

TRUST BOARD MEETING



Date: Tuesday 27 May 2025

Location: Wallace Chambers, John Dickie Street, Kilmarnock

Start time: 6pm

AGENDA			
AGENDA ITEM	FOR NOTING	FOR DISCUSSION	FOR APPROVAL/ DECISION
1. Apologies for Absence	✓		
2. Declarations of Interest	✓		
3. Minutes of previous meetings 3.1 Board Meeting: 4 March 2025 3.2 P&ASC Meeting: 13 May 2025	✓		✓
4. Performance Report January – March 2025	✓		
5. Trust Budget 2025-26			✓
6. External Audit Plan	✓		
7. Organisational Growth (Phase I) This is a restricted document and not for onward circulation			✓
8. Service Level Agreement			✓
9. Severance – Flexible Retirement This is a restricted document and not for onward circulation			✓
10. AOCB		✓	
11. Dates of Next Meetings: Performance & Audit Sub-Committee: 19 August 2025 Trading Subsidiary: 19 August 2025 AGM/Trust Board: 9 September 2025			

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REPORT TO BOARD OF TRUSTEES

PERFORMANCE REPORT JANUARY TO MARCH 2025

Date: 27 May 2025

Agenda Item: 4

Report by: Anneke Freel, Chief Officer

I PURPOSE OF REPORT

- 1.1 This report provides details of the Trust’s performance for the fourth quarter of 2024/25.
- 1.2 In line with the organisational review, Strategic Vision and Corporate Delivery Plan, the performance report has been separated into 3 documents:
 - East Ayrshire Leisure Performs – providing an update on attendance figures, organisational learning, the risk register and other organisational wide items
 - Corporate Delivery Plan Record of Progress – providing an update on the priority outcomes
 - Financial Performance – providing an update on our financial position at the end of the quarter and projections to the end of the financial year

2 EAST AYRSHIRE LEISURE PERFORMS

- 2.1 The overall attendance at our venues for the period January to March 2025 was 532,500, which is an increase of 1.18% compared to the same period in 2023/24.
- 2.2 The Leisure at the Heart of Every Community Team has seen higher attendance figures in this period with an overall increase of 7.43% compared to the same period in 2023/24
- 2.3 The country park continues to grow in popularity. However, forced closures due to storms in January has led to a decrease of 7.36% in the period. 8.88% of visitors to the Country Park also visited the Dean Castle. Dean Castle Country Park continues to be Ayrshire’s most visited free visitor attraction.
- 2.4 We continue to monitor the performance aspirations set out in our Strategic Vision with many projections already being exceeded as outlined in the table below. It should be noted that the variances are based on how close we are to achieving the 2030 target. In some cases, these are being exceeded. Intervention areas that we will focus on are Children engaged in educational activities and opportunities for volunteers. Given the transfer of additional services from EAC Trust, the Strategic Vision and associated targets will be reviewed in 2025/26.

Measurement	Progs. for 12-25yrs	Progs. For 65+	Events and Exhibitions	Children engaged in education	Opportunities for volunteers	Community Initiatives	Partnership Projects
2018 Baseline	20	7	28	12000	17	17	25
2024/25	73	58	155	11810	31	55	138
2030 Target	30	15	40	20000	50	54	106
Variance against baseline	73%	88%	82%	-2%	45%	69%	76%
Variance against target	59%	74%	74%	-69%	-61%	44%	62%

- 2.5 As we come to the mid-point of the 2nd Corporate Delivery Plan, it is important to reflect on these statistics. This will allow us to focus on key areas such as programmes and activities for children and young people linked to the curriculum and opportunities for volunteering and placements. This focused piece of work needs to be done, whilst sustaining the target levels for the other performance indicators.

REPORT TO BOARD OF TRUSTEES



2.6 The risk register has been reviewed and with a new risk included to reflect the transfer of additional services.

3 CORPORATE DELIVERY PLAN RECORD OF PROGRESS

3.1 At the mid-point of the 46 outputs included in the 2024-26 plan, 6 have been completed, 37 are underway and 3 have yet to be started.

4 FINANCIAL PERFORMANCE

4.1 The financial performance quarter 4 report provides detail of the Trust's financial performance for the period January to March 2025. The outturn for East Ayrshire Leisure at 31st March 2025 is a deficit position of £30k. 2024/25 was a particularly challenging year for the Trust with the closure of the Palace Theatre and Grand Hall resulting in significant income shortfalls in both performing arts and hospitality and additional spend to provide alternative storage facilities for the equipment. This deficit can be met from uncommitted reserves.

4.2 It should be noted that the management team have now introduced a new budgetary monitoring process to ensure robust financial management, especially while the Palace Theatre and Grand Hall remains closed and the consequence of capital that comes with that.

Recommendation/s:

It is recommended that Trustees:

- i. Note the East Ayrshire Leisure Performs Report for the period January to March 2025;
- ii. Otherwise note the content of this report.

Anneke Freckel

Signature:

Designation: Chief Officer

Date: 1 May 2025



EAST AYRSHIRE LEISURE PERFORMS

QUARTER 4

JANUARY - MARCH

2024/25



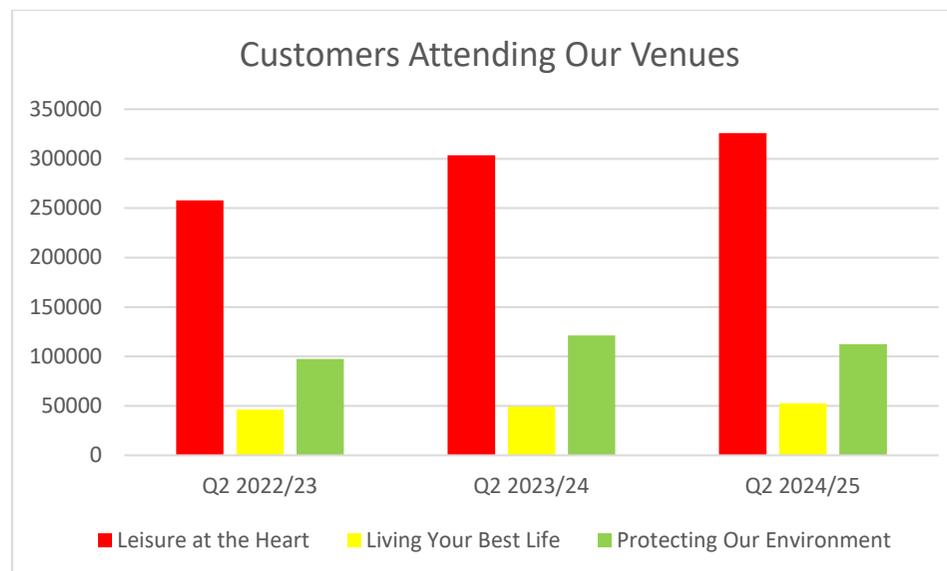
Contents

PERFORMANCE INDICATORS	3
Attendance Figures	3
Strategic Vision Performance Monitoring	5
KEY UPDATES.....	6
Insurance Claims	6
Gifts & Hospitality.....	6
ORGANISATIONAL LEARNING.....	7
RISK REGISTER.....	9

PERFORMANCE INDICATORS

Attendance Figures

The following chart summarises our attendance figures across 3 of our strategic themes and the table provides a detailed breakdown of which venues are included within each theme.



- **Leisure at the Heart** portfolio has seen a significant increase compared to the same period in 2023/24 of 7.4%. Whilst libraries are generally performing well, attendances have been impacted by the community performing arts programme that has been introduced, in Stewarton Area Centre, Darvel Town Hall and Cumnock Town Hall with respective increases of 314%, 161% and 66%. Morton Hall has recorded another significant increase of 390% (Q3 reported an increase of 576%). Ongoing investigation is being carried out to determine if there could be an error in the data collection. However, bookings are building back up after closure for refurbishment in 2023/24. Many of our synthetic grass pitches have now reached capacity during evening and weekends, with an average increase of 20.43% for the period. Ongoing discussions are taking place with local football clubs, the Scottish Football Association and SportScotland to develop a strategy to meet future demand. Rose Reilly Sports Centre is also benefitting from the establishment of a new table tennis club that meets regularly and the introduction of the Active Wellbeing Suite, which is being used for regular programming with primary health care practitioners. Doon Valley indoor use has been impacted by damage caused by recent storms and Hunter Fitness suite figures continue to be monitored.
- The venues within the **Living Your Best Life** portfolio have seen an overall decrease of 7% compared to the same period in 2023/24. This is predominantly due to the change in data recording with the new Futuremuseum website. The new method of collecting data from the website has been in place for a full year, allowing accurate year on year comparisons to be made from Q1 2025.26. Museums in general have seen an increase in visitor numbers in quarter 4 by an average of 7%.

However, the Baird Institute has decreased by 22%. The visitor numbers for the Baird seem to fluctuate significantly depending on the exhibition programme. Tracking this across the year we can see +48% in Q1, -22% in Q2, +27% in Q3 and now -22% in Q4. A piece of work will now be carried out to marry the exhibition programme to the trends in visitor numbers to determine how we achieve a more consistent approach to attracting visitors.

- **Protecting our Environment** is currently only recording figures for Dean Castle Country Park. The Country Park continues to be popular, although has recorded a decrease of 7.3% compared to the same period in 2023/24. The country Park was significantly affected by storm damage in January and remained closed for a period. This has had an effect on the number of visitors recorded.

Leisure at the Heart	Living Your Best Life	Protecting our Environment
Auchinleck Library Cumnock Library Darvel Library Newmilns Library Galston Library Dick Institute Library Stewarton Library Crosshouse Library Stewarton Area Centre Boswell Centre Galston Community Centre Darvel Town Hall Morton Hall Cumnock Town Hall Barony Sports Village Doon Valley Leisure Centre Rose Reilly Sports Centre Loudoun Leisure Centre Hunter Fitness Suite St Joseph's Leisure Centre Grange Leisure Centre William McIlvanney Leisure Centre E-books Mobile Services Football Pavilions	Dick Institute Museum Dean Castle Burns House Museum Burns Monument Centre Baird Institute Doon Valley Museum Ayrshire Athletics Arena Annanhill Golf Course	Dean Castle Country Park River Ayr Way

Strategic Vision Performance Monitoring

The following performance indicators are aligned to our 10 year Strategic Vision

Performance Indicator	Quarter 1 Performance	Quarter 2 Performance	Quarter 3 Performance	Quarter 4 Performance	2024/25 Performance	2030 Strategic Aspirations
People attending our Venues	501,656	505,464	488,348	500,008	2.03 million	2.9 million
People engaging in our programmes						0.99 million
Our eastyrshireleisure.com online visitors	232,775	238,202	260,241	190,860	0.92 million	0.38 million
Online visitors to futuremuseums.com	31,100	28,480	31,430	41,524	0.13 million	0.25 million
Number of programmes for 12-25 year olds	18	18	17	20	73	30
Number of programmes for 65+	15	20	11	10	58	15
Number of local and regional events and exhibitions	12	69	31	40	155	40
Number of children engaged in our education programme	5365	1117	2761	2409	11810	20,000
Opportunities that we offer for volunteers and work placements	2	18	6	5	31	50
Our absence Levels	2.85	2.63	2.79	3.10	11.37	8 days / annum
Our staff turnover rates	2.2%	3.3%	5.4% (5 fixed term & 3 retirements)	6.6% (12 leavers: 5 on fixed term contracts)	4.4%	7-10%
Number of community initiatives that we support	19	15	10	10	54	30
Number of partnership projects we engage in	40	11	18	17	106	40
Carbon Footprint	Not currently recorded				Not currently recorded	990tCO2e

KEY UPDATES

Insurance Claims

The following information provides an update on the number of live claims in progress during the period January - March 2025:-

Public Liability	3 x ongoing 1 x new
Employers' Liability	1 x ongoing
Motor Claim	2 x ongoing 2 x closed

Gifts & Hospitality

No gifts and hospitality records were received during this period.

ORGANISATIONAL LEARNING

Organisational Learning is our new framework which analyses feedback from events and activities, staff and customer comments and complaints, venue visits, audits and external accreditation schemes. This process demonstrates our commitment for continuous improvement through collectively sharing and reviewing processes and procedures whilst also celebrating good practice and acknowledging where there are opportunities to learn.

Learning Theme	Recommendation/Notes	Action Required
Customer Care/Services	<ul style="list-style-type: none"> • Service and Staff praised for levels of customer care: <ul style="list-style-type: none"> - the Countryside Rangers commitment and professionalism is exceptional; Vision team are a dedicated and enthusiastic team, the Dick Institute building is a marvel; the experience certainly surpassed our expectations; what a joy to sit in this beautiful building, surrounded by books drinking wonderful coffee. - Comments received re. Baird Institute, Cumnock: Brilliant Museum, friendly and helpful staff with informative conversations. 	<ul style="list-style-type: none"> • Service action required <ul style="list-style-type: none"> - Staff newsletter and Intranet - staff to be notified.
	<ul style="list-style-type: none"> • Poor customer service 	<ul style="list-style-type: none"> • Service action required <ul style="list-style-type: none"> - Customer Service Protocol - Customer Journey Training being rolled out to all frontline staff
	<ul style="list-style-type: none"> • Cleanliness mentioned in 2 facilities 	<ul style="list-style-type: none"> • Service action required <ul style="list-style-type: none"> - Revise cleaning schedule
Health & Safety	<ul style="list-style-type: none"> • Staff being subjected to verbal abuse, concerned for their own safety, feeling intimidated and/or threatened, public refusing to leave premises. During this quarter, these incidents have predominantly involved youths accessing school premises 	<ul style="list-style-type: none"> • Service action required <ul style="list-style-type: none"> - Violence & Aggression H&S Standard - Violence & Aggression Risk Assessment - Staff awareness – do's & dont's - Conflict Handling Training - Scenario Based Exercise

	<ul style="list-style-type: none"> • Trips and slips 	<ul style="list-style-type: none"> • Service action required <ul style="list-style-type: none"> - Staff to follow guidance within the manual handling techniques when carrying items and take due care carrying items up/downstairs. - Article to be added to the Staff Newsletter
Communication	<ul style="list-style-type: none"> • Clarification of duties to be reviewed and communicated • Ensure regular progress meetings are taking place • Training to be reviewed with staff • Induction process 	<ul style="list-style-type: none"> • Service action required <ul style="list-style-type: none"> - Ensure Job Induction process is followed

RISK REGISTER

No.	Risk	Lead Officer	Likelihood	Impact	Total Risk Score (L x I)	Risk Category	Controls
1	There will be a reduction in funding received from East Ayrshire Council, resulting in a reduction in service provision and a requirement to generate more income from services.	Chief Officer	4	4	16 RISK APPETITE: CAUTIOUS (Compliance)	HIGH	<ul style="list-style-type: none"> • Communication with East Ayrshire Council allowing forward planning to ensure that service provision meets the requirements of the main funding provider. • Organisational Learning • Implementation of Growth Plan 2024-2030 • PR; communications with staff and customers • Financial Strategy •
2	There is a risk of not being able to maintain high quality services because of a lack of funding, resulting in a failure to invest, loss of staff, a reduction in staff commitment and damage to East Ayrshire Leisure's reputation.	Executive Managers & Strategic Leads	4	3	12 RISK APPETITE: OPEN (Reputation)	MEDIUM	<ul style="list-style-type: none"> • Business Planning • Positive Public Relations • Equipment Replacement Programme • Leisure Facility Strategy • Financial Strategy • Continued dialogue with Council • B.E.S.T. - ongoing training and development of staff • Organisational Learning • Implementation of Growth Plan 2024-2030
3	There is a risk partners and external stakeholders do not see East Ayrshire Leisure as a partner of choice because of a lack of resources invested in partnership activity, resulting in a failure to deliver Delivery Plan	Executive Managers & Strategic Leads	3	3	9 RISK APPETITE: OPEN (Reputation)	LOW	<ul style="list-style-type: none"> • Service reviews • Positive Public Relations • Service Level Agreements/Contracts • Strategic Vision 2020-2030 with 2 yearly Corporate Delivery Plans • Leisure Facility Strategy

No.	Risk	Lead Officer	Likelihood	Impact	Total Risk Score (L x I)	Risk Category	Controls
	targets and the loss of external funding.						
4	There is a risk that buildings are not at the standard required or operating efficiently in terms of environmental sustainability due to a lack of capital investment or maintenance, resulting in a reduction in facilities, loss of income, the inability to market services, inability to respond to impacts of climate change or weather and the loss of services.	Executive Managers & Strategic Leads	3	4	12 RISK APPETITE: OPEN (Operation)	MEDIUM	<ul style="list-style-type: none"> • Regular communication with the Council • Business Continuity Plan • Regular Workplace inspections and reviews • Fire Risk Assessments • Established repairs reporting system • Proposed Asset Management Plan (EAC) • Capital Improvement Plan (EAC) • Environmental management, monitoring and reporting • Leisure Facility Strategy and Action Plan • Maintenance Liaison Group • Leisure Programme Board
5	There is a risk that East Ayrshire Leisure does not take commercial opportunities because staff are not able to identify and take these opportunities, resulting in lost revenue streams, perceptions of poor service and the failure to be aligned with market demands.	Executive Managers & Strategic Leads	4	3	12 RISK APPETITE: OPEN (Financial)	MEDIUM	<ul style="list-style-type: none"> • Attendance at Events • Recruitment and Selection procedure • B.E.S.T. reviews • Training and development programme • Growth Plan 2024-30 • Financial Strategy • Establishment of a trading subsidiary

No.	Risk	Lead Officer	Likelihood	Impact	Total Risk Score (L x I)	Risk Category	Controls
6	There is a risk that East Ayrshire Leisure does not have the right people with the right skills in the right places because of the failure to adapt/train existing staff, not recruiting the right people and not motivating its workforce. This would result in poor services, lack of customer engagement, failure to cross-sell and a loss of income.	Executive Managers & Strategic Leads	3	2	6 RISK APPETITE: OPEN (Operation)	LOW	<ul style="list-style-type: none"> • Training and development • Ongoing review of Training matrices • Induction Process • B.E.S.T. review and development programme • Recruitment and selection procedures • Effective communication with staff
7	There is a risk that East Ayrshire Leisure will not comply with legislation standards and fail to meet the requirements of Health & Safety, GDPR, OSCR, VAT etc.	Executive Managers & Strategic Leads	1	4	4 RISK APPETITE: CAUTIOUS (Compliance)	LOW	<ul style="list-style-type: none"> • Health & Safety Strategy Group • Partnerships Working Groups • Service Level Agreement • Support from East Ayrshire Council
8	There is a risk that East Ayrshire Leisure will not be able to operate services due to a failure in IT systems including the Box Office and Booking System. This would result in a loss of income, not being able to meet	Executive Managers & Strategic Leads	2	4	8 RISK APPETITE: OPEN (Operation)	LOW	<ul style="list-style-type: none"> • Dedicated Systems Development Officer and IT Co-ordinator • Regular communication with Council's IT dept • Ongoing review of systems

No.	Risk	Lead Officer	Likelihood	Impact	Total Risk Score (L x I)	Risk Category	Controls
	community demand and reputational damage.						
9	There is a risk that East Ayrshire Leisure will not be able to proceed with planned events due to natural disasters, severe weather, threats or other unexpected incidents.	Executive Managers & Strategic Leads	3	4	12 RISK APPETITE: OPEN (Operation)	MEDIUM	<ul style="list-style-type: none"> Partnership working groups (SAG) Support from EAC Appropriate insurance cover in place Contract agreements in place PR; communications with staff and customers
10	There is a risk that the transfer of additional services will put addition pressures on resources that will have an impact on service delivery or the change process will lead to low staff moral, which could also have an impact on service delivery	Executive Managers & Strategic Leads	3	4	12 RISK APPETITE: OPEN (Operation)	MEDIUM	<ul style="list-style-type: none"> Implementation of communication plan Ongoing review of meeting schedule Review of management structures Review of operating model Training and development Ongoing review of Training matrices Induction Process B.E.S.T. review and development programme



CORPORATE DELIVERY PLAN
RECORD OF PROGRESS
QUARTER 4
JANUARY - MARCH
2024/25



KEY:

Chief Officer	AF	Strategic Lead: Leisure at the Heart of Every Community	GR	Strategic Lead: Sharing Our Vision	DR
Executive Lead: People, Policy and Performance	JB	Strategic Lead: Living Your Best Life	VACANT	Strategic Lead: Creating a Solid Foundation for Growth	LR
Executive Lead: Place, Projects and Programmes	PM	Strategic Lead: Protecting our Environment	CK	Strategic Lead: Investing in our People and Embracing our Values	IP

 - No Progress	 - Some Progress	 - Complete
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SHARING OUR VISION

Strategic Objective: To create a programme of community engagement activities which includes consultation with our customers and potential customers about existing and future facilities and services and to adopt a positive approach to feedback

Output		Lead	Progress	Comments
1	Develop and implement a 2 year programme of Customer Exchange activities for members of the community	DR		<p>A working group for Customer Roadshows has been established and planning is now well underway for the events. All staff will be issued with a briefing note to ensure everyone has the information they require to encourage participation amongst customer groups and to answer questions that might arise out with the organised sessions.</p> <p>An awareness campaign on social media will run from April.</p> <p>A webpage has been set up with key information about organisational growth, roadshow information, link to customer survey and links to previous survey report:</p> <p>https://eastayrshireleisure.com/about-us/organisational-growth/</p>
2	Develop a programme of customer consultation activities aligned to the priorities within the Leisure Facility Strategy	DR		No update from previous quarter.

SHARING OUR VISION

Strategic Objective: To ensure our use of creative marketing-led activities effectively promote our high quality services, maximise customer engagement and make a real difference to how people view East Ayrshire Leisure Trust

Output		Lead	Progress	Comments
3	Develop and implement a programme of signage and interpretation as outlined in the Leisure Facility Strategy 2022-30	DR		The project to install a number of TV screens and digital signage across multiple Trust venues is now complete. Software (pico boxes) which will allow key, and targeted messaging to be

				<p>delivered across multiple sites from one central point is also being installed.</p> <p>Screens and signage at Wallace Chambers have been installed and a larger project of interpretation and imagery within the building showcasing the history of the William Wallace & Co and additional tenants is now underway.</p> <p>Interpretation boards at Morton Hall highlighting lace industry and links to the covenanters have now been installed.</p>
4	Review all actions within the East Ayrshire Leisure Digital Transformation Action Plan 2021-24 and develop a revised action plan for the period 2024-26	DR		Further exploratory meetings with the Senior Management Team are scheduled.
5	Develop, implement and evaluate a Destination Campaign Action Plan for 2024-26	DR		<p>Following the announcement by VisitScotland that their Accreditation Scheme is being withdrawn we will join Association of Scottish Visitor Attractions (ASVA) from April 2025. Becoming a member will provide us with alternative benchmarking, training and networking opportunities.</p> <p>Internal Audit will investigate opportunities for implementing our own internal Mystery Shopping scheme or whether it should be sourced from an external agency.</p> <p>The Destination Campaign Action Plan is in draft form to be discussed at Board in due course. Incorporates actions from the Leisure Facility Strategy as well as a wider approach to local tourism.</p>

SHARING OUR VISION

Strategic Objective: To integrate our values into all aspects of our business including Review and Development programme, recruitment, training and meetings. To focus on skills, knowledge and experience in the development of our business and to ensure we invest in industry specialist training which is tailored to meet the needs of our programmes

Output	Lead	Progress	Comments
6	DR		<p>A meeting has been held with the Council's Organisational Development reps to discuss our requirements and reporting mechanisms. EAC are liaising with Learn Pro on our behalf initially and will keep us up to date with any outcomes.</p> <p>The vision for this platform first and foremost is to remove confusion for our staff associated with mixed messaging – ensuring all content and branding is fully representative of The Trust and reflects the Trust's needs. It will incorporate all learning and development requirements from across all services. The starting point is to reflect the Mandatory Training matrices of all Trust 'family groups' and then will move to the addition of 'designation specific' training.</p>
7	DR		<p>A final report outlining the outcomes of the 2024 Staff Satisfaction survey has been prepared for P&ASC and features highlights as well as areas for improvement. This will be discussed with the Senior Management Team and actions will be added to service plans if appropriate.</p> <p>Our Communications Plan is well underway and dates for Staff Roadshows have been circulated – these will run adjacent to the Customer Roadshows.</p> <p>Staff Inductions are scheduled for 1st & 2nd April with all incoming staff from Vibrant Communities and the Galleon Centre being invited. The induction covers all key information for staff from our Vision Mission and Values, to the Code of Conduct and a</p>

				promotional video which gives a flavour of who we are and what we deliver. All staff will be issued with a Welcome Pack
LEISURE AT THE HEART OF EVERY COMMUNITY				
Strategic Objective: To work with community, local authority and private providers to develop a Leisure Facility Strategy that identifies all leisure provision throughout East Ayrshire and maximises the opportunities for our communities to participate in leisure activity				
Output		Lead	Progress	Comments
8	As part of East Ayrshire Council's project team, develop proposals for Doon Valley Leisure Centre to maximise opportunities that the community campus has for community participation in leisure activities.	GR		No update from previous quarter.
9	Secure funding for the upgrade and development of sports pitches as part of the implementation of the sports pitch priorities identified in the Leisure Facility Strategy 2022-2030	GR		The consultants appointed to carry out the masterplan for the Regional Sports Park have been also asked to carry out an audit of sports pitch condition, availability and use. This will allow further discussions with clubs, SFA and SportScotland regarding priorities for future investment.
LEISURE AT THE HEART OF EVERY COMMUNITY				
Strategic Objective: To work collaboratively with key partners and stakeholders in the development of programmes and activities whilst exploring innovative delivery models which ensure best value for our customers				
Output		Lead	Progress	Comments
10	Develop and implement an action plan for the opening of Galston Town Hall	GR		Conversations have started around the layout, equipment, IT requirements for the facility, which is scheduled to open in Q3 of 25.26
11	Introduce, monitor and evaluate a pilot mobile services programme and integrate successes into core services	GR		

LEISURE AT THE HEART OF EVERY COMMUNITY

Strategic Objective: To work with partners to explore funding opportunities for refurbishment and development of leisure facilities

Output	Lead	Progress	Comments
12	Secure funding for the redevelopment of Darvel Town Hall	GR	
13	Implement improvement plan for Rose Reilly Sports Centre including installation of a studio for fully inclusive exercise, an outdoor pump track, new play area and outdoor fitness space	GR	

LIVING YOUR BEST LIFE

Strategic Objective: To support the development of sustainable pathways that encourage lifelong participation in leisure activities

Output	Lead	Progress	Comments
14	Establish a Youth Board in line with the East Ayrshire Leisure Programme Development Strategy 2022-2026		

LIVING YOUR BEST LIFE

Strategic Objective: To contribute to a programme of high profile regional and national events, exhibitions, programmes and projects, that are ambitious and outward facing, whilst maximising the impact on our customers and visitors

Output	Lead	Progress	Comments
15	Work with key stakeholders across Ayrshire to develop a regional wide Cultural Strategy		

				will be given to a more strategic document that provides direction for Sport and Culture.
16	Develop a funding strategy for the implementation of the Ayrshire Regional Sports Park			Consultants have now been appointed to develop the masterplan for the Regional Sports Park (RSP). Consultation has started with local sports clubs who will form part of a new community sports hub for the RSP. Draft report is scheduled for October 25
17	Develop a masterplan for Annanhill Golf Course, which includes the development of the clubhouse to enhance participation in female and youth golf			No update from previous quarter.
18	Review the opportunities for 2024/26 within the East Ayrshire Leisure Programme Development Strategy 2022-2026 and develop and implement a 2 year programme of hallmark and regional events			Strategic Lead: Events started with EALT on the 7 th April and has started to review existing strategies, processes and procedures.
19	Implement redevelopment project at Burns House Museum as part of the Mauchline CARS project			Contractor has been appointed to carry out external refurbishment of Burns House Museum and Nanse Tinnocks. An application has been submitted for internal layout improvements, upgrade and access improvements to the courtyard and modernisation display and interpretation.
20	Develop an interpretation plan that provides enhance public access to the Dean Castle			No update from previous quarter.
21	Develop and implement Cultural Kilmarnock			<p>Planning consent has now been approved, the preferred contractor has been appointed, and marketing testing of the various work packages is scheduled to be finalised by mid-May. Ongoing discussions are taking place with Ayrshire Roads Alliance through the Kilmarnock Town Centre Taskforce group to develop proposals that link the Palace Theatre project to the Kilmarnock Green Infinity Loop.</p> <p>A separate commission has been made to develop a promotional booklet and video to be used with promoters and tourers to raise the profile of the refurbished Palace Theatre and Concert Hall. Images produced as part of this commission will also be used</p>

				for innovative and creative signage for the site hoarding when it is erected.
LIVING YOUR BEST LIFE				
Strategic Objective: To develop activities and services that contribute to the Scottish Government's aspirations for 'A Healthy and Active Nation' and 'A Creative, Open and Connected Nation' and to ensure that East Ayrshire Leisure is at the heart of future trends and initiatives				
Output		Lead	Progress	Comments
22	Implement a campaign to promote the new Futuremuseum.com platform and add community based collections to the website			Complete
23	Develop a funding strategy for the creation of an 'open store' museum			No update from previous quarter.
24	Maintain accreditation for our museums by reviewing the Collection Procedural Manual in line with the Collection Development Strategy 2022-30 and Collection Agreement and submitting an application to Museum Galleries Scotland			No update from previous quarter.
25	Develop an action plan for the completion of the digitisation of the entire museum collection onto Axiell Collection Management System			Action plan is in place with regular monitoring embedded
26	Implement, monitor and evaluate the actions outlined in the East Ayrshire Leisure Sporting Pathways Action Plan 2023-26			No update from previous quarter.
INVESTING IN OUR PEOPLE & EMBRACING OUR VALUES				
Strategic Objective: To develop and embed our People Strategy so that employees at all levels, alongside our customers, partners and communities, are engaged and can contribute to the business.				
Output		Lead	Progress	Comments
27	Develop, implement, monitor and evaluate a People Strategy	IP		

INVESTING IN OUR PEOPLE & EMBRACING OUR VALUES

Strategic Objective: To offer work placements, volunteering and apprenticeships

Output		Lead	Progress	Comments
28	Identify and implement opportunities for Foundation Apprenticeships	IP		Complete
29	Identify and implement opportunities for Modern Apprenticeships	IP		Application has been made through the Council's Jobs and Training Fund for 4 Modern Apprentices, £5K has been awarded for each. Executive Management will need to review budgets to see which of these can be taken forward if any.
30	Identify and implement opportunities for Graduate Apprenticeships	IP		Application has been made through EAC Jobs and Training Fund for 5 graduate Interns. £5K has been awarded for each. Executive Management will need to review budgets to see which of these can be taken forward if any.

INVESTING IN OUR PEOPLE & EMBRACING OUR VALUES

Strategic Objective: To review and continually improve and enhance our systems and processes to ensure that they are effective and appropriate in the transformation of our business

Output		Lead	Progress	Comments
31	Implement, Monitor and Evaluate Leisure Management Systems	IP		Focus now needs to move to the Invoicing and Debt Recovery capabilities of the system to ensure we provide accessible services for our communities while maximising income. Quotes have been requested from Legend to allow us to explore areas of funding, potentially Tools for Success. A Customer survey to target our Legend Customers to obtain feedback on the customer journey will now be developed and distributed

32	Implement, Monitor and Evaluate Leisure Ticketing Systems	IP		A Customer Survey will now be developed and distributed to our Spektrix Customers to obtain feedback on the customer journey
33	Review and identify various payment methods available to the Trust which will enhance customer service	IP		Working Closely with the Council and our third party providers we have successfully implemented suitable and accessible payment methods across our sites and on line.
34	Explore opportunities to enhance the existing commitment reporting system	IP		As part of the ongoing working groups with the additional incoming services an option appraisal will be carried out to ascertain whether the Trust will continue with the current Pecos Procurement System or develop a new e-purchasing system bespoke to Trust requirements
CREATING A SOLID FOUNDATION FOR GROWTH				
Strategic Objective: To develop a collaborative approach with relevant partners to explore wider opportunities that fit within the Trust's vision and values and to explore opportunities to share resources across all our services internally and with key stakeholders				
Output		Lead	Progress	Comments
35	Develop, implement, monitor and evaluate identified actions outlined within the East Ayrshire Leisure Growth Plan	LR		First phase of the Growth plan has been implemented with the transfer of Vibrant Communities and the Galleon Leisure Centre to East Ayrshire Leisure on the 1 st April.
CREATING A SOLID FOUNDATION FOR GROWTH				
Strategic Objective: To maximise the return from commercial opportunities, especially around retail, hospitality and membership packages, so that we are in a position to fulfil our charitable obligations and become a sustainable organisation				
Output		Lead	Progress	Comments
36	Expand the membership packages to include opportunities across all service areas	LR		The working group is developing a 'pick and mix' approach to the integrated membership allowing customers to purchase a base package and then choose 'add ons' that best suit their lifestyles. This model will allow us to develop the offer whenever new products and services become available. The logistics for the administration of this will be reviewed prior to presentation to Board.

37	Introduce a hospitality offer to support large scale events and programmes at identified venues as outlined in the Leisure Facility Strategy	LR		Strategic Lead: Hospitality & Retail has been appointed and is working on the operating model that will allow large scale events to be supported
38	Develop and implement a retail plan, which includes on-line and venue sales	LR		Strategic Lead: Hospitality & Retail has been appointed and is working on the operating model that will explore new and enhanced opportunities for gift shops and on-line retail
39	Prepare a Business Plan for the development of a Trading Arm	LR		Complete

PROTECTING OUR ENVIRONMENT

Strategic Objective: To prepare and adopt a Climate Change Declaration on an annual basis which audits our carbon footprint and outlines priorities for carbon reduction

Output		Lead	Progress	Comments
40	Implement, monitor and evaluate the East Ayrshire Leisure Net Zero Action Plan 2024-26	CK		Awarded Bronze status Carbon Literate Organisation A water reduction pilot underway with tap aerators within three venues.

PROTECTING OUR ENVIRONMENT

Strategic Objective: To adopt the principles of Visit Scotland's Green Tourism Business Scheme to reduce the environment impact of our business

Output		Lead	Progress	Comments
41	Develop a funding strategy for further upgrades to Dean Castle Country Park's outdoor toilets and car park to include LED lighting and EV charging points	CK		Working with the Council for confirmed costs and timescales for upgrading the outdoor toilets
42	Develop a funding strategy to enhance adventure and informal play at Dean Castle Country Park	CK		No update from previous quarter.

43	Develop an Urban Croft proposal, including funding strategy that focuses on Assloss Walled Garden, Assloss Stables, Assloss Car Park and the paddocks at Dean Castle Country Park	CK		Urban Croft Feasibility report completed, currently exploring alternative funding options.
PROTECTING OUR ENVIRONMENT				
Strategic Objective: To implement a Sustainable Transport Strategy which encourages active travel in all our operations and with our staff and customers				
Output		Lead	Progress	Comments
44	As part of the Ayrshire Roads Alliance led project team implementation of the Kilmarnock Green Infinity Loop, particularly as it goes through Dean Castle Country Park, Ayrshire Athletics Arena, Scott Ellis Playing Fields and Annanhill Golf Course	CK		No update from previous quarter.
45	Update the accessibility audit and associated action plan of the River Ayr Way and develop a funding strategy to carry out improvement works to tie in with the 20 th anniversary celebrations	CK		Accessibility Audit complete being revisited after recent storm, working with Ayrshire Roads Alliance in relation to bridges on the route.
46	Develop a funding strategy to upgrade and install additional electrical supply to Annanhill Golf Course to allow the move from diesel to electric golf carts	CK		Meetings held onsite with EAC and Fortress regarding power.



FINANCIAL PERFORMANCE
QUARTER 4
JANUARY - MARCH
2024/25



CONTENTS

SUMMARY STATEMENT	4
ANNUAL BUDGET	5
OVERALL NET POSITION	5
EXECUTIVE MANAGEMENT SERVICE ANALYSIS	11
SHARING OUR VISION ANALYSIS	13
INVESTING IN OUR PEOPLE AND EMBRACING OUR VALUES ANALYSIS	15
CREATING A SOLID FOUNDATION FOR GROWTH ANALYSIS	17
LEISURE AT THE HEART OF EVERY COMMUNITY ANALYSIS	19
LIVING YOUR BEST LIFE ANALYSIS	21
PROTECTING OUR ENVIRONMENT ANALYSIS	23
RESERVES	24
GENERAL PROJECTS	29
EXTERNAL FUNDING	32

Notes:

All financial figures are cumulative to the current quarter and projected to the end of the financial year, i.e Qtr 3 shows the actual amounts for Qtr 3, combined with projections up to the end of March 2025.

The 1st paragraph is a brief statement which summarises the current financial position.

The 'Annual Budget Table' reconciles the annual budget for the Trust. The budget is initially reported to the Board in February for the upcoming financial year, but there are often adjustments throughout the year. This table provides a reconciliation from initial February report to the current report.

FINANCIAL PERFORMANCE KEY

ADVERSE:		FAVOURABLE:	
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SUMMARY STATEMENT

The actual outturn for East Ayrshire Leisure at 31st March 2025 is an adverse variance of £29,932. This adverse variance can be met from existing uncommitted Reserves.

(Note £80k was released to uncommitted reserves from allocated reserves at Qtr 3)

This financial year has been a challenging year for the Trust managing the closure of the Palace/Grand Hall complex, providing alternative programming, relocation to Wallace Chambers and preparing for the changes in the upcoming financial year.

Additional expenditure on project works during the financial year has resulted in a higher element of Irrecoverable VAT.

Detailed explanation of variances can be found within individual Service Analysis.

There are further variances within Income and Expenditure, these are closely monitored and managed within the Service during the year where possible - Detailed explanation of variances can be found within individual Service Analysis.

TABLE A – Overall Net Position (including Income/Expenditure) for East Ayrshire Leisure analysed by Service Area

TABLE B – Overall Net Position (including Income/Expenditure) for East Ayrshire Leisure analysed by Subjective Level

TABLE C – Income Position for East Ayrshire Leisure analysed by Service Area

TABLE D – Expenditure Position for East Ayrshire Leisure analysed by Service Area

ANNUAL BUDGET

Table below provides detail of Annual Budget showing the impact of 2024/25 savings approved at 20th February 2024 Board meeting.

Service Division	Annual Budget 2024/25	Annual Budget 2024/25 Qtr 1	Annual Budget 2024/25 Qtr 2	Annual Budget 2024/25 Qtr 3	Annual Budget 2024/25 Qtr 4	Comments
EXECUTIVE MANAGEMENT		346,690	787,870	651,810	887,290	
SHARING OUR VISION		415,810	384,470	395,280	395,280	
INVESTING IN OUR PEOPLE AND EMBRACING OUR VALUES		615,660	617,510	658,930	852,010	
CREATING A SOLID FOUNDATION FOR GROWTH		198,780	162,990	172,770	172,770	
LEISURE AT THE HEART OF EVERY COMMUNITY		1,947,260	1,769,470	1,888,850	2,026,820	
LIVING YOUR BEST LIFE		994,760	921,050	976,690	1,063,970	
PROTECTING ENVIRONMENT		1,000,880	941,940	994,410	1,009,550	
TOTAL	5,638,300					
SAVINGS TO BE ALLOCATED	(181,000)					
TOTAL	5,457,300	5,519,840	5,585,300	5,738,740	6,407,690	
Management Fee	(5,457,300)	(5,502,030)	(5,506,930)	(5,604,370)	(5,921,660)	
Reserves	0	(17,810)	(78,370)	(134,370)	(486,030)	
TOTAL	0	0	0	0	0	

OVERALL NET POSITION

Notes:

Tables A and B present financial information in different formats:

TABLE A: Overall Net Position (including Income/Expenditure) for Trust analysed by Service Area

TABLE B: Overall Net Position (including Income/Expenditure) for Trust analysed by Subjective Level

For all tables

Column 1 refers to information for prior year; column provides final position for full prior year

Column 2 refers to the Service Areas

Column 3 provides the Annual Budget – this reconciles to the Annual Budget table above

Column 4 provides the Actuals to date (including commitments)

Column 5 provides Actual Expenditure as a % of Annual Budget

Column 6 provides anticipated projected position for end of financial year

Column 7 provides anticipated projected variance for current financial year – (Favourable)/Adverse)

Final column provides quick review of favourable/adverse position

TABLE A – OVERALL NET POSITION

Actual Out-turn to 31/03/24	Service Division	Annual Estimate 2024/25	Revised Actual Exp. to 31/03/25	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/25	Variance (Favourable) / Adverse	
321,098	EXECUTIVE MANAGEMENT	887,290	857,243	97%	857,243	(30,047)	
404,249	SHARING OUR VISION	395,280	399,932	101%	399,932	4,652	
61,510	Vision Management Team	56,100	58,117	104%	58,117	2,017	
44,977	Visual Communications	41,680	41,958	101%	41,958	278	
192,788	Marketing & Tourism	191,860	195,280	102%	195,280	3,420	
35,509	Organisational Administration	33,180	34,166	103%	34,166	986	
69,466	Training & Engagement	72,460	70,412	97%	70,412	(2,048)	
720,572	INVESTING IN OUR PEOPLE AND EMBRACING OUR VALUES	852,010	821,616	96%	821,616	(30,394)	
65,532	People Management Team	67,880	62,956	93%	62,956	(4,924)	
45,027	Volunteer & Placement	44,680	42,254	95%	42,254	(2,426)	
164,741	Systems & Data	170,170	176,922	104%	176,922	6,752	
460,984	Corporate	587,710	555,825	95%	555,825	(31,885)	
(15,713)	Active Community Hubs	(18,430)	(16,341)	89%	(16,341)	2,089	
210,137	CREATING A SOLID FOUNDATION FOR GROWTH	172,770	181,071	105%	181,071	8,301	
59,298	Growth Management Team	55,110	56,088	102%	56,088	978	
42,846	Finance	64,150	43,926	68%	43,926	(20,224)	
78,982	Commercial (Hospitality & Retail)	11,830	65,779	556%	65,779	53,949	
29,012	Commercial (Business)	41,680	15,278	37%	15,278	(26,402)	
2,092,364	LEISURE AT THE HEART OF EVERY COMMUNITY	2,047,480	2,140,189	105%	2,140,189	92,709	
74,621	Community Management Team	94,800	70,824	75%	70,824	(23,976)	
342,438	Cultural Hubs	316,320	368,606	117%	368,606	52,286	
349,908	Lifestyle Hubs	470,760	486,783	103%	486,783	16,023	
991,496	Library Hubs	922,400	911,558	99%	911,558	(10,842)	
215,377	Sport Hubs	123,480	178,923	145%	178,923	55,443	
23,890	Sport Football	27,170	18,096	67%	18,096	(9,074)	
94,633	Management Arrangements	92,550	105,399	114%	105,399	12,849	
1,210,772	LIVING YOUR BEST LIFE	1,063,970	1,041,555	98%	1,041,555	(22,415)	

49,024	Best Life Management Team	61,560	29,983	49%	29,983	(31,577)	
159,986	Sports	156,410	173,691	111%	173,691	17,281	
511,206	Museums	511,490	535,641	105%	535,641	24,151	
354,871	Performing Arts	157,320	157,240	100%	157,240	(80)	
135,685	Visual Arts	177,190	144,999	82%	144,999	(32,191)	
1,069,350	PROTECTING OUR ENVIRONMENT	1,009,550	1,016,663	101%	1,016,663	7,113	
73,177	Environment Management Team	72,690	63,828	88%	63,828	(8,862)	
544,813	Sustainability	519,290	529,007	102%	529,007	9,717	
108,805	Estates	98,830	81,909	83%	81,909	(16,921)	
342,555	Countryside	318,740	341,919	107%	341,919	23,179	
6,028,543	TOTAL	6,428,350	6,458,270	100%	6,458,270	29,920	
(5,827,870)	Management Fee	(5,921,660)	(5,921,648)	100%	(5,921,648)	12	
200,673	TOTAL	506,690	536,622		536,622	29,932	
(214,340)	Trs From Reserves	(506,690)	(506,690)	100%	(506,690)	0	
(13,667)	TOTAL (after transfer from reserves)	0	29,932		29,932	29,932	

TABLE B – OVERALL NET POSITION

Actual Out-turn to 31/03/24	Service Division	Annual Estimate 2024/25	Revised Actual Exp. to 31/03/25	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/25	Variance (Favourable) / Adverse	
(2,464,202)	Income From Charitable Activities	(2,282,010)	(2,582,086)	113%	(2,582,086)	(300,076)	
(5,827,870)	Management Fee	(5,921,660)	(5,921,648)	100%	(5,921,648)	12	
(8,292,072)	TOTAL INCOME	(8,203,670)	(8,503,734)	104%	(8,503,734)	(300,064)	
5,914,990	Employee Costs	5,542,690	5,517,493	100%	5,517,493	(25,197)	
80,245	Transport Costs	45,300	78,398	173%	78,398	33,098	
907,532	Premises Costs	926,210	1,022,516	110%	1,022,516	96,306	
1,192,096	Supplies & Services	1,793,110	2,011,661	112%	2,011,661	218,551	
32,680	Financing Costs	61,930	56,930		56,930	(5,000)	
187,400	Support Costs	187,400	187,400		187,400	0	
177,801	Governance Costs	153,720	165,958	108%	165,958	12,238	
8,492,745	TOTAL RESOURCES EXPENDED	8,710,360	9,040,355	104%	9,040,355	329,995	
200,673	NET POSITION	506,690	536,622		536,622	29,932	
(214,340)	Trs From Reserves	(506,690)	(506,690)	100%	(506,690)	0	
(13,667)	TOTAL (after transfer from reserves)	0	29,932		29,932	29,932	

Notes

The following individual Service tables provide analysis in both formats; by sub-service and by subjective level, followed by a summarised comments section for each Service area.

EXECUTIVE MANAGEMENT SERVICE ANALYSIS

Actual Out-turn to 31/03/24	EXECUTIVE MANAGEMENT	Annual Estimate 2024/25	Revised Actual Exp. to 31/03/25	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/25	Variance (Favourable) / Adverse
(5,827,870)	Executive Management	(5,034,370)	(5,064,405)	101%	(5,064,405)	(30,035)
(29,230)	Trs From Reserves	(193,910)	(193,910)		(193,910)	0
(5,857,100)	TOTAL OBJECTIVE ANALYSIS	(5,228,280)	(5,258,315)	101%	(5,258,315)	(30,035)
(133,393)	Income From Charitable Activities	0	(97,831)		(97,831)	(97,831)
(5,827,870)	Management Fee	(5,921,660)	(5,921,648)	100%	(5,921,648)	12
0	External funding	0	0		0	0
(5,961,263)	TOTAL INCOME	(5,921,660)	(6,019,479)	102%	(6,019,479)	(97,819)
330,212	Employee Costs	343,900	295,880	86%	295,880	(48,020)
0	Transport Costs	0	0		0	0
8,405	Premises Costs	1,660	56,712		56,712	55,052
83,172	Supplies & Services	521,950	558,700	107%	558,700	36,750
0	Financing Costs	0	0		0	0
0	Support Costs	0	0		0	0
32,701	Governance Costs	19,780	43,782	221%	43,782	24,002
454,490	TOTAL RESOURCES EXPENDED	887,290	955,074	108%	955,074	67,784
(5,506,772)	NET POSITION	(5,034,370)	(5,064,405)	101%	(5,064,405)	(30,035)
(29,230)	Trs From Reserves	(193,910)	(193,910)		(193,910)	0
(5,536,002)	TOTAL (after transfer from reserves)	(5,228,280)	(5,258,315)	101%	(5,258,315)	(30,035)

Comments

Executive Management encompasses Trust Board, Chief Officer, Executive Leads and Trust-wide activities, events and funding.

Executive Management

Favourable variance relates to management action being taken to support all the Trust Services, including income from External Events offset by unbudgeted premises costs relating to Moorfield Unit and additional cost of irrecoverable VAT.

SHARING OUR VISION ANALYSIS

Actual Out-turn to 31/03/24	SHARING OUR VISION	Annual Estimate 2024/25	Revised Actual Exp. to 31/03/25	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/25	Variance (Favourable) / Adverse
61,510	Vision Management Team	56,100	58,117	104%	58,117	2,017
44,977	Visual Communications	41,680	41,958	101%	41,958	278
192,788	Marketing & Tourism	191,860	195,280	102%	195,280	3,420
35,509	Organisational Administration	33,180	34,166	103%	34,166	986
69,466	Training & Engagement	72,460	70,412	97%	70,412	(2,048)
0	Trs From Reserves	0	0		0	0
404,249	TOTAL OBJECTIVE ANALYSIS	395,280	399,932	101%	399,932	4,652
(1,033)	Income From Charitable Activities	(1,500)	(5,100)	340%	(5,100)	(3,600)
(1,033)	TOTAL INCOME	(1,500)	(5,100)	340%	(5,100)	(3,600)
333,905	Employee Costs	317,630	313,947	99%	313,947	(3,683)
0	Transport Costs	0	255		255	255
0	Premises Costs	0	0		0	0
68,991	Supplies & Services	78,150	87,861	112%	87,861	9,711
0	Financing Costs	0	0		0	0
0	Support Costs	0	0		0	0
2,387	Governance Costs	1,000	2,969	297%	2,969	1,969
405,283	TOTAL RESOURCES EXPENDED	396,780	405,032	102%	405,032	8,252
404,249	NET POSITION	395,280	399,932	101%	399,932	4,652
0	Trs From Reserves	0	0		0	0
404,249	TOTAL (after transfer from reserves)	395,280	399,932	101%	399,932	4,652

Comments

Sharing Our Vision is responsible for Visual Communications; Marketing and Tourism; Organisational Administration; and Training and Engagement.

Sharing Our Vision

A small adverse position is primarily due to additional marketing required to promote alternative programme following closure of Palace and Grand Hall Complex.

INVESTING IN OUR PEOPLE AND EMBRACING OUR VALUES ANALYSIS

Actual Out- turn to 31/03/24	INVESTING IN OUR PEOPLE AND EMBRACING OUR VALUES	Annual Estimate 2024/25	Revised Actual Exp. to 31/03/25	Actual Exp as % of Annual Estimate	Actual Out- turn to 31/03/25	Variance (Favourable) / Adverse
65,532	People Management Team	67,880	62,956	93%	62,956	(4,924)
45,027	Volunteer & Placement	44,680	42,254	95%	42,254	(2,426)
199,043	Systems & Data	170,170	176,922	104%	176,922	6,752
460,984	Corporate	587,710	555,825		555,825	(31,885)
(15,713)	Community Lettings Co Managed Centres	(18,430)	(16,341)		(16,341)	2,089
(14,460)	Trs From Reserves	(46,140)	(46,140)		(46,140)	0
740,414	TOTAL OBJECTIVE ANALYSIS	805,870	775,476	96%	775,476	(30,394)
(47,238)	Income From Charitable Activities	(31,200)	(28,267)	91%	(28,267)	2,933
(47,238)	TOTAL INCOME	(31,200)	(28,267)	91%	(28,267)	2,933
462,847	Employee Costs	482,270	493,278	102%	493,278	11,008
0	Transport Costs	0	423		423	423
14,800	Premises Costs	12,450	11,304	91%	11,304	(1,146)
103,021	Supplies & Services	155,340	112,818	73%	112,818	(42,522)
0	Financing Costs	0	0		0	0
187,400	Support Costs	187,400	187,400		187,400	0
34,045	Governance Costs	45,750	44,660	98%	44,660	(1,090)
802,112	TOTAL RESOURCES EXPENDED	883,210	849,883	96%	849,883	(33,327)
754,874	NET POSITION	852,010	821,616	96%	821,616	(30,394)
(14,460)	Trs From Reserves	(46,140)	(46,140)		(46,140)	0
740,414	TOTAL (after transfer from reserves)	805,870	775,476	96%	775,476	(30,394)

Comments

Investing in Our People and Embracing Our Values is responsible for Volunteer and Placement; Systems and Data; Corporate; and Community Lettings.

Investing in Our People and Embracing Our Values

A favourable position has been achieved primarily due to savings in Software Costs following in year implementation of Legend Booking System. This is non-recurring and full costs will be incurred in future years.

CREATING A SOLID FOUNDATION FOR GROWTH ANALYSIS

Actual Out- turn to 31/03/24	CREATING A SOLID FOUNDATION FOR GROWTH	Annual Estimate 2024/25	Revised Actual Exp. to 31/03/25	Actual Exp as % of Annual Estimate	Actual Out- turn to 31/03/25	Variance (Favourable) / Adverse
59,298	Growth Management Team	55,110	56,088	102%	56,088	978
42,846	Finance	64,150	43,926	68%	43,926	(20,224)
78,982	Commercial (Hospitality & Retail)	11,830	65,779	556%	65,779	53,949
29,012	Commercial (Business)	41,680	15,278	37%	15,278	(26,402)
0	Trs From Reserves	0	0		0	0
210,137	TOTAL OBJECTIVE ANALYSIS	172,770	181,071	105%	181,071	8,301
(405,314)	Income From Charitable Activities	(440,360)	(432,595)	98%	(432,595)	7,765
(405,314)	TOTAL INCOME	(440,360)	(432,595)	98%	(432,595)	7,765
363,059	Employee Costs	360,220	324,503	90%	324,503	(35,717)
0	Transport Costs	0	0		0	0
2,241	Premises Costs	0	151		151	151
235,530	Supplies & Services	239,940	271,957	113%	271,957	32,017
0	Financing Costs	0	0		0	0
0	Support Costs	0	0		0	0
14,621	Governance Costs	12,970	17,056	132%	17,056	4,086
615,451	TOTAL RESOURCES EXPENDED	613,130	613,666	100%	613,666	536
210,137	NET POSITION	172,770	181,071	105%	181,071	8,301
0	Trs From Reserves	0	0		0	0
210,137	TOTAL (after transfer from reserves)	172,770	181,071	105%	181,071	8,301

Comments

Creating A Solid Foundation For Growth is responsible for Financial Reporting, Commercial and Hospitality Services.

Creating A Solid Foundation For Growth

An adverse position for Hospitality Service has been result of closure of Palace/Grand Hall and alternative provision within Community Venues. This adverse variance has been partially offset by vacancies within Growth Team along with income from Bank Interest Received.

Detailed review and evaluation of Hospitality Provision is currently ongoing following appointment of new Strategic Lead for Hospitality and Retail.

LEISURE AT THE HEART OF EVERY COMMUNITY ANALYSIS

Actual Out-turn to 31/03/24	LEISURE AT THE HEART OF EVERY COMMUNITY	Annual Estimate 2024/25	Revised Actual Exp. to 31/03/25	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/25	Variance (Favourable / Adverse)
74,621	Community Management Team	94,800	70,824	75%	70,824	(23,976)
342,438	Cultural Hubs	316,320	368,606	117%	368,606	52,286
349,908	Lifestyle Hubs	470,760	486,783	103%	486,783	16,023
991,496	Library Hubs	922,400	911,558	99%	911,558	(10,842)
215,377	Sport Hubs	123,480	178,923	145%	178,923	55,443
23,890	Sport Football	27,170	18,096	67%	18,096	(9,074)
94,633	Management Arrangements	92,550	105,399	114%	105,399	12,849
(20,570)	Trs From Reserves	(112,180)	(112,180)		(112,180)	0
2,071,794	TOTAL OBJECTIVE ANALYSIS	1,935,300	2,028,009	105%	2,028,009	92,709
(1,096,681)	Income From Charitable Activities	(1,049,910)	(1,038,890)	99%	(1,038,890)	11,020
(1,096,681)	TOTAL INCOME	(1,049,910)	(1,038,890)	99%	(1,038,890)	11,020
2,421,731	Employee Costs	2,211,640	2,239,084	101%	2,239,084	27,444
29,876	Transport Costs	12,830	23,181	181%	23,181	10,351
485,518	Premises Costs	506,440	538,247	106%	538,247	31,807
231,110	Supplies & Services	325,890	320,158	98%	320,158	(5,732)
9,100	Financing Costs	29,780	29,780		29,780	0
0	Support Costs	0	0		0	0
11,710	Governance Costs	10,810	28,630	265%	28,630	17,820
3,189,045	TOTAL RESOURCES EXPENDED	3,097,390	3,179,079	103%	3,179,079	81,689
2,092,364	NET POSITION	2,047,480	2,140,189	105%	2,140,189	92,709
(20,570)	Trs From Reserves	(112,180)	(112,180)		(112,180)	0
2,071,794	TOTAL (after transfer from reserves)	1,935,300	2,028,009	105%	2,028,009	92,709

Comments

Leisure at the Heart of the Community has responsibility for the operations of our community based facilities, which are split into 4 categories; Lifestyle Hubs, Sports Hubs & Pavilions, Library Hubs and Cultural hubs. The team also has responsibility for developing the regular programming within these venues e.g. Aquatics, Fitness and Readership programmes and to work with local partners adopting a place based approach to maximum the use of our venues and ensure we meet the needs of the local communities.

Community Management Team

£24k favourable position is a result predominantly of savings in staffing costs and savings made in year to offset adverse movements within the service.

Cultural Hubs

£52.2k adverse position is a result of long-term absence, bank staffing requirement and community space income not being able to meet target.

Lifestyle Hubs

£16K adverse position is a result of essential spend on equipment and maintenance resulting in additional irrecoverable VAT being offset by membership income performing better than target.

Library Hubs

£10k favourable position is a result predominantly of savings across staffing and vacancies not being filled in year.

Sport Hubs

£55.4k adverse position is a result predominantly of income shortfall across indoor hall hire being offset partially by savings across staff and expenditure.

Management Arrangements

£12.8k adverse variance has arisen due to additional property costs and income recovery being less than anticipated.

LIVING YOUR BEST LIFE ANALYSIS

Actual Out-turn to 31/03/24	LIVING YOUR BEST LIFE	Annual Estimate 2024/25	Revised Actual Exp. to 31/03/25	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/25	Variance (Favourable) / Adverse
49,024	Best Life Management Team	61,560	29,983	49%	29,983	(31,577)
159,986	Sports	156,410	173,691	111%	173,691	17,281
511,206	Museums	511,490	535,641	105%	535,641	24,151
320,569	Performing Arts	157,320	157,240	100%	157,240	(80)
135,685	Visual Arts	177,190	144,999	82%	144,999	(32,191)
(105,650)	Trs From Reserves	(95,190)	(95,190)		(95,190)	0
1,070,820	TOTAL OBJECTIVE ANALYSIS	968,780	946,365	98%	946,365	(22,415)
(733,938)	Income From Charitable Activities	(712,520)	(812,199)	114%	(812,199)	(99,679)
(733,938)	TOTAL INCOME	(712,520)	(812,199)		(812,199)	(99,679)
1,104,211	Employee Costs	993,240	999,724	101%	999,724	6,484
11,636	Transport Costs	7,780	23,894	307%	23,894	16,114
302,159	Premises Costs	319,230	309,645	97%	309,645	(9,585)
420,505	Supplies & Services	387,250	487,682	126%	487,682	100,432
13,910	Financing Costs	22,480	17,480		17,480	(5,000)
0	Support Costs	0	0		0	0
57,987	Governance Costs	46,510	15,329	33%	15,329	(31,181)
1,910,408	TOTAL RESOURCES EXPENDED	1,776,490	1,853,754	104%	1,853,754	77,264
1,176,470	NET POSITION	1,063,970	1,041,555	98%	1,041,555	(22,415)
(105,650)	Trs From Reserves	(95,190)	(95,190)		(95,190)	0

Comments

Living Your Best Life is responsible for Sports; Museums, Performing Arts and Visual Arts. Remit includes the following venues – Dean Castle, Dick Institute, Grand Hall & Palace Complex, Ayrshire Athletics Arena, Annanhill Golf Course, Baird Institute, Burns House Museum & Library.

Best Life Management Team

Favourable position of £31.5k due predominantly to the resignation of the Strategic Lead (September 2024) who was not being replaced this financial year.

Sports

£17.3k adverse position due predominantly to additional bank staffing and essential equipment purchases for Ayrshire Athletics Arena.

Museums

£24k adverse predominantly due to bank staff costs in covering DC vacancy, additional staffing through holiday period and providing additional support to Stores project.

Performing Arts

Panto and Big Top Live have been reviewed and evaluated. **This position includes an allocation of £150k from 2024-25 pension savings regarding loss of income relating to Palace and Grand Hall closure.**

Visual Arts

£32k favourable position predominantly due to the current year exhibition programme being met from MGTR funds held in Reserves.

PROTECTING OUR ENVIRONMENT ANALYSIS

Actual Out-turn to 31/03/24	PROTECTING OUR ENVIRONMENT	Annual Estimate 2024/25	Revised Actual Exp. to 31/03/25	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/25	Variance (Favourable) / Adverse
73,177	Environment Management Team	72,690	63,828	88%	63,828	(8,862)
544,813	Sustainability	519,290	529,007	102%	529,007	9,717
108,805	Estates	98,830	81,909	83%	81,909	(16,921)
342,555	Countryside	318,740	341,919	107%	341,919	23,179
(44,430)	Trs From Reserves	(59,270)	(59,270)		(59,270)	0
1,024,920	TOTAL OBJECTIVE ANALYSIS	950,280	957,393	101%	957,393	7,113
(46,606)	Income From Charitable Activities	(46,520)	(167,204)	359%	(167,204)	(120,684)
(46,606)	TOTAL INCOME	(46,520)	(167,204)		(167,204)	(120,684)
899,026	Employee Costs	833,790	851,077	102%	851,077	17,287
38,733	Transport Costs	24,690	30,645	124%	30,645	5,955
94,410	Premises Costs	86,430	106,458	123%	106,458	20,028
49,767	Supplies & Services	84,590	172,486	204%	172,486	87,896
9,670	Financing Costs	9,670	9,670		9,670	0
0	Support Costs	0	0		0	0
24,351	Governance Costs	16,900	13,532	80%	13,532	(3,368)
1,115,956	TOTAL RESOURCES EXPENDED	1,056,070	1,183,868	112%	1,183,868	127,798
1,069,350	NET POSITION	1,009,550	1,016,663	101%	1,016,663	7,113
(44,430)	Trs From Reserves	(59,270)	(59,270)		(59,270)	0
	Designated Funds					0
	Trs To Reserves					0
1,024,920	TOTAL (after transfer from reserves)	950,280	957,393	101%	957,393	7,113

Comments

Protecting Our Environment is responsible for Sustainability; Estates and Countryside.

Note that large variances relate to one off works relating to Lugar Water Trails which was subsequently reimbursed by EAC.

Countryside

Adverse variance predominately relates to additional spend on staffing within Residential Centre at DCCP. Significant management action and promotion has been implemented to develop the Residential Centre which has resulted in some additional costs but has also ensured that the service has achieved the income target for the centre. Management are monitoring these costs and will incorporate these costs in future charging review.

RESERVES AS AT 31ST MARCH 2025

Notes

The Reserves Table provides detail on the current Reserves position for the Trust

The 1st table is a summary report and the 2nd table provides analysis of the committed amounts from Reserves

Line 1 Retained Reserves refers to our Reserves Policy – currently set to “minimum 2% of Turnover”.

Line 2 refers to Unallocated Reserves – this amount will initially be allocated to fund any in-year deficit and then to any additional spend approved by The Board.

Line 3 Allocated Reserves refers to allocated amounts and the 2nd table provides further analysis of progress on these commitments

Line 4 MGTR refers to Museum and Galleries Tax Relief received and this must be used to help fund future exhibitions

Lines 5 & 6 refer to specific accounting entries required each financial year

Summary

UNRESTRICTED RESERVES	2023/24 b/f	REVISED BALANCE	PROPOSED DRAWDOWN	Q1	Q2	Q3	Q4	BALANCE	NOTES
RETAINED RESERVES	270,000	270,000						270,000	
UNUSEABLE RESERVES	89,942	211,092					56,930	154,162	
UNALLOCATED RESERVES	209,405	319,902						319,902	
ALLOCATED RESERVES	564,345	449,665		17,810	60,560	47,020	271,260	53,015	see Allocated Table
MGTR FUNDS	85,047	85,047		(48,596)		8,980	44,130	80,533	Allocations:- £86k - Malky McCormick Collection £6k - support Malky McCormick project £30k - Exhibition Programme 2024-25 £8k - support exhibition at Baird
FIXED ASSET RESERVE	34,920	34,920						34,920	
HOLIDAY PAY PROVISION	(60,874)	(60,874)						(60,874)	
TOTAL UNRESTRICTED RESERVES	1,192,785	1,309,753	0	(30,786)	60,560	56,000	372,320	851,659	

Allocated Reserves Analysis

ALLOCATED RESERVES	REVISED BALANCE	PROPOSED DRAWDOWN	Q1	Q2	Q3	Q4	BALANCE	APPROVAL	STATUS	NOTES
Box Office/Booking System	13,775			10,450			3,325	1 June 2021 Board, 28 June 2022 Board	Ongoing	
Climate Strategy	30,000			20,360			9,640	28 Nov 2023 Board	Ongoing	
Urban Farm - Feasibility Study	30,000				23,250		6,750	28 Nov 2023 Board	Ongoing	
IT Equipment linked to new Systems	10,000			8,450			1,550	20 June 2024 Board	Ongoing	
Potential NDR Liability	7,300				3,720	1830	1,750	20 June 2024 Board	Ongoing	
Regional Sports Park	30,000						30,000	20 June 2024 Board	Ongoing	
People Counters	0						0	28 June 2022 Board	Complete	Release balance as uncommitted
Valuations	0						0	28 June 2022 Board	Complete	Release balance as uncommitted
Wellbeing Initiatives - EA Gift Cards to staff	0						0	4 October 2022 Board	Complete	Release balance as uncommitted
10th Anniversary Events and Initiatives	2,910					2910	0	21 February 2023 Board	Complete	Release £16,720 as uncommitted
Uniforms	0						0	30 May 2023 Board	Complete	Release balance as uncommitted
Security Costs - Palace & Grand Hall	0						0	30 May 2023 Board	Complete	Release balance as uncommitted
Dean Castle - Visitor Safety Measures	0						0	30 May 2023 Board	Complete	Release balance as uncommitted

Growth Plan - Trading Subsidiary	10,000						0	20 June 2024 Board	Complete	Release balance as uncommitted
			10,000							
Equipment Replacement Programme	94,120		8,600		85520		0	28 June 2022 Board	Complete	Allocation approved by Executive Management; £45.8k + £10.75k transferred to Unuseable Reserves
24-25 Savings Balance	181,000				181000		0	20 Feb 2024 Board	Complete	
Collection Management Support (1 FTE Co-ordinator)	22,680	7,810	7,820		7,050		0	28 Sept 2023 Board	Complete	
Venue Equipment	3,000				3,000		0	28 June 2022 Board	Complete	
Secure Portal Upgrade	4,880		4,880				0	28 June 2022 Board	Complete	
Event Management	10,000	10,000					0	22 November 2022 Board	Complete	£10k still required, release balance as uncommitted
23-24 Savings Balance	0						0	21 February 2023 Board	Complete	redesignate as per note, release balance as uncommitted
IT Equipment - Corporate Services	0						0	1 June 2021 Board	Complete	Release balance as uncommitted
	0						0			
TOTAL ALLOCATED RESERVES	449,665	0	17,810	60,560	47,020	271,260	53,015			

GENERAL PROJECTS

Notes:

General Projects are multi-annual projects involving funding from external partners. These projects are not included in the Financial Monitoring reports. The table gives an overview of the projects and the Additional Information gives a brief description of each of the projects

Project	Partners	Balance b/f 01.04.24	Balance at 31.03.25	Expected Completion Date
KGIL Artworks Programme	EAC/ARA	£0	£770	Ongoing
Ayrshire Libraries Forum	North Ayrshire Council/South Ayrshire Council/East Ayrshire Council	(£3,707)	(£3,593)	Ongoing
VACMA	Creative Scotland / Other Ayrshire Authorities	£0	(£4,664)	Ongoing
Burns Birthday in Mauchline	Event Scotland	(£861)	(£861)	Mar 2027
Digital Storyteller in Residence	Scottish Book Trust	(£2,372)	(£2,372)	Mar 2025
SHOUT	EAC	(£3,684)	(£3,474)	Ongoing
Morton Hall and Library	EAC	£21,744	£3,998	Mar 2025
Wifi Project	EAC	(£24,700)	(£2,456)	Mar 2025
Foster Carer Service - Memberships	EAC	(£4,000)	(£4,000)	Ongoing
Youth Memberships	EAC	(£8,162)	(£7,562)	Ongoing
Annick Valley Leisure Facilities	EAC	(£198,144)	(£40,493)	Ongoing
Stewarton Dev Cont	EAC	(£49,464)	(£32,048)	Ongoing

Patna Leisure Facilities	EAC	(£810)	(£810)	Ongoing
Nature Therapy Breaks	Shared Care Scotland	(£12,952)	(£501)	Mar 2024
Celebration Wood	n/a	£0	(£2,100)	Ongoing
Leisure Facility Strategy	EAC	(£0)	£1,830	Mar 2025
Parental Employability - Work Experience	EAC	(£1,323)	(£1,133)	Mar 2024
Civic Centre Set Up	EAC	£0	£37,429	Dec 2025

Additional Information

KGIL Artworks Programme – This project is being managed by East Ayrshire Leisure Trust in conjunction with Ayrshire Road Alliance.

Ayrshire Libraries Forum is a network partnership of the three Ayrshire councils, Ayrshire NHS, school, prison and higher education libraries to be used towards the upkeep of Ayrshire Working Lives website.

VACMA – Visual Arts and Craft Makers Awards – East Ayrshire Leisure Trust is taking lead from 2024/25. Creative Scotland contribute £6k funding along with £1k from each of the 3 Ayrshire authorities

Burns Birthday in Mauchline – The project which was funded by Event Scotland has now come to an end. There is a surplus balance which Event Scotland have said we can use towards future support of cultural programme for Scotland’s Winter Festival planning. The team are drafting a proposal to utilise the balance and it is anticipated funds will be utilised by end of 2024-25.

Digital Storyteller in Residence - The project which was funded by the Scottish Book Trust has now come to an end. There is a surplus balance which Scottish Book Trust have said we can use towards further Digital Storytelling activities. The team are drafting a proposal which will support the digital infrastructure in conjunction with Library Mobile Services. It is anticipated funds will be utilised by end of 2024-25.

SHOUT - £5,000 funding from East Ayrshire Council has been issued to offer FREE swimming to SHOUT card holders during the school holiday periods.

Morton Hall and Library – Procurement of new furniture for Newmilns Library is being managed by the Trust but will be funded by EAC. A maximum of £20,000 of the £30,000 allocation will be for library furniture and the balance is for the overall venue.

Wifi Project - After an initial review was submitted to the EAC we have since received funding of £20,000 to contribute to the installation costs of Wi-Fi across all East Ayrshire Leisure standalone venues.

Foster Carer Service - Memberships – £4,000 funding from East Ayrshire Council has been issued to support foster carers in accessing sport and physical activity services for the children they are caring for.

Youth Memberships – £5,000 funding will be utilised to target certain 16-17 years olds who currently do not engage with physical activity or our sports venues. The funding will be utilised to pay for a fitness membership that will give them access to our gyms, fitness classes, swimming pools, running tracks and racquet sports.

Annick Valley Leisure Facilities – EAC Members and Officers Working Group (MOWG) on developer contributions identified £212,000 which has been allocated for Annick Valley and has been transferred to East Ayrshire Leisure.

Stewarton Dev Contr – With reference to the cabinet report of 31st May 2023, £49,464 has been allocated from developer contribution funds towards leisure projects in Stewarton.

Patna Leisure Facilities – EAC Members and Officers Working Group (MOWG) on developer contributions identified £810 which has been allocated for Patna and has been transferred to East Ayrshire Leisure.

Nature Therapy Breaks – Working with East Ayrshire Council Children and Disabilities Team, we hosted family groups staying throughout the school holiday periods. The staff thoroughly enjoyed working with the families to ensure opportunities were suggested to suit all requirements. When asked what difference the break had made for the young people, their responses were overwhelmingly positive and in most instances attendees noted benefits to their mental health and wellbeing.

Celebration Wood - Sponsorship Income to be gathered here until a sufficient fund is achieved to progress purchase of trees and planting

Leisure Facility Strategy – Following the publication of the Leisure Facility Strategy 2020-2030, East Ayrshire Council allocated £500k for their capital programme to implement the priorities for the period 2020-2025. A cross service leisure facility action plan has been produced to identify and implement the priorities for this funding.

Parental Employability – Work Experience – Funding was secured from EAC to deliver a work experience project with Parental Employability. The scheme is aiming to give parents who are interested in working in the outdoors some practical experience and training.

Civic Centre Set Up – EAC have allocated funding to assist the Trust with setting up Wallace Chambers as new Head Office.

EXTERNAL FUNDING

Notes:

A robust monitoring process is now in place for all External Funding applications from initial submission to subsequent successful or unsuccessful award.

EXTERNAL FUNDING APPROVED APPLICATIONS

(*denotes funding not available to East Ayrshire Council)

EXTERNAL FUNDING APPROVED APPLICATIONS

Section	Name of Funding Provider and Project	Value of Funding/Support	Received in 2024/25
Living Your Best Life	Museums Galleries Scotland - Malky McCormick Project	£9,800	£0
TOTAL		£9,800	£0

NO APPLICATIONS DECLINED IN QTR 4

REPORT TO BOARD OF TRUSTEES



TRUST BUDGET 2025/26

Date: 27 May 2025

Agenda Item: 5

Report By: Anneke Freel, Chief Officer

1 PURPOSE OF REPORT

- 1.1 This report confirms the Trust's budget position for 2025/26 and shows how the savings target of £120,000 will be achieved.

2 BACKGROUND

- 2.1 East Ayrshire Council have confirmed a savings requirement of £120,000 to be achieved by the Trust in 2025/26.
- 2.2 On the 6 February 2024, the Trust Board approved the Trust Budget for 2024/25 with the savings requirement of £181,000 being temporarily funded from Reserves.
- 2.3 Further to East Ayrshire Council's Leisure Review Vibrant Communities service and the Galleon Centre transferred to East Ayrshire Leisure Trust on the 1st April 2025 with further services scheduled to transfer on the 18th August 2025, the services include Community and Corporate Catering along with Instrumental Music and Creative Minds.

3 SAVINGS IN 2025/26

- 3.1 It is proposed that the savings of £151,000 are met through efficiencies from revenue budgets in 2025/26 and the remaining £150,000 savings requirement are temporarily funded from Reserves. This will enable the Trust to establish the Trading Subsidiary and implement the Growth Plan. Executive Management are committed to identifying a permanent allocation of these savings and will identify opportunities during the current financial year.

4 DRAFT ANNUAL BUDGET FOR 2025/26

- 4.1 The table below outlines the draft Trust budget for 2025/26 and includes the savings outlined above.
- 4.2 Note that these figures only relate to previous Trust services and services which transferred on 1 April 2025.
- 4.3 Figures relating to services scheduled to transfer on the 18th August 2025 are currently subject to discussion with the Council and a pro-rata value will be awarded for 2025/26 with full annual value for 2026/27.

REPORT TO BOARD OF TRUSTEES



TRUST	Annual Budget 2024/25 as at Qtr 4	Reserves Adjustments	Base Annual Budget 2024/25	2025/26 Adjustments	2025/26 Savings	Draft Annual Budget 2025/26
Existing Trust	6,221,010	(299,350)	5,921,660	286,390	(120,000)	6,088,050
Galleon			139,790			139,790
Vibrant Communities			2,752,840			2,752,840
TOTAL	6,221,010	(299,350)	8,814,290	286,390	(120,000)	8,980,680
Management Fee	(5,921,660)		(8,814,290)	(286,390)	120,000	(8,980,680)
Reserves	(299,350)	299,350	0			0
TOTAL	0	0	0	0	0	0

Recommendation/s:

It is recommended that Trustees:

- i. Approve the budget position shown in this report; and
- ii. Otherwise note the content of this report.

Annete Freed

Signature:

Designation: Chief Officer

Date: 1 May 2025

REPORT TO BOARD OF TRUSTEES



EXTERNAL AUDIT PLAN 2024/25

Date: 27 May 2025

Agenda Item: 6

Report by: Lorraine Russell, Strategic Lead – Creating a Solid Foundation for Growth

I PURPOSE OF REPORT

1.1 The purpose of this report is to present the External Audit Plan for 2024/25 for noting by the Sub-Committee.

2 BACKGROUND/CONSIDERATIONS

2.1 Azets Audit Services (previously Scott Moncrieff) were reappointed as East Ayrshire Leisure Trust's External Auditors in 2022. The contract is for 3 years with 3 1-year extensions.

2.2 The External Audit Plan is attached as Appendix I to this report. The document details the work plan which will underpin the 2024/25 External Audit and sets out how both the Board and Azets will meet their respective responsibilities under charities legislation and International Standards of Auditing.

2.3 The projected timescales for the audit allows for completion in July 2025, and this will allow the audited accounts to be presented to the AGM and then to the Council as part of the 2024/25 performance report.

Recommendation/s:

It is recommended that the Trustees:

- i. Consider and note the External Audit Plan for 2024/25; and
- ii. Otherwise note the content of this report.

Signature: Lorraine Russell

Designation: Strategic Lead – Creating a Solid Foundation for Growth

Date: 1 May 2025



Audit Plan

East Ayrshire Leisure Trust

Year ended 31 March 2025



Strictly Private & Confidential

The Board of Trustees
East Ayrshire Leisure Trust
Dick Institute
14 Elmbank Street
Kilmarnock
KA1 3BU

Our ref: SACH/SALO/EASTAL01
10 April 2025

Dear Sirs

**East Ayrshire Leisure
Audit plan for the year ended 31 March 2025**

We are writing to confirm the audit arrangements in respect East Ayrshire Leisure Trust ('the Trust') for the year ended 31 March 2025.

As auditor we are responsible for performing the audit, in accordance with International Standards on Auditing (UK) (ISAs UK), which is directed towards forming and expressing an opinion on the financial statements. The audit of the financial statements does not relieve management or those charged with governance of their responsibilities, including those in respect of the preparation of financial statements.

There is more detail in respect of the responsibilities of the auditor and those charged with governance within our engagement letter. Our standard terms and conditions can be found at <https://www.azets.co.uk/about-us/policies-legal/terms-of-business/>.

This audit plan highlights the key elements of our proposed audit strategy for the benefit of those charged with governance, as required by ISA (UK) 260 'Communication with those charged with governance'. On completion of our audit work, an audit findings letter will be issued prior to the approval of the financial statements and will detail our significant findings and other matters arising from the audit.

If, during the course of the audit, we identify any significant adverse or unexpected findings that we conclude should be communicated, we will do so on a timely basis, either informally or in writing.

Yours faithfully



Sally Cheeney
Senior Statutory Auditor
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Contents

1.	Audit scope and general approach	2
2.	Significant and other risks of material misstatement	5
3.	Audit team and timetable	8
4.	Fees	9
5.	Audit independence and objectivity	10
6.	Use of this letter	11
7.	Confirmation of arrangements	12
	Appendix: Implications of Revised Auditing Standards for periods commencing on/after 15 December 2021	13
	Appendix: Materiality	16

1. Audit scope and general approach

Audit Scope

This section of our letter sets out the scope and nature of our audit and should be considered in conjunction with our letter of engagement dated 10 April 2025.

General approach

Our objective when performing an audit is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement and to issue an auditor's report that includes our auditor's opinion.

As part of our general approach, we will:

- perform risk assessment procedures including updating our understanding of the entity and its environment, the financial reporting framework and system of internal control;
- review the design and implementation of key internal controls;
- identify and assess the risks of material misstatement, whether due to fraud or error, at the financial statement level and the assertion level for classes of transaction, account balances or disclosures;
- design and perform audit procedures responsive to those risks, to obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion; and
- exercise professional judgment and maintain professional scepticism throughout the audit recognising that circumstances may exist that cause the financial statements to be materially misstated.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. We include an explanation in the auditor's report of the extent to which the audit was capable of detecting irregularities, including fraud and respective responsibilities for prevention and detection of fraud.

New audit requirements for financial statements with periods commencing on/after 15 December 2021

UK audit firms are implementing a revised set of requirements for audits of financial statements with periods commencing on or after 15 December 2021. These revised requirements will have a significant impact on the way we perform our audits, particularly how we assess the risk of material misstatement in an entity's financial statements, our approach to the audit of fraud, and the ways we ensure our audits are performed in line with regulatory requirements and to a high standard.

An appendix to this document provides further detail on the implications of these new requirements.

Materiality

We apply the concept of materiality both in planning and performing the audit, and in evaluating the effect of identified misstatements on the audit and of uncorrected misstatements. In general, misstatements, including omissions, are considered to be material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

Judgments about materiality are made in the light of surrounding circumstances and are affected by our perception of the financial information needs of users of the financial statements, and by the size or nature of a misstatement, or a combination of both.

As per Materiality Appendix, any identified errors greater than £9,700 (based on prior year figures) will be recorded and discussed with you and, if not adjusted, confirmed as immaterial as part of your letter of representation to us. This will be updated once 2025 figures are available.

The basis for our assessment of materiality for year is set out in an appendix to this letter.

Accounting systems and internal controls

The purpose of an audit is to express an opinion on the financial statements. As part of our work, we consider certain internal controls relevant to the preparation of the financial statements such that we are able to design appropriate audit procedures. However, this work is not for the purpose of expressing an opinion on the effectiveness of internal controls.

We will report to you in writing, significant deficiencies in internal controls that we identify during the audit. These matters will be limited to those which we conclude are of sufficient importance to merit being reported to you. The scope of our work is not designed to be an extensive review of all internal controls.

Going concern

Under the going concern principle it is assumed that an entity will continue in operation and there is neither the intention nor the need to liquidate it or cease to operate.

Management responsibility

Management is required to make and document a rigorous assessment of whether the entity is a going concern when preparing the financial statements. The process should be proportionate in nature and depth depending upon the size and level of financial risk and the complexity of the entity and its operations. The review period should cover at least 12 months from the date of approval of the financial statements. Trustees are also required to make balanced, proportionate and clear disclosures about going concern within the financial statements where material uncertainties exist in order to give a true and fair view.

Auditor responsibility

Under ISA (UK) 570, we are required to consider the appropriateness of management's use of the going concern assumption in the preparation of the financial statements and consider whether there are material uncertainties about the entity's ability to continue as a going concern that need to be disclosed in the financial statements.

Further detail in respect of the responsibilities of the auditor and management can be found within our engagement letter.

Related party transactions

ISA 550 *Related Parties* requires that the audit process starts with the client providing a list of related parties to the auditor, including any companies under common control, shareholders and Trustees.

Previously you have informed us of the individuals and entities that you consider to be related parties. Please advise us of any changes for the period under audit.

2. Significant and other risks of material misstatement

Significant risks are risks that require special audit consideration and include identified risks of material misstatement that:

- our risk assessment procedures have identified as being close to the upper range of the spectrum of inherent risk due to their nature and a combination of the likelihood and potential magnitude of misstatement; or
- are required to be treated as significant risks due to requirements of ISAs (UK), for example in relation to management override of internal controls.

Significant risks at the financial statement level

The below table summarises significant risks of material misstatement identified at the financial statement level. These risks are considered to have a pervasive impact on the financial statements as a whole and potentially affect many assertions for classes of transaction, account balances and disclosures.

Identified risk of material misstatement	Audit approach
<p>Management override of controls Management is in a unique position to perpetrate fraud because of management's ability to manipulate accounting records and prepare fraudulent financial statements by overriding controls that otherwise appear to be operating effectively.</p> <p>Although the level of risk of management override of controls will vary from entity to entity, the risk is nevertheless present in all entities. Due to the unpredictable way in which such override could occur, it is a risk of material misstatement due to fraud and thus a significant risk</p> <p>Risk of material misstatement: Very High</p>	<p>Whilst we do not suspect any incidences of management override, we will review the accounting records for significant transactions that are outside the normal course of business and obtain evidence to ensure that these are valid and accounted for correctly.</p> <p>Procedures performed to mitigate risks of material misstatement in this area will include:</p> <ul style="list-style-type: none"> • Review of accounting estimates, judgements and decisions made by management; • Testing of journal entries; and • Review of any unusual significant transactions.
<p>Going concern The Trustees must undertake a formal assessment of the Trust's ability to continue as a going concern for at least 12 months following the signing of the financial statements at both the planning stage of the audit and at the date the financial statements are signed.</p>	<p>In respect of going concern for each entity, we will review:</p> <ul style="list-style-type: none"> • your assessment of going concern at planning and at the date of signing the financial statements; • budgets covering the 12 month period from the signing date of the financial statements; • post year end management accounts; and

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We have designed our audit procedures in order to obtain sufficient appropriate audit evidence over the above risks.

Risk of material misstatement: Medium

- the cash position at date of approval of the accounts.

We will also have a detailed discussion with the finance team in respect of going concern.

Finally, we will ask the Trustees, via the letter of representation, to confirm that the Trustees have concluded that each entity in the group is a going concern.

Significant risks at the assertion level for classes of transaction, account balances and disclosures

The below table summarises significant risks of material misstatement assertion level for classes of transaction, account balances and disclosures.

Identified risk of material misstatement	Audit approach
<p>Fraud in revenue recognition Material misstatement due to fraudulent financial reporting relating to revenue recognition is a presumed risk in ISA 240 (The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements).</p> <p>Inherent risk of material misstatement:</p> <ul style="list-style-type: none"> Revenue (Occurrence): Very High Revenue (Completeness, Cut-off, Accuracy, Presentation & classification): High 	<p>Whilst we do not suspect any incidences of fraud or error, we will evaluate each type of income transaction and document our conclusions.</p> <p>Procedures performed to mitigate risks of material misstatement in this area will include:</p> <ul style="list-style-type: none"> Review and testing of revenue recognition policies; Detailed substantive testing on material revenue streams; and Substantive analytical procedures.
<p>Expenditure on charitable activities Given the Trust can receive restricted revenue, accounting for the expenditure can be more complex. It is important that we ensure that purchases are correctly incurred and allocated.</p> <p>Inherent risk of material misstatement: Expenditure (Accuracy): Medium</p>	<p>We will perform sufficient substantive testing to gain assurance that expenditure has been correctly incurred and authorised.</p>
<p>Pension Assumptions An actuarial estimate of the pension fund asset/liability is calculated on an annual basis under FRS 102 and on a triennial funding basis by an independent firm of actuaries with specialist knowledge and experience. The estimates are based on the most up to date membership data held by the pension fund and have regard to local factors such as mortality rates and expected</p>	<p>We will review the controls in place to ensure that the data provided from the pension fund to the actuary is complete and accurate. We will review the reasonableness of the assumptions used in the calculation against other local government pension fund actuaries and other observable data. We will</p>

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pay rises with other assumptions around inflation when calculating the liabilities. There is a risk that the assumptions used are not appropriate.

agree the disclosures in the financial statements to information provided by the actuary.

Inherent risk of material misstatement:

- Pensions (Existence, Completeness, Accuracy, valuation & allocation, Rights & obligations): **High**

3. Audit team and timetable

Audit team

Our audit team will be as follows:

Role	Name	Email
Senior Statutory Auditor	Sally Cheeney	Sally.Cheeney@azets.co.uk
Manager	Sarah Lowe	Sarah.Lowe@azets.co.uk
Senior(planning)	Frances Walker	Frances.Walker@azets.co.uk
Senior (fieldwork)	Ben Houston	Ben.Houston@azets.co.uk
Associate	Adam Ross	Adam.Ross@azets.co.uk

Timetable

Please find below confirmation of our proposed timetable for the audit as previously discussed with you:

Event	Date
Audit planning meeting	27 February 2025
Accounts information to be provided to Azets	30 April 2025
Performance & Audit Sub Committee at which the external audit plan will be considered	13 May 2025
Final audit	9 June 2025
Audit Committee/Board meeting	19 August 2025
Target date of approval of accounts	9 September 2025
Statutory filing deadline	31 December 2025

The audit process is underpinned by effective project management to ensure that we co-ordinate and apply our resources efficiently to meet your deadlines. It is therefore essential that we work closely with your team to achieve this timetable.

4. Fees

Our audit fee proposal (excluding VAT and disbursements) is as follows:

	Agreed fee £
Audit of Financial Statements	24,500

Our fee proposal is on the basis that:

- Supporting schedules and information are supplied by the agreed dates / on a timely and accurate basis and in accordance with the audit deliverables list provided;
- The financial statements will be prepared by us; and
- Your staff will be available to our team and will provide all reasonable assistance.

It is our policy to bill for overruns or scope extensions e.g., where we have incurred delays, deliverables have been late or of poor quality, where key personnel have not been available, or we have been asked to do extra work.

Our policy is to raise fees to account at appropriate stages of the audit such as on completion of the audit planning, completion of the interim visit, completion of the final audit work and after the financial statements have been signed.

5. Audit independence and objectivity

We confirm that we comply with the Financial Reporting Council's (FRC) Ethical Standard and are able to issue an objective opinion on the financial statements. We have considered our integrity, independence and objectivity in respect of audit services provided and we have identified potential threats for which we have applied appropriate safeguards as follows:

Non-audit services

We have detailed in the table below the non- audit services provided, the threats to our independence these present and the safeguards we have put in place to mitigate these threats:

Non-audit service	Fees 2025	Fees 2024	Type of threat	Safeguard
Preparation of statutory accounts	£7,150	£6,490	Self-review	Trustees to sign and approve all adjustments made to the financial statements. Preparation of statutory financials statements performed and reviewed by a separate team / Whilst the preparation of the statutory financial statements is carried out by members of the audit team, it is reviewed by a reviewer separate from the audit team.
CTax compliance	TBC	£2,930	Self Review	Work is performed by a separate team who are not involved in the delivery of audit services.
Adhoc Tax and VAT services (Tax report on c tax and VAT implications of new subsidiary)	£10,000	£nil		The report provided options only and it was informed management's responsibility to take the final decision.

6. Use of this letter

This planning letter has been prepared for the sole use of those charged with governance and, where applicable, and should not be relied upon by third parties. No responsibility is assumed by Azets Audits Services to third parties.

7. Confirmation of arrangements

Please confirm in writing your agreement to these assignment terms by signing and returning a copy of this letter. If there are any elements of this audit plan to which you do not agree or would like to discuss, please let us know as soon as possible.

Yours sincerely / faithfully

A handwritten signature in black ink that reads 'Sally Cheeney'.

Sally Cheeney
Senior Statutory Auditor
Azets Audit Services Limited

I confirm the arrangements set out above:

.....

Name:

Position:

Date:

For and on behalf of East Ayrshire Leisure Trust

Appendix: Implications of Revised Auditing Standards for periods commencing on/after 15 December 2021

Revised requirements for audits of financial statements with periods commencing on or after 15 December 2021 will have a significant impact on the way we perform our audits, particularly how we assess the risk of material misstatement, our approach to the audit of fraud, and the ways we ensure our audits are performed in line with regulatory requirements and to a high standard. The in-depth nature of these additional procedures, as well as updated tools and techniques that may come into scope will also provide additional opportunity to provide insights and constructive feedback on the way you manage risks within your organisation.

The table below provides further detail on the implications of these new requirements.

Key change	Potential impact on the entity & our approach
An enhanced risk identification and assessment process, in turn promoting more focused auditor responses to identified risks	<p>Management and those charged with governance may receive more up-front questions from us as we plan the audit and identify and assess risks of material misstatement.</p> <p>We may conduct planning and risk assessment procedures at a different time to previous engagements to ensure that our understanding is comprehensive, and that information leveraged as part of an effective and efficient approach.</p> <p>To facilitate a more robust risk-assessment process, we may request additional information to enhance our understanding of systems, processes and controls. For example, we may request:</p> <ul style="list-style-type: none"> • a better understanding of an entity's business model and how it integrates the use of information technology (IT); • more information about an entity's own risk assessment process and process for monitoring its system of internal control; • more detailed narratives about how transactions are initiated, recorded, processed and reported; • support such as policies and procedure manuals, flowcharts and other supporting documentation to validate our understanding of the information systems relevant to the preparation of financial statements; and • more information (or ask more questions) to support our inherent risk assessment, given there are new factors to consider in completing the assessment. <p>This information not only informs our risk assessment but also assists us in determining an appropriate response to risks identified including, where warranted, new significant risks which would require a different response.</p>

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Understanding and acting on risks associated with IT

We will be asking more focused questions and making additional information requests to better understand the IT environment at the entity, including:

- IT applications, including data warehouses and report writers;
- supporting IT infrastructure (i.e., network, operating systems, databases and their related hardware and software);
- IT processes (i.e., managing program changes, IT environment changes, and IT operations); and
- IT personnel involved in the IT processes.

Combined with the identified controls that may be needed to address the identified and assessed risks of material misstatement, this understanding may also identify risks (and potentially new risks) arising from the use of IT. Therefore, we will be asking more focused questions and requesting additional information to understand the general IT controls that address such risks. For example, we may have additional questions in relation to general IT controls over journal entries (e.g., segregation of duties related to parking and posting entries) to address risks arising from the use of IT.

Depending on the complexity of systems and associated risks, we may also involve additional team members, such as IT specialists, who may need to engage with members of the entity's IT team who were not previously involved in the audit process.

Enhanced procedures in connection with fraud

We will be asking more targeted questions as part of an enhanced approach to fraud, including:

- asking questions of anyone in the entity that deals with allegations, if any, of fraud raised by employees or related parties; and
- discussing with those charged with governance the risks of material fraud, including those specific to the sector(s) in which the entity operates.

Combined with other information, and any inconsistencies in responses from those charged with governance and management, we then determine implications for further procedures as part of our audit. Work in connection with fraud may also now include the use of audit data analytics, or the inclusion of specialists in our engagement team (for example, with forensic accounting experience) to ensure we obtain sufficient appropriate audit evidence to conclude whether the financial statements are materially misstated as a result of fraud.

In addition to existing communication and reporting requirements relating to irregularities and fraud, there may also be additional matters we report to those charged with governance in connection with management's process for identifying and responding to the

	<p>risks of fraud in the entity and our assessment of the risks of material misstatement due to fraud.</p> <p>These enhanced requirements may assist in the prevention and detection of material fraud, though do not provide absolute assurance that all fraud is detected or alter the fact that the primary responsibility for prevention and detection of fraud rests with both those charged with governance and management.</p>
<p>Enhanced requirements relating to exercising professional scepticism</p>	<p>Challenge, scepticism and the application of appropriate professional judgement are key components of our audit approach. You may receive additional inquiries if information is found that contradicts what our teams have already learned in the audit or in instances where records or documents seen in the course of the audit appear to have been tampered with, or to not be authentic.</p> <p>We may also seek further independent verification of amounts with banks or lenders, suppliers or customers depending on our appraisal of risk in certain areas.</p>
<p>Using the right resources, in the right way, at the right time</p>	<p>One of our new strategic quality objectives sets out that we will strive to use the right resource, in the right way, at the right time. On a specific engagement this may mean increasing the use of specialists (for example in relation to general IT controls, forensic accounting or valuations) or changing the shape of the audit engagement team to ensure that we are able to provide appropriate challenge and feedback in specialist areas.</p> <p>This will include appropriate use of technology, including data analytics. These changes are an expectation of all new audit standards that apply for December 2022 year end audits onwards and short periods commencing on/after 15 December 2021.</p>

Appendix: Materiality

Whilst our audit procedures are designed to identify misstatements which are material to our audit opinion, we also report to those charged with governance and management any uncorrected misstatements of lower value errors to the extent that our audit identifies these.

Under ISA (UK) 260 'Communication with those charged with governance', we are obliged to report uncorrected omissions or misstatements other than those which are 'clearly trivial' to those charged with governance. ISA (UK) 260 defines 'clearly trivial' as matters that are clearly inconsequential, whether taken individually or in aggregate and whether judged by any quantitative or qualitative criteria.

An omission or misstatement is regarded as material if it would reasonably influence the users of the financial statements. The assessment of what is material is a matter of professional judgement and is affected by our assessment of the risk profile of the business and the needs of the users.

When planning, we make judgements about the size of misstatements which we consider to be material, and which provide a basis for determining the nature and extent of our audit procedures. Materiality is revised as our audit progresses, should we become aware of any information that would have caused us to determine a different amount had we known about it during our planning.

Our assessment of materiality for this year ended 31 March 2025 was calculated as follows.

	Value (£)	Basis(£)	Explanation
Overall materiality for the financial statements	195,000	2% of prior year income	Accounts materially misstated where total errors exceed this value.
Performance materiality	146,000	75% of overall materiality	Work performed to capture individual errors at this level.
Trivial threshold	9,700	5% of overall materiality	All errors greater than this are reported.

We will reassess our materiality once the current year-end figures have been prepared.

REPORT TO BOARD OF TRUSTEES

REVISED SERVICE LEVEL AGREEMENT

Date: 27 May 2025

Agenda Item: 8

Report by: Anneke Freel, Chief Officer

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to provide information on a review of the East Ayrshire Leisure Trust's constitution, along with a review of the service agreements between East Ayrshire Council and EALT, following the approval to transfer additional services to EALT. Trustees are being asked to approve the revised service agreement.

2 BACKGROUND

- 2.1 East Ayrshire Leisure Trust is an Arm's Length External Organisation (ALEO), which was registered in May 2013 and became operational in July 2013. It is responsible for the management of a variety of cultural, countryside and sports facilities and services. It is a Scottish Charitable Incorporated Organisation (SCIO), which is a legal form that is unique to Scottish Charities. The EALT is regulated by the Office of the Scottish Charity Regulator (OSCR) and is bound by the Charities and Investment (Scotland) Act 2005 and the Scottish Charitable Incorporated Organisations Regulations 2011.
- 2.2 On 31st October and the 11th and 12th November 24, East Ayrshire Council and the Boards of Kilmarnock Leisure Centre Trust and East Ayrshire Leisure agreed to transfer Vibrant Communities, Community and Corporate Catering, Instrument Music, Creative Minds and the Galleon Leisure Centre to East Ayrshire Leisure.
- 2.3 This change in portfolio required a review of the Service Level Agreement between the Council and the Trust. East Ayrshire Council approved these changes on the 23rd April 2025.

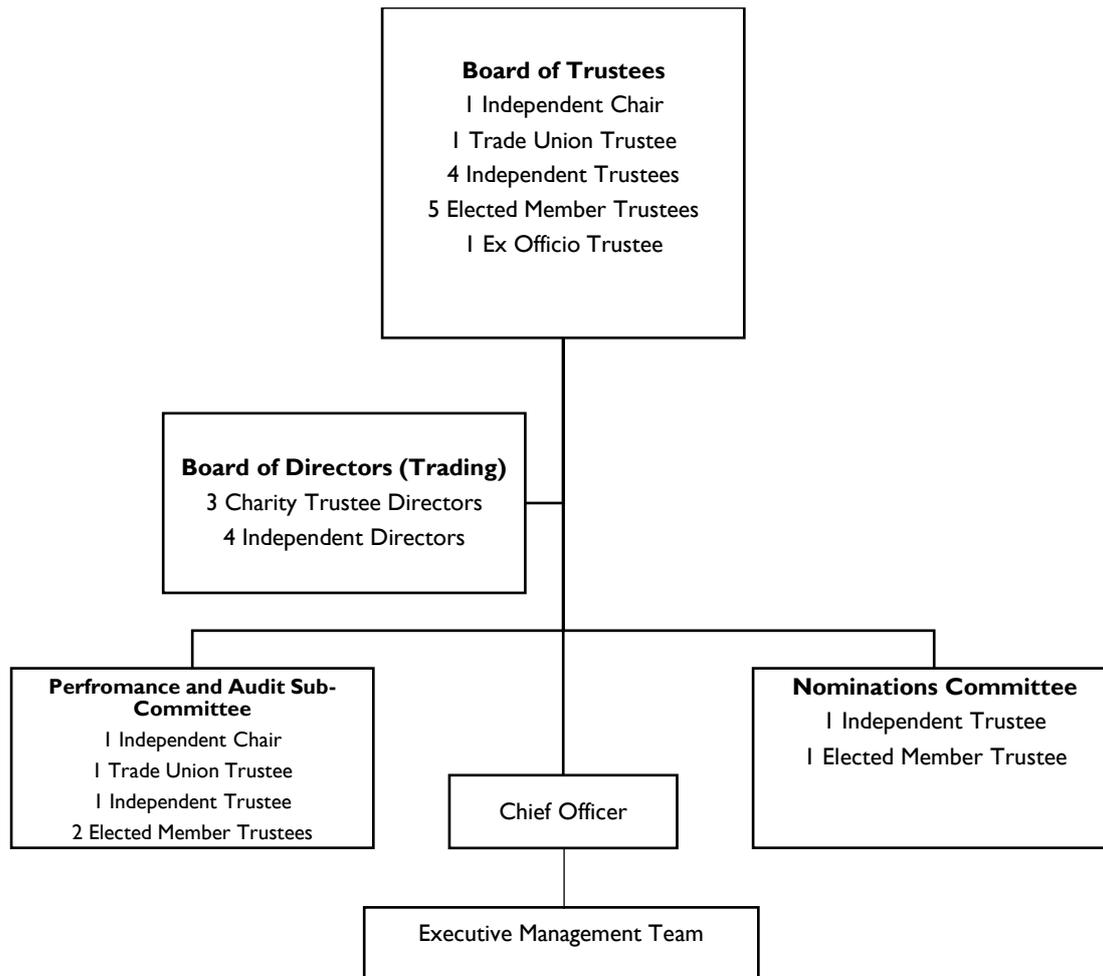
3. SERVICE AGREEMENTS BETWEEN EAST AYRSHIRE COUNCIL AND EAST AYRSHIRE LEISURE TRUST

- 3.1 The agreements between EALT and EAC were established in 2013 prior to the registration of EALT as a charitable organisation and further reviewed in 2022 to reflect the 10-year Strategic Vision of the Trust. The agreement includes legal documents as outlined below:
- **Provision of Services Agreement** which provided the detail of services that EALT would provide on behalf of EAC
 - **Support Services and Finance Agreement** outlined the support that EALT would receive from EAC to enable the services to be delivered
 - **Transfer and Lease Agreements** for all properties with separate agreements for shared school sites
 - **Mechanical Services Agreement** for the maintenance of machinery and equipment **associated** with Annanhill Golf Course, Ayrshire Athletics Arena and Dean Castle Country Park
 - **Collection Agreement** outlined the responsibilities that EALT has for the care and management of the East Ayrshire Council Museum collection
- 3.2 The changes to the agreement reflect the extended portfolio of services and facilities that are now being delivered on behalf of East Ayrshire Council.

REPORT TO BOARD OF TRUSTEES

4. GOVERNANCE STRUCTURES

4.1 Given the changing portfolio and the creation of a Trading Subsidiary, a review of the governance structures has been carried out to reflect the revised constitution for the Charity and the Articles of Association for the Trading Subsidiary and to clearly demonstrate the relationships. It should be noted that the Board of Trustees will have oversight of the whole organisation and will report to East Ayrshire Council through East Ayrshire Performs on a quarterly basis and through monthly contract administration meetings with The Depute Chief Executive and the Chief Finance Officer. The Chief Officer will also present to full Council with the annual report in the November and the Corporate Delivery Plan in March of each year.



5 CONCLUSION

5.1 East Ayrshire Leisure is at a pivoted period in the implementation of our Growth plan. A complete review of governance arrangements, which includes a programme of regular review, continues to demonstrate the commitment of the EALT Management Team and EAC in developing an organisation, which creates a solid foundation for growth and sustainability.

REPORT TO BOARD OF TRUSTEES



Recommendation/s:

It is recommended that Trustees:

- i. Consider and approve the revised Service Level Agreement between East Ayrshire Council and East Ayrshire Leisure Trust to East Ayrshire Council for approval;
- ii. Note the governance structures of the Trust; and
- iii. Otherwise note the content of this report.

Anneke Freel

Signature:

Designation: Chief Officer

Date: 15 May 2025



SERVICE LEVEL AGREEMENT
between
EAST AYRSHIRE LEISURE TRUST
and
EAST AYRSHIRE COUNCIL



REPORT TO BOARD OF TRUSTEES



Agreement among

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

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

REPORT TO BOARD OF TRUSTEES

SECTION 1: EAST AYRSHIRE LEISURE TRUST - WHO WE ARE & WHAT WE DO 8

I. Introduction.....	8
1.1 East Ayrshire Leisure’s Strategic Vision	8
1.2 Sharing our Vision	8
1.3 Leisure at the Heart of Every Community	8
1.4 Living Your Best Life	9
1.5 Investing in our People and Embracing our Values	9
1.6 Creating a Solid Foundation for Growth	9
1.7 Protecting our Environment.....	10
1.8 Agreed Services	10

SECTION 2: DEFINITIONS AND INTERPRETATIONS..... 12

SECTION 3: GENERAL ARRANGEMENTS 23

3.1 Service Availability	23
3.2 Commencement Date (“Term”)	23
3.3 Service Monitoring and Performance Measurement.....	23
3.4 .Outcomes of the Services.....	23
3.5 Following the Public Pound.....	24
3.6 Warranties	24
3.7 Liability and Indemnity.....	24
3.8 Contract Arrangements	26
3.9 Problem Escalation	26
3.10 Data Protection and Freedom of Information	26
3.6 Dispute Resolution Procedure	27
3.7 Publicity	28
3.8 Non Solicitation	28
3.9 Notices	29
3.10 Variation and Waiver	29
3.11 Costs	30
3.12 Severability.....	30
3.13 Assignment.....	30
3.14 No Partnership or Agency.....	30
3.15 Termination.....	30
3.16 Consequences of Termination	31
3.17 Entire Agreement	32
3.18 Change Control Procedures	32
3.19 Force Majeure	34

REPORT TO BOARD OF TRUSTEES

3.20 Applicable Law and Jurisdiction	34
SECTION 4: PROVISION OF SERVICES AGREEMENT	36
Part 1 Legal Framework for Provision of Services.....	46
Part 2 Policy Framework for Provision of Services	47
Part 3 Description of Services.....	49
Part 4 Service Performance.....	55
Part 5 Provision of Policy and Strategy.....	57
SECTION 5: SUPPORT SERVICES AGREEMENT	58
Part 1 People and Culture.....	66
Part 3 Procurement.....	71
Part 4 Legal.....	72
Part 5 Property Maintenance and Development	73
Part 6 Finance and IT	73
Part 7 Internal Audit	82
SECTION 6: ASSETS AGREEMENT	84
Part 1 The Premises	108
Part 2 Roles and Responsibilities for Shared Sites – Category I Schools.....	111
Part 3 Roles and Responsibilities for Shared Sites – Community Hubs	116
Part 4 Roles and Responsibilities for Standalone Sites	119
Part 5 Roles and Responsibilities for Community Management Arrangements 122	
Part 6 Roles and Responsibilities for Shared Management Arrangements .	126
Part 7 General Maintenance Obligations	129
Part 8 Provision for Elections and Refurenda.....	131
Part 9 Provision for Emergency Events	132
SECTION 7: COLLECTIONS AGREEMENT.....	133
Part 1 Right Granted	143
Part 2 The Trust’s Premises	144
Part 3 Collection Development Strategy and Policies	145
Part 4 Laws, Standards, Guidelines and Codes of Ethics.....	146
SECTION 8: SIGNATORIES.....	150

REPORT TO BOARD OF TRUSTEES



SECTION I: EAST AYRSHIRE LEISURE TRUST - WHO WE ARE & WHAT WE DO

I. Introduction

1.1 East Ayrshire Leisure's Strategic Vision

This document expands on East Ayrshire Leisure's Strategic Vision 2020-2030 to give further information on our vision for the facilities and services that the Trust manages. It provides strong and ambitious objectives, outlines clear timescales for delivery and gives specific strategic direction for our facilities that will develop the Trust into a more independent, resilient, innovative and inclusive organisation. Within the period of this strategy, East Ayrshire Leisure Trust will continue to grow as a leisure provider, facilitator and partner that is recognised on both a local and national stage.

To be successful in our ambitions collectively we plan to:

- Work more closely with local communities and our customers to deliver services that are valued and embedded in local life;
- Engage with local and national partners to develop collaborative approaches to service design that enhance the opportunities for leisure across East Ayrshire;
- Develop facilities that are of a high quality and to support partners across the third, public and private sector in doing the same;
- Contribute to local and national agendas through the provision of an innovative programme that encourages East Ayrshire to flourish;
- Value our people, recognise their skills and talents and empower them to be solution focused;
- Integrate commercialisation and sustainability into our business model in its widest sense and to explore more efficient working practices, governance and leadership arrangements and to look to the market place for inspiration
- Be a responsible member of the community that supports a sense of place and adopts environmental best practice

1.2 Sharing our Vision

East Ayrshire Leisure will be widely recognised and acclaimed as a provider that is firmly committed to listening to our customers, local residents, visitors and partners and developing facilities and services that meet their needs.

- To create a programme of community engagement activities which includes consultation with our customers and potential customers about existing and future facilities and services and to adopt a positive approach to feedback.
- To ensure our use of creative marketing led activities effectively promote our high quality services, maximise customer engagement and make a real difference to how people view East Ayrshire Leisure Trust.
- To work collaboratively with key partners and stakeholders in the development of programmes and activities whilst exploring innovative delivery models which ensure best value for our customers.
- To introduce customer service related performance targets

1.3 Leisure at the Heart of Every Community

East Ayrshire Leisure will continue to provide high quality leisure facilities, services and programmes that

REPORT TO BOARD OF TRUSTEES

are relevant and modern and will support other groups and organisations in ensuring that our work is truly at the heart of every community regardless of who the provider is.

- To work with community, local authority and private providers to implement the Leisure Facility Strategy that identifies all leisure, culture, community and wellbeing provision throughout East Ayrshire and maximises the opportunities for our communities to participate
- To work with partners to explore funding opportunities for refurbishment and development of facilities and services
- To work with East Ayrshire Council in reviewing, prioritising and refining repair and maintenance plans and schedules for all facilities within our remit which include an annual programme of planned maintenance and decoration, as well as identifying alternative funding and delivery models where appropriate.

1.4 Living Your Best Life

East Ayrshire Leisure will contribute to improving the enjoyment, quality of life, health and wellbeing of communities and visitors to East Ayrshire through an innovative, welcoming and ambitious programme of cultural, sport and outdoor activities.

- To support the development of sustainable pathways that encourage lifelong participation
- To contribute to a programme of high profile regional and national events, exhibitions, programmes and projects, that are ambitious and outward facing, whilst maximising the impact on our customers and visitors
- To develop activities and services that contribute to the Scottish Government's aspirations for 'A Healthy and Active Nation' and 'A Creative, Open and Connected Nation' and that ensure that East Ayrshire Leisure is at the heart of future trends and initiatives

1.5 Investing in our People and Embracing our Values

East Ayrshire Leisure will be an employer that encourages all employees and volunteers to be fully engaged in the operation and development of our business, services and programmes and where opportunities are provided for them to realise their potential.

- To develop and embed our People Strategy so that employees at all levels are engaged and can contribute to the business
- To offer work placements, volunteering and apprenticeships
- To integrate our values into all aspects of our business including Review and Development programme, recruitment, training and meetings. To focus on skills, knowledge and experience in the development of our business and to ensure we invest in industry specialist training which is tailored to meet the needs of our programmes
- To ensure that our board of Trustees reflects the community we serve and the need to be both a charitable and commercial organisation

1.6 Creating a Solid Foundation for Growth

East Ayrshire Leisure will achieve continuous improvement in the operation of the Trust and will focus on developing and challenging existing and new business opportunities in order to fulfil our strategic, charitable and trading objectives.

REPORT TO BOARD OF TRUSTEES

- To review and continually improve and enhance our systems and processes to ensure that they are effective and appropriate in the transformation of our business
- To develop a collaborative approach with relevant partners to explore wider opportunities that fit within the Trust's vision and values and to explore opportunities to share resources across all of our services internally and with key stakeholders
- To maximise the return from commercial opportunities, especially around retail, hospitality and membership packages, so that we are in a position to fulfil our charitable obligations and become a sustainable organisation
- To develop an effective performance management framework

1.7 Protecting our Environment

East Ayrshire Leisure will be committed to environmental best practice and will use resources as efficiently and effectively as possible in the operation of our business. We will also explore new opportunities to promote sustainability and biodiversity and encourage greater use of East Ayrshire's wonderful outdoors.

- To prepare and adopt a Climate Change Declaration on an annual basis which audits our carbon footprint and outlines priorities for carbon reduction
- To adopt the principles of Visit Scotland's Green Tourism Business Scheme to reduce the environmental impact of our business
- To implement a Sustainable Transport Strategy which encourages active travel in all of our operations and with our staff and customers
- To provide a community leadership role in protecting, promoting and enhancing the wider natural environment of East Ayrshire

1.8 Agreed Services

Through the provision of services (including those entrusted to it by East Ayrshire Council (hereinafter referred to as "The Council")), which contribute to advancing well-being (primarily the wellbeing of residents of East Ayrshire) including (i) the operation, management and development of galleries, museums and other facilities which provide public access to collections of works of art, antiquities and objects of scientific interest; (ii) the development and delivery of arts and cultural activities and events, artistic programmes, instrumental music tuition and ensembles and educational projects; (iii) the operation, management and development of libraries and provision of library and archive services; (iv) the operation, management and development of indoor and outdoor sports facilities (including arrangements to facilitate access to such facilities by those on lower incomes or having special needs and to encourage wider participation in physical activity); (v) the development and delivery of sports activities and events directed towards wider participation in sport; (vi) the development and delivery of community learning and adult learning initiatives; (vii) country park, strategic routes, biodiversity and countryside services management and (viii) the delivery of services focused on social renewal and the needs of young people. (ix) the provision of community development activities and support to community councils (x) the delivery of community and corporate catering services

1.9 Outcomes of the Services

This Agreement represents a working partnership between the Trust and the Council to achieve identified outcomes for the communities of and visitors to East Ayrshire, associated with the effective management and development of leisure, culture, community, wellbeing and educational services.

The Council aims to provide, or enable to be provided, working in partnership with the Trust, the best services that current resources allow.

REPORT TO BOARD OF TRUSTEES



The Trust undertakes to have regard to the outcomes set by the Council from time to time in furtherance of this aim when delivering the Services and when developing its Corporate Delivery Plans.

REPORT TO BOARD OF TRUSTEES

SECTION 2: DEFINITIONS AND INTERPRETATIONS

Now it is hereby agreed:

2.1 DEFINITIONS AND INTERPRETATION

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

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

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

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

"ADR Notice" has the meaning given to it in Clause 3.6.4;

"Agreement" means this agreement;

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

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

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

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

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

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

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

"Corporate Delivery Plan" means an 2 year plan prepared in writing by the Trust in respect of the provision of the Services to identify the expected income and expenditure for the relevant Financial Years, the Payment and the projected income and expenditure for the two Financial Years following the next Financial Year together with an indication of the likely Payment for each of those two Financial Years, which plan will provide sufficient detail of the specification of services, facilities,

REPORT TO BOARD OF TRUSTEES



proposed improvements or other information as is necessary to vouch for the projected income and expenditure;

"Corporate Delivery Plan Review" a Corporate Delivery Plan review carried out pursuant to Clause 4.23;

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

"Change and Control Procedures" means the Council's control procedure;

"Charges" means the charges for the Services as set out in Section 4 of this Agreement or, where relevant, the agreed charges for any Renewal Period, which charges are exclusive of Value Added Tax;

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

"Code of Ethics" means the codes of ethics for museums, Archives and/or libraries listed in Section 7, Part 4 of this Agreement, as the same may be amended or supplemented from time to time, and any other code of ethics relating to the Collections or the Libraries' Collection (or part of them) (a) as may be notified by the Council, to the Trust from time to time, and/ or (b) which may become the *de facto* standard for the code of ethics in the UK relating to the Collections (or part of them);

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

- on display or stored in the Trust's Premises as at the Commencement Date,
- on loan by the Council to a Third Party as at the Commencement Date,
- in transit to or from the Trust's Premises or otherwise in temporary location outside the Trust's Premises as at the Commencement Date for any purpose including without prejudice to that generality for the purpose of maintenance and repair, observation or research,
- acquired through the formal acquisition process (referred to Section 7, Part 3)
- subject of a loan agreement,
- placed on deposit, or
- subject of a Charge & Superintendence agreement,

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

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

"Collections' Intellectual Property" means Intellectual Property Rights (as defined below) relating to the Collections and the Libraries' Collection:

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

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

REPORT TO BOARD OF TRUSTEES



“Collections Development Strategy” means the strategy of the Trust, relating to the acquisition, disposal and lending to third parties of items forming part of the Collections, as the same may be altered, supplemented or replaced by the Trust from time to time until such time as the strategy is altered, supplemented or replaced by the Trust, the policy shall be deemed to be amended in so far as necessary to reflect the transfer of the undertaking of the Council to the Trust in terms of the Asset Agreement;

"Community Facilities" means those facilities denoted in Section 6, Part 1;

“Commencement Date” means First of April 2025

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

"Contract Manager" means the representative of the Council appointed pursuant to clause 3.19.14 ;

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

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

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

"Council Departments" means Chief Executive's Office and the Depute Chief Executive's Office as such departments and services may be reorganised and renamed from time to time;

"Council Instructions" means instructions given by the Council

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

“Council Representative” means the representative of the Council

"Data Controller" shall have the same meaning as set out in the DPA and GDPR

"Discrimination Legislation" means any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) including, without limitation, the Equality Act 2010, the Sex Discrimination Act 1975; the Race Relations Act

REPORT TO BOARD OF TRUSTEES

1976; the Disability Discrimination Act 1995; Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, Employment Equality (Sexual Orientation) Regulations 2003, and Employment Equality (Religion or Belief) Regulations 2003 and Employment Equality (Age) Regulations 2006;

"Dispute" has the meaning given to it in Clause 3.6.1;

"Dispute Notice" has the meaning given to it in Clause 3.6.2;

"DPA" the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679) (hereinafter referred to as "the **GDPR**") and any national implementing laws, and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other national data protection authority, and the equivalent of any of the foregoing in any relevant jurisdiction;

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

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

"Educational Services" means the Council's Educational and Schools Department;

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

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

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

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

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

REPORT TO BOARD OF TRUSTEES



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

"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);

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

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

"Expiry Date" means the date twenty five years following the Commencement Date, or such later date as may be determined

"Facilities" means the community facilities and leisure facilities in place at the Properties

"Financial Year" means the period from 1 April of a year and ending on 31 March;

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

"Force Majeure Event" has the meaning given to it in Clause 19.1;

"Health and Safety Legislation" means any law, enactment, order, regulation or Approved Code of Practice issued by the Health and Safety Executive or the Scottish Government relating to health and safety or fire safety including, without limitation, the Health and Safety at Work etc Act 1974 and the Fire (Scotland) Act 2005;

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

"Indemnifying Party" shall have the meaning ascribed to it in clause 5.27;

"Individual Service" means each individual part of the Services,

"Instrumental music service", as defined here as instrumental lessons to pupils in all Primary and Secondary schools throughout East Ayrshire and within the Instrumental music service level agreement;

REPORT TO BOARD OF TRUSTEES



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

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

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

"Leisure Facilities" means those Facilities denoted as such in Section 4 Part 3 ;

"Leisure Services" means the operation of the facilities and services to be carried out by the Trust in accordance with Section 4 Provision of Services Agreement

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

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

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

"Loan In Agreement" means the terms and conditions of any agreement entered into by the Council with a Third Party relating to the lending by the Third Party to the Council, for a defined period of any item;

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

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

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

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

"Person Days" means the anticipated time input, and on the basis that one person working for one

REPORT TO BOARD OF TRUSTEES



full day will be deemed to constitute one "Person Day";

"Policies" means the policies of the Council, in relation to the Collections and the Libraries' Collection, as at the Commencement Date (including, without prejudice to that generality, the policies listed in Section 7 as the same may reasonably be amended, supplemented or replaced by the Council in consultation with the Trust from time to time, and notified by the Council to the Trust from time to time; and any other reasonable policies relating to the Collections and the Libraries' collection (or part of them) as may be notified by the Council, to the Trust from time to time; until such times as each policy is altered, supplemented or replaced by the Council; that policy shall be deemed to be amended in so far as necessary to reflect the transfer of the undertaking of the Council to the Trust;

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

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

"Properties" means the properties owned by the Council, brief particulars of which are set out in Section 6 – Assets Agreement; Part I – The Premises

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

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

"PVG Act" means the Protection of Vulnerable Groups (Scotland) Act 2007 as updated by the Disclosure (Scotland) Act 2020;

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

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

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

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

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

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

REPORT TO BOARD OF TRUSTEES

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

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

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

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

"Retransmission" means the temporary return of one or more items in an Archival Deposit to the owners of that Archival Deposit, for legal, administrative or evidential purposes or for

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

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

"Services" means the services set out in Section 4 Provision of Services Agreement

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

"Services Performance Standards" means:-

- (a) in respect of the first Financial Year, the performance standards and related reporting obligations set out in the Services Specification;
- (b) in respect of each subsequent Financial Year, the performance standards agreed between the Council and the Trust pursuant to Clause 4.3 as being applicable to that Financial Year;

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

"Services Specification" means the standards, specifications, procedures and other requirements set out in Section 4: Provision of Services Agreement

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

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

"Staffing Information" means, in relation to all persons detailed on the Trust's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-

REPORT TO BOARD OF TRUSTEES



employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services;

“Standards” – means the standards listed in Section 7 as the same may be amended or supplemented from time to time, and any other standards relating to the Collections (or any part of them) (a) as may be notified by the Council following consultation with the Trust to the Trust from time to time and/ or (b) which are or may become *de facto* UK standards.

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

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

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

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

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

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

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

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

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

"The Trust's Responsibilities" means the responsibilities assigned to the Trust by Section 4 of this Agreement

"The Leases" has the meaning assigned to that expression in the Section 6 the Asset Agreement;

“Term” – has the definition ascribed in clause 3.2

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

REPORT TO BOARD OF TRUSTEES

amended or supplemented from time to time;

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

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

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

"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;

"Warning Notice" means a notice served by the Council on the Trust

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

Furthermore;

- A. Any reference to a clause, or paragraph shall be to, respectively, a clause or paragraph, to the Agreement.
- B. Clause headings are for the ease of reference only and shall not affect the construction and interpretation of any clause.
- C. Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- D. References to any statute, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation, or order as amended or re-enacted from time to time.
- E. Except where otherwise provided, words and expressions used in this Agreement shall have the meanings ascribed to them by the Companies Act 2006.
- F. In the Agreement, except where the context otherwise requires, any reference to:
 - I. another agreement or any deed or instrument or document shall be construed as a reference to that other agreement, deed, or other instrument or document as the same may have been, or may from time to time be amended, varied, supplemented or novated.
 - II. a "day" means a period of 24 hours (or such other number of hours as may be relevant in the case of changes for daylight savings) ending at 12:00 midnight.
 - III. the words "include" or "including" are to be construed as meaning without limitation.
 - IV. a "month" means a calendar month; and
 - V. a "person" includes any individual, partnership, firm, Trust, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having a separate legal personality.
- G. a reference to a person includes a reference to his executors, administrators, successors and assignees;

REPORT TO BOARD OF TRUSTEES

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

REPORT TO BOARD OF TRUSTEES

SECTION 3: GENERAL ARRANGEMENTS

3.1 Service Availability

- 3.1.1 In general terms, East Ayrshire Council's service will be provided within normal office hours (9am to 5pm Monday to Thursday and 9am to 4pm Friday). However, service outwith these hours will be provided in respect of attendance at meetings. Outwith normal office hours, the Risk Management Centre (RMC) will provide continuity of cover for the instruction of emergency works upon consultation and agreement with the Facility and Property Management section.
- 3.1.2 Services provided by East Ayrshire Leisure Trust will be determined by the opening hours of individual venues.

3.2 Commencement Date ("Term")

- 3.2.1 Notwithstanding the date or dates of execution of this Agreement, this Agreement shall commence on the Commencement Date and, unless sooner terminated under clause 3.15, shall continue in force for a duration of 25 years.

The Parties may mutually agree to extend the length of the Agreement by written notice prior to the expiry of the Agreement.

The Parties agree to mutually review the terms of the agreement every 5 years.

3.3 Service Monitoring and Performance Measurement

- 3.3.1 In accordance with statutory requirements, performance information relevant to the services covered by East Ayrshire Leisure Trust will be incorporated within the Council's arrangements for public performance reporting to ensure coherent and regular reporting to stakeholders.
- 3.3.2 East Ayrshire Leisure Trust will provide to East Ayrshire Council all necessary information, on a quarterly basis, which allows the measurement of performance against all previously identified statutory and non-statutory performance indicators as set out in the Corporate Delivery Plan. This will be undertaken by East Ayrshire Leisure Trust providing a quarterly performance report aligned to East Ayrshire Performs, as well as an annual report in December of each year and a Performing Impact Measurement report in May of each year.

3.4 .Outcomes of the Services

- 3.4.1 Agreement represents a working partnership between the Trust and the Council to achieve identified outcomes for the communities of and visitors to East Ayrshire, associated with the effective management and development of leisure, culture, community, wellbeing and educational services.
- 3.4.2 The Council aims to provide, or enable to be provided, working in partnership with the Trust, the best services that current resources allow.
- 3.4.3 The Trust undertakes to have regard to the outcomes set by the Council from time to time in furtherance of this aim when delivering the Services and when developing its Corporate Delivery Plan.

3.5 Following the Public Pound

- 3.5.1 The Council and the Trust will apply the Accounts Commission and the Convention of Scottish Local Authorities "Code of Guidance on Funding External Bodies and Following the Public Pound" to the operation of the relationship between the Trust and the Council to ensure clear public accountability and robust monitoring of the performance of the Trust with a view to securing quality services in the most effective, efficient and economic manner.
- 3.5.2 Both parties will also ensure that the principles of openness, integrity and accountability are enshrined within the operation of this Agreement

3.6 Warranties

- 3.6.1 The Trust warrants, represents and undertakes to the Council that:
- 3.6.1.1 the Trust has full capacity and authority to enter into the Agreement;
- 3.6.1.2 the Trust's Obligations will be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments;
- 3.6.1.3 the performance of the Trust shall not infringe any Intellectual Property Rights of any Third Party; and
- 3.6.1.4 as at the date of execution of the Agreement by the Trust, there is no material outstanding litigation, arbitration or other disputed matters to which the Trust is a party, which may have material adverse effects upon the fulfilment of the Trust's liabilities, responsibilities or obligations pursuant to the Agreement.
- 3.6.2 The Council warrants, represents and undertakes to the Trust that the Council has full capacity and authority to enter into the Agreement.

3.7 Liability and Indemnity

- 3.7.1 The Trust shall indemnify the Council against any liabilities, losses, charges, costs and expenses and assist with contesting any claim by a Third Party against the Council and any cost ordered against the Council arising from or in connection with:
- 3.7.1.1 a breach of any of the warranties given by the Trust in the Agreement;
- 3.7.1.2 the negligence, recklessness or wilful misconduct of the Trust, or its employees, agents, contractors or otherwise in the course of performing the Trust's Obligations; and
- 3.7.1.3 any breach by the Trust of any obligations or undertaking contained in the Agreement, or otherwise in the case of the Trust arising in relation to the Trust's Obligations,
- provided always that the Council shall use all reasonable endeavours to minimise any such liabilities, losses, charges, costs or expenses and that the Council shall not take any step which may increase any such liability (without having first obtained the written approval of the Trust to such steps).
- 3.7.2 The Council shall indemnify the Trust against any liability, losses, charges, costs and expenses (including but not limited to all reasonably incurred legal expenses) suffered or incurred by the Trust, arising from:
- 3.7.2.1 a breach of any of the warranties given by the Council in the Agreement; and

REPORT TO BOARD OF TRUSTEES

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

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

3.7.3 Each party which incurs a loss or liability or receives a claim of a nature which may fall within the indemnity contained in clauses 3.6.1 and 3.6.2:

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

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

3.7.3.3 shall keep the other party closely apprised of any developments relating to the relevant loss, liability or claim (including any insurance claim that may be perused in connection with the relevant occurrence);

3.7.3.4 shall not (in the case of the claim) compromise any such claim, or take any step which would prejudice the defence of such claim, without (in each such case) the prior written consent of the other party (such consent not to be unreasonably withheld and/or delayed);

3.7.3.5 take all reasonable steps available to it to mitigate such loss or liability; and

3.7.3.6 shall not admit nor imply any acceptance of liability, but shall fully co-operate with the insurers in the investigation and defence of any such loss.

3.7.4 No party to the Agreement excludes or limits liability for the death or personal injury arising as a result of its negligence.

3.7.5 Subject always to clause 3.6.4 no party shall be liable to any other party in respect of any of the following losses or damages (whether such losses or damages were foreseen, foreseeable, known or otherwise):

3.7.5.1 any indirect, incidental, special or consequential loss or damage (whether or not such loss or damage is of the type specified in clause 3.6.5.2 to 3.6.5.7 below);

3.7.5.2 loss of actual or anticipated profits;

3.7.5.3 loss of goodwill;

3.7.5.4 loss of business;

3.7.5.5 loss of revenue or of the use of money;

3.7.5.6 loss of contracts; and

REPORT TO BOARD OF TRUSTEES

3.7.5.7 loss of anticipated savings.

3.8 Contract Arrangements

3.8.1 The operation of each service area as detailed within the Support Services Agreement (Section 5) will be provided through named East Ayrshire Council Officers. The Trust will be informed of any changes to personnel.

3.9 Problem Escalation

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

3.9.2 Any complaints which may not be resolved by the respective manager may be raised with the relevant Service Manager and will be reviewed subsequently by the Head of Service and discussed with all relevant parties before also being raised at East Ayrshire Leisure Trust contract administration meetings. Any actions identified as service improvements will be built into the appropriate service improvement plan and the progress/outcome will be included in the (period) service report and discussed at the contract administration meetings.

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

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

3.9.4.1 Relevant senior management and equivalent customer representative; or

3.9.4.2 The Chief Executive of East Ayrshire Council and Chief Officer of East Ayrshire Leisure

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

3.10 Data Protection and Freedom of Information

3.10.1 Each Party shall comply with its obligations under the provisions of the DPA and GDPR.

3.10.2 The Parties acknowledge that they are independent Data Controllers for the personal data they hold in relation to this Agreement.

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

REPORT TO BOARD OF TRUSTEES

3.10.4 act only on instructions from the Trust; and

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

3.10.6 ensure Council staff members processing the data are appropriately trained in Data Protection and are subject to a duty of confidence; and

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

3.10.8 only engage sub-processors with the Trusts prior authorisation and under a written contract; and

3.10.9 take appropriate measures to help the Trust respond to requests from individuals to exercise their rights; and

3.10.10 assist the Trust in meeting its DPA and GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments; and

3.10.11 delete or return all personal data to the Trust (at the Trust's choice) at the end of the Agreement; and

3.10.12 submit to audits and inspections where required by the Trust.

3.10.13 The provisions of clause 3.10.3 shall apply in relation to any personal data processed by the Trust on behalf of the Council under this Agreement as if each reference in that clause to the Council were a reference to the Trust and vice versa.

3.10.14 For the purposes of clause 3.5.3, the terms "personal data" and "processing" shall have the meanings ascribed to them in the DPA and GDPR.

3.10.15 Both Parties acknowledge that they are designated Scottish public authorities by Order of the Scottish Ministers under Section 5 of the Freedom of Information (Scotland) Act 2002 ("the Act") and the Environmental Information (Scotland) Regulations 2004 ("the Regulations") and shall comply with requests for information independently of the other Party.

3.10.16 Both Parties acknowledge the other Parties obligations under the Act and the Regulations and acknowledges in particular that either Party may be required to provide information relating to this Agreement to any person on request in order to comply with the Act or the Regulations.

3.11 Dispute Resolution Procedure

3.11.1 If a dispute arises out of or in connection with this Agreement (a Dispute") then, except as expressly otherwise provided in this Agreement, the Parties shall follow the procedure set out in this Clause 3.11.

3.11.2 Either Party shall give to the other notice in writing of the dispute (the Dispute Notice"), setting out its nature and reasonable particulars with the relevant supporting documentation. On service of the

REPORT TO BOARD OF TRUSTEES

Dispute Notice, the Council Officer and the Trust Representative shall seek in good faith to resolve the dispute.

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

3.12 Publicity

- 3.12.1 Neither Party (including their respective agents, employees or representatives) will, without the prior written consent of the other Party, disclose or permit to be disclosed any part or parts of this Agreement except and to the extent that such disclosure may be necessary to:-
- 3.12.1.1 comply with the law or the requirements of auditors;
- 3.12.1.2 provide information to HM Revenue & Customs or to its professional advisers;
- 3.12.1.3 provide information to a Party's professional advisers; or
- 3.12.1.4 provide information to potential New Suppliers.
- 3.12.2 Neither Party will unreasonably withhold or delay its consent to a request by the other Party to disclose the contents of the Agreement to a Third Party which has a bona fide interest therein.

3.13 Non Solicitation

- 3.13.1 Subject to clause 3.13.2, for the duration for this Agreement and for a period of 12 months thereafter, neither Party will, without the prior written consent of the other, whether directly or indirectly, either for itself or for any other person, firm or company, engage, employ or otherwise actively solicit for employment any person who, during the relevant period, was an employee of the other.
- 3.13.2 Nothing in clause 3.13.1 shall prevent either Party from engaging or employing any person who, during the relevant period, was an employee of the other Party where that individual made an unsolicited response to a general recruitment advertisement issued by the Party which is engaging or employing him/her.

REPORT TO BOARD OF TRUSTEES



3.14 Notices

3.14.1 Without prejudice to Clause 3.12.4, any notice required to be given under this Agreement shall be in writing signed by (or by some person duly authorised by) the Party giving it and may be served by delivering it personally to the address of the relevant Party set out in Clause 3.12.3 or by sending it by pre-paid recorded delivery to the address of the relevant Party set out in Clause 3.12.3.

3.14.2 Any notice so served shall be deemed to have been received:-

3.14.2.1 if delivered personally, at the time of delivery;

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

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

3.14.3.1 in the case of the Council:-

Position: Chief Executive

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

3.14.3.2 in the case of the Trust:-

Position: Chief Officer East Ayrshire Leisure Trust

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

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

3.14.4 Notwithstanding any other provision of this Agreement, any notice to be served or instruction to be given pursuant to Section 6, Part 11 (*Emergency Events*) may be validly served or given by email to such electronic address as shall be notified to each Party from time to time in which case the notice shall be deemed to have been received on receipt of an electronic read-receipt from the recipient of the notice or on the expiration of four hours from the time it was sent, whichever is the later.

3.15 Variation and Waiver

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

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

REPORT TO BOARD OF TRUSTEES

- 3.15.3 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.
- 3.15.4 No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.
- 3.15.5 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

3.16 Costs

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

3.17 Severability

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

3.18 Assignment

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

3.19 No Partnership or Agency

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

3.20 Termination

3.20.1 If:-

- 3.20.1.1 the Trust fails to observe or perform any of its material obligations under this Agreement and such failure is not capable of being remedied; or
- 3.20.1.2 the Trust fails to observe or perform any of its material obligations under this Agreement (other than a failure which is capable of being the subject of a Rectification Notice) and such failure is capable of being remedied but is not remedied within fifteen Business Days (or such longer period as the Parties may agree taking into account the nature of the failure) after the Trust being required by notice in writing to do so by the Council; or
- 3.20.2 the Trust fails to establish and agree or implement a Final Rectification Plan pursuant to Clause 4.52;
or

REPORT TO BOARD OF TRUSTEES

3.20.3 the Council exercises its right to terminate all, or a majority, of the Leases set out in the Asset Agreement; or

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

3.20.5 Either party may terminate this Agreement by giving not less than twelve months prior written notice.

3.21 Consequences of Termination

3.21.1 Termination or expiry of this Agreement, however arising, shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.

3.21.2 In the event of termination or expiry of this Agreement for any reason:

3.21.2.1 the Trust shall grant a renunciation of the Leases as per the Asset Agreement (if the Council has not exercised its right to terminate them) and the Council shall be bound to accept that renunciation accordingly;

3.21.2.2 the Council shall be entitled to terminate the Support Services Agreement;

3.21.2.3 the provisions of the Exit Management Plan shall, if directed by the Council, come into effect and the Trust shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a New Supplier;

3.21.2.4 if requested to do so by the Council, the Trust shall assign to the Council or to a New Supplier (as the Council may direct) any contracts relating to the Services to which the Trust is party;

3.21.2.5 the Trust shall (subject to Clause 3.16.1) transfer to the Council or to a New Supplier (as the Council may direct) ownership of the Trust Business and Assets (insofar as it owns the same) and of all other assets acquired by the Trust using funds (wholly, or in conjunction with other funds) and used by it in connection with the Services;

3.21.2.6 the Trust shall (subject to Clause 3.16.1) assign to the Council or to a New Supplier (as the Council may direct) its whole right, title and interest in and to all Intellectual Property Rights owned by the Trust and used by it in connection with the Services;

3.21.2.7 the Trust shall transfer to the Council or to a New Supplier (as the Council may direct) all records held by it (or on its behalf) in connection with the Services; and

3.21.2.8 the Trust will immediately pay to the Council all sums then due to the Council under this Agreement.

3.21.3 The transfers and assignments of referred to in Clause 3.16.2 shall be conditional upon the Council undertaking in writing to the Trust that the Council shall (or shall procure that the New Supplier shall) use the relevant assets, contracts and rights solely for charitable purposes (within the meaning of the Charities and Trustee Investment (Scotland) Act 2005).

3.22 Entire Agreement

- 3.22.1 This Agreement and all agreements entered, or to be entered into, pursuant to the terms of this Agreement or entered into between the Council and the Trust in writing and expressly referring to this Agreement:-
- 3.22.1.1 together constitute the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement; and
- 3.22.1.2 (in relation to such subject matter) supersede all prior discussions, understandings and agreements between the Parties and their agents (or any of them) and all prior representations and expressions of opinion by any Party (or its agent) to any other Party (or its agent).
- 3.22.2 Each of the Parties acknowledges that it is not relying on any statements, warranties or representations given or made by any of them in relation to the subject matter hereof, save those expressly set out in this Agreement and other documents referred to above, and that it shall have no rights or remedies with respect to such subject matter otherwise than under this Agreement (and the documents executed at the same time as it or referred to in it) save to the extent that they arise out of the fraud or fraudulent misrepresentation of any Party.

3.23 Change Control Procedures

Principles

- 3.23.1 Neither the Trust nor the Council shall unreasonably withhold or delay its agreement to any change proposed in pursuance of the provisions of this Agreement.
- 3.23.2 Until such time as a change control note ("CCN") has been signed by both the Trust and the Council, the Trust shall, unless otherwise expressly agreed in writing in accordance with provisions of 3.23.1 continue to perform the Trust Obligations in accordance with the Agreement.
- 3.23.3 Any discussions, negotiations or other communications which may take place between the Trust and the Council in accordance with any proposed change to the Agreement, including but not limited to the submission of the written communications, prior to the signing by the Trust and the Council of relevant CCN, shall be without prejudice to the rights of either party.

Procedure

- 3.23.4 If the Council wishes to amend the Agreement pursuant to the provisions of Sections 4 -6 of this Agreement, then the Council representative shall submit a brief written paper (the "proposed change paper") to the Trust representative addressing, as a minimum, the following points:
- 3.23.4.1 the title of the proposed change
- 3.23.4.2 the reason for the proposed change; and
- 3.23.4.3 detail of the proposed change
- 3.23.5 Within 10 Business Days after submission of a proposed change paper (or such other period as may be agreed between the Trust and the Council) the Trust's representative shall prepare and deliver to the Council representative two copies of a written and signed response to the proposed change paper setting out in as much detail as possible:

REPORT TO BOARD OF TRUSTEES

3.23.6 the title of the proposed change;

3.23.6.1 technical details of how to implement the change;

3.23.6.2a list of deliverables in relation to the change (together with any acceptance criteria);

3.23.6.3a timetable for delivery of change;

3.23.6.4any tasks required to be completed by the Council in order to allow the Trust to deliver change; and

3.23.6.5associated revisions to be made to the Agreement.

3.23.7 If the Trust wishes to amend the Agreement pursuant to the provisions of this Sections 4-6 of this Agreement the Trust's representative shall prepare and deliver the Council representative two copies of a CCN setting out in as much detail as possible:

3.23.7.1 title of the proposed change;

3.23.7.2technical details of how to implement change;

3.23.7.3a list of deliverables in relation to the change (together with any related acceptance criteria);

3.23.7.4a timetable for delivery of the change;

3.23.7.5any tasks required to be completed by the Trust in order to allow the Council to deliver the change;

3.23.7.6Associated revisions to be made to the Agreement;

3.23.8 Each CCN shall be uniquely identified by a sequential number.

3.23.9 Following receipt of a CCN, the Trust or the Council (as appropriate) may enter into discussions with the other party in relation to the contents of the CCN with the view to the Trust and the council reaching an agreed position; the Trust or the Council (as appropriate) must either receipt or reject a CCN. To accept a CCN, the Trust or the Council (as appropriate) must sign and return the CCN to the other party no later than [10] business days following its receipt of the CCN (or such other period as may be agreed between the Council and the Trust).

Following acceptance of a CCN, the agreement shall be deemed to be revised as set out in Review

3.23.10 This Agreement shall be reviewed every 2 years and adjusted if required in accordance with the relevant Corporate Delivery Plan to take into account any changes in service requirements of the Council or to accommodate changes in internal and/or external circumstances of the Council and/or the Trust

3.23.11 On completion of any Agreement review in accordance with paragraph 3.23.1, either Party may make a proposal for a change to the Services.

3.23.12 The Council will appoint a Contract Manager and the Trust will appoint a Trust Representative to oversee the overall performance of this Agreement. Neither Party shall change such appointee without prior consultation with the other Party.

3.23.13 The Contract Manager and the Trust Representative shall meet at least once every Quarter, or as otherwise agreed, to review the performance of the Council in providing the Services and to discuss any concerns associated with the implementation of the respective obligations of the Parties under this Agreement.

REPORT TO BOARD OF TRUSTEES

- 3.23.14 Meetings between the Contract Manager and the Trust Representative shall be convened on not less than 5 Business Days' notice, except in an emergency (in which case as much notice as is reasonably practicable shall be given); and shall (except in the case of an emergency) be accompanied by an agenda of items to be discussed at the meeting.
- 3.23.15 The Contract Manager shall be responsible for preparing minutes of all meetings.
- 3.23.16 A copy of the minutes prepared by the Contract Manager in pursuance of clause 3.23.6 shall be forwarded to the Trust Representative by the Contract Manager within 5 Business Days of the date of the meeting.
- 3.23.17 The Trust Representative shall advise the Contract Manager of any comments which He/she has in respect of the minutes prepared in pursuance of clause 3.23.7 within 5 Business Days of receipt of a copy of the minutes in accordance with clause 3.23.7; and the Contract Manager will make such revisions to the minutes as are agreed between the Trust Representative and the Contract Manager.

3.24 Force Majeure

- 3.24.1 A Party, provided that it has complied with the provisions of Section 4 – 7 of this Agreement shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (including, without prejudice to that generality, strikes or lockout) (a "Force Majeure Event").
- 3.24.2 The corresponding obligations of the other Party will be suspended to the same extent as those of the Party first affected by the Force Majeure Event.
- 3.24.3 Either Party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that:
- 3.24.3.1 it promptly notifies the other Parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - 3.24.3.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - 3.24.3.3 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 3.24.4 If the Force Majeure Event prevails for a continuous period of more than six months, either Party may terminate this Agreement by giving not less than fifteen Business Days' notice in writing to the other Party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.

3.25 Applicable Law and Jurisdiction

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

REPORT TO BOARD OF TRUSTEES



REPORT TO BOARD OF TRUSTEES

SECTION 4: PROVISION OF SERVICES AGREEMENT

Services

- 4.1 The Trust agrees to supply the Services during the Services Period in accordance with the terms of this Agreement.
- 4.2 The Trust shall:-
- 4.2.1 provide the Services in an efficient, effective and safe manner to the reasonable satisfaction of the Council and in accordance with the Services Performance Standards and any policies and guidance related to the Services issued by the Council (acting reasonably) to the Trust from time to time;
 - 4.2.2 provide the Services in such a manner as shall promote and enhance the image and reputation of the Council and East Ayrshire in respect of leisure activities and in accordance with the law from time to time in force;
 - 4.2.3 establish a system for dealing with any oral or written enquiry (including enquiries in terms of the FOI Act and/or the EIRs) or complaint in a prompt, courteous and efficient manner and record all such communications, all in accordance with relevant statutory requirements and in pursuance of best practice;
 - 4.2.4 not less than four months after the end of each Financial Year, provide an annual report to the Depute Chief Executive at East Ayrshire Council with summaries of the records referred to in Clause 4.2.3 above;
 - 4.2.5 introduce internal systems for monitoring quality assurance performance and outputs. An annual report on performance shall be submitted to the Council each year no later than 1 December in each calendar year and a performance impact report each year no later than the 1st June
 - 4.2.6 not act in a manner, whether in the delivery of the Services or otherwise, which could reasonably be viewed as bringing the Council into disrepute;
 - 4.2.7 ensure that appropriate health and safety measures are put in place and carried out within all land and premises (including the Properties) from which the Services are delivered;
 - 4.2.8 only utilise, in the provision of the Services, such personnel as shall possess the appropriate experience, skills and qualifications necessary for the Services to be performed in accordance with this Agreement;
 - 4.2.9 ensure that all staff who are or may undertake Regulated Work (as defined in the Protection of Vulnerable Groups (Scotland) Act 2007 (the PVG Act)), in delivery of the Services, are suitable for the performance of the duties they will undertake, and that all staff are not whether in terms of the PVG Act or any other appropriate legislation, deemed to be a risk either to the service users, the Trust, the Properties or the Council;
 - 4.2.10 employ sufficient staff to ensure that the Services are provided at all times and in all respects in accordance with Section 1 of this agreement and Section 4, Part 1 Service Specification;
 - 4.2.11 ensure that no advertising shall be displayed at the Properties or in relation to the Services which could reasonably be expected to cause offence or which has been prohibited by the Council, and no advertising of a political nature and no material which could be considered indecent, racial or obscene may be displayed;

REPORT TO BOARD OF TRUSTEES

4.2.12 have regard to all reasonable requests by the Council to act in a manner which assists the Council to meet its legal obligations, except insofar as such request may involve significant expenditure of resources or may otherwise prevent the Trust from delivering the Services or meeting its wider obligations.

4.2.13 The Trust recognises that the Council must comply with Sections 1 and 2 of the Local Government in Scotland Act 2003 and the Trust shall facilitate, support and assist the Council in so complying, in so far as it is able to do so.

Services Performance Standards

4.3 The Trust shall meet the Services Performance Standards in its provision of the Services.

4.4 Not less than six months prior to the commencement of each Financial Year the Council and the Trust shall consult in good faith with a view to agreeing whether the then applicable Services Performance Standards require to be varied for the forthcoming Financial Year and, if so, the nature and extent of such variation.

4.5 The Council may require more regular review of the Services Performance Standards where they are reasonably deemed to be required by the Council in order (1) to address any audit observation or requirement, (2) to comply with any statutory or wider legal requirement, (3) to meet any binding guidance or (4) to allow the Council to assess any substantial payment or other resource. In such circumstances both Parties will be bound to act reasonably and in a manner which seeks to meet such requirements, whilst limiting any adverse impact on both parties.

Exercise of Council landlord Lease rights

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

Corporate Delivery Plan

4.7 Not less than three months prior to the commencement of every alternative Financial Year the Trust shall submit its draft Corporate Delivery Plan to the Council. The draft Corporate Delivery Plan shall be prepared on a rolling two year basis and identify:-

4.7.1 the resources which the Trust intends to use during the next two Financial Years in performing the Services;

4.7.2 the expected expenditure required to implement the Trust's obligations under this Agreement and the Leases during those Financial Years; and

4.7.3 its proposal for Payment for the two year period.

4.8 The Council is committed to ensuring best value and compliance with Scottish Government proposals on continuous improvement in local authorities. To ensure that the Trust can demonstrate best value in

REPORT TO BOARD OF TRUSTEES

delivery of the Services it shall include provisions within its Corporate Delivery Plan to demonstrate its intentions for assisting the Council in delivery of that commitment.

4.9 The Parties acknowledge and agree that:-

4.9.1. in the context of the current EU law in relation to the provision of state aid the Council requires to ensure that:-

4.9.1.1 the parameters on the basis of which Payment is determined are set out in an objective and transparent manner; and

4.9.1.2 Payment does not exceed what is necessary to cover all or part of the costs incurred in discharging the Services, taking into account all relevant receipts in discharging those obligations;

4.9.2. without prejudice to the other provisions of this Agreement regarding the provision by the Trust of information, the Trust shall provide the Council with such information and access to its records and staff as the Council may reasonably request to allow the Council to:-

4.9.2.1 monitor the level of compensation received by the Trust from time to time in the context of the Services and the Trust's cost base; and

4.9.2.2 form a view as to whether the Payment is at a level that may exceed the overall operating costs of the Trust; and

4.9.3 if the Council (acting reasonably) considers that the payment level is in excess of the Trust's overall operating costs and provides the Trust in writing with reasonable details of the same then the Council shall be entitled by notice in writing to the Trust to address such by way of:-

4.9.3.1 adjustment of the level of the Payment; and/or

4.9.3.2 reduction of, or delay in, the payment of all or part of any instalment the Payment; and/or

4.9.3.3 requiring the repayment of all or part of any instalment of the Payment; and/or

4.9.3.4 any combination of such measures.

4.10 The Council and the Trust shall liaise to identify any issues within the draft Corporate Delivery Plan that require to be discussed and agreed. The Trust shall make available to the Council such additional information as the Council may reasonably require to consider the draft Corporate Delivery Plan. The Trust may, as a result of this process, adjust the draft Corporate Delivery Plan.

4.11 The Trust shall at all times perform the Services in accordance with the Corporate Delivery Plan and the Services Specification. If during the Services Period the Council (acting reasonably) considers that the performance of the Services does not conform to the agreed Corporate Delivery Plan then the Council shall be entitled to:-

4.11.2 require the Trust to produce a revised Corporate Delivery Plan reflecting the actual operations of the Services as being performed by the Trust; or

REPORT TO BOARD OF TRUSTEES

4.11.3 require the Trust to comply with the agreed Corporate Delivery Plan.

4.12 The Council shall complete a review of the Corporate Delivery Plan in accordance with the provisions of Clause 4.13. where;

4.12.2 it is required by the Asset Agreement or the Leases; or

4.12.3 the Council exercises its right to terminate the Leases or any of them; or

4.12.4 there is a claim under Intellectual Property Licence; or

4.12.5 there is a request by the Trust pursuant to Clause 4.13; or

4.13 Subject to Clause 4.16, where an additional liability not identified by the Corporate Delivery Plan for the relevant Financial Year or any other unforeseen costs arise the Trust may request the Council to review the Corporate Delivery Plan for the relevant Financial Year to:-

4.13.2 identify the extent of the additional liability or costs;

4.13.3 assess the impact of the additional liability or cost on the Corporate Delivery Plan, the Services Specification, the Council's obligations under this Agreement and the existing contractual obligations of the Trust; and

4.13.4 identify any changes to the Payment or Services Specification required to allow the Trust to properly account for and assume responsibility for that liability or those costs, and the Trust shall make available to the Council such financial, operational and other information as the Council shall reasonably require to complete that review.

4.14 The Council and the Trust shall use all reasonable endeavours to ensure that the review of the Corporate Delivery Plan is completed as soon as possible and in any event within one month of the date of the Trust's request pursuant to Clause 4.13.

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

4.15.2 adjust the Payment; and/or

4.15.3 approve amendments to the Services Specification as appropriate; or

4.15.4 determine that no change is required to existing arrangements.

The Council acknowledges that in exercising its option under this Clause 4.15 it shall duly take into account the requirement for the Trust and its Charity Trustees to comply with good business practice and, if requested to do so, will provide explanatory information in respect thereof.

4.16 The Parties agree that (unless they agree otherwise in writing) no review of the Corporate Delivery Plan (in accordance with Clause 4.13 or otherwise) shall require to be carried out where the cumulative value of all additional liabilities or unforeseen costs that have arisen in the relevant Financial Year is less than one per cent of the Payment.

REPORT TO BOARD OF TRUSTEES



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

Payment Arrangements

- 4.18 The Corporate Delivery Plan prepared by the Trust on a rolling two year basis and approved by the Council shall identify the Payment for those Financial Years.
- 4.19 Subject to Clause 4.18, the Council shall pay the Payment on a financial period basis and on dates agreed between the parties
- 4.20 The Trust shall be responsible for the payment of all direct tax liabilities which it incurs in the supply of the Services.
- 4.21 The Trust shall issue the Council with a valid VAT invoice not less than ten Business Days in respect of all agreed payment dates referred to in Clause 4.19.
- 4.22 Payment by the Council of the Payment should not be interpreted as approval of the outputs in any period by the Trust with any subsequent unresolved disputes subject to a potential recovery of funds.
- 4.23 In the event that the Council has not approved a Corporate Delivery Plan pursuant to Clause 4.7, the Council shall continue to pay the Payment at the level for the previous two year period agreed at the commencement of or during the previous Corporate Delivery Plan period, and with reference to the services required by the previous Corporate Delivery Plan (as the same may have been adjusted in accordance with this Agreement) until such time as the Corporate Delivery Plan for the new two year period is approved. Following approval of the Corporate Delivery Plan there shall be an adjustment to the Payment to address any under or overpayment already made.
- 4.24 The Council may require the Trust to accept the transfer of any of the Additional Facilities on the same basis and subject to the same terms and conditions as the Asset Agreement applicable to the Properties, in which case the Payment shall be reviewed and agreed by the Parties in accordance with a Corporate Delivery Plan Review.
- 4.25 It is hereby expressly declared and agreed between the parties that in consideration of the payment as detailed above the Trust will provide the Services as detailed in the Part 1-5 of the Provision of Services Agreement hereto to the Council.

Employees

- 4.26 The Trust shall, in respect of all persons employed or seeking to be employed in respect of the provision of the Services comply with each and every provision of law governing the employment relationship including any laws which prohibit discrimination in relation to employment.

REPORT TO BOARD OF TRUSTEES

- 4.27 Other than in relation to the engagement of the Employees, the Trust shall at all times act with all due diligence and care, in the manner of a prudent employer, in the engagement of any person in connection with the provision of the Services and in particular the Trust shall not engage any such person unless it shall have obtained satisfactory references in respect of any such person and subject to the provisions of the Data Protection Act 2018 and the GDPR and the Police Act 1997, has carried out such checks as the Trust may lawfully undertake to establish that no such person has any unspent and, where appropriate, spent criminal convictions in terms of the Rehabilitation of Offenders Act 1974 that makes them unsuitable for employment in the provision of the Services.
- 4.28 The Trust shall recognise the freedom of its employees to be members of Trade Unions in accordance with the provisions of Section 23 of the Employment Protection (Consolidation) Act 1978.
- 4.29 The Trust shall ensure that appropriate health and safety measures are detailed and carried out within each of the Properties and normal operating procedures are detailed, reviewed as required.
- 4.30 The Trust shall not make any award in relation to the early retirement or voluntary early retirement of any employee employed in relation to the Services without having obtained the prior consent of the Board of Trustees.
- 4.31 The Trust undertakes that it will not exercise any power to increase benefits, or provide different benefits, or exercise any discretions under the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008, the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland Regulations 2008, the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 or the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998, in respect of any Employee without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.
- 4.32 The Trust shall develop and adopt a code of conduct for its employees, which will define the responsibilities of its employees on matters of probity, in accordance with all regulatory requirements with which the Trust is obliged to comply and the Trust shall produce a copy of such code of conduct to the Council for examination upon request. The Trust shall keep a register of gifts and hospitality in a form consistent with regulatory requirements and shall produce a copy to the Council for examination upon request.
- 4.33 The Trust will not be entitled to change the terms and conditions of employment of the Employees or any of the terms and conditions offered to employees without first negotiating and consulting on the same with all recognised trade unions, or in the event of there being no recognised Trade Unions, duly appointed employee representatives appointed by the employees for that purpose. In particular the Trust will not be entitled to impose any new terms or conditions on any Employee or Service Employee without such agreement except where such imposition is explicitly required (and not simply permitted) by any statutory provision. Declaring further that no such change will be permitted unless and until the Council has had reasonable opportunity to comment on the same and the parties have taken account of such reasonable comments in determining the provisions of any amendment to the terms and conditions, always having regard to the Council's role as reversionary employer.
- 4.34 The parties hereto agree that the Council has an interest in the terms and conditions of employment and other provisions governing the relationship between the Trust and its Service Employees as it may be the reversionary employer on the operation of the Transfer Regulations and the Section 52 Guidance upon the expiry or termination of this Agreement. Accordingly the Trust will have regard at all times to the reasonable observations and suggestions of the Council in respect of the terms and

REPORT TO BOARD OF TRUSTEES

conditions and wider employee relations where they may subsequently impact on the Council's relationships with the Service Employees upon such reversion.

Industrial Action

- 4.35 The Trust shall immediately inform the Council of any potential or actual industrial action, whether such action be by the Trust employees or others, which affects their ability at any time to fulfil the performance of the Services within the Provision of Service.
- 4.36 In the event of industrial action by the Trust's staff, the Trust shall seek written approval from the Council for the Trust's proposals to maintain the Service. Any reduction of the Service for which the Trust is responsible may result in the Council exercising its rights pursuant to clauses 4.52 (Rectification Procedure) or 3.15 (Termination) of this Agreement.
- 4.37 In the event of industrial action by anyone other than the Trust or the Services Provider's staff which may impinge upon the delivery of the Service, the Trust may be entitled to compensation for loss of income which shall be at the discretion of the Council.

Corporate Governance

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

Financial Control and Rights of Audit

- 4.41 The Trust shall adopt financial regulations and guidance for financial management in terms approved by the Council.
- 4.42 The Trust shall arrange for regular audits of its financial systems, and shall ensure that appropriate internal financial control mechanisms are in place. Detailed records of income and expenditure, admission figures and bookings shall be kept by the Trust. The Council reserves the right to inspect such records at any reasonable time on giving reasonable notice during the Services Period. In carry out any such inspection the Council shall use all reasonable endeavours to minimise disruption to the Trust's activities and delivery of the Services. The Trust shall arrange for regular audits of its financial systems and shall appoint an independent external auditor to carry out at least an annual audit of the financial records by a registered auditor. The accounts of the Trust should be prepared on an accruals basis.

REPORT TO BOARD OF TRUSTEES

- 4.43 The Trust shall permit the Council's internal and external auditors access to its records (financial and non-financial), staff and assets at reasonable times and on reasonable notice. The Trust shall assist the Council in discharging its statutory and other obligations to disclose information to any government department, the Scottish Government, the Scottish Ministers, the Scottish Parliament, and/or regulatory or fiscal body or other body responsible for the audit of the Council by providing copies of such information and records as is reasonable in the circumstances.
- 4.44 The Trust shall permit the Council's internal auditors to have access to the Trust's external auditors and their outputs.
- 4.45 The Trust will report any suspected or known defalcations or corrupt practices to the Council timeously.

Periodic Reporting

- 4.46 The Trust shall provide to the Council;
- 4.46.2 reports in accordance with the Provision of Services Section of this Agreement. In particular, the Trust will provide a written report on an agreed frequency for consideration by the Council's Cabinet but in any event no less than every twelve weeks. The report will include financial information and performance information in a format to be agreed by the Chief Financial Officer and will be sufficiently detailed to allow the Council to assess the effectiveness with which the Trust is carrying out its operational and financial affairs.
- 4.46.3 a copy of:-
- 4.46.3.1 the unaudited accounts for each Financial Year within two months of the end of that Financial Year;
 - 4.46.3.2 the audited accounts for each Financial Year within six months of the end of that Financial Year;
 - 4.46.3.3 an Annual Governance Certificate in a format and at a time to be determined by the Council; and
- 4.46.4 such further information as the Council requires to enable the Council to assess any financial and operational estimates which are included within the Corporate Delivery Plan, the written reports referred to in Clause 4.45.2, or any other financial or operating reports to the Council.

Indemnity

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

REPORT TO BOARD OF TRUSTEES

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

4.48 The indemnity contained in Clause 4.43 shall not extend to any loss, liability or claim which arises directly out of any breach by the Council of its obligations under this Agreement.

Break Option

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

Failure To Perform

4.50 At any time during the Services Period the Council may investigate each instance where it appears to the Council that the Trust has failed to perform all or any of the Services in accordance with the provisions of this Agreement. Where the Council is satisfied that a failure has occurred it shall be entitled to instruct the Trust to remedy the failure and to comply there with within such period as it may determine acting reasonably and with full regard to the nature of the failure.

4.51 Where the Trust fails to remedy a failure in accordance with Clause 4.50 the Council may issue a Rectification Notice in accordance with Clause 4.52.

Rectification Procedure

4.52 If the Trust fails to comply with the Council's requirement under Clause 4.11, or an instruction of the Council under Clause 4.50, the Council may issue to the Trust a notice in writing (a "Rectification Notice") advising the Trust of that fact.

4.53 Following the service of a Rectification Notice, the Trust shall prepare and provide to the Council for its agreement a Rectification Plan. Both Parties shall act reasonably in agreeing the Rectification Plan.

4.54 Where the Trust fails to establish a Rectification Plan within two months of the issue of a Rectification Notice, the Council may issue to the Trust a notice in writing of that fact (a "Warning Notice").

4.55 Where the Trust fails to implement a Rectification Plan in accordance with its terms the Council may issue to the Trust a notice in writing of that fact (also a "Warning Notice").

4.56 Following the service of a Warning Notice, the Trust will establish and agree with the Council a Final Rectification Plan. Both Parties shall act reasonably in agreeing the Final Rectification Plan.

4.57 If in a period of six consecutive months following the issue of a Warning Notice referred to in Clause 4.55, the Trust has:-

4.57.2 failed to establish and agree with the Council a Final Rectification Plan; or

4.57.3 failed to implement a Final Rectification Plan in accordance with its terms

REPORT TO BOARD OF TRUSTEES



then the Council will be entitled to terminate this Agreement, the Asset Agreement, the Support Services Agreement.

REPORT TO BOARD OF TRUSTEES

Part I Legal Framework for Provision of Services

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

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

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

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

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

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

- The East Ayrshire Leisure Trust Strategic Vision 2020-2030;
- East Ayrshire Community Plan;
- The Leases and Licences to Occupy;
- The Asset Agreement;
- The Constitution of East Ayrshire Leisure Trust.
- The Collection Agreement

The work of the Trust will be set within the context of the core legislative framework which drives the business. Most notably, this legislation includes the following:

The Public Libraries Consolidation (Scotland) Act 1887, The Local Government (Scotland) Act 1973, The Local Government (Scotland) Act 1994, The Education (Scotland) Act 2016 and the Land Reform (Scotland) Act 2003.

All Trust Services also have a duty to comply with various pieces of equality legislation, including the Disability Discrimination Act (1995) and (2005), the Race Relations Act (1976) and Race Relations (Amendment) Act (2000), and the Equality Act 2010.

REPORT TO BOARD OF TRUSTEES

Part 2 Policy Framework for Provision of Services

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

- East Ayrshire Community Plan
- East Ayrshire Council Transformation Strategy
- Curriculum for Excellence;
- GIRFEC;
- Physical activity for Health – Scotland’s National Framework’
- National Youth Work Strategy
- CLD Framework
- CYP Strategic Plan
- Corporate Parenting Strategic Plan
- Falls and Fracture Prevention Strategy for Scotland
- Creating Hope Together: Scotlands Suicide Prevention Strategy
- Mental Health Strategy
- EA ADP Action Plans
- A Healthier Future – Scotlands Diet and Healthy Weight Delivery Plan
- Relevant NICE Guidelines
- National Play Strategy for Scotland
- Nation Play Strategy vision for Scotland
- UNCRC
- Learning: For All. For Life. Report for the Independent Review of Community Learning & Development
- CLD Plan 2024-2027
- New Scots Refugee Integration Strategy:2024
- Adult Learning Strategy 2022-2027
- The National Gaelic Language Plan 2023-2028
- East Ayrshire Gaelic Language Plan 2023-2028
- National Guidance on the Implementation of Local Area Coordination
- East Ayrshire Local Employability Implementation Plan
- How Good is our CLD
- EAC Volunteer Framework
- East Ayrshire Corporate Action Plan
- East Ayrshire Local Development Plan
- East Ayrshire Climate Change Strategy
- East Ayrshire Recreation Plan
- East Ayrshire Green Infrastructure Strategy
- East Ayrshire Biodiversity Duty
- Scotland’s Biodiversity Strategy
- East Ayrshire Active Travel Strategy
- Scottish Cultural Strategy
- Going Further – The National Strategy for Scotland’s Museums and Galleries
- Forward - Scotland’s Public Library Strategy (2021-2025)
- National Performance Framework
- Enabling, Connecting and Empowering: Care in the Digital Age - Scotland’s Digital Health and Care Strategy, Scottish Government and COSLA
- Scotland The Perfect Stage – Scotland’s Event Strategy (2015 – 2025)

REPORT TO BOARD OF TRUSTEES

- Sport for Life – SportScotland Strategy (2019-2021)
- East Ayrshire Children and Young People’s Strategy
- East Ayrshire Health and Social Care Partnership Strategic Plan 2021-30
- Volunteering for All: national framework
- Our Place in Time: the Historic Environment Strategy for Scotland
- Youth Employment Strategy:
- National standards for community Engagement
- ECHR
- Digital Transformation
- Scotland's 2018-2032 Climate Change Plan
- Good Food Nation (Scotland) Act 2022
- East Ayrshire Asset Management Framework and Capital Investment plan
- East Ayrshire Council Property Management Plan and Property Pledge
- Scotland’s/East Ayrshire Council Procurement

The Trust will co-operate with the Council in implementing, as appropriate, action plans in accordance with the relevant strategies listed in paragraph above as such strategies are amended, renewed or replaced from time to time.

The Trust shall have regard to the strategies and policies set out above when delivering the Services.

The Trust shall be mindful of the Council’s approach to promoting and ensuring equality of opportunity and the terms of the Equality Impact Assessment when developing policies and delivering the Services.

The Trust, being the major provider of cultural, sport, community, wellbeing and leisure services in the East Ayrshire area will be required to assist the Council by jointly leading in the formulation of cultural, sport, community, countryside and wellbeing related strategies.

The Trust will co-operate with the Council in progressing the development and implementation of the Community Asset Transfer and Asset Rationalisation programmes.

The Trust will support the Council in developing and implementing action plans that will contribute to the Net Zero target by 2030 as outlined in the East Ayrshire Climate Change Strategy

REPORT TO BOARD OF TRUSTEES

Part 3 Description of Services

General Description

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

The Properties are occupied by the Trust pursuant to the Leases and the Licences to Occupy included as Part 5 of the Asset Agreement.

The Trust will be responsible for providing any catering, vending and hospitality services within the Properties.

The Council will provide maintenance and repairs services to all of the Properties in accordance with the Leases, the Licences to Occupy, the Asset Agreement and the Support Services Agreement.

Where any Service is stated in this Provision of Services Section to be subject to a specific Service Performance Standard, the Trust shall provide that Service in such manner as will ensure that the standard of performance actually achieved by the Trust in provision of that Service is equal to or higher than such specific Service Performance Standard in accordance with Part 4 of the Agreement.

Improvements, Expansion, Reduction and Variations to the Service

The Council acknowledges that the Trust must be responsive to changing trends in the leisure industry, evolving customer needs and expectations, legislative and regulatory changes, new Government and Council policy and the use of new technology etc. The Trust accepts that such changes may necessitate an increase or decrease in the Services or other change to the nature of the Services during the course of this Agreement.

Additionally, the Council acknowledges that there may be certain unforeseen circumstances and market forces that could significantly affect the provision of Services as described in Part 4 this Agreement.

The Trust shall inform the Council of opportunities to improve, expand or reduce the provision of the Services in accordance with the policies of the Council.

The Council will keep under review the opportunity to improve, expand or reduce the Services and will work with the Trust to agree and implement any changes that may be required in accordance with the Agreement.

Charges

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

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

The Trust shall have discretion to fix and alter User Charges and fix promotional User Charges in accordance with a sound business strategy whilst ensuring that the policies of the Council are adhered to.

Vetting (Employees/Volunteers and Hirers of Facilities)

The Trust is responsible for training employees and volunteers in the Council's policy on the Protection of

REPORT TO BOARD OF TRUSTEES

Vulnerable Group (Scotland) Act 2007.

The Trust shall ensure that all individuals engaged in provision of the Services, all volunteers and all hirers of the Facilities are subject to a valid enhanced disclosure check undertaken through Disclosure Scotland or other appropriate vetting procedures in accordance with the Council's policy on Protecting Vulnerable Groups and the Protection of Vulnerable Group (Scotland) Act 2007; and will monitor the level and validity of such checks for each such individual.

Services Linked to Strategic Vision

The Trust's Strategic Vision outlines 6 key themes which guides all service delivery. Structures and alignment of services are linked to these themes.

- **Sharing our Vision** focuses on how we engage with staff, customers and partners to ensure that services meet the needs and demands of communities. The table below outlines the key focus for this service area.

<u>Communications</u> <ul style="list-style-type: none"> • Graphic design • Digital communication • Audio/visual production
<u>Marketing and Tourism</u> <ul style="list-style-type: none"> • Marketing • Campaign development • Tourism liaison • Digital engagement / reach • Website/intranet development
<u>Operational Learning</u> <ul style="list-style-type: none"> • Feedback and complaints • VisitScotland accreditation • Performance monitoring • Staff recognition • Staff and customer surveys
<u>Staffing and Development</u> <ul style="list-style-type: none"> • Leadership programme • Mentoring • Staff and customer engagement • Skills development • Partnership development

- **Leisure at the Heart of Every Community** focuses on our venues that offer programmes and activities within communities. These include a range of fitness, library and community programmes as well as providing support for local clubs and organisations. The facilities and services, which are within the portfolio for this service area are included in the table below. It should be noted that programmes and campaigns are reviewed as part of the 2 year corporate delivery plan schedule

<u>Cultural Hubs</u> <ul style="list-style-type: none"> • Stewarton Area Centre (including Stewarton Library) • Darvel Town Hall (including Darvel Library) • Morton Hall (including Newmilns Library) • Cumnock Town Hall
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REPORT TO BOARD OF TRUSTEES

<ul style="list-style-type: none">• Galston Community Centre• Galston Town Hall•
<p><u>Library Hubs</u></p> <ul style="list-style-type: none">• Cumnock Library• Crosshouse Library• Dick Institute Library• Auchinleck Library• Mobile Libraries• Homeward Services
<p><u>Community Lifestyle Hubs</u></p> <ul style="list-style-type: none">• Loudoun Leisure Centre• Doon Valley Leisure Centre• Rose Reilly Sports Centre• Hunter Fitness Centre
<p><u>Community Sports Hubs</u></p> <ul style="list-style-type: none">• Grange Leisure Centre• St. Joseph's Lesiure Centre• William McIlvanney Leisure Centre• Barony Sports Village• Football Pavilions – update with specifics after confirmation on what is being demolished
<p><u>Communities</u></p> <ul style="list-style-type: none">• <u>Community Action Plans</u>• <u>Community Asset Transfer advice</u>• <u>Support to Community Councils</u>• <u>Community Development and Capacity Building</u>• <u>Support to place based hubs</u>
<p><u>Community Health and Activity</u></p> <ul style="list-style-type: none">• <u>Activity on Prescription</u>• <u>Community Wellbeing Activity programmes</u>• <u>Equalities training and campaigns</u>• <u>Play Therapy</u>• <u>Suicide prevention training and camapigns</u>
<p><u>Older People's Wellbeing</u></p> <ul style="list-style-type: none">• <u>Hamilton Gardens Supported Accommodation Unit (SAU)</u>• <u>St Maurs Gardens SAU</u>• <u>Garven Court</u>• <u>Ross Court</u>• <u>Ellisland Court</u>• <u>Afton Court</u>• <u>Rowantree Court</u>• <u>Satellite SAU</u>• <u>Programmes and activities to support intergenerational work</u>• <u>Older People's Forum and voice</u>
<p><u>Lifeskills and Inclusion</u></p> <ul style="list-style-type: none">• <u>Adult Literacies</u>• <u>ESOL</u>• <u>Community Based Adult Learning</u>

REPORT TO BOARD OF TRUSTEES



- Digital Literacies

- **Living Your Best Life** focuses on high profile programmes and activities that support sporting pathways, exhibitions, theatre performance and venues that attract people to East Ayrshire. This service area focuses on strategic programmes and initiatives and includes the activities and venues in the table below. It should be noted that programmes and campaigns are reviewed as part of the 2 year corporate delivery plan schedule

<p><u>Strategic Programming (Physical Activity)</u></p> <ul style="list-style-type: none"> • Ayrshire Athletics Arena (programme) • Annanhill Golf Course (programme) • Galleon Leisure Centre • Sporting events • Active Travel • Coaching • Physical activity programming • Active Schools • ASN programming
<p><u>Strategic Programming (Museums)</u></p> <ul style="list-style-type: none"> • Dean Castle • Baird Institute • Burns House Museum • Burns Monument Centre • Dick Institute Museums • Futuremuseums • Museum programming • Collection care
<p><u>Strategic Programming (Performing Arts)</u></p> <ul style="list-style-type: none"> • Palace Theatre • Grand Hall • East Ayrshire Youth Theatre • Performance programming
<p><u>Strategic Programming (the Arts)</u></p> <ul style="list-style-type: none"> • Dick Institute Galleries • Visual arts programming • VACMA • Public art • Creative Minds
<p><u>Instrumental Music Service</u></p> <ul style="list-style-type: none"> • <u>School based group lessons</u> • <u>Loan of instruments to all pupil</u> • <u>Support to SQA music exams</u> • <u>Pathways for young people through appropriate performance opportunities at school, local authority and nationally</u> • <u>Ensembles</u> • <u>Community based music</u>
<p><u>Young People, Sport and Diversion</u></p> <ul style="list-style-type: none"> • <u>Club sport development</u>

REPORT TO BOARD OF TRUSTEES



- Young Leadership programmes
- Inclusion / EDI development
- National Governing Body Liaison
- Community Sports Hub development
- Youth work
- Sports Mentoring
- East Ayrshire Sports Council

- **Investing in our People and Embracing our Values** is the service area which focuses on human resources and systems and process to ensure that all procedures are in place to support our operational service areas. The focus of this service area is detailed below.

<u>Volunteer Development</u> <ul style="list-style-type: none">• Volunteering co-ordination• Placements• Employability• Apprenticeships• interns
<u>Systems</u> <ul style="list-style-type: none">• IT Support• Box office and booking system management and development• Digital transformation
<u>Corporate Development</u> <ul style="list-style-type: none">• Recruitment and selection• Supporting attendance at work• GDPR compliance• People strategy and policy

- **Building a Solid Foundation for Growth** is responsible for ensuring that sound financial systems and business planning arrangements are in place to allow the organisation to grow and develop. The key areas of work for this service area are outlined in the table below.

<u>Finance</u> <ul style="list-style-type: none">• Budgetary control co-ordination• External funding co-ordination• Community Investment Programme
<u>Hospitality and Retail</u> <ul style="list-style-type: none">• Bars• Cafes – commercial and community cafes• Corporate and event catering• Vending• Gift shops• On-line retail• Secondary spend programming
<u>Commercial Development</u> <ul style="list-style-type: none">• Donations• Sponsorships

REPORT TO BOARD OF TRUSTEES

- Memberships
- Commercial / business opportunities
- Fun4Hire

- **Protecting our Environment** is about ensuring that our facilities, services and programmes are operated to use resources efficiently to reduce the impact on the environment. However, this service area also leads on the management of the Trust's outdoor spaces and the programming which maximises and promotes the importance of the environment. The following are the key objectives of this service.

Sustainability

- Facility management
- Sustainable transport
- Sustainability
- Climate change reporting
- Leisure Facility Strategy

Estates

- Annanhill Golf Course (Estate)
- Dean Castle Country Park
- Strategic Path Network
- Green infrastructure strategy
- Ayrshire Athletics Arena (Estate)

Countryside

- Natural health programming
- Outdoor activities
- Recreation Plan
- Land Reform
- Biodiversity
- Outdoor learning
- Treehouse residential centre
- Rural Life Centre including the urban farm

Play and Early Intervention

- Playday
- Grounds4Play
- Children and Young people Befriending
- Danger Detectives
- Support to Children's Houses and Care Experienced Young People
- Play in Prisons

REPORT TO BOARD OF TRUSTEES

Part 4 Service Performance

The Strategic Vision and Corporate Delivery Plan is underpinned by statutory and key performance targets that will be monitored and reported at identified timescales to East Ayrshire Council. The Trust will also provide qualitative service performance data.

Statutory Performance Indicators

Name of Return	Date of Return	Frequency of submission
SPI 7: Arts & Museums	May	Annual
Cost per visit across arts and museums facilities		

SPI 29: Pool Other Leisure Facilities	May	Annual
A: Number of attendances per 1,000 population for pools		
B: Number of attendances per 1,000 population for other indoor sports and leisure facilities, excluding pools in a combined complex		
C: Number of attendances per 1,000 population for outdoor sports		

SPI 30: Visits to and Use of Museums	May	Annual
A: Number of museum visits that were in person per 1,000 population		
B: Number of online visits per 1,000 population		
C: Total number of museum visits per 1,000 population		

SPI 31: Library Usage	May	Annual
A: Number of visits to libraries per 1,000 population		
B: Borrowers as a percentage of resident population		
C: Number of Books borrowed per 1,000 population		
D: Number of books borrowed electronically per 1,000 population		

Key Performance Indicators (quantity)

The Trust will agree with the Council a series of key performance indicators for the period 2026-2030 no later than November 2025. These will be reported annually and will be reviewed in 2029 for the period 2030 – 2035.

Key Performance Indicators (quality)

The Trust will use qualitative evaluation to monitor the impact of services, programmes and projects through an Organisational Learning process. An organisational Learning Action Plan is developed on a quarterly basis. Evaluation techniques will be dependent on the measurement and information that is being gathered and may include:

REPORT TO BOARD OF TRUSTEES

- Staff satisfaction surveys
- Customer satisfaction surveys
- Impact Monitoring Surveys
- Business Development Action Plans
- Business Case Development
- Feedback Systems
- Business Development Surveys
- Website and social media engagement
- VisitScotland Assessment and Accreditation
- Mystery Shopping
- Unannounced visits

REPORT TO BOARD OF TRUSTEES

Part 5 Provision of Policy and Strategy

East Ayrshire Leisure Trust will take the lead on a number of policies and strategies on behalf of East Ayrshire Council. These will be subject to prior agreement, but as a minimum will include:

- East Ayrshire Recreation Plan including the Core Path Plan
- Scottish Outdoor Access Code
- East Ayrshire Cultural Strategy
- East Ayrshire Community Learning Strategy
- East Ayrshire Physical Activity Strategy

The Trust will also provide support and advice to East Ayrshire Council on the implementation of the local authority duties under the Countryside Scotland Act 1981, the Land Reform Scotland Act 2003 and the Wildlife and Natural Environment (Scotland) Act 2011.

REPORT TO BOARD OF TRUSTEES

SECTION 5: SUPPORT SERVICES AGREEMENT

Provision of Support Services

- 5.1 In consideration of the Charges, the Council will provide the Services with effect from the Commencement Date in accordance with the terms and conditions of this Agreement.
- 5.2 The Council will provide the Services:-
- 5.2.1 with all reasonable skill and care and in accordance with all generally accepted standards and practices applicable to the Services or services similar to the Services;
 - 5.2.2 in proper, diligent, expeditious and professional manner,
 - 5.2.3 in accordance with the terms of this Agreement and in accordance with any specific obligations outlined in Part 1 to 9 of the Support Services Section of this Agreement; and
 - 5.2.4 in accordance with any policies and guidance directly related to the Services issued by the Trust (acting reasonably) to the Council.
- 5.3 During the term of the Agreement, the Council shall provide such personnel as shall possess the appropriate experience, skills and qualifications necessary for the Council Services to be performed in accordance with the Agreement.
- 5.4 The Council shall procure that its employees and representatives:-
- 5.4.1 make themselves available, at reasonable times and on reasonable notice, to the Trust for the purposes of consultation and advice relating to the provision of the Support Services; and
 - 5.4.2 attend meetings with representatives of the Trust and such other parties as may be necessary for the performance of the Support Services.
- 5.5 The Council shall not be liable for any failure to provide the Services if and to the extent that such failure results from a failure by the Trust to perform or otherwise fulfil the Trust's Responsibilities.
- 5.6 The Trust and the Council shall, to the fullest extent permitted by law, co-operate with each other and comply with the requirements of their own internal and external auditors in respect of all matters arising out of or in connection with the provisions of the Agreement.
- 5.7 The Trust and the Council will keep the Agreement and all related arrangements under review to ensure that the Agreement and those related arrangements comply with the requirements of the law, and, in particular, in relation to European Union procurement, requirements and best value.
- 5.8 The Trust shall:-
- 5.8.1 co-operate with the Council and provide it with all such information and assistance as the Council shall reasonably require to facilitate the provision of the Services in accordance with Part 1 to 9 of the Support Services Section;
 - 5.8.2 provide the Council with fully accurate and up-to-date information in respect of any and all reasonable requirements which they may have in relation to the delivery of the Services under the terms of this Agreement, including (without prejudice to that generality) information relating to financial information and reporting, health and safety procedures and payroll mechanisms;

REPORT TO BOARD OF TRUSTEES

- 5.8.3 comply with any specific requirements in respect of the Council as are outlined in Part 1 to 9 of the Support Services Section of this Agreement as being appropriate to facilitate the provision of the Services;
- 5.8.4 provide the Council and its employees and agents with such physical access to the Trust Premises and equipment, insofar as the Trust itself has physical access to the Trust Premises and to the equipment, as is appropriate to facilitate the performance of the Services, subject to the Council complying with the provisions of this Agreement;
- 5.8.5 allow the Council and its employees and agents such reasonable access to power supplies, hot and cold running water supplies, waste disposal facilities, kitchen facilities and to all other Trust Property as is appropriate to facilitate the performance of the Services subject to compliance by the Council and its employees and agents with any reasonable health and safety rules put in place by the Trust and notified to the Council;
- 5.8.6 ensure that key personnel are available to assist the Council, subject to reasonable notice being given by the Council of this requirement;
- 5.8.7 give notification of any changes (and reasonable prior notification of any proposals with regard to future changes) which could reasonably be considered to affect the provisions of the Services;
- 5.8.8 give notification of all or any material changes on risk issues including but not limited to the failure of any fire or security and/or any additional cover requirements or deletions;
- 5.8.9 maintain the integrity of the Trust Data except where such responsibility has been specifically transferred to the Council;
- 5.8.10 ensure that the Trust has in place all necessary and appropriate consents and approvals, in order to enable the Council to provide the Services to the Trust;

Intellectual Property

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

Charges

- 5.12 In consideration of the provision of the Services, the Trust shall pay to the Council the Charges in accordance with the invoicing procedure and the mechanism for payment specified in Part 1 to 9 of the Support Services Section of this Agreement
- 5.13 Payment of sums due under this clause 5.12 shall be made, without set-off, within 25 Business Days of receipt by the Trust of a valid VAT invoice issued by the Council.
- 5.14 All sums due under this Agreement are expressed exclusive of any Value Added Tax; The Trust shall

REPORT TO BOARD OF TRUSTEES

pay any Value Added Tax thereon at the rate and in the manner provided by law from time to time.

- 5.15 The Trust will, upon request, pay interest on any amount payable under this Agreement not paid on the due date, for the period from that due date to the date of payment, at the rate of 2% per annum above the base-lending rate of the Bank of Scotland from time to time. The Parties acknowledge and agree that the amount set out in this clause represents a substantial remedy.
- 5.16 If the Trust disputes any invoice or other request for payment, the Trust shall immediately notify the Council in writing. The Parties shall negotiate in good faith in an attempt to resolve the dispute promptly but where the Parties cannot reach agreement, either Party shall be entitled to refer the matter for resolution in accordance with clause 3.6. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date in accordance with clause 5.13.
- 5.17 Where this Agreement is extended the charges for each Renewal Period shall be as agreed between the Parties prior to the commencement of the Renewal Period and the provisions of this clause 5.12 - 5.15 shall apply. Where the Parties cannot agree the charges for each Renewal Period prior to the commencement of the relevant Renewal Period, either Party shall be entitled to refer the matter for resolution in accordance with clause 3.6.
- 5.18 If any sum of money shall be due from either Party to the other Party then the same may be deducted from any sums then due, or which at any time thereafter may become due, to the either Party under this Agreement.
- 5.19 All sums payable to the Council under this Agreement shall become due immediately on its termination. This clause 5.19 is without prejudice to any right to claim interest under the law or under this Agreement.

Warranties

- 5.20 The Council warrants, represents and undertakes to the Trust that:-
- 5.20.1 the Council has full capacity and authority to enter into this Agreement;
- 5.20.2 the Services will be performed in accordance with the service level agreement documentation Part 1 to 9 of the Support Services Section of this Agreement as relevant hereto and in compliance with all applicable laws and regulations;
- 5.20.3 the Council has in place all necessary and appropriate consents and approvals in respect of the provision of the Services;
- 5.20.4 the provision of the Services shall not infringe any Intellectual Property Rights of any Third Party; and
- 5.20.5 as at the date of this Agreement there is no material outstanding litigation, arbitration or other disputed matters to which the Council is a party, which may have a material adverse effect upon the fulfilment of the Council's responsibilities or obligations pursuant to this Agreement.
- 5.21 The Trust warrants, represents and undertakes to the Council that The Trust has full capacity and authority to enter into this Agreement.
- 5.22 The Parties hereby exclude from this Agreement all implied warranties, implied conditions, implied licences and implied terms to the fullest extent permitted by law.

REPORT TO BOARD OF TRUSTEES

Liability and Indemnity

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

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

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

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

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

5.24 The indemnity given by the Council pursuant to clause 5.23 shall not apply in respect of any claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements), losses and damages to the extent that such liabilities have resulted directly from the Trust's failure to properly observe the Trust's Responsibilities.

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

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

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

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

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

5.26 The indemnity given by the Trust pursuant to clause 5.25 shall not apply in respect of any claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements), losses and damages to the extent that such liabilities have resulted directly from the Council's failure to properly observe its responsibilities under this Agreement.

5.27 Each Party (an "Indemnified Party") which incurs a loss or liability, or receives a claim, of a nature which may fall within the indemnity contained in clause 5.23 or 5.25,

5.27.1 shall intimate the loss or liability, or the relevant claim, to the other party (the "Indemnifying Party") as soon as reasonably practicable after the loss, liability or claim becomes known to the Indemnified Party, providing to the Indemnifying Party all such information and evidence in respect of the loss, liability or claim as is reasonably available to the Indemnified Party;

REPORT TO BOARD OF TRUSTEES

- 5.27.2 shall (in the case of a claim) take such steps to resist or defend the claim as the Indemnifying Party may reasonably request or (if the Indemnifying Party so elects) allow the Indemnifying Party the conduct of any defence and/or negotiations in respect of the claim (subject in either case to the Indemnifying Party indemnifying the Indemnified Party in respect of any liability (including reasonable legal expenses on a solicitor/client basis and any award of expenses) which the Indemnified Party may thereby incur);
- 5.27.3 shall keep the Indemnifying Party closely apprised of all developments relating to the relevant loss, liability or claim (including any insurance claim that may be pursued in connection with the relevant occurrence);
- 5.27.4 shall not (in the case of a claim), compromise any such claim, or take any steps which would prejudice the defence of such claim, without (in each such case) the prior written consent of the Indemnifying Party (such consent not to be unreasonably withheld) (except where the taking of such steps is required by law);
- 5.27.5 take all reasonable steps available to it to mitigate such loss or liability.
- 5.28 Neither Party excludes or limits liability for death or personal injury arising as a result of its negligence.
- 5.29 Subject always to clause 5.27, neither Party shall be liable to the other Party in respect of any of the following losses or damages (whether such losses or damages were foreseen, foreseeable, known or otherwise):-
- 5.29.1 any, indirect, incidental, special or consequential loss or damage (whether or not such loss or damage is of the type specified in clauses
- 5.29.2 loss of actual or anticipated profits;
- 5.29.3 loss of goodwill;
- 5.29.4 loss of business;
- 5.29.5 loss of revenue or of the use of money;
- 5.29.6 loss of contracts; and
- 5.29.7 loss of anticipated savings.

Reports

- 5.30 The Council shall provide the Trust with reports, at such intervals and in such form as the Trust may reasonably require from time to time, relating to:-
- 5.30.1 the Council's performance in respect of delivery of the Services;
- 5.30.2 any failure in performance or observance of the obligations of the, respective Parties under this Agreement of which it becomes aware;
- 5.30.3 the financial performance of the Council in delivering the Services, to assist the Trust in determining

REPORT TO BOARD OF TRUSTEES



whether the arrangements under this Agreement deliver best value to the Trust.

Health and Safety

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

Security

- 5.35 The Trust shall notify the Council immediately of any concerns or issues relating to security which may exist or arise at the Trust Premises and which may affect the provision of the Services by the Council. The Council shall take all reasonable steps to draw these concerns and issues to the attention of those of its employees and agents who have reason to attend the Trust Premises and shall instruct such persons in connection with any necessary associated security measures.
- 5.36 The Trust shall take all reasonable steps to ensure that all appropriate measures are in place to afford protection to the employees and agents of the Council who have reason to attend the Trust premises, against any and all foreseeable risks to their personal safety, arising as a result of any issues relating to security.

Council's Personnel

- 5.37 If and when directed by the Trust, the Council shall provide a list of the names of all persons who it is expected may require admission to the Trust Premises in connection with the performance of this Agreement, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Trust may reasonably require.
- 5.38 The Council shall comply with all reasonable security requirements and reasonable policies of the Trust, insofar as written details of these requirements and policies have been provided to the Council, while:-
- 5.38.1 in the Trust Premises; or
- 5.38.2 using the Trust Property.

REPORT TO BOARD OF TRUSTEES

- 5.39 The Council shall use all reasonable endeavours to procure that all of its employees and agents shall likewise comply with all reasonable security requirements and reasonable policies of the Trust, insofar as written details of these requirements and policies have been provided to the Council.
- 5.40 The Trust shall provide the Council with copies of the requirements and policies referred to in clauses 5.38 and 5.39,.
- 5.41 The Trust shall not make any amendments to the requirements and policies referred to in clauses 5.38 and 5.39 (insofar as such amendments may have an impact in the context of the provision of the Services), except where such amendments are required by law, without first consulting with the Council, which consultation will take place between the Contract Manager and the Trust Representative.
- 5.42 The Trust shall (subject to clause 5.43) notify the Council in writing of any amendments to the requirements and policies referred to in clauses 5.38 and 5.39 (insofar as such amendments may have an impact upon the provision of the Services).
- 5.43 The Trust shall not make any amendments to the requirements and policies referred to in clauses 5.38 and 5.39 (except where such amendments are required by law) where the result of that amendment would be that the cost to the Council of providing the Services, or of providing any Individual Service, would be significantly increased.

Discrimination

- 5.44 Neither Party shall, at any time during the term of this Agreement, unlawfully discriminate within the meaning and scope of the Discrimination Legislation.
- 5.45 Each Party shall take all reasonable steps to ensure the observance of the provisions of clause 5.44 by all of its employees and agents and consultants.

Audit

- 5.46 The Council shall keep or cause to be kept full and accurate records of all Services performed in connection with this Agreement.
- 5.47 On at least ten Business Days' notice from the Trust, the Council shall grant to the Trust, any statutory auditors of the Trust, and their respective authorised agents reasonable access during the Council's normal working hours to any records of the nature referred to in clause 5.46 and/or any premises and/or materials used in the provision of the Services.

Failure To Perform

- 5.48 At any time during the Services Period the Trust may investigate each instance where it appears to the Trust that the Council has failed to perform all or any of the Services in accordance with the provisions

REPORT TO BOARD OF TRUSTEES

of this Agreement. Where the Trust is satisfied that a failure has occurred it shall be entitled to instruct the Council to remedy the failure and to comply therewith within such period as it may determine acting reasonably and with full regard to the nature of the failure.

5.49 Where the Council fails to remedy a failure in accordance with Clause 5.48, the Trust may issue a Rectification Notice in accordance with Clause 5.50.

Rectification Procedure

5.50 If the Council fails to comply with the Trust's instruction under Clause 5.48, the Trust may issue to the Council a notice in writing (a "Rectification Notice") advising the Council of that fact and requiring the Council to prepare in writing and provide to the Trust an action plan to rectify the situation.

5.51 Following the service of a Rectification Notice, the Council shall prepare and provide to the Trust for its agreement a Rectification Plan. Both Parties shall act reasonably in agreeing the Rectification Plan.

5.52 Where the Council fails to establish a Rectification Plan within two months of the issue of a Rectification Notice, the Trust may issue to the Council a notice in writing of that fact (a "Warning Notice").

5.53 Where the Council fails to implement a Rectification Plan in accordance with its terms the Trust may issue to the Services Provider a notice in writing of that fact (also a "Warning Notice").

5.54 Following the service of a Warning Notice, the Council will establish and agree with the Trust a Final Rectification Plan. Both Parties shall act reasonably in agreeing the Final Rectification Plan.

5.55 If in a period of six consecutive months following the issue of a Warning Notice referred to in Clause 5.52, the Council has:-

5.55.1 failed to establish and agree with the Trust a Final Rectification Plan; or

5.55.2 failed to implement a Final Rectification Plan in accordance with its terms, then the Trust will be entitled to terminate this Agreement, the Asset Agreement, the Leases and the Provision of Services Agreement.

REPORT TO BOARD OF TRUSTEES

Part I People and Culture

East Ayrshire Leisure Trust will be provided with the following services by East Ayrshire Council People and Culture:-

Employee Relations

Provision of HR Business Partner approach in the following activities:

Recruitment and Selection

- Provide adhoc support as required

Appointments

- Review correspondence and contracts relating to the appointment of an employee

Payroll

Provide a Payroll function which will include:

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

Grievance and Disciplinary Procedures

Provision of a case management support to:

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

Welfare and Absence management

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

Organisational Reviews and Job Design

Management of a framework for job evaluation and grading of posts by:

- Assisting in the development of job outline and person specifications
- Job evaluating new posts or posts where changes have been made to a posts duties and responsibilities
- Assisting in organisational or service redesigns

Statistical and performance information

- Statistical and performance information relating to elements of the Human Resources service will be provided to East Ayrshire Leisure as and when required

REPORT TO BOARD OF TRUSTEES

Employee Relations

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

Equality and Diversity

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

Policy Development

Development of HR strategy and Policies to:

- Provide advice and support to managers in the development of new policies and procedures or the review and revision of existing policies and procedures to meet the Trust's Workforce Planning objectives
- Advise the Trust's Executive Management of any changes being made to existing, or new, policies/strategies, prior to the wider distribution to staff

Change Management

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

External Service Provision

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

Organisational Development

Provision of HR Business Partner approach in the following activities and OD Support as required:

In-service training (in-house)

- Delivery of In-service in-house training courses, including health and safety provision
- Access to e-learning modules
- Access to EAC OD courses and programmes as appropriate
- Support from P&C Manager OD to develop the new Management Team and access external support for Insights Discovery via consultant from EAC's Exec Coaching Framework
- Support as required on LearnPro
- Work in partnership with East Ayrshire Leisure's Training & Engagement Officer in relation to employee development and appropriate interventions

HR Systems

- Provide hosted HR systems via corporate systems – Chris21, HR21, LD 21, LearnPro and others as appropriate
- Provide systems support services – updating and maintenance of structures
- Implementation of routine software upgrades in line with timescale adopted by East Ayrshire Council.
- Maintain standard reporting templates and functionality to support reporting requirements
- Application of routine system developments and maintenance of test systems
- Reconciliation of all feeder systems to ensure integrity of core system
- Assist with development of ad hoc reporting requirements

REPORT TO BOARD OF TRUSTEES



REPORT TO BOARD OF TRUSTEES

Health and Safety

East Ayrshire Leisure Trust will be provided with the following services by East Ayrshire Council Health and Safety Services:

Policy Development

- Development of the Health, Safety and Wellbeing Standard and Safety Standards to provide the Trust with appropriate safety measure arrangements
- Provide advice and assistance in the development of Health & Safety documentation and procedures
- Provide advice and support to Managers in the development of new standards and procedures or review or revision of existing standards and procedures.
- Advising the Trust's Executive Management Team of any changes being made to existing or new standards or procedures prior to wider distribution.
- Circulate health and safety campaigns and relevant safety flashes to Trust employees
- Attend the Health & Safety Strategy Group in an advisory capacity

Systems

- Provide access to SHE incident reporting system subject to licence agreement
- Implementation of routine software upgrades in line with timelines adopted by East Ayrshire Council
- Application of routine system development and maintenance of test systems

Statistical and Performance Information

- Provide statistical and performance information relating to elements of the Trust Health & Safety services as required

Risk Assessments

- Provide advice and support in the compilation of any new assessments
- Assist with the review of existing risk assessments and provide recommendations for improvements

Fire Risk Assessments

- Carry out fire risk assessments/reviews for Trust buildings within an agreed programme
- Provide support and guidance in the completion of fire risk assessments
- Assist with the completion of actions, where required, following completion of fire risk assessments

SHE Incident Reporting

- Review and approve all incident reports on the SHE system
- Report RIDDOR incidents to the Health & Safety Executive as required
- Provide advice and support in relation to accident investigations
- Where required carry out investigations for the Trust

COSHH

- Provide guidance and advice to Managers in relation to COSHH
- Identify suitable training provider relating to COSHH

REPORT TO BOARD OF TRUSTEES

Asbestos

- Provide valid and up to date asbestos registers for all Trust building

Corporate Communications Services

Media support

- Co-ordinate East Ayrshire Council's responses to media enquiries relating to the Council's involvement with East Ayrshire Leisure Trust, in accordance with the Council's own media protocols.
- Assist EALT with the preparation of joint statements in relation to the UK Government's Levelling Up Fund, in accordance with LUF promotional guidance.
- Support EALT with preparation of joint press releases as part of the wider regeneration plans for Kilmarnock Town Centre/ Cultural Kilmarnock.
- Continue to assist with media activity relating to Vibrant Communities during the initial transition period.
- Assist EALT with comms support generally in relation to provision of ASN summer activities programme 2025, since this is now being brought back in house and will involve Vibrant Communities.

Events and Marketing

- Co-ordinate operational and media arrangements for official visits (e.g. Royal visits and Ministerial visits) to East Ayrshire which may include the facilities under the management of East Ayrshire Leisure Trust, in accordance with the Council's own protocols for such events. East Ayrshire Council will assume lead responsibility for such events but will liaise with Trust employees in respect of Trust facilities.
- Support EALT with the promotion of local events and activities (eg. Killieween, Christmas festival and Panto) by sharing social media content.
- Support EALT with the promotion of a single East Ayrshire what's on events portal and assist with the promotion of key flagship events such as Boswell Book Festival and Cumnock Tryst etc...
- Continue to assist with events and marketing activities relating to Vibrant Communities during the initial transition period.

Graphic Design

- Continue to assist with graphic design requirements relating to Vibrant Communities during the initial transition period.
- Continue to support EALT with adhoc graphics requests in support of wider local events and activities.

Consultation and engagement

- Continue to assist Vibrant Communities with their continued usage of the Engagement HQ and Granicus platforms as part of their placemaking activities during the initial transition period

REPORT TO BOARD OF TRUSTEES

Part 3 Procurement

East Ayrshire Leisure Trust will be provided with the following services from East Ayrshire Council:

Procurement & Tendering

- Market Consultation
- Scoping of Projects
- Contract Notices
- Tender Selection Process
- Drafting Invitation to Tender Documents
- Management of Tender Process
- Preparation of Financial Appraisal
- Supporting Tender Evaluation Panels
- Reporting on Tender Outcomes
- Supporting Contract Initiations
- Reminders for Option Appraisals/Contract Reviews/Insurance Checks
- Providing Best Practice Procurement Guidance & Advice

Sourcing & Purchasing Services

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

Epurchasing Support Service

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

REPORT TO BOARD OF TRUSTEES

Part 4 Legal

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

Conveyancing and Contracts

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

Litigation and Advice

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

Licencing

- Provision of all necessary advice and assistance in respect of all forms of licencing (liquor, gambling and miscellaneous civic government)

REPORT TO BOARD OF TRUSTEES

Part 5 Property Maintenance and Development

East Ayrshire Leisure Trust will be provided with the following services by East Ayrshire Council Facilities and Property Management:-

Estates Management

Management and coordination of the property estate with technical and professional advice to support cost effective operation.

- The Estates function for land/properties which have transferred to East Ayrshire Leisure.
- Coordination and negotiation of leases, rent reviews and way-leaves, for sites operated by the trust and/or occupied by subsidiaries or Third Parties.
- Acquisitions of land or property in support of objectives identified by East Ayrshire Leisure
- Valuation assessments and rating appeals
- Land survey services including provision of plans
- Retention of appropriate property documentation and information

Asset Investment

Construction Professional support as required or relation to the Council's property portfolio including:

- Strategic support in relation to the Council's capital investment plans
- Architecture and design development
- Quantity Surveying & Cost Management
- Civil Structural Engineering
- Mechanical/Electrical Engineering
- CDM Co-ordinator and/or Clerk of Works
- Project Management (in relation to capital programme projects)

Property Management

In line with council's asset investment and property management plan priorities support the Trust with:

- Routine maintenance
- Statutory Maintenance/Non Statutory works
- Planned Maintenance and Lifecycle investment plans
- Sub-Contractor Management
- Coordination and liaison for PPP and Hub Co property
- Energy Management

Both parties will operate within the principles and operational arrangements for communication and reporting, premise manager responsibilities, asset management framework aims and property pledge commitments.

Part 6 Finance and IT

East Ayrshire Leisure Trust will be provided with the following services by East Ayrshire Council Finance and IT Services:-

Statement of Intent

The major services which will be provided by EAC Finance & ICT to East Ayrshire Leisure Trust

REPORT TO BOARD OF TRUSTEES

are:

- ICT support;
- Core Financial Management System and specified support;
- Exchequer Service Support including accounts payable, accounts receivable and income processing and banking support;
- Provision of insurance and insurance risk advice and claims handling.

Principles

In the spirit of collaboration, the parties will work to develop an environment of co-operation using the following partnership principles:

- be accountable – to the joint responsibilities set out below
- collaborate and co-operate – establish and adhere to the governance structure to ensure that service activities are delivered and actions taken on a joint basis
- be open – communicate openly about major concerns, issues or opportunities relating to the services provided
- work collaboratively to identify business improvements, eliminate inefficiencies and reduce the cost-of-service provision
- adopt a positive outlook – demonstrate a positive ‘can do’ attitude, looking at ways to improve services
- focus on customer service and continuous improvement

Obligations

The Council will deliver the service within agreed standards and in accordance with its policies and corporate strategies, and the commitments of East Ayrshire Leisure Trust.

Description of the Service

EAC Finance & ICT provides comprehensive support through the following functional areas:

EAC ICT Service Divisions:

- Infrastructure & Digital (inc. cyber security, networks, and the server environment)
- Applications & Business Support (inc. Web and Desktop & Service Desk environment)

Finance Service Divisions:

- Financial Strategy & Accounting
- Exchequer & Capital Finance
- Finance & Business Innovation

Support from relevant divisions will be provided and further detail on the nature of support is outlined later in this document.

Services will predominantly be provided from EAC Finance & ICT offices at the Opera House, John Finnie Street. Where meetings are required between EAC Finance & ICT employees and East Ayrshire Leisure Trust employees then these can take place in either organisation’s premises.

This Agreement will operate for a three-year period commencing 1 April 2025. The Agreement will be monitored on an annual basis at a formal meeting between the Chief Financial Officer and Head of Finance and ICT, and the Chief Officer of East Ayrshire Leisure Trust.

REPORT TO BOARD OF TRUSTEES

Service Delivery Model

East Ayrshire Leisure Trust will be able to call upon the services of EAC Finance & ICT as and when required in respect of the services being provided, within the Hours of Support identified below.

Finance & ICT will provide a responsive and accountable service which supports East Ayrshire Leisure Trust and is focused upon and driven by the business needs of its customers.

The EAC Finance & ICT support services outlined will be delivered through a combination of internal EAC Finance & ICT employee resources and third-party contract provision, carefully balanced to ensure best value is always obtained for East Ayrshire Leisure Trust.

The primary responsibility for Finance & ICT service provision to EALT will be for the Chief Officer of EALT to commission it. EAC Finance & ICT will continue to provide a support function generally in line with that provided to all EAC services, taking in to account the availability of EAC Finance & ICT resources, and the Finance & ICT resources available to the EALT.

Services in Scope

EAC Finance & ICT will endeavour to work with East Ayrshire Leisure Trust to meet appropriate and reasonable timescales and priorities identified by East Ayrshire Leisure Trust.

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

ICT support function

In relation to ICT, the Trust will be provided with ICT infrastructure and applications support, front-ended by an ICT Service Desk to manage faults and request for service.

- ICT project management support, on a case-by-case basis as resource requirements are determined
- device installation and support (including, but not limited to, desktops, laptops and mobile devices); ICT will not be responsible for any 3rd party hardware delays, e.g. supply chain
- applications support, where commissioned via EAC ICT
- networks (voice and data) support
- liaison with external suppliers on world wide web (WWW) and intranet advice and support, as appropriate
- EAC standard ICT equipment procurement
- support for licensing, where appropriate
- systems and cyber security (EAC ICT systems only)
- ICT will provide project management support to EALT
- where available, EALT staff will be given access to all ICT training resources (e.g. The Bookshelf); ICT do not provide system / application user training

Financial Systems

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

REPORT TO BOARD OF TRUSTEES

- Manage all Civica interfaces with approved subsidiary systems (PECOS; CHRIS21) where these are available / utilised (support will not be provided for any internal EALT subsidiary system changes where prior compatibility and approval has not been confirmed and agreed in advance).

Financial Reporting

- Support the Trust where clarification is sought or requested from the external auditor as regards to transactions recorded in the financial systems.

Accounts Payable

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

Accounts Receivable

- Provide access to Civica Financials – Debtors
- Provide appropriate system training as required
- Maintain standing data as requested and instructed by the Trust.

Insurance and Insurance Risk

- Provide EALT Senior Management with advice in terms of self-insurance/policy deductibles and cover limits for Council insurance policies which extend to provide cover to EALT
- Handle claims within excess including liaison with the Insurer, appointed loss adjuster etc.
- Provide an internal point of contact for all dealings with the Insurer and broker

Exchequer

- Control and release of payment files for BACS payments and collections

Any other requests for support from the Finance & ICT Service outwith those detailed above will require to be considered and agreed separately and may result in required future amendments to the SLA and additional levels of service fees.

EALT ICT responsibilities

- ICT equipment and software inventory, as per APB 11B
- Inventory of all ICT related licences
- the cost of any ICT equipment including devices, AV hardware, software licenses and applications etc.; where non-standard equipment, or equipment not recommended by EAC ICT is procured, EAC ICT will not assume a support function
- disaster recovery and business continuity arrangements (DR / BC)
- information security and governance
- legacy systems not procured nor currently managed / maintained by EAC ICT (this includes systems in use at the Galleon Centre – bookings system, non-EAC payroll / purchase order systems)

REPORT TO BOARD OF TRUSTEES

- CCTV / security / car park systems
- 3rd party public Wi-Fi support, maintenance and security
- contract administration

Outside of normal business hours, the Council's Risk Management Centre is the initial point of contact for urgent ICT support requests; however, the ICT service does not give any guarantee of a response until the next working day.

Both parties to this Agreement will work collaboratively to meet the objectives and obligations.

Where the delivery of services provided by East Ayrshire Leisure Trust are modified and adapted whether by increase in opening hours or additional to the range of services currently promoted, changes in the overall cost of Finance & ICT support will be borne by East Ayrshire Leisure Trust.

The loss of business-critical systems, e.g. the Palace Theatre Box Office system, outside of normal working hours should be managed as part of the EALT's DR and BC plans, or through extended contractual arrangements with relevant 3rd party suppliers. EAC Finance & ICT do not provide an out-of-hours response and is therefore out-with the scope of this SLA.

Service Availability / Hours of Support

Standard Council working hours are Monday-Thursday 0900-1700 hours and Friday 0900-1600 hours excluding public holidays. Where the delivery of Leisure Services is modified and adapted whether by increase in opening hours or addition to the range of services promoted, consequential change in the overall cost of Finance & ICT support services will be borne by East Ayrshire Leisure Trust.

REPORT TO BOARD OF TRUSTEES

Service Availability	Hours of Support
EAC Finance & ICT	Standard Council working hours (as above)
Additional arrangements should be considered as part of the EALT's DR & BC arrangements	

Key Service Areas

EAC Finance & ICT will deliver a professional high-quality service; and will support The Trust's managers to deliver innovative and responsive outcomes wherever possible.

The ICT service will:

- respond to all faults reported, and keep East Ayrshire Leisure Trust informed of progress
- respond to all requests and keep East Ayrshire Leisure Trust informed of progress
- respond to urgent / service affecting faults as a matter of priority; and for faults or requests for service deemed as non-urgent, within 5 working days

East Ayrshire Leisure Trust will provide:

- a level of triage of EALT faults and requests for service
- written details of any requests involving the services of EAC ICT

Provision of Management Information

The ICT service will be responsible for the provision of high-quality management information that will support the needs of East Ayrshire Leisure Trust management team to effectively operate their business.

Upon reasonable request, the ICT Service will provide:

- management information to East Ayrshire Leisure Trust as available
- ad-hoc reports to East Ayrshire Leisure Trust within agreed timescales

The Finance service will provide access to all EALT data from the Councils Financial Management System as well as relevant information in relation to income management, banking and insurance claims and support any enquiries EALT have regarding this data. It will be the responsibility of EALT to put in place processes for appropriate analysis, reconciliation and interpretation of that data for management purposes.

East Ayrshire Leisure Trust will:

- ensure all changes which impact upon service delivery or Finance & ICT support arrangements are notified to Finance & ICT to ensure systems are up to date
- e-mail requests for Information to the relevant officer, with details of format and timescales required
- meet with the relevant officers to discuss requirements in more detail if required
- review management information provided on a regular basis, and advise if information is no longer required or needs to be amended
- provide EAC with all relevant information within required timescales to meet all Council statutory and internal management reporting requirements.

Service Dependencies

The delivery of some Finance & ICT services is dependent upon existing contractual and service level arrangements with external suppliers. These include the public electricity supply and telecommunications voice and data services. In addition, the delivery of some services may be co-dependent on other

REPORT TO BOARD OF TRUSTEES

organisations with which the Council has manual and / or electronic interfaces.

In the event of a cyber incident, EAC Finance & ICT Service will manage such events as per the Council's Cyber Incident Response Plan. Where the source of the incident is detected in a 3rd party application, ICT will work with the appropriate supplier to remediate, and it will be the responsibility of the EALT to ensure their suppliers provide all necessary co-operation with the Council's ICT Security & Cyber Defence Team.

Depending on the nature of the incident, it may be necessary to take systems offline or remove them from the network during the recovery phase.

East Ayrshire Leisure Trust Responsibilities

It is expected that the services described in this document can only be consistently delivered when East Ayrshire Leisure Trust takes responsibility in relation to the relevant policies and procedures and meets both procedural and legislative timescales.

The East Ayrshire Leisure Trust contract administrator for Finance & ICT services or software with external suppliers will be responsible for contact and agreed resolution with supplier.

The key responsibilities of East Ayrshire Leisure Trust regarding ICT are outlined below

All East Ayrshire Leisure Trust staff are required to abide by the Acceptable Use Policy governing the use of communications systems. Where a breach of the Policy results in additional costs to the Council, these costs will be met in full by the EALT; similarly, where the purchase / installation of equipment against the advice of EAC Finance & ICT results in operational issues, all associated costs may also be passed to EALT.

Service Monitoring

Quality of Service and Service Standards

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

Service Comments and Complaints

Any comments or complaints raised with the relevant Finance & ICT Manager relating to services will be reviewed by the Depute Head of Service and discussed with all relevant parties before also being raised at EALT / Finance & ICT liaison meetings. Any actions identified as service improvements will be built into the appropriate service improvement plan, and progress / outcomes will be included in the (period) service report and discussed at the liaison meetings.

It is expected that any dispute relating to the provision of Finance & ICT support services defined within this Agreement will be resolved between the appropriate customer representative and the Finance & ICT Manager and / or Depute Head of ICT & Digital / Depute Head of Finance.

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

- relevant senior Finance and ICT management and equivalent customer representative;
- Head of Finance and ICT and equivalent customer representative;
- The Chief Executive of East Ayrshire Council and Chief Officer of EALT

Review of the Service Level Agreement

East Ayrshire Finance & ICT and the East Ayrshire Leisure Trust will periodically review this SLA to ensure it remains relevant and aligned to with EALT's business goals; this will include, but is not limited to, the re-opening of the Palace Theatre complex, the continued integration of the Galleon Centre, the transfer of Catering Services, and any other sites, services, etc. that may be added to the SLA in the future by

REPORT TO BOARD OF TRUSTEES

agreement of both parties.

East Ayrshire Leisure Trust ICT Responsibilities

- EALT will budget for the procurement, development and implementation of ICT systems including both hardware and software, required to support Leisure Trust business processes.
- EALT will make any request for an extension to out-with normal working hours through the relevant Finance & ICT Manager, or directly to the Depute Head of EAC ICT & Digital or Depute Head of Finance, at least 10 working days prior to the service being required.
- EALT will procure ICT equipment and software from Council-approved suppliers. Any equipment procured via other channels will not be installed or connected to the Council's ICT network or to other Council owned equipment, as this could impact on the Council's compliance with ICT and Information Security regulatory requirements.
- Externally procured equipment or software will not be supported by EAC Finance & ICT unless by prior agreement
- EALT will liaise with EAC Finance & ICT to specify the requirements for PC procurement.
- EALT will be responsible for raising purchase orders to the agreed specification. EALT system users will be responsible for ensuring that all faults on ICT software and equipment, and details of any ICT equipment which is to be declared redundant, are reported to the ICT Service Desk.
- EALT will make any request for disposal of redundant equipment through the relevant ICT Manager, or directly to the Head of EAC ICT.
- EALT may make use of systems developed in-house by EAC Finance & ICT staff (for example the corporate complaints system) but must accept that support of these and ongoing amendments will be determined by the primary customer within the council. Bespoke changes to systems for EALT will be accommodated only where possible by prior agreement.
- EALT will allocate appropriate staff resources to assist in the testing and acceptance of new versions of, and modifications to existing, applications software systems; and to the evaluation and testing of new products and systems which may be required by the customer.
- EALT will make any request for ICT related, including telephony, support through the relevant ICT Manager; and at least 10 working days prior to the service being required.
- EALT usage of e-mail and web / internet systems will be subject to the normal e-mail / web monitoring and filtering arrangements which apply to all council staff. Exceptions requests must be made in writing to the relevant ICT Manager. Note that not all requests for exceptional levels of access may be granted.
- EALT will be responsible for certifying the accuracy of the data contained within the ICT inventory database and notifying EAC ICT of changes resulting from the move of equipment.
- Where appropriate, EALT will be responsible for performing regular system and data archives to agreed standards, the safe local storage and identification of archive media, and for making archives available to EAC Finance & ICT staff in the event of systems contingency invocations. EALT will be responsible for data governance, including data protection act responsibilities.
- EALT will be responsible for providing appropriate access, within and out-with normal working hours, to PCs, file-servers network equipment and software applications and to assist EAC ICT in the testing of contingency and disaster recovery procedures at appropriate intervals to be agreed in advance.
- EALT will not modify application software without prior agreement, nor permit any interfaces to utilise software applications, databases or ICT equipment without prior agreement with the ICT Manager.
- Any planned closure of offices or other properties or services therein should be communicated in writing to the ICT Manager at least 6 months in advance of the proposed closure date.
- EALT may be subject to early termination fees imposed by suppliers for any 3rd party circuit, software or hardware licences, or other agreement.

REPORT TO BOARD OF TRUSTEES

- EALT will be wholly responsible for compliance with PCI-DSS (Payment Card Industry Data Security Standard) and data security.
- EALT will comply fully with all relevant council Policies and Compliance Procedures relating to ICT and Information Security and Governance, and procurement and contract administration.

REPORT TO BOARD OF TRUSTEES

Part 7 Internal Audit

Within the Council it is the responsibility of the Chief Auditor to provide an independent and objective opinion on the overall adequacy and effectiveness of the control environment and stewardship of public funds. The scope of that work will include the Council's dealings with the Trust especially in respect of obligations under Following the Public Pound (FtPP).

It is anticipated that internal audit work undertaken on behalf of the Council, to check arrangements with and within the Trust, will in turn provide a level of assurance to the Trust. This work is

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

It is understood that the Trust will appoint independent external auditors.

This Service Level Agreement (SLA) is for the provision of an internal audit service that delivers direct support to the East Ayrshire Leisure Trust on an agreed basis. The delivery of these services from the East Ayrshire Council Internal Audit team (hereafter referred to as "IA") to the East Ayrshire Leisure Trust (hereafter referred to as "the Trust") will be carried out in line with the requirements of the Global Internal Audit Standards (GIAS) within the UK Public Sector (applicable from 1 April 2025) including obligations regarding appropriate competencies related to those areas being requested for IA review.

As part of this SLA, East Ayrshire Leisure Trust will be provided with the following services by East Ayrshire Council's IA:

- 25 days internal audit service per annum
- Advice and support to the Executive Management Team as required

REPORT TO BOARD OF TRUSTEES

Part 8 Mechanical and Transport

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

Transport

- Servicing
- Repairs
- Parts
- Arrange External suppliers for tyres etc

Greener Communities

- Annual Servicing
- A winter service and mid-season service when required
- Repairs
- Parts (Labour only agreement. All parts and other commodities required for servicing and maintenance will be charged at an agreed fee)
- A work/service history will be maintained for each machine/piece of equipment
- Arrange External suppliers for tyres etc.
- Training
- Provision of 2 x modern apprentices

REPORT TO BOARD OF TRUSTEES

SECTION 6: ASSETS AGREEMENT

Existing Facilities Leased to the Trust

Opening Times

6.1 The Trust will set facility opening hours that reflect projected demand for access and availability of resources.

Maintenance

6.2 A liaison with representatives from the Trust and the Council will monitor all facility maintenance issues and will meet every 4 weeks

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

6.4 The Trust shall be compensated by the Council for such closure periods as a result of ongoing maintenance work. The quantification of any such payments of Compensation shall take place as part of the financial review process. The Council will make every effort to advise the Trust of any planned maintenance work well in advance to avoid disruption to customer access and loss of income.

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

The Council's Capital Programme

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

Schools Estate

6.7 The Parties shall agree a protocol to allow the Trust reasonable access to the Schools Estate for the delivery of the any element of the Services. Such protocol will address the following matters:

6.7.1 that the Trust will be granted such access as permits them to deliver, (1) the level of service previously delivered by the Council, and (2) such reasonable enhancements as may be required to meet agreed improvements or enhancements to the Services;

6.7.2 the areas within the Schools Estate which may be accessed by the Trust on a school by school basis;

6.7.3 the times during which the Trust will have access to the Schools Estate, on a school by school basis, including a provision for an annual review of such times;

6.7.4 the provision of an outline annual programme of events by both Parties (commencing in August of each year) to identify dates when access is anticipated as necessary for particular purposes and when the premises may not be available due to school requirements;

REPORT TO BOARD OF TRUSTEES

- 6.7.5 an agreed procedure for ensuring that use by the Trust does not interfere with school use, whilst also ensuring that such uses permit sufficient leeway for the Trust to meet its obligations under this Agreement;
- 6.7.6 an agreement that where the proposed or actual use by the Trust results in costs to the Council which would not have occurred but for the use or proposed use by the Trust then the Trust will reimburse such sums, or if agreed between the parties acting reasonably, such percentage of these sums as arises directly from such use by the Trust;
- 6.7.7 an agreement between the Parties to co-operate to minimise the costs of such use of the Schools Estate through co-ordinating periods of use so far as possible, whilst still permitting the Trust to meet its obligations under this Agreement;
- 6.7.8 an agreement that the Trust will have access to such facilities within the Schools Estate as are necessary for the purpose of delivering initiatives and programmes in conjunction with Educational Services;
- 6.7.9 an agreement that the Council will use all reasonable endeavours (not involving substantial additional cost) to facilitate the Trust having access to the Schools Estate for the purposes of the provision of leisure services.
- 6.8 Following the agreement or any adjustment to the protocol referred to in Clause 4.46.1 the Parties agree that the Payment and/or the Services Specification will be reviewed as a Corporate Delivery Plan Review.

Emergency Events

- 6.9 If an Emergency Event occurs the Council shall be entitled:-
- 6.9.1 to occupy all or any part of the Properties and use the equipment therein; and/or
- 6.9.2 to issue instructions ("Council Instructions") to the Trust in respect of any of the Properties, in order to discharge the Council's statutory obligation to prevent, eliminate, mitigate or accommodate the effects of the Emergency Event. The provisions of Part II of the Assets Agreement Section shall apply in relation to such occupancy.
- 6.9.3 To issue instruction ("Council Instruction") to the Trust in respect of any employees in order to discharge the Council's statutory obligation to prevent, eliminate, mitigate or accommodate the effects of the emergency event.
- 6.10 Without prejudice to Clause 4.56, the Council shall use reasonable endeavours to liaise with the Trust in connection with the Emergency Event as soon as reasonably practicable after the occurrence of the Emergency Event. In doing so the Council shall inform the Trust of the action being taken by the Council and provide such information as may be reasonably required by the Trust for management purposes.
- 6.11 Where the Council is occupying all or any part of the Properties under Clause 4.56 the Council shall take such action as it reasonably believes is necessary (the "Required Action") to address the Emergency Event and the Trust shall give all reasonable assistance to the Council (including without prejudice to the foregoing, instructing key holders) while it is taking such Required Action.

REPORT TO BOARD OF TRUSTEES

6.12 For so long as and to the extent that the Required Action is taken and/or Council Instructions are issued, and this prevents the Trust from providing any part of the Service:-

6.12.1 the Trust shall be relieved from its obligations to carry out or provide such part of the Service as is affected by the Required Action and/or Council Instructions and the Trust will not be in breach of its obligations under this Agreement by not doing so; and

6.12.2 in respect of the period in which the Council is taking the Required Action and/or issuing Council Instructions the Payment due from the Council to the Trust shall equal the amount the Trust would receive if it were discharging all its obligations and providing the Services affected by the Required Action or Council Instructions in full over that period together with any incremental costs incurred by the Trust in complying with the Council's Instructions. There shall also be factored in to the Corporate Delivery Plan and taken account of in the setting of the Payment any sum received or receivable by the Council from any governmental body in respect of the use of such part of the Properties in relation to such Emergency Event.

6.13 The Council shall indemnify the Trust against losses, claims, liabilities, damages and costs suffered by the Trust as a direct result of the Council exercising its rights under Clause 6.8.

6.14 The Council shall as soon as reasonably practicable notify the Trust that:-

6.14.1 the Required Action has been completed; or

6.14.2 that the Trust is required to commence delivery of the Service affected by the Required Action on the expiry of not less than five Business Days' notice or such shorter period as is agreed between the Parties. The Council shall remain responsible for the provision of the Service affected by the Required Action up to expiry of such notice or, if later, the end of the period agreed between the Parties pursuant to this Clause 6.8.

Elections

6.15 The Council shall be entitled to occupy any part of the Properties upon giving reasonable notice to the Trust for the purposes of elections and referenda and the Trust shall give all reasonable assistance to the Council (including without prejudice to the foregoing, instructing key holders) for the purposes of such occupation. The provisions of Part 10 of the Asset Agreement shall apply in relation to such occupancy.

6.16 The Trust shall in terms of East Ayrshire Council's Special Leave Policy grant to Employees Special Leave where such Employees have volunteered to perform public service duties in connection with any elections or referenda held at any of the Properties or otherwise organised or administered by the Council.

6.17 A reasonable letting fee in respect of such occupancy by the Council shall be factored in to the Corporate Delivery Plan and taken account of in setting the Payment. Such fee shall fairly reflect any sum received or receivable by the Council from any governmental authority in respect of the use of such part of the Properties for the purpose of such elections and referenda.

6.18 The Trust shall be relieved from its obligations to carry out or provide such part of the Service as is affected by the Council's actions pursuant to this Clause and the Trust will not be in breach of its obligations under this Agreement by not doing so. The Council acknowledges and agrees that the Corporate Delivery Plan may, if appropriate, be adjusted to reflect any loss of revenue by the Trust arising from the Council's actions pursuant to this Clause.

REPORT TO BOARD OF TRUSTEES



New Asset Transfers

- 6.19 The Council shall transfer to the Trust, and the Trust shall accept, in each case with effect from the Effective Time:-
- 6.19.1 the Undertaking; and
 - 6.19.2 all of the assets associated with the conduct of the Undertaking (with the exception of the Excluded Assets), including without prejudice to that generality:-
 - 6.19.2.1 (subject to clause 6.52) the Council's interest under each of the Transferring Contracts;
 - 6.19.2.2 the Equipment & Furniture;
 - 6.19.2.3 the Stock;
 - 6.19.2.4 the Third Party Rights; and
 - 6.19.2.5 the Petty Cash.
- 6.20 For the avoidance of doubt, the following assets associated with the conduct of the Undertaking are excluded from the Transfer:-
- 6.20.1 the Properties (in respect of which the only rights to be acquired by the Trust shall be those conferred on it under the Leases, the Sublease and the Licences to Occupy);
 - 6.20.2 the Collections (in respect of which the only rights to be acquired by the Trust shall be those conferred on it under the Collections Agreement);
 - 6.20.3 the Retained Intellectual Property (in respect of which the only rights to be acquired by the Trust shall be those conferred on it (a) by clause 6.26 of this Agreement and (b) by the Collections Agreement);
 - 6.20.4 the Retained ICT Infrastructure (in respect of which the only rights to be acquired by the Trust shall be those conferred on it by the Support Services Agreement
 - 6.20.5 all cash at bank and cash in transit, all cheques received but not yet banked, and all cheques which are in the course of clearance, in each case, as at the Effective Time;
 - 6.20.6 the Debtors; and
 - 6.20.7 the Creditors.
- 6.21 The Council undertakes that (except in the case of a bona fide dispute and subject to the provisions of clauses 6.37, 6.46 and 6.50) it shall pay and discharge in accordance with its normal procedures all debts and liabilities arising out of or in connection with the conduct of the Undertaking in the period up to the Effective Time.
- 6.22 The Trust shall (subject to the provisions of clauses 6.22, 6.38 and 6.50) assume responsibility, as from the Effective Time, for the satisfaction of all debts and liabilities (both ascertained and contingent) incurred in relation to, or in connection with, the conduct of the Undertaking as from the Effective Time;

REPORT TO BOARD OF TRUSTEES

the Trust shall indemnify the Council against all proceedings, claims and demands in respect of such debts and liabilities.

6.23 For the avoidance of doubt, the Trust shall not assume any liability which relates exclusively to an item or items comprised in the Excluded Assets.

Consideration

6.24 Subject to clause 6.37, the consideration due by the Trust to the Council or **vice versa** in respect of the transfer of the Undertaking and Assets under clause 2 shall be One Pound Sterling (£1).

6.25 Within 45 Business Days of Completion the Trust shall pay to the Council an amount equal to the Petty Cash. Any such amount due shall be payable through an adjustment in terms of the sum payable by the Council to the Trust in terms of the Finance and Services Agreement.

Completion

6.26 The transfer shall be completed immediately following the Effective Time at the offices of the Council, when all of the matters set out in clause 6.25.1 shall (so far as reasonably practicable) be effected and property in the Assets shall be deemed to pass to the Trust.

6.26.1 the Council shall (subject to clause 6.33) cause to be delivered or made available to the Trust:-

6.26.1.1 all items comprised in the Assets which are capable of physical delivery (but on the understanding that delivery shall be deemed to be affected by their being left at the Properties);

6.26.1.2 copies of the following documents, to the extent only that they have been maintained by the Council and are in the Council's possession (and in each case only to the extent that they relate to the Properties and existing fittings and fixtures and equipment):-

- (a) asbestos assessments and written plans required under the Control of Asbestos Regulations 2012;
- (b) fire risk assessments and documented arrangements required under the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006;
- (c) health and safety files required under the Construction (Design and Management) Regulations 1997;
- (d) risk assessments and control plans required under the Control of Substances Hazardous to Health Regulations 2002;
- (e) risk assessments required under the Management of Health and Safety at Work Regulations 1999;
- (f) risk assessments required under the Workplace (Health, Safety and Welfare) Regulations 1992;

REPORT TO BOARD OF TRUSTEES

- (g) any risk assessments, documented controls, maintenance manuals, information and written instructions required under the Provision and Use of Work Equipment Regulations 1988;
- (h) any records of assessments required under the Health and Safety (Display Screen Equipment) Regulations 1992; and
- (i) any records of assessments, control measures, health surveillance, information, instruction and training required under the Control of Noise at Work Regulations 2005;

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

6.26.1.3 (subject to clause 6.31) all of the Council's accounting records, client files, contact lists, distribution lists, reference material, test and other certificates, registration documents, and all other records (otherwise than of the nature referred to in paragraph 6.25.1.2), information (including security codes) and keys held by or on behalf of the Council, in each case so far as relating exclusively to the conduct of the Undertaking;

6.26.1.4 copies of the Transferring Contracts, so far as held by or to the order of the Council;

6.26.1.5 a certificate showing the amount comprised in the Petty Cash;

6.26.1.6 the Employee List;

6.26.1.7 the Non-Collections Assets List;

6.26.1.8 the Pensions Guarantee, duly executed by the Council,

6.26.2 the Council and the Trust shall execute, in each case in the Agreed Form:-

6.26.2.1 the Provision of Services Agreement;

6.26.2.2 (subject to clause 6.33) the Leases;

6.26.2.3 (subject to clause 6.33) the Sublease;

6.26.2.4 the Collections Agreement;

6.26.2.5 the Support Services Agreement; and

and

6.27 Subject to clause 6.27, the Council hereby grants to the Trust, with effect from the Effective Time, a worldwide, royalty free, sole licence, or (where the interest of the Council is that of a licensee) sole sub-licence, to use the Retained (Non-collections) Intellectual Property for all purposes associated with the

REPORT TO BOARD OF TRUSTEES

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

- 6.28 In any case where the interest of the Council in Retained (Non-collections) Intellectual Property is that of a licensee and the terms of the relevant licence or other agreement are such that the licensor's consent is required to the grant of a sub-licence, the grant of the sub-licence in pursuance of clause 6.26 shall have effect only as from the date on which the licensor issues its consent to the grant of the sub-licence; if the licensor does not expressly consent in writing to the grant to the Trust of the sub-licence, the sub-licence under clause 4.3 shall not extend to the Retained (Non-collections) Intellectual Property which is the subject of that licence or other agreement.
- 6.29 The Council hereby grants to the Trust, with effect from the Effective Time, a worldwide, royalty free, exclusive licence to use, adapt, modify and develop the LT Databases for all purposes associated with the Undertaking.
- 6.30 To give effect to the licences granted pursuant to clauses 6.26 and 6.28, the Council hereby agrees to give the Trust such access to the Shared Databases as it requires in connection with the Undertaking.
- 6.31 The licences granted pursuant to clauses 6.26 and 6.28 shall terminate only upon termination of the Provision of Services Agreement, howsoever arising.
- 6.32 The Council shall be entitled to retain all such records relating to the Undertaking and Assets as are required under VATA to be preserved in respect of the Undertaking.
- 6.33 For the avoidance of doubt:-
- 6.33.1 the Trust shall not be obliged to complete the acquisition of any of the Assets unless the transfer of all of the Assets is completed simultaneously;
- 6.33.2 property, ownership and risk in respect of the Assets shall pass to the Trust at Completion;
- 6.34 In relation to, the Properties (Properties in respect of which there are matters outstanding as at Completion), the terms of paragraphs 6.25.2.1 and 6.25.2.2 will not apply as at Completion.

Valuation of Stock

- 6.35 Immediately following the Effective Time, the Council and the Trust shall carry out a stock review for the purposes of determining the composition and value of the Stock as at the Effective Time.
- 6.36 The policies, practices and procedures to be followed in valuing the Stock shall be in accordance with the Council's standard approach in the context of close-down valuations carried out for the purpose of year-end accounts (and including, for the avoidance of doubt, the requirement to have due regard to the condition of the Stock and any other factors which may affect saleability of the Stock in the ordinary course of retail operations.
- 6.37 In the event that the value of the Stock has not been agreed between the Council and the Trust by the expiry of a period of 15 Business Days following Completion, either of them may refer the

REPORT TO BOARD OF TRUSTEES

matter(s) in dispute to an independent expert (the "Expert") appointed by agreement between them, or (failing such agreement) nominated on the application of either Party by the President at the time of the Institute of Chartered Accountants of Scotland.

- 6.38 The following provisions shall apply in relation to any reference to an Expert in pursuance of clause:-
- 6.38.1 the Expert shall act as an expert and not as an arbiter;
- 6.38.2 he/she shall have the right to seek such professional advice and assistance as he/she may reasonably require;
- 6.38.3 his/her professional fees and expenses and the fees and expenses of his/her advisers (if any) shall be borne by the Council and the Trust in such proportions as he/she shall direct and, in making such direction, he/she shall have regard to the merits of the arguments placed before him by each Party.
- 6.38.4 The value of the Stock as agreed between the Parties or as determined by the Expert shall be final and binding on the Parties; no right of appeal shall be competent with regard to the value, and neither of the Parties shall be entitled to appeal or state a case to any court, whether on a point of law or of fact, save in the case of any fraud or manifest error.
- 6.38.5 The Stock Price shall be paid to the Council within 90 Business Days of Completion, or if the Stock Price is agreed or determined in accordance with this clause 6.37.5 after such period, immediately after such agreement or determination.
- 6.38.6 If at the time for payment of any sum pursuant to clause 6.37.5 there is any Claim outstanding, the Trust shall be entitled to retain an amount equal to the amount of such Claim from any such payment; and to set off against any such payment the amount of any such Claim as finally agreed or determined or to set off any other amounts due to it by the Council in terms of the Agreement.

Apportionments

- 6.39 Rates shall be apportioned as at the Effective Time on a daily basis, calculated over the current rating period; the Council shall notify the rating authority of the grant of the Leases and the Licence and shall request the rating authority to carry out such apportionments.
- 6.40 If at the Effective Time rates for the current rating period for any of the Properties have not been determined (whether because of an appeal against assessment or otherwise), the apportionment referred to in clause 6.38 will be carried out on the basis of the latest available assessment.
- 6.41 Charges in respect of supplies of gas, electricity, telecommunication services and any other utilities in relation to the Undertaking shall be payable by the Trust as from the Effective Time, and the Council shall notify the relevant suppliers accordingly; the Council shall be responsible for any charges of that nature which relate to the period up to the Effective Time.
- 6.42 All sums due by the tenant under the Head Lease shall be apportioned between the Council and the Trust as at the Effective Date (but only to the extent that the Trust is required to meet such sums under the terms of the Sublease), and on the basis that any annual payment shall be deemed to accrue at a uniform daily rate throughout the year.

REPORT TO BOARD OF TRUSTEES

- 6.43 The rents and all other sums due to the landlord under the Third Party Leases shall be apportioned between the Council and the Trust as at the Effective Date, and on the basis that any annual payment shall be deemed to accrue at a uniform equal daily rate throughout the year; the apportionment under the preceding provisions of this clause 6.42 shall be carried out on the basis of sums received, and the Council shall account to the Trust for any rent or other sum received after Completion from the tenant under a Third Party Lease, to the extent that such sum relates to the period from and after the Effective Date.
- 6.44 Subject to clauses 6.38 to 6.42 and without prejudice to any other provision of this Agreement:
- 6.44.1 where any payment has been made to the Council in respect of goods and/or services to be supplied by the Undertaking after the Effective Time, the Council shall account to the Trust in respect of that payment;
- 6.44.2 where any payment has been made by the Council in respect of goods and/or services to be supplied to the Undertaking after the Effective Time, the Trust shall account to the Council in respect of that payment;
- 6.44.3 where any liability is accruing due by the Undertaking in respect of goods and/or services being supplied to the Undertaking over a period which spans the Effective Time, the initial responsibility for payment shall be the Council's, but following any such payment the respective amounts shall be apportioned between the Council and the Trust as closely as possible on the basis of supplies made at the Effective Time and, accordingly, the Trust shall reimburse the Council as soon as possible following such apportionment;
- 6.44.4 where any sum receivable is accruing due to the Undertaking in respect of goods and/or services being supplied by the Undertaking over a period which spans the Effective Time, the initial responsibility for collecting payment shall be the Council's, but following receipt of any such payment the respective amounts shall be apportioned between the Council and the Trust as closely as possible on the basis of supplies supplied at the Effective Time and, accordingly, the Council shall pay over the relevant part of the payment to the Trust as soon as possible following such apportionment; and
- 6.44.5 otherwise, the principle applying shall be that accounts of suppliers to the Undertaking shall be for the account of the Council in so far as they relate to goods and/or services supplied prior to the Effective Time and otherwise shall be for the account of, and paid by the Trust to the extent they relate to goods and/or services supplied after the Effective Time.
- 6.45 The net amount, or amounts where payments and apportionments are being made separately in respect of specific items, payable by one Party to the other in accordance with the provisions of clauses 6.38 to 6.43 shall be agreed between the Council and the Trust within 6 months after Completion; and if not then agreed, the matter in dispute shall be referred to an independent expert appointed by agreement between them (or, failing such agreement, nominated on the application of either of them by the President at the time of the Institute of Chartered Accountants of Scotland).
- 6.46 The amount or amounts agreed or determined to be payable in accordance with clause 6.44 shall be paid in cleared funds within 25 Business Days of such agreement being reached or such determination being made.

Properties

- 6.47 The Trust undertakes that:-

REPORT TO BOARD OF TRUSTEES

- 6.47.1 within thirty Business Days of completion , it shall submit each of the Leases (together with applicable forms, supporting documentation and cheque in respect of Land Register of Scotland registration dues) to the Land Register of Scotland for registration and to the Books of Council and Session for registration for preservation and execution, requesting two extracts;
- 6.47.2 within five Business Days of receipt of the extract of each of the Leases, it shall forward one extract to the Council;
- 6.47.3 within five Business Days of receipt from the Land Register of Scotland of each of the annotated Forms 4 together with the Keeper's Acknowledgement Addendum relative thereto showing the Title Number to be allocated to the Title Sheet for the Trust's interest in each of the Leases, it shall forward a copy thereof to the Council;
- 6.47.4 within five Business Days of receipt of a Land Certificate in respect of the Trust's interest in each of the Leases from the Land Register of Scotland, it shall forward to the Council a copy of such Land Certificate in respect of such interest, with a colour copy of the Title Plan(s).
- 6.48 The provisions of clause 6.46 shall apply in relation to the Sublease, subject to the qualification that, save where the relevant Sublease qualifies to be registered in the Land Register of Scotland, all references in clause 6.46 to registration in the Land Register (or matters associated with registration in the Land Register) shall be disregarded.
- 6.49 In relation to each of the Properties for transfer:-
- 6.49.1 the Council and the Trust undertake that:-
- 6.49.1.1 the Council and the Trust shall enter into a lease in accordance with the roles and responsibilities outlined in Parts 2 to 6 of the Asset Agreement (subject to such adjustments to reflect the particularities of the Property as the Council and the Trust may agree (each being bound to act reasonably in this respect)); or (in the case of a Leasehold Property, shall enter into a sublease in with the roles and responsibilities outlined in Parts 2 to 6 of the Asset Agreement amended to refer to the relevant head lease and impose upon the Trust the whole obligations upon the Council thereunder (subject to such adjustments to reflect the particularities of the Property [and/or the relevant Head Lease] as the Council and the Trust may agree (each being bound to act reasonably in this respect));
- 6.49.1.2 the provisions of paragraph 6.25.2.1 and 6.25.2.2 shall apply (with any necessary modifications) as at the date the Trust and the Trust enter into the lease [or the sublease (as the case may be)]; and
- 6.49.1.3 the provisions of clause 6.46 (as read with clause 6.47 in the case of a sublease) shall apply (with any necessary modifications) in relation to the lease or the sublease (as the case may be);
- 6.49.2 pending the completion of a lease or a sublease in pursuance of paragraph 6.48.1.1, the Trust may occupy the relevant Property in accordance with the Licence to Occupy set out in Part 7 of the Asset Agreement.
- 6.50 The Council undertakes:-
- 6.50.1 to issue, as soon as reasonably practicable after Completion, to any tenants/licensees/occupiers under the Third Party Leases a notice intimating the change of landlord/licensor under the relevant Third Party Lease, in such terms as the Council and the Trust may agree (each being bound to act

REPORT TO BOARD OF TRUSTEES

reasonably in this respect); and

- 6.50.2 to supply to the Trust, within 10 Business Days after issue of the notices referred to in clause 6.49.1 copies of such notices, together with appropriate proof of posting.

Transferring Contracts

6.51 Subject to clause 6.52, the Council hereby assigns its interest under each of the Transferring Contracts to the Trust with effect from the Effective Time; and the Trust hereby accepts the assignation to it of the Council's interest under each of the Transferring Contracts under the preceding provisions of this clause 6.50.

6.52 In respect of each of the Transferring Contracts:-

6.52.1 the Council undertakes to use all reasonable endeavours to secure (insofar as not already dealt with) that, as soon as practicable after Completion, the other party to that Transferring Contract consents in writing (or, where there are two or more of such parties, that each of them consents in writing) to an assignation to the Trust with effect from the Effective Time of the Council's interest under that Transferring Contract; and

6.52.2 the Council and the Trust shall, as soon as reasonably practicable after such written consent(s) has/have been obtained, enter into such documentation as the Council (acting reasonably) may agree with the other party or parties to that Transferring Contract, to record such assignation.

6.53 If the Council's interest under any of the Transferring Contracts is not capable of being assigned without the consent of another party (or parties), and that party (or, as the case may be, any of such parties) in the case of a Transferring Contract does not expressly consent in writing to the assignation to the Trust of the Council's interest under the Transferring Contract with effect from the Effective Time, then

6.53.1 the assignation shall not proceed (but without prejudice to any liability of the Trust which may have accrued in respect of the relevant Transferring Contract under the provisions set out in with the roles and responsibilities outlined in Parts 2 to 6 of the Asset Agreement); and

6.53.2 the Council may (acting reasonably, and after due consultation with the Trust) either

- (a) elect that the provisions set out in with the roles and responsibilities outlined in Parts 2 to 6 of the Asset Agreement of the Schedule shall continue to apply, in respect of the relevant Transferring Contract, up to the date of expiry (or earlier termination) of that Transferring Contract; or
- (b) terminate the relevant Transferring Contract with effect from such date as the Council may reasonably determine..

6.54 The provisions set out in with the roles and responsibilities outlined in Parts 2 to 6 of the Asset Agreement of the Schedule shall apply in relation to any of the Transferring Contracts during any period when the other party or parties to that Transferring Contract treat the Council, rather than the Trust, as party to that Transferring Contract.

6.55 If the Parties are unable to secure the assignation of any Transferring Contract, the assumption by

REPORT TO BOARD OF TRUSTEES

the Trust of responsibility for performance of the relevant obligations in respect of the remainder of the term of that Transferring Contract may (subject to the consent and cooperation of the other party or parties to that Transferring Contract) be dealt with by novation; the provisions of clauses 6.50 to 6.53, and of with the roles and responsibilities outlined in Parts 2 to 6 of the Asset Agreement, shall be deemed to be modified accordingly.

6.56 Without prejudice to the provisions of clause 6.38 and with the roles and responsibilities outlined in Parts 2 to 6 of the Asset Agreement, if after the Effective Time any sum or benefit is received by the Council which relates to or arises out of the performance of the Transferring Contracts by the Trust after the Effective Time, the Council shall hold such sum or benefit in trust for the Trust and shall promptly pay such sum, or (as the case may be) transfer such benefit, to the Trust.

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

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

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

and the parties shall endeavour to procure that the provisions of any assignment entered into in pursuance of paragraph 6.51.2 reflect that principle; in any event, the provisions of clause 6.60 (indemnity) shall apply in respect of any liability inconsistent with that principle which is incurred by either the Council or the Trust to a party to a Transferring Contract.

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

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

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

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

Licences & Consents

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

6.60 Without prejudice to the generality of clause 6.58, the Council shall provide the Trust with all such

REPORT TO BOARD OF TRUSTEES

assistance and co-operation as the Trust may reasonably request:-

- 6.60.1 in connection with submitting or pursuing any application to the relevant authority or other third party for the purpose of any assignation, transfer or fresh grant of the nature referred to in clause 6.58; and
- 6.60.2 in connection with an application by the Trust for any licence, consent or authorisation which relates partly to the Undertaking and partly to other operations of the Council (or bodies connected with the Council).

Indemnities

- 6.61 Subject to clause 6.62 (and without prejudice to any specific indemnity set out elsewhere in this Agreement), the Council will, as from the Effective Time, indemnify the Trust against any loss or liability which the Trust may sustain or incur, or any claim by a third party against the Trust (including the reasonable expenses associated with contesting any such claim on a solicitor/client basis, and any costs awarded against the Trust in respect of any such claim), where such loss, liability or claim arises out of, or in connection with, the conduct of the Undertaking up to the Effective Time.
- 6.62 Subject to clause 6.62 (and without prejudice to any specific indemnity set out elsewhere in this Agreement), the Trust will, as from the Effective Time, indemnify the Council against any loss or liability which the Council may sustain or incur, or any claim by a third party against the Council (including the reasonable expenses associated with contesting any such claim on a solicitor/client basis, and any costs awarded against the Council in respect of any such claim), where such loss, liability or claim arises out of, or in connection with, the conduct of the Undertaking from and after the Effective Time.
- 6.63 Each Party (an "Indemnified Party") which incurs a loss or liability, or receives a claim, of a nature which may fall within the indemnity contained in clause 6.60 or 6.61:-
 - 6.63.1 shall intimate the loss or liability, or the relevant claim, to the other Party (the "Indemnifying Party") as soon as reasonably practicable after the loss, liability or claim becomes known to the Indemnified Party, providing to the Indemnifying Party all such information and evidence in respect of the loss, liability or claim as is reasonably available to the Indemnified Party;
 - 6.63.2 shall (in the case of a claim) take such steps to resist or defend the claim as the Indemnifying Party may reasonably request or (if the Indemnifying Party so elects) allow the Indemnifying Party the conduct of any defence and/or negotiations in respect of the claim (subject in either case to the Indemnifying Party indemnifying the Indemnified Party in respect of any liability (including reasonable legal expenses on a solicitor/client basis and any award of expenses) which the Indemnified Party may thereby incur);
 - 6.63.3 shall keep the Indemnifying Party closely apprised of all developments relating to the relevant loss, liability or claim (including any insurance claim that may be pursued in connection with the relevant occurrence);
 - 6.63.4 shall not (in the case of a claim), compromise any such claim, or take any step which would prejudice the defence of such claim, without (in each such case) the prior written consent of the Indemnifying Party (such consent not to be unreasonably withheld) except in circumstances where the taking of such steps is required by law;
 - 6.63.5 take all reasonable steps available to it to mitigate such loss or liability, and shall comply at all times with insurers claims handling protocols. In particular the Trust shall notify the Council immediately in writing of any situation that might give rise to a claim; it must also notify Police Scotland in the event of any theft or malicious damage losses and provide the Council with a crime reference number.

REPORT TO BOARD OF TRUSTEES

All insured losses should be reported immediately to the Council as failure to notify same within a 30 day period from the date of loss could entitle insurers to void the claim.

including, without prejudice to that generality, the indemnities contained in clause 6.73.

Insurance Arrangements

- 6.64 The Council shall be responsible for maintaining insurances, with effect from the Effective Time, in accordance with the particulars set out in with the roles and responsibilities outlined in Parts 2 to 6 of the Asset Agreement, subject to such variations as the Parties may agree from time to time (each being bound to act reasonably in this respect).
- 6.65 With reference to clause 6.63:-
- 6.65.1 the Parties shall use all reasonable endeavours to ensure that the indemnity limit in respect of each of the insurances listed at with the roles and responsibilities outlined in Parts 2 to 6 of the Asset Agreement is (a) in respect of the collection a sum equivalent to the market value at date and time of loss (b) in respect of all other stock is a sum equivalent to the market value at date and time of loss (c) in respect of all other buildings and contents a sum equal to the reinstatement value as new (d) in respect of employee death/injury, third party death/injury/third party property damage the indemnity limits will be regularly reviewed and maintained at a level to provide suitable protection against catastrophic losses; and (e) in respect of vehicles settlement will be based upon repair costs and/or in the event of a total loss the market value of the vehicle at date and time of loss.
- 6.65.2 (without prejudice to the provisions of clause 6.60 in respect of any other variations) the Council shall not increase the amount of excess in respect of any of the insurances referred to in clause 6.60 without the prior written consent of the Trust (such consent not to be unreasonably withheld).
- 6.66 For the avoidance of doubt, the Trust shall be responsible for payment of any excess under any of the insurance policies referred to in clause 6.60.
- 6.67 The Council undertakes:-
- 6.67.1 to provide to the Trust on request a summary of the policy covers relating to the insurances maintained by the Council in pursuance of clause 6.60, together with such evidence as the Trust may reasonably request to demonstrate that such policies are in force;
- 6.67.2 to advise the Trust promptly in writing if there is any significant change in the terms of the relevant insurance policies or the identity of the insurer.
- 6.68 The Council and its agents and advisers shall, on giving not less than 24 hours' prior notice to the Trust, be given reasonable access to all facilities operated by the Trust within the Properties for the purposes of inspecting such facilities and carrying out risk control surveys; following any such inspection or survey, the Council (or its agents or advisers) shall make recommendations to the Trust on any issues identified by the inspection and/or survey, including (without prejudice to that generality) recommended measures to control risk Where future insurance cover is subject to such recommendations having been fully implemented, the Trust shall take appropriate remedial action and shall confirm to the Council and its agents or advisers as and when any necessary action points have been completed.
- 6.69 The Council and the Trust shall each consider the recommendations referred to in clause 6.64 and shall enter into discussions in respect of the implementation of such recommendations and the timeframe for doing so; the Council and the Trust each recognise that implementation of the recommendations referred to above may have significant financial implications and these shall be taken into account in such discussions.

REPORT TO BOARD OF TRUSTEES

6.70 The Trust undertakes to implement such measures to control risk as the Council may reasonably prescribe (having regard to issues of affordability) in the light of the recommendations made in pursuance of clause 6.64, and within the timeframe reasonably prescribed by the Council

6.71 The Trust undertakes to notify the Council of any material changes in risk which might affect insurer's view of the insured risk, including but not limited to additional cover requirements for items loaned out or borrowed; partial or total failure of fire/security systems and monitoring thereof

The Trust undertakes not to do anything that would vitiate the insurance covers arranged by the Council.

In respect of all insured losses the Trust shall supply all supporting evidence as may from time to time be requested by insurers in support of the claim being made.

6.72 Without prejudice to the provisions of clause 6.60, in the event of any claim (a "Third Party Claim") being made against the Trust in respect of an incident which occurred prior to the Effective Time, then if such Third Party Claim is not covered by the insurances which fall to be maintained by the Council under clause 6.60, the Council shall procure that any insurance claim available to the Council (at the time when the Third Party Claim is made) in respect of the Third Party Claim is pursued by the Council; and the Council shall pay over to the party which made the Third Party Claim the amount of the Third Party Claim which is met under the insurance claim pursued by the Council. Subject to liability being proven by the claimants, to the satisfaction of the Council and its nominated insurers.

6.73 For the avoidance of doubt, the provisions of paragraphs 6.60 to 6.61 shall be without prejudice to any provisions relating to insurance contained in the Leases, the Collections Agreement, the Support Services Agreement and the Services and Finance Agreement.

Employees

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

6.75 Where, by virtue of the TUPE Regulations, the employment of any Transferring Employee transfers to the Trust at a time prior to the Effective Time, the provisions of this 6.73 shall have effect as if references to the Effective Time were, in respect of that Transferring Employee, references to the time that the transfer of such Transferring Employee occurred.

6.76 Subject to clause 6.73 and 6.85.1 the Council shall be responsible for all amounts payable to or in relation to the Transferring Employees (including but not limited to wages and salaries (including backdated Pay if a job evaluation appeal has been lodged and the resulting outcome of a re-evaluation is a change in grade), expenses, overtime, bonus or commission (earned but unpaid or not yet payable), accrued holiday pay, income tax, national insurance contributions, pension contributions and insurance premiums) in respect of the period up to the Effective Time and the Council shall indemnify the Trust against any Employment Losses arising out of or in connection with such amounts. All necessary apportionments shall be made to give effect to this clause.

6.77 Subject to clause 6.73 and 6.85.1, the Trust shall be responsible for all amounts payable to or in relation to the Transferring Employees (including but not limited to wages and salaries, expenses, overtime, bonus or commission (earned but unpaid or not yet payable), accrued holiday pay, income tax, national insurance contributions, pension contributions and insurance premiums) in respect of the period

REPORT TO BOARD OF TRUSTEES

after the Effective Time and the Trust shall indemnify the Council against any Employment Losses arising out of or in connection with such amounts. All necessary apportionments shall be made to give effect to this clause.

- 6.78 Subject to clause 6.80 the Council shall indemnify and keep indemnified the Trust from and against all Employment Losses arising from any claim or demand against the Trust by any of the Transferring Employees arising out of or in connection with any act, fault or omission or alleged act, fault or omission of the Council prior to the Effective Time including, without limitation, any claim for breach of contract, unfair dismissal, discrimination, personal injury or any other claim within the jurisdiction of an employment tribunal, or arising in common law, in delict or otherwise.
- 6.79 The Trust shall indemnify and keep indemnified the Council from and against all Employment Losses arising from any claim or demand by any of the Transferring Employees arising out of or in connection with any act, fault or omission or alleged act, fault or omission of the Trust after the Effective Time including, without limitation, any claim for breach of contract, unfair dismissal, discrimination, personal injury or any other claim within the jurisdiction of an employment tribunal, or arising in common law, in delict or otherwise.
- 6.80 Subject to clause 6.80, the Council shall indemnify and keep indemnified the Trust against all Employment Losses arising from any claim or demand by any of the Transferring Employees or by any trade union, employee representative or body of employees or their representatives (whether or not recognised by the Trust) on behalf of any of the Transferring Employees arising out of or in connection with any failure by the Council to comply with its obligations under Regulations 13 and 14 of the TUPE Regulations in relation to the Transfer.
- 6.81 The Trust shall indemnify and keep indemnified the Council from and against all Employment Losses arising from any claim or demand by any of the Transferring Employees or by any trade union, employee representative or body of employees or their representatives (whether or not recognised by the Trust) on behalf of any of the Transferring Employees arising from or in connection with any failure by the Trust to comply with its obligations under Regulation 13(4) of the TUPE Regulations in relation to the Transfer.
- 6.82 The Council and the Trust agree that the Council has, insofar as reasonably practicable, complied with Regulation 11 of the TUPE Regulations in respect of the Transferring Employees; and the Trust shall indemnify and keep indemnified the Council from and against all Employment Losses arising from any claim or demand by the Trust arising out of or in connection with any failure by the Council to comply with its obligations under Regulation 11 of the TUPE Regulations.
- 6.83 If, by operation of the TUPE Regulations, the contract of employment of any individual who was employed by the Council immediately prior to the Effective Time and who is not a Transferring Employee, excluding for the avoidance of doubt any Casual Worker, ("**the Individual**") takes effect or is alleged to take effect as if originally made with the Trust as a consequence of the Transfer:-
- 6.83.1 the Trust shall notify the Council in writing as soon as it becomes aware of this fact and shall consult with the Council as to the appropriate course of action;
- 6.83.2 the Council shall, within 14 days of receiving notice in terms of clause 6.82.1, offer employment to the Individual or notify the Trust that it does not wish to make such an offer;
- 6.83.3 if the Individual does not accept any offer of re-employment made by the Council within 14 days of such offer being made (or if no such offer is made within the 14-day time limit referred to in clause 6.82.2) the Trust shall be entitled to terminate the employment of the Individual;

REPORT TO BOARD OF TRUSTEES

6.83.4 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 6.82.3 (where an offer of re-employment is made by the Council) or within 14 days of the expiry of the 14-day time limit referred to in clause 6.82.2 (where no offer of employment is made by the Council), the Council shall indemnify and keep indemnified the Trust from and against any Employment Losses:-

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

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

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

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

6.85 Subject to the restrictions imposed on the Trust as a result of the operation of clause 6.89 below, the Trust shall ensure that the terms and conditions of employment offered to any new employees employed or engaged by it shall be no less favourable overall than the terms and conditions of employment applying to the comparable Transferring Employees. The Trust's obligations in this Clause 6.84 are subject to any amendment to applicable statutory guidance and its obligations shall not exceed the requirements of statutory guidance in place from time to time.

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

REPORT TO BOARD OF TRUSTEES

- 6.86.1 the Trust shall, within seven days of being requested to do so by the Council, make to the Transferring Employee an offer in writing to employ the Transferring Employee on the terms and conditions of employment of the Transferring Employee immediately prior to the Effective Time (save with regard to the identity of the employer) with effect from the date on which the offer is accepted; and
- 6.86.2 if the Transferring Employee accepts such offer, the provisions of clauses 6.75, 6.76, 6.77, 6.78, 6.83, 6.84, 6.88, 6.89 shall have effect in respect of those Transferring Employees and they shall have effect as if any references to the Effective Time were, in respect of that Transferring Employee, references to the date on which such offer is accepted by the Transferring Employee; or
- 6.86.3 if the Transferring Employee does not accept such offer of employment, the Transferring Employee shall remain employed by the Council and all claims in relation to the Transferring Employee shall remain with the Council.
- 6.86.4 Notwithstanding clause 6.87:
- 6.86.4.1 the Trust shall notify the Council in writing of any Casual Worker Claim against the Trust within 10 Business Days from the day on which such claim comes to the notice of the Trust;
- 6.86.4.2 the Trust shall take such action and give such information and assistance as the Council may reasonably request to avoid, dispute, resist, litigate, compromise or defend any Casual Worker Claim and, on the request of the Council, the sole conduct of any legal proceedings of whatever nature arising out of any Casual Worker Claim shall be delegated to the Council. In any event, and provided that the Trust shall appoint such solicitors or other professional advisers as the Council may nominate to act on behalf of the Trust in the event that the Council does not request sole conduct of any legal proceedings arising out of any Casual Worker Claim, the Council shall indemnify and keep indemnified the Trust from and against the Casual Worker Claim Expenses.
- 6.87 The Council shall be responsible for and shall indemnify and keep indemnified the Trust from and against any and all Casual Worker Claim Liabilities (including, for the purpose of this clause 6.86 only, the cost of any protective award arising out of or in connection with any failure by the Council to comply with its obligations under Regulation 13 and 14 of the TUPE Regulations in respect of the Transfer) insofar as such liabilities relate to the period prior to the Effective Time. All necessary apportionments shall be made to give effect to this clause.
- 6.88 The Trust shall be responsible for and shall indemnify and keep indemnified the Council from and against any and all Casual Worker Claim Liabilities insofar as such liabilities relate to the period after the Effective Time. All necessary apportionments shall be made to give effect to this clause.
- 6.89 The Council undertakes (insofar as it has not already done so) to apply ("the Application") within five Business Days of the Effective Date to have the Trust added to the list of bodies set out in Schedule 1 of the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999.
- 6.90 Regardless of the outcome of the Application, in the event that any of the Transferring Employees leave the employment of the Trust (for whatever reason) and become employed by the Council, the Council undertakes to recognise the Transferring Employee's service with the Trust as continuous for the purpose of determining any entitlement of the Transferring Employee to a redundancy payment and to sick pay, annual leave, maternity pay and parental leave or the amount of any such payments.

REPORT TO BOARD OF TRUSTEES

Pensions

6.91 Trust to be an Admission Body

6.91.1 The Trust shall ensure that all Employees are offered membership of the LGPS on and from the Effective Time.

6.92 Indemnity for breach of the Admission Agreement

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

6.93 Trust ceasing to be an Admission Body

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

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

6.93.2.1 established within three months of the Cessation Date or such longer period as the Council may agree;

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

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

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

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

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

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

6.93.3 any replacement arrangement(s) under paragraph 6.92.2.7 must comply with this clause 6.92 in all respects as if it were the Replacement Scheme;

6.93.4 within two months of the Cessation Date, the Trust shall offer or procure that there is offered to each Employee who agrees to become a member of the Replacement Scheme the opportunity to transfer the benefits he/she had accrued under the LGPS into the Replacement Scheme. For each

REPORT TO BOARD OF TRUSTEES

Employee who accepts such an offer in writing within two months of receipt of the offer, the Trust shall procure (subject to the receipt by the Replacement Scheme of a transfer amount from the LGPS) that the Replacement Scheme shall provide benefits which, in the opinion of an actuary nominated by the Council, and (if so required by the Council) in the opinion of the Government Actuary's Department, in respect of past service are equal in value to and no less favourable and in respect of future service are broadly comparable in value to and no less favourable than the benefits to which the Employee was entitled under the LGPS; and

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

Undertaking by the Trust

- 6.94 The Trust undertakes to the Council:-

- 6.94.1 not to consent to instigate, encourage or assist any event which could impose on the LGPS or on the Council a cost in respect of any Employee greater than the cost which would have been payable in respect of that Employee had that consent, instigation, encouragement or assistance not been given;
- 6.94.2 to procure that until the Effective Time, no announcements (whether in writing or not) shall be, or have been, made to the Employees concerning pension matters without the prior consent of the Council;
- 6.94.3 to ensure that it shall (where permitted) award benefits to the Employees under the Compensation Regulations in circumstances where the Employees would have received such benefits had they still been employed by the Council;
- 6.94.4 where the award of benefits under paragraph 6.93.3 is not permitted under the Compensation Regulations, to award benefits to the Employees which are equivalent to the benefits which the Employees would have received under the Compensation Regulations in circumstances where the Employees would have received such benefits had they still been employed by the Council; and
- 6.94.5 where benefits under the LGPS Regulations or the Compensation Regulations are of a discretionary nature, to award such benefits on the basis of the Council's written policy in relation to such benefits at Completion (which the Council shall provide upon request); or, where the payment of such benefits is not possible, to compensate the Employees in a manner which is broadly comparable or equivalent in cash terms.

Claims from Employees or Trade Unions

- 6.95 The Trust hereby agrees to indemnify and keep indemnified the Council from and against all liabilities, costs, losses or expenses (including legal expenses on a solicitor/client basis) incurred by it which arise out of or in connection with claims by Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Employees to the extent that such liabilities, costs, losses or expenses:-
- 6.95.1 relate to pension rights in respect of periods of employment on and after the Effective Time; or
- 6.95.2 arise out of the failure of the Trust to comply with the provisions of clause 6.94.

REPORT TO BOARD OF TRUSTEES

Transfer to another Employer

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

- 6.96.1 consult with and inform those Employees of the pension provisions relating to that transfer; and
- 6.96.2 unless the Council otherwise agrees, procure that the employer to which the Employees are transferred complies with the provisions of this 6.95.

Additional Pension Cost

6.97 Notwithstanding anything to the contrary in this clause 6.96, in relation to Additional Pension Costs, as defined below, the Council and the Trust hereby agree as follows:-

- 6.97.1 each of them (and their successors) will meet the Additional Pension Costs (if any) arising by virtue of its own actions and omissions;
- 6.97.2 neither of them (nor their successors) will be liable for the Additional Pension Costs in respect of the other's actions and omissions;
- 6.97.3 each of them (and their successors) will meet the requirements of the LGPS in respect of the Employees during the employment of such employees and will indemnify and keep indemnified (to the extent not already done) the other against any Additional Pension Costs which may be incurred as a result of any failure by it to comply with its obligations under the provisions of the LGPS;
- 6.97.4 "Additional Pension Costs" means any new, increased or additional costs, fees, charges, liabilities or penalties of whatever nature (including, without limitation, administration, legal or professional advisers' fees) which may arise (directly or indirectly) and be due to the LGPS (as applicable) as a result of an Employee being made redundant or being allowed to retire early and draw an immediate pension from the LGPS.

The provisions of clause 6.97 below shall apply.

6.98 In the circumstances set out in clause 6.96 above, the Council and the Trust shall co-operate fully in relation to such benefits, including, but not limited to:-

- 6.98.1 providing any and all required information in connection with the Employees;
- 6.98.2 liaising as appropriate with the LGPS; and
- 6.98.3 communicating with the Employees.

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

VAT

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

REPORT TO BOARD OF TRUSTEES

Transferring Records

6.101 The Council undertakes:-

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

6.101.2 to afford the Trust facilities to examine and take copies (at no cost to the Trust) of the records referred to in paragraph 6.100 from time to time during normal business hours and (if required by the Council) under the supervision of the Council.

6.102 The Trust shall give to the Council not less than two Business Days' notice of each occasion on which it wishes to have access to records and facilities in pursuance of 6.100

Governance Arrangements

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

6.104 Where the Council requires access to financial information to meet the obligations referred to in clause 6.102, the Trust shall procure that all reasonable assistance is granted by the Trust and its employees and agents.

6.105 Where the Council's internal audit service requires access to the Trust's records to achieve assurance on the arrangements in place for governance and probity issues, then this will be granted by the Trust on the same basis as envisaged in clauses 6.102 and 6.103

6.106 The Trust agrees to provide information on the financial performance of its business to the Council on a regular basis. The timing and format of the information to be provided will be so far as possible on such basis as reasonably requested by the Council's Head of Finance and otherwise in accordance with the reasonable requests of the Council.

6.107 Where required in the discharge of its or their duties, the Trust will procure that access to the records (and where appropriate, employees) of the Trust is granted where such access is required by the Council's auditor(s) to discharge its or their duty; such access shall, however, be subject to the Council exercising a duty of care and confidentiality in respect of the records involved.

6.108 The Trust undertakes to the Council to establish and put in place as soon as reasonably practicable following Completion, having regard to the reasonable requests of the Council and in particular taking account of any specific regulations or obligations incumbent on the Council in relation to its own, or any Council-controlled body's, activities as regards reporting, accounting, or general governance, appropriate governance and decision-making arrangements as are appropriate to oversee and supervise operation of the Undertaking.

Title To, and Condition of, Assets

REPORT TO BOARD OF TRUSTEES

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

Warranties

- 6.111 The Council warrants and undertakes to the Trust that the Warranties are true and accurate in all respects as at the date of this Agreement and will be true and accurate as at the Effective Time by reference to the circumstances pertaining at that time.
- 6.112 The Council undertakes:-
- 6.112.1 not by any act or omission to cause (directly or indirectly) any of the Warranties to be breached after the date of this Agreement;
- 6.112.2 to disclose promptly to the Trust any event or circumstance which arises or becomes known to the Council after the date of this Agreement which is inconsistent with any of the Warranties.
- 6.113 The Council's liability in respect of any breach of the Warranties shall be extinguished with effect from 1 year after completion, except to the extent of any claim in respect of which formal written intimation, accompanied by details of the circumstances which are regarded by the Trust as representing a breach of the Warranties, is given by the Trust to the Council prior to that date.

Co-Operation

- 6.114 The Council undertakes to provide all such information, execute all such documents and take all such other steps as the Trust may reasonably request to vest the Assets in the Trust or otherwise give effect to the provisions of this Agreement.
- 6.115 The Council undertakes to notify the Trust in writing as soon as reasonably practicable:-
- 6.115.1 upon becoming aware that any information provided by or on behalf of the Council to the Trust in respect of the transfer of the Undertaking and Assets under clause 6.18 or the assumption of liabilities by the Trust under clause 6.19 was or has become inaccurate, incomplete or misleading; or
- 6.115.2 upon becoming aware of any other event or circumstance arising during the period between the date of this Agreement and the Effective Time which could reasonably be regarded as relevant to the Trust in the context of the transfer of the Undertaking and Assets and/or the assumption of such liabilities.
- 6.116 Without prejudice to the provisions of clause 6.113 :-
- 6.116.1 the Council undertakes to provide to the Trust all such information and exhibit to the Trust all such records and documentation relating to the conduct of the Undertaking by the Council, or any events or circumstances which occurred or pertained on or prior to close of business on the Effective Time in relation to the Undertaking, as the Trust may reasonably request from time to time (whether before or after the Effective Time);

REPORT TO BOARD OF TRUSTEES

- 6.116.2 the Council undertakes (subject to the Trust indemnifying it in relation to all costs (on a solicitor-client basis) and other expenses and liabilities thereby incurred by the Council (including any award of, expenses made against the Council) to exercise any rights or remedies (whether under a guarantee or otherwise) which may be available to the Council against any manufacturer, supplier or installer in respect of any defect or deficiency in any of the Assets which emerges after the Effective Time.
- 6.117 Each Party shall reimburse such reasonable costs (internal and/or external) as are incurred by the other in providing information, assistance or access to its staff in pursuance of clauses 6.113 to 6.115
- 6.118 Where insurance representatives require access to premises/plant room etc for the purposes of carrying out fire/security services or undertaking statutory plant inspections the Trust shall facilitate such access and access shall not be unreasonably refused or withheld.

REPORT TO BOARD OF TRUSTEES

Part I The Premises

General

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

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

The Council is responsible for the payment of the following:

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

The following table outlines the property list as of August 2025. It is recognised that this list may expand or reduce and will be subject to regular review.

The Premises

The Trust's portfolio of facilities fall into one of six categories:

- Shared Site – schools
- Shared site – community hubs
- Standalone
- Community Management Arrangement – community led
- Community Management Arrangements – shared
- Pavilions

Shared Sites - Schools

Facility	Operators
Barony Sports Village (Barony Campus)	East Ayrshire Leisure East Ayrshire Council
Doon Valley Leisure Centre (Doon Academy Campus)	East Ayrshire Leisure East Ayrshire Council
Grange Leisure Centre (Grange Academy)	East Ayrshire Leisure East Ayrshire Council Mitie
Loudoun Leisure Centre (Loudoun Academy campus)	East Ayrshire Leisure East Ayrshire Council
St Joseph's Leisure Centre (St Joseph's Academy)	East Ayrshire Leisure East Ayrshire Council Mitie
William McIlvanney Leisure Centre (William McIlvanney Campus)	East Ayrshire Leisure East Ayrshire Council

REPORT TO BOARD OF TRUSTEES

Shared Sites – Community Hubs

Facility	Operators
Hunter Fitness Suite (North West Area Centre)	East Ayrshire Leisure East Ayrshire Council NHS
Crosshouse Library	East Ayrshire Leisure East Ayrshire Council NHS
Cumnock Library	East Ayrshire Leisure East Ayrshire Council
Ross Court	East Ayrshire Leisure East Ayrshire Council
Ellisland Court	East Ayrshire Leisure East Ayrshire Council
Burns Monument Centre	East Ayrshire Leisure * East Ayrshire Leisure will move out of this facility in 2025 East Ayrshire Council
Annanhill Golf Clubhouse	Annanhill Golf Club East Ayrshire Leisure
Auchinleck Library (Boswell Centre)	East Ayrshire Leisure ACDI East Ayrshire Council

Standalone Sites

Facility	Operators
Annanhill Golf Course	East Ayrshire Leisure
Ayrshire Athletics Arena	East Ayrshire Leisure
Baird Institute	East Ayrshire Leisure
Burns House Museum	East Ayrshire Leisure
Cumnock Town Hall	East Ayrshire Leisure
Darvel Town Hall	East Ayrshire Leisure
Dean Castle Country Park	East Ayrshire Leisure
Dick Institute	East Ayrshire Leisure
Doon Valley Museum	East Ayrshire Leisure
Grand Hall	East Ayrshire Leisure
Galston Library	East Ayrshire Leisure * CAT transferred to community in Summer 2025
John Fulton Memorial Hall	East Ayrshire Leisure * CAT transferred to community
Civic South	East Ayrshire Leisure
Palace Theatre	East Ayrshire Leisure
Morton Hall	East Ayrshire Leisure
Rose Reilly Sports Centre	East Ayrshire Leisure
Stewarton Area Centre	East Ayrshire Leisure
The Jougs	East Ayrshire Leisure
Burns Memorial Tower	East Ayrshire Leisure (leased to private party)
Galston Community Centre	East Ayrshire Leisure
Galston Town Hall	East Ayrshire Leisure
Central Production Unit	East Ayrshire Leisure
The Galleon Leisure Centre	East Ayrshire Leisure
Moorfield Industrial Unit	East Ayrshire Leisure

REPORT TO BOARD OF TRUSTEES

Community Management Arrangements

Facility	Operators
Logan Day Care Centre	Logan Centre User Group
Onthank Community Campus	Kilmarnock North West Community Partnership
AM Brown Insitute	Catrine Community Trust
Patna Community Centre including gym and library	Patna Community Association
Rankinston Community Education Centre	Rankinston Community Association
Knockintiber Pavilion	Knockentiber AFC
Auchinleck Boswell Centre	Auchinleck Community Development Initiative

Pitches and Pavilions

Facility	Operators
Bonnyton (Pitch only)	East Ayrshire Leisure
Portland Park (Pitch only)	East Ayrshire Leisure
Cocklebie	East Ayrshire Leisure
Dalmellington	East Ayrshire Leisure
Mauchline	East Ayrshire Leisure
Merlin Park	East Ayrshire Leisure
Darymple	East Ayrshire Leisure
Scott Ellis	East Ayrshire Leisure

REPORT TO BOARD OF TRUSTEES

Part 2 Roles and Responsibilities for Shared Sites – Category I Schools

Part 2 of the Asset Agreement outlines the roles and responsibilities of all parties involved in running services within a shared category I school building.

Health and Safety

Task	Responsibility		
	EALT	EAC	Mitie (PPP schools only)
Premises Manager role		√	√
Completion of daily facility checklist <i>This should be completed with a representative from both organisation at handover to identify any issues or defects. In the situation where by it is not possible to complete jointly, comments must be verified and recorded on the one checklist.</i>	Joint		√
Completion of Fire Risk Assessments <i>East Ayrshire Leisure will complete any actions which are relevant.</i>		√	√
Completion of Main Fire Register <i>East Ayrshire Leisure hold their own fire register to log certain checks e.g. fire drills.</i>		√	√
Workplace Inspections <i>A representative of East Ayrshire Leisure will carry this out with the premises manager.</i>	Joint		√
Risk Assessments <i>Where it is relevant a joint approach should be taken when completing Risk Assessment for similar tasks.</i>	Joint		√
COSHH Assessments		√	√
PPE Equipment <i>This will be purchased and checked by the relevant organisation.</i>	Joint		√
Asbestos Management <i>There should be an asbestos register located within the school and East Ayrshire Leisure reception.</i>		√	√
Building checks including swimming pools during periods of closure		√	n/a

Cleaning

Task	Responsibility		
	EALT	EAC	Mitie (PPP schools only)
Purchasing of cleaning products and equipment		√	√
Where applicable, cleaning of fitness equipment	√		√
Cleaning of all sports facilities (Term time mornings and afterschool) <i>East Ayrshire Leisure will carry out spot cleaning during opening hours</i>		√	√
Cleaning of sports facilities (Doon Valley Leisure Centre) <i>Leisure Centre</i>	√	√	n/a

REPORT TO BOARD OF TRUSTEES

<i>Sports Hall (within PE Dept)</i>			
Cleaning of sports facilities at weekends	√		√
Cleaning of all sports facilities (School Holidays)	√		√
Cleaning of poolside <i>Loudoun Leisure Centre</i> <i>Doon Valley Leisure Centre</i>		√	n/a
Cleaning of Swimming pool scum channels	√		n/a
Cleaning of Poolside equipment <i>Loudoun Leisure Centre</i> <i>Doon Valley Leisure Centre</i>		Joint	n/a
	√		n/a
Rubbish Collection on and around the Synthetic Grass Pitches		Joint	√
Cleaning of equipment		Joint	√
Refuse Collections <i>Budget holder sits with East Ayrshire Council</i>		√	√
Sanitary bins <i>Budget holder sits with East Ayrshire Council</i>		√	√
Gritting – purchase of salt <i>Budget holder sites with East Ayrshire Council</i>		√	√

Updating and Maintaining Inventory Records

- East Ayrshire Leisure Trust and East Ayrshire Council will maintain their own inventories clearly outlining what items belong to each organisations.
- Inventories will be completed as per their organisations inventory protocols including the disposal of equipment.
- For relevant areas within the facility, it should be arranged that the facilities East Ayrshire Leisure and East Ayrshire Council establishment inventory officer's jointly check their inventories on a quarterly basis to ensure accuracy.
- Any equipment that would be considered a joint purchase should be noted within both inventories

Statutory and Non Statutory Inspections for Facilities & Equipment

Task	Responsibility to arrange			Budget Responsibility		
	EALT	EAC	Mitie (PPP Schools only)	EALT	EAC	Mitie (PPP Schools only)
Air Conditioning Unit		√	√		√	√
Air Handling Units		√	√		√	√
Asbestos survey		√	√		√	√
Boilers		√	√		√	√
Changing Places equipment (or equivalent)		√	√		√	√
Cleaning Equipment <i>Determined by inventory</i>	√	√	√	√	√	√
CCTV		√	√		√	√
Fire Alarm Inspections		√	√		√	√
Fitness Equipment Service* <i>Determined by inventory</i>	√	√		√	√	
Fix Wire Testing (buildings)		√	√		√	√
Fix Wire Testing (Swimming Pool)		√	√		√	√

REPORT TO BOARD OF TRUSTEES

Gas Safety Certificate		√	√		√	√
Handheld Fire Equipment		√	√		√	√
Lightening Conductors		√	√		√	√
Pallet Truck Inspections <i>Determined by Inventory</i>	√	√	√	√	√	√
Poolside hoist		√	√		√	√
Pool testing equipment		√	√			
Pool Hoover		√	√			
Pool covers		√	√			
Sports Equipment* <i>Determined by inventory</i>	√	√		√	√	
Stairlift		√	√		√	√
Swimming Pool Plant		√			√	
Synthetic Grass Pitches		√	√		√	√
Water Quality Biannual		√	√		√	√
Water quality Risk Assessment		√	√		√	√
Weekly Water flushing		√	√		√	√

*A negotiated percentage split of cost is agreed by both parties.

Reporting Faulty Equipment

- The reporting of faulty equipment will be determined by the facilities inventory and would follow the process in line with either East Ayrshire's Councils property pledge or through an approved alternative arrangement e.g. direct with the contractor.
- In the event that the equipment is shared and there is a financial cost to repair, a percentage split of cost will be negotiated between both parties.

Repairs and Maintenance of buildings and equipment

- The reporting of repairs will be in line with East Ayrshire Council's property pledge. The process will be as follows
 1. In the event of a repair being discovered by a member of East Ayrshire Leisure staff, an email should be issued to the schools janitorial team to investigate.
 2. If required the janitorial team would report the repair to East Ayrshire Council's repairs helpdesk, obtaining the reference.
 3. Details should then be logged within a shared document.
- The responsibility of coordinating preventative maintenance programmes for the buildings and surrounding campus areas will be with East Ayrshire Council with a representative from East Ayrshire Leisure being involved in any decision making where necessary.
- East Ayrshire Council will have budget responsibilities for these programmes.
- The responsibility of coordinating preventative maintenance programmes for equipment will be determined by the facilities inventory. In the event that the equipment is shared, a percentage split of cost would be negotiated between both parties.
- In the event of any planned major or minor maintenance / repairs, this must be discussed with all relevant parties before proceeding so that everyone's needs can be considered.
- Where it has been identified and proven that a repair is required as a result of damage either by a member of East Ayrshire Leisure staff or leisure users, East Ayrshire Leisure will be charged accordingly.

Equipment (New & Replacement)

REPORT TO BOARD OF TRUSTEES

- The responsibility for the ordering and purchasing of new equipment should be discussed between all parties to determine which parties will be utilising the equipment and how often, which inventories the items should be added to, where the equipment will be stored, who will pay for any ongoing costs and an agreed percentage split of cost would be negotiated should the item be shared.
- The responsibility for the replacement of equipment will be determined by the inventory. In the event that the equipment is shared, a percentage split of cost would be negotiated between both parties.

Insurance

- The responsibility for arranging insurance inspections for the buildings and equipment is with East Ayrshire Council. All insurance inspection reports should be issued to the premises manager for all parties to discuss any actions that are relevant to them.
- Any actions that are required in relations to the building would be arranged and financed by East Ayrshire Council.
- Any actions that are required in relation to equipment, a percentage split of cost would be negotiated between both parties if applicable.

Access and Security

- Trust staff will be able to access their office at any point during school and community operating times. Should it be during school hours then the member of staff must sign in at the main reception of the school.
- East Ayrshire Council will be responsible for ensuring safe access, egress and the security of the building out with the leisure centre opening hours
- East Ayrshire Leisure will be responsible for ensuring safe access, egress and the security of the building during the leisure centre opening hours
- East Ayrshire Council will be responsible for providing access to community areas within Category 2 and 3 schools
- East Ayrshire Council will be responsible for responding to any alarm or fire call outs.
- In the event of adverse weather, the decision as to whether the building remains open for community use will be the responsibility of East Ayrshire Leisure

School Use

- Should any of the leisure centre be required during exam periods, East Ayrshire Council will provide details of normal exam times on an annual basis (before the end of June for the following academic year) and any changes must be requested at least one term in advance.
- East Ayrshire Council (Doon Academy) should submit their requests by the end of June for the following academic year, based on the days and times offered by East Ayrshire Leisure for swimming pool usage and fitness suite usage. In the event this is not submitted, the leisure centre can utilise the sessions for community use.
- East Ayrshire Council teaching staff who wish to make 'Casual' use of the leisure facilities will have the opportunity to gain access up to the leisure centre's opening times.
- East Ayrshire Leisure and East Ayrshire Council will negotiate an agreement in relation to storage with the facility (indoors and outdoors).
- Quarterly Liaison meetings will take place with relevant operational representatives from East Ayrshire Leisure and East Ayrshire Council.
- East Ayrshire Council will be responsible for payment of all utility and water costs for the building.

Swimming Pools

REPORT TO BOARD OF TRUSTEES

- East Ayrshire Council will be responsible for the pool plant, pool water testing and water quality out with the opening hours, notifying East Ayrshire Leisure as soon as possible in the event that the swimming pool is unable to open.
- East Ayrshire Council will be responsible for repairing or replacing the swimming pool covers
- East Ayrshire Leisure will be responsible for the pool plant and pool water testing during the opening hours
- A representative from East Ayrshire Leisure and East Ayrshire Council should carry out a joint pool test at handover.
- East Ayrshire Council are responsible for arranging monthly biological water testing, circulating the reports to designated East Ayrshire Leisure representative and provide advisory action if required.
- East Ayrshire Council will be the budget holder and purchase all necessary pool filtration chemicals and equipment.
- East Ayrshire Leisure will carry out the backwashing of the pool filters.

REPORT TO BOARD OF TRUSTEES

Part 3 Roles and Responsibilities for Shared Sites – Community Hubs

Health and Safety

Task	Responsibility		
	EALT	EAC	Other
Premises Manager role		√	
Completion of daily facility checklist <i>This should be completed with a representative from both organisation at handover to identify any issues or defects. In the situation where by it is not possible to complete jointly, comments must be verified and recorded on the one checklist.</i>	Joint		√
Completion of Fire Risk Assessments <i>East Ayrshire Leisure will complete any actions, which are relevant.</i>		√	
Completion of Main Fire Register <i>East Ayrshire Leisure hold their own fire register to log certain checks e.g. fire drills.</i>		√	
Workplace Inspections <i>A representative of East Ayrshire Leisure will carry this out with the premises manager.</i>	Joint		√
Risk Assessments <i>Where it is relevant, a joint approach should be taken when completing Risk Assessment for similar tasks.</i>	Joint		√
COSHH Assessments		√	√
PPE Equipment <i>This will be purchased and checked by the relevant organisation.</i>	Joint		√
Asbestos Management <i>There should be an asbestos register located within the school and East Ayrshire Leisure reception.</i>		√	

Cleaning

Task	Responsibility		
	EALT	EAC	Other
Purchasing of cleaning products and equipment			
Where applicable, cleaning of equipment		√	
Cleaning of facilities		√	
Cleaning of equipment		√	
Refuse Collections <i>Budget holder sits with East Ayrshire Council</i>		√	
Sanitary bins <i>Budget holder sits with East Ayrshire Council</i>		√	

REPORT TO BOARD OF TRUSTEES

Updating and Maintaining Inventory Records

- East Ayrshire Leisure Trust and East Ayrshire Council will maintain their own inventories clearly outlining what items belong to each organisations.
- Inventories will be completed as per their organisations inventory protocols including the disposal of equipment.
- For relevant areas within the facility, it should be arranged that the facilities East Ayrshire Leisure and East Ayrshire Council establishment inventory officer's jointly check their inventories on a quarterly basis to ensure accuracy.

Statutory and Non Statutory Inspections for Facilities & Equipment

- The compliance and budget responsibilities for all statutory inspections in relation to shared use community hub buildings, will sit with East Ayrshire Council.
- The compliance and budget responsibilities of Non-Statutory inspections such as equipment will be determined by the inventory or through a percentage split of cost with all parties.

Reporting Faulty Equipment

- The reporting of faulty equipment would be determined by the facilities inventory and would follow East Ayrshire's Councils property pledge process or through an approved alternative arrangement e.g. direct with a contractor.
- In the event that the equipment is shared and there is a financial cost to repair, a percentage split of cost would be negotiated between all parties.

Repairs and Maintenance of buildings and equipment

- The reporting of repairs will be in line with East Ayrshire Council's property pledge. The process will be as follows
 1. In the event of a repair being discovered by a member of East Ayrshire Leisure staff, an email should be issued to the caretaker to investigate.
 2. If required the caretaker would report the repair to East Ayrshire Council's repairs helpdesk, obtaining the reference.
 3. Details should then be logged within a shared document.
- The responsibility of coordinating preventative maintenance programmes for the buildings will be with East Ayrshire Council but involve a representative from East Ayrshire Leisure where necessary. East Ayrshire Council will have budget responsibilities for these programmes.
- The responsibility of coordinating preventative maintenance programmes for equipment will be determined by the facilities inventory. In the event that the equipment is shared, a percentage split of cost would be negotiated between all parties.

Insurance

- The responsibility for arranging insurance and insurance inspections for the buildings and equipment is with East Ayrshire Council. All insurance inspection report should be issued to the premises manager, then for all parties to discuss any actions that are relevant to them.
- Any actions that are required in relations to the building would be arranged and financed by East Ayrshire Council.
- Any actions that are required in relation to equipment, a percentage split of cost would be negotiated between relevant parties if applicable.

REPORT TO BOARD OF TRUSTEES

Access and Security

East Ayrshire Council will be responsible for ensuring safe access, egress and the security of the building.

REPORT TO BOARD OF TRUSTEES

Part 4 Roles and Responsibilities for Standalone Sites

Health & Safety

Task	Responsibility	
	EALT	EAC
Premises Manager role	√	
Completion of daily facility checklist	√	
Completion of Fire Risk Assessments <i>Each party, including any actions, will complete an agreed list of buildings.</i>	Joint	
Completion of Fire Register	√	
Workplace Inspections	√	
Risk Assessments	√	
COSHH Assessments	√	
PPE Equipment	√	
Asbestos Management – contractor sign off <i>There should be an asbestos register located within the building, which must be signed by the contractor.</i>	√	
Building checks including swimming pools during periods of closure	√	

Pavilions

Task	Responsibility	
	EALT	EAC
Premises Manager role	√	
Completion of weekly facility checklist	√	
Completion of Fire Risk Assessments	√	
Completion of Fire Register (where applicable)	√	
Workplace Inspections	√	
Risk Assessments	√	
COSHH Assessments	√	
PPE Equipment	√	
Asbestos Management (where applicable)– contractor sign off <i>There should be an asbestos register located within the building, which must be signed by the contractor.</i>	√	
Building checks during periods of closure	√	

Cleaning

REPORT TO BOARD OF TRUSTEES

- The purchasing of cleaning products and equipment will be the responsibility of East Ayrshire Leisure.
- The cleaning of the buildings and surrounding spaces outside will be the responsibility of East Ayrshire Leisure.
- The budget holder for refuse collections will sit with East Ayrshire Leisure.
- The budget holder for sanitary bins will sit with East Ayrshire Leisure.

Updating & maintaining inventory records

- East Ayrshire Leisure Trust will maintain the inventories for their standalone buildings.

Statutory & Non Statutory Inspections for facilities & Equipment

- The compliance and budget responsibilities for all statutory inspections in relation to Standalone buildings will sit with East Ayrshire Council.
- The compliance and budget responsibilities of Non-Statutory inspections such as equipment will be by negotiation between East Ayrshire Leisure and East Ayrshire Council.

Task	Responsibility to arrange		Budget Responsibility	
	EALT	EAC	EALT	EAC
Air Conditioning Unit		√		√
Air Handling Units		√		√
Asbestos survey		√		√
Boilers		√		√
Changing Places equipment (or equivalent)		√		√
Cleaning Equipment	√		√	
CCTV		√		√
Fire Alarm Inspections		√		√
Fitness Equipment Service	√		√	
Fix Wire Testing (buildings)		√		√
Fix Wire Testing (Swimming Pool)		√		√
Gas Safety Certificate		√		√
Handheld Fire Equipment		√		√
Lightening Conductors		√		√
Pallet Truck Inspections	√		√	
Poolside hoist		√		√
Sports Equipment	√		√	
Stairlift		√		√
Swimming Pool Plant		√		√
Synthetic Grass Pitches		√		√
Weekly Water flushing	√		√	
Water Quality Biannual		√		√
Water quality Risk Assessment		√		√

Reporting Faulty Equipment

REPORT TO BOARD OF TRUSTEES

- The reporting of faulty equipment would be the responsibility of East Ayrshire Leisure and would follow the process in line with either East Ayrshire's Councils property pledge or through an approved alternative arrangement e.g. direct with the contractor.

Repairs and Maintenance of buildings and equipment

- The reporting of repairs will be in line with East Ayrshire Leisure Protocols.
- The budget holder for building repairs sits with East Ayrshire Council.
- The responsibility of coordinating preventative maintenance programmes for the buildings and surrounding areas within the buildings grounds and budget holder will be negotiated between East Ayrshire Leisure and East Ayrshire Council.
- In the event of any planned major or minor maintenance / repairs, this must be discussed with all relevant parties before proceeding so that everyone's needs can be considered.
- Where it has been identified and proven that a repair is required because of damage either by a member of East Ayrshire Leisure staff or leisure users, East Ayrshire Leisure will be charged accordingly.

Equipment (New & Replacement)

- The responsibility for the ordering and purchasing of new equipment will be with East Ayrshire Leisure.
- The responsibility for the replacement of equipment will be negotiated between East Ayrshire Leisure and East Ayrshire Council.

Insurance

- The responsibility for arranging insurance inspections for the buildings and equipment is with East Ayrshire Council. All insurance inspection reports should be issued to the premises manager for all parties to discuss any actions that are relevant to them.
- Any actions that are required in relation to the building would be arranged and financed by East Ayrshire Council.
- Any actions that are required in relation to equipment will be negotiated between East Ayrshire Leisure and East Ayrshire Council.

Access and Security

- East Ayrshire Leisure will be responsible for ensuring safe access, egress and the security of the building.
- East Ayrshire Leisure will instruct East Ayrshire Council of any buildings that require to have out of hour's security arrangements put in place. Responsibility for costs of out of hours security will be agreed between the Trust and the Council prior to being instructed

REPORT TO BOARD OF TRUSTEES

Part 5 Roles and Responsibilities for Community Management Arrangements

In line with the East Ayrshire Leisure Facility Strategy, The Trust will support community organisations where they have a viable business plan to management community facilities. Where a community group takes over management responsibility for a venue, a minute of agreement will be entered into between the community group, the Trust and the Council.

To ensure consistency across all community management arrangements, the following roles and responsibilities will be included in every minute of agreement

Community Group Roles and Responsibilities

The Community Group shall;

- adopt and follow a constitution and elect office bearers comprising a Chairperson, a Secretary and a Treasurer
- establish a board to ensure that the community group meets its stated purposes and operates within legal requirements
- send representatives of the community group to meetings or training opportunities when invited by the Council or the Trust
- regard any advice given by to any representative of the Trust or Council
- establish, adopt and implement a complaints and confidentiality procedure which shall be reviewed on a regular basis
- where staff are employed, establish, adopt and implement policies and procedures including but not limited to health and safety, personnel, insurance and vulnerable groups. The policies and procedures shall be reviewed on a regular basis and updated as required
- manage lets to the community facility for individual user groups or lessees
- ensure that all required licences are in place prior to any let taking place, including but not limited to any licence in terms of the Civic Government (Scotland) Act 1982 and/or the Licensing (Scotland) Act 2005
- establish, adopt and implement a letting policy and procedure(s) which shall be reviewed on a regular basis and updated as required
- respond to any requests made to the Council and/or the Trust for letting information, which may include, but not limited to, information on attendance, information about bookings and information regarding the community group's use of surplus funds
- review letting charges annually
- retain 50% of its letting income and pay 50% of its letting income to the Trust on a quarterly basis (excluding grants and donations)
- pay direct PRS for Music any costs or charges incurred because of music being played in the community facility, whether during lets or otherwise as required by PRS for Music and keep, all such records relating to this.
- provide the Trust and the Council with the name and contact details of two keyholders within the community group
- Invest any surplus funding generated by the Community Group in the Community Campus, for instance on redecoration or suitable replacement of equipment within the Community Campus, provided that the Community Group has agreed any such redecoration or replacement of equipment with the Council. The use of the surplus funding for any other purposes shall require the prior written consent of the Council.
- Prepare its annual report and accounts after the end of its financial year and present the annual report and accounts (including a receipts and payments account, which has been independently examined) at the next annual general meeting following thereon. The annual report shall be signed by the Chairperson and/or Treasurer of the Community Group and thereafter a copy of it

REPORT TO BOARD OF TRUSTEES

submitted to the Trust's People and Finance Manager and the Council's Team Leader - Communities, Vibrant Communities.

- Submit annual returns to the Council currently consisting of (a) an annual report of activities, (b) a report on the annual general meeting, (c) a contact and support agreement and (d) an independently examined receipts and payments account approved at the annual general meeting of the Community Group. The aforementioned documents shall be submitted to the Council's Vibrant Communities.
- If the Community Group is registered as a charity, it shall submit its accounts together with its annual return and supplementary monitoring return form (if issued) to OSCR, which submission shall take place according to the charity's financial year end.
- Provide appropriately scrutinized and examined annual accounts to OSCR (if appropriate), and the Trust's People and Finances Manager and the Council's Team Leader - Communities, Vibrant Communities.
- Ensure the Treasurer presents a summarised receipts and payments statement to each meeting of the Board, which shall include a statement of cash and bank balances. This shall be verified at the meeting and recorded within the minute of the meeting.
- Act responsibly in relation to the management and use of its funds, a portion of which will have been raised in lots of the Community Campus.
- Ensure that proper records are kept for the current and previous five financial years.
- Notify the Council's Tea Communities and the Trust's Corporate Services in writing of any change in the names and/or addresses of its office bearers and/or Charity Trustees.
- Co-operate with any reasonable inspection, reporting, monitoring or evaluation procedures required by the Council and/or the Trust.
- Permit the Council (and others authorised by them) to access the Community Campus at all reasonable times, on reasonable prior notice (except in the case of emergency, when no notice shall be required) to enter, examine and record the condition of the Community Campus and/or carry out any statutory works/compliance as may be required and/or execute any works of repair to the Community Campus which the Council may deem necessary.
- Keep the Community Campus free from any undue deposit or refuse or other materials (not being refuse) or things which may in the reasonable opinion of the Council and/or the Trust be deemed to be offensive or a nuisance or injurious to the amenity of the Community Campus.
- Be permitted to carry out minor decorative works within the Community Campus subject to obtaining the prior written consent of the Council's Head of Facilities and Property Management.
- If they desire or propose to place any items or equipment on or in the area of ground shown hatched on the plan annexed and signed as relative hereto, the prior written consent of the Council's Estates Manager shall be required. For the avoidance of doubt, any items or equipment placed on or in the aforementioned area of ground will require to be removed by the Community Group (at its sole expense) at the end or earlier termination of this Agreement and the ground reinstated (at the sole expense of the Community Group) all to the satisfaction of the Council acting reasonably.
- Ensure that general waste is placed in external bins as appropriate

The Community Group shall not:

- Enter into any contract or agreement relating to the structure or fabric (whether internal or external) of the Community Campus with an external contractor. Any and all improvement works must be progressed through the Council's Head of Facilities and Property Management. The Community Group shall advise the Trust and the Council if it is of the opinion work is required to the Community Campus

REPORT TO BOARD OF TRUSTEES

- Use or allow the Community Campus to be used for any noxious, noisy, offensive, dangerous or immoral trade or business, including, without prejudice to the foregoing generality, the sale or disposal or advertisement of solvents, combat knives or handguns from the Community Campus or for any purpose which in the reasonable opinion of the Council and/or the Trust may be undesirable or cause a nuisance, annoyance, disturbance or inconvenience to the Council and/or the Trust or to any occupier of premises in the neighbourhood.
- Overload any floor surfaces or any electrical or ICT system in the Community Campus, terminate any ICT services or network connection or install any ICT equipment or software.
- Allow any hazardous, explosive, dangerous or combustible goods or materials in the Community Campus.
- Pass or allow to pass into the pipes, drains, sewers or others serving the Community Campus any polluting agent or noxious or deleterious effluent or other substance, which might cause any obstruction or injury to the said pipes and others or otherwise cause contamination.

East Ayrshire Leisure Trust Roles and Responsibilities

- Pay rates and other such charges in relation to the Community Campus.
- Pay utility costs (e.g. gas and electricity) incurred by the operation of the Community Campus subject to these costs not being considered excessive by the Trust.
- Monitor and review the operation of this Agreement and the Community Group's performance of its obligations annually.
- If considered necessary or desirable, invite any other person and/or organisation to provide support, assistance and guidance to, or work with, the Community Group
- Assist the Community Group to review its letting charges annually, if required.
- Provide advice and support to the Community Group in relation to the management and operation of the Community Campus.
-

East Ayrshire Council Trust Roles and Responsibilities

- Provide a representative to all of the Community Groups annual general meetings and endeavour to provide a representative to all meetings of the Board and *ad hoc* meeting of charity trustees/office bearers which may occur (but only if so requested by the Community Group and appropriate Council staff are available to attend the said meetings).
- If undertaking significant work in the Community Campus, make every effort to give as much notice as possible in order to minimise any impact on lets.
- Subject to the availability of financial resources, maintain the Community Campus in good order and repair, normal fair wear and tear excepted, of which the Council at their discretion shall be the sole judge as provided for in terms of the Lease.
- Carry out all statutory works, which may be required from time to time in the Community Campus in order to secure compliance with statutory requirements. For the purposes of this clause, statutory works means works in respect of the Community Campus which require to be executed in order to secure compliance with statutory requirements (whether currently in force or introduced during the duration of this Agreement) including, without prejudice to the foregoing generality, the installation of firefighting equipment or other fixtures and fittings.
- Carry out fire risk assessments and make documented arrangements required under the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006 in relation to the Community Campus.
- Carry out asbestos assessments and make written plans required under the Control of Asbestos Regulations 2012 in relation to the Community Campus.
- Carry out risk assessments required under health and safety legislation in respect of the risks posed by legionella bacteria in relation to the Community Campus.
- If considered necessary or desirable, invite any other person and/or organisation to provide

REPORT TO BOARD OF TRUSTEES

support, assistance and guidance to, or work with, the Community Group.

- Insure the Community Campus against physical loss or damage by or in consequence of fire, lightning, aircraft, explosion, storm, tempest, flood, bursting or overflowing of water apparatus riot, civil commotion, malicious damage, earthquake, impact damage (including by any vehicle owned or leased to the Council), terrorism and/or such other normal commercial risks and insurance as the Council may from time to time deem expedient in respect of the Community Campus (hereinafter referred to as "the Insured Risks") (but only for so long as and to the extent that the Council are reasonably able to obtain such cover at reasonable commercial rates subject to reasonable policy excesses of which the Council shall be the sole judge) in their full reinstatement value (as determined by the Council) together with an amount to cover the costs of shoring up, propping, hoarding, demolition, site clearance and incidental expenses and architects and other professional fees in relation to the rebuilding, repairing or restoring of the Community Campus or any part thereof and any VAT properly chargeable on such costs and others all in the name of the Council (and such other names as the Council may require) with the interest of the Community Group noted thereon. For the avoidance of doubt, the insurance cover provided by the Council shall not cover loss or damage due to or caused by subsidence, accidental damage, damage caused in the furtherance of theft or attempted theft or Community Group's improvements which remain the Community Group's sole responsibility. For the avoidance of doubt, the Council shall not be liable for any property damage, loss of property or injury arising directly or indirectly because of the Community Group's use of the Community Campus or the use thereof by third parties. The Council shall affect insurance against property owners and third party liability and such other risks as the Council may require, for such amounts and on such terms as the Council may require.

REPORT TO BOARD OF TRUSTEES

Part 6 Roles and Responsibilities for Shared Management Arrangements

In line with the East Ayrshire Leisure Facility Strategy, The Trust will support community organisations where they have a viable business plan to jointly manage community facilities. Where a community group takes over joint management responsibility for a venue, a minute of agreement will be entered into between the community group, the Trust and the Council.

To ensure consistency across all community management arrangements, the following roles and responsibilities will be included in every minute of agreement

Community Group Roles and Responsibilities

- Adopt and follow a memorandum of association and articles of association and elect office bearers comprising a Chair and a Treasurer and such other office bearers as considered appropriate.
- Send representatives of the Community Group to meetings or training opportunities when invited by the Council and/or the Trust.
- Have regard to any advice given by the Trust's representative and/or any other person or organisation as the Trust or Council may consider appropriate.
- Establish, adopt and implement a complaints procedure and confidentiality procedure, which shall be reviewed on a regular basis and updated as required.
- When delivering services in its own right or if the Community Group becomes an employer, the Community Group must establish, adopt and implement policies and procedures including but not limited to health and safety, personnel, insurance and vulnerable groups. The policies and procedures shall be reviewed on a regular basis and updated as required.
- Approve applications for lets of the agreed community spaces to individual user groups or lessees.
- Ensure that all required licences are in place prior to any let taking place, including but not limited to any licence required in terms of the Civic Government (Scotland) Act 1982 and/or the Licensing (Scotland) Act 2005.
- Provide the Council and the Trust with the name and contact details of two key-holders within the Community Group.
- Adopt and implement the Trust's letting policy and procedure(s)
- Respond to any requests made by the Council and/or the Trust for letting information, which may include, but not be limited to, information on attendance information about bookings and information regarding the Community Groups use of surplus funds.
- Adopt and implement the Trust's letting charges annually to ensure a consistent approach to lets in the agreed community spaces.
- Retain 100% of income received from lets it has organised during agreed hours; declaring that the Trust shall retain 100% income from lets the Trust has organised during agreed opening hours.
- Reimburse the Trust any costs or charges incurred as a result of music being played in the Community spaces, whether during lets or otherwise, as required by PRS for Music.
- Reimburse the Trust any costs incurred for waste collection as a result of lets organised by the Community Group during agreed hours.
- During agreed hours maintain and leave the agreed community spaces in the same (or no worse) condition as it is in during the venue opening hours.
- Prepare its annual report and accounts after the end of its financial year and present the annual report and accounts (including a receipts and payments account, which has been independently examined) at the next annual general meeting following thereon. The annual report shall be signed by an office bearer of the Community

REPORT TO BOARD OF TRUSTEES

Group and thereafter a copy of same submitted to the Trust

- Submit annual returns to the Trust and the Council currently consisting of (a) an annual report of activities, (b) a report on the annual general meeting, (c) a contact and support agreement and (d) an independently examined receipts and payments account approved at the annual general meeting of the Community Group.
- If the Community Group is registered as a charity, it shall prepare its accounts in accordance with the Charities Accounts (Scotland) Regulations 2006 and OSCR guidance, which submission shall take place according to the charity's financial year end.
- Provide appropriately scrutinized and examined annual accounts to OSCR (if appropriate), and the Trust's People and Finances Manager
- Ensure the Treasurer presents a summarised receipts and payments statement to each Directors meeting, which shall include a statement of cash and bank balances. This shall be verified at the meeting and recorded within the minute of the meeting.
- Act responsibly in relation to the management and use of its funds, a portion of which will have been raised in lets of the agreed community spaces.
- Ensure that proper records are kept for the current and previous five financial years.
 - Notify the Trust in writing of any change in the names and/or addresses of its office bearers.
 - Co-operate with any reasonable inspection, reporting, monitoring or evaluation procedures required by the Council and/or the Trust.
 - Permit the Council and the Trust (and others authorised by them) to access the agreed community spaces at all reasonable times, on reasonable prior notice (except in the case of emergency, when no notice shall be required) to enter, examine and record the condition of the facility and/or carry out any statutory works as may be required and/or execute any works of repair to the facility which the Council may deem necessary.
 - Keep the facility free from any undue deposit or refuse or other materials (not being refuse) or things which may in the reasonable opinion of the Council and/or the Trust be deemed to be offensive or a nuisance or injurious to the amenity of the Community Space.
 - Ensure that general waste is placed in external bins as appropriate.

The Community Group shall not:

- Enter into any contract or agreement relating to the structure or fabric (whether internal or external) of the facility with an external contractor. Any and all improvement works must be progressed through the Council's Head of Facilities and Property Management. The Community Group shall advise the Trust and the Council if it is of the opinion work is required to the Community Space.
- Use or allow the Community Space to be used for any noxious, noisy, offensive, dangerous or immoral trade or business, including, without prejudice to the foregoing generality, the sale or disposal or advertisement of solvents, combat knives or handguns from the Community Space or for any purpose which in the reasonable opinion of the Council and/or the Trust may be undesirable or cause a nuisance, annoyance, disturbance or inconvenience to the Council and/or the Trust or to any occupier of premises in the neighbourhood.
- Overload any floor surfaces or any electrical or ICT system in the Community Space, terminate any ICT services or network connection or install any ICT equipment or software.

REPORT TO BOARD OF TRUSTEES

- Allow any hazardous, explosive, dangerous or combustible goods or materials in the Community Space.
- Pass or allow to pass into the pipes, drains, sewers or others serving the Community Space any polluting agent or noxious or deleterious effluent or other substance, which might cause any obstruction or injury to the said pipes and others or otherwise cause contamination

East Ayrshire Leisure Trust Roles and Responsibilities

- Provide staff during agreed hours.
- Retain responsibility for premises management in the Community Space.
- Pay rates and other such charges in relation to the Community Space.
- Pay utility costs (e.g. gas and electricity) incurred by the operation of the Community space subject to these costs not being considered excessive by the Trust.
- Provide training to the Community Group to facility shared management of the venue.
 - Monitor and review the operation of this Agreement and the Community Groups performance of its obligations annually.
 - If considered necessary or desirable, invite any other person and/or organisation to provide support, assistance and guidance to, or work with, the Community Group following discussion with the Community Group who will have the final say on whether they wish to accept the support, assistance and/or guidance and reserve the right to invite support from a source of their own choosing.
 - Liaise with and share information with the Council in relation to the Community Group's annual report/accounts and finances, governance arrangements and any other such information as may be required.

East Ayrshire Council Roles and Responsibilities

- Provide a representative to all of the Community Groups annual general meetings and endeavour to provide a representative to all Directors meetings and *ad hoc* meeting which may occur (but only if so requested by the Community Group and appropriate Council staff are available to attend the said meetings).
- If undertaking significant work in the Community Space, make every effort to give as much notice as possible in order to minimise any impact on lets.
- Provide advice and support to the Community Group in relation to the management and operation of the Community Space.
- Subject to the availability of financial resources, maintain the Community Space in good order and repair, normal fair wear and tear excepted, of which the Council at their discretion shall be the sole judge as provided for in terms of the Lease.
- Carry out all statutory works, which may be required from time to time in the Community Space in order to secure compliance with statutory requirements. For the purposes of this clause, statutory works means works in respect of the Community Space which require to be executed in order to secure compliance with statutory requirements (whether currently in force or introduced during the duration of this Agreement) including, without prejudice to the foregoing generality, the installation of firefighting equipment or other fixtures and fittings.
- Carry out fire risk assessments and make documented arrangements required under the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006 in relation to the Community Space.
- Carry out asbestos assessments and make written plans required under the Control of Asbestos Regulations 2012 in relation to the Community Space.
- Carry out risk assessments required under health and safety legislation in respect of

REPORT TO BOARD OF TRUSTEES

- the risks posed by legionella bacteria in relation to U1e Community Space.
- Carry out PAT testing of all Council and Trust equipment within the Community Space.
 - Monitor and review the operation of this Agreement and the Community Groups performance of its obligations annually.

 - If considered necessary or desirable, invite any other person and/or organisation to provide support, assistance and guidance to, or work with, the Community Group.
 - Insure the Community Space against physical loss or damage by or in consequence of fire, lightning, aircraft, explosion, storm, tempest, flood, bursting or overflowing of water apparatus riot, civil commotion, malicious damage, earthquake, impact damage (including by any vehicle owned or leased to the Council), terrorism and/or such other normal commercial risks and insurance as the Council may from time to time deem expedient in respect of the Community Space (hereinafter referred to as "the Insured Risks") (but only for so long as and to the extent that the Council are reasonably able to obtain such cover at reasonable commercial rates subject to reasonable policy excesses of which the Council shall be the sole judge) in their full reinstatement value (as determined by the Council) together with any VAT properly chargeable in the name of the Council (and such other names as the Council may require) with the interest of the Community Group noted thereon. For the avoidance of doubt, the insurance cover provided by the Council shall not cover loss or damagedue to or caused by subsidence, accidental damage, damage caused in the furtherance of theft or attempted theft or Community Group's improvements which remain the Community Group's sole responsibility. For the avoidance of doubt, the Council shall not be liable for any property damage, loss of property or injury arising directly or indirectly as a result of the Community Group's use of the Community Space or the use thereof by third parties. The Council shall affect insurance against property owners and third party liability and such other risks as the Council may require, for such amounts and on such terms as the Council may require.

Part 7 General Maintenance Obligations

East Ayrshire Leisure Trust Obligations

- To keep the Premises clean and tidy so as to be suitable for their relevant operational use and to carry out any rudimentary property maintenance and repairs in so far as such works would be within the scope and responsibility of an ordinary building caretaker as shall be determined by the Landlords from time to time throughout the Duration acting reasonably.

- To collect and dispose of any litter, rubbish or waste in the Premises or on any ground pertaining thereto on a regular basis.

- To undertake premises management .

- To undertake Key- holding responsibilities including without prejudice to the foregoing generality to be primary key-holders and attendees in cases of urgent or emergency works to the Premises .

- To comply with the Landlords Procedures, Policies and Standards in all instances.

- To carry out any additional works as may be required by the Tenants in terms of the Asset Transfer Agreement , the Collections Agreement , the Services and Finance Agreement and Support Services Agreement or Service Level Agreement.

REPORT TO BOARD OF TRUSTEES

East Ayrshire Council Obligations

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

REPORT TO BOARD OF TRUSTEES

Part 8 Provision for Elections and Refurenda

The Council shall be entitled to make use of the facilities within the Properties for the purposes of operating polling stations, counting votes and declaring results for the following elections/referenda:-

- general elections/bye-elections to the UK Parliament
- Scottish Parliament elections/bye-elections
- European Parliament elections
- local authority elections/bye/elections
- any referendum.

The Council shall be entitled to use such of the Properties as shall be specified by the Council to the Trust for the purposes detailed in paragraph 1, together with such other ancillary facilities as may, in the Council's sole discretion, be required depending on the circumstances of the election/referendum being held.

The days and times during which the facilities specified as referred to in paragraph 1 shall be required and used for the purposes detailed in paragraph 1 shall be as specified by the Council in its sole discretion and shall vary depending on the circumstances of the election/referendum being held.

In the event of the facilities specified as referred to in paragraph 2 being unusable for the purposes detailed in paragraph 1, due to unforeseen circumstances beyond the control of either the Council or the Trust, the Council's business continuity arrangements provide that equivalent facilities within alternative Properties shall be used for the purposes detailed in paragraph 1.

In the circumstances outlined in paragraph 4, the Council shall be entitled to use facilities within the Properties which are, in the Council's sole discretion, equivalent to those specified by it pursuant to paragraph 2 for the purposes detailed in paragraph 1. The provisions of paragraph 3 shall apply in respect of such equivalent facilities.

REPORT TO BOARD OF TRUSTEES

Part 9 Provision for Emergency Events

The Properties are approved emergency centres in the event of a major incident occurring within East Ayrshire requiring the evacuation of a large number of people.

It should be noted that there are other approved emergency centres which do not form part of the Properties.

Usage of any of the Properties as an emergency centre will usually take one or more of the following forms:-

- Rest Centre/Survivor Reception Centre. A rest centre or a survivor reception centre is a place of safety where people who have been evacuated from an area of risk can receive immediate welfare assistance, including shelter, food, and hot drinks, dry/clean clothing, comfort and support, and advice and information. It may be opened for a short or prolonged period depending on the circumstances prevailing at the time.
- Emergency Feeding Centre. An emergency feeding centre is opened to provide food and refreshments for people who may need to be evacuated, or who cannot remain at home. An example is houses that are without power for a prolonged period of time.

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

When a decision has been taken to evacuate an area at risk and to open an emergency centre, the most suitable such centre will be selected. Where the emergency centre is to be opened in one of the Properties, arrangements will be made with the manager of the Property to have the Property opened, if it is not already opened.

During a Property's use as an emergency centre, the Property will remain open for 24 hours a day, although the leisure facilities available to the public may be so available for the Property's normal operational hours.

In the event of a Property being used as an emergency centre, the scale of the usage of the Property as such will depend on the scale of the emergency. If necessary, the normal operation of the Property will be adversely affected and activities or sets of facilities will require to be relocated, rescheduled or cancelled.

The operation of an emergency centre within a Property will be governed by the Council's approved Rest Centre Plan as amended from time to time. In particular, where an emergency centre has been operated within a Property, the Council will make good any damage to the Property caused by its operation as an emergency centre as soon as reasonably practicable after operation of the emergency centre has been ceased.

REPORT TO BOARD OF TRUSTEES

SECTION 7: COLLECTIONS AGREEMENT

Grant of Licence/Right To Use The Collections

- 7.1 Subject to clause 7.2 to 7.9 and to the Trust's compliance with the provisions of this Agreement and in consideration of the sum of One Pound Sterling (£1) the Council hereby grants to the Trust a licence to use the Collections and the Libraries' Collection in the manner set out in Part I of the Schedule. For the avoidance of any doubt, no right of ownership in the Collections and the Libraries' Collection, or any part of them, shall transfer to the Trust under this Agreement.
- 7.2 The licence granted under clause 7.1 is subject to the terms and conditions of this Agreement and/or any licence, bequest, the company deed, gift, donation or other instrument pertaining to any particular item or forming part of the Collections and the Libraries' Collection. The Trust shall comply with the requirements of any such terms and conditions in relation to the relevant item or items forming part of the Collections and the Libraries' Collection, as if it were directly bound by such terms and conditions (excluding from this any requirements which may only be exercised by the Council as owner of the item or items).
- 7.3 If, in relation to any item forming part of the Collections and the Libraries' Collection, the Council has insufficient rights to grant to the Trust the licence referred to in clause 7.1, that item shall be excluded from the licence, but shall remain part of the Collections or the Libraries' Collection as appropriate and the Trust shall, to the extent permitted by the rights held by the Council, perform the Trust's Obligations in relation to that item; the Council and the Trust shall enter into discussions as regards the best means of the Trust performing the Trust 's Obligations in relation to any such item.
- 7.4 If any item forming part of the Collections or the Libraries' Collection is unusable or unavailable for use in accordance with the terms of this Agreement (excluding items on loan to a Third Party), the Council and the Trust shall enter into discussions as regards the best means of the Trust performing the Trust's Obligations in relation to any such item.
- 7.5 The Trust shall ensure (in so far as possible) that any agreement relating to the acquisition of any item into the Collections and the Libraries' Collection shall be entered in the name of the Council and that item shall become the property of the Council and not the Trust with the exception of Archival Deposits which remain the property of a Third Party. Any such item by its execution hereof shall be acquired in accordance with the Acquisitions and Disposal Policies.
- 7.6 Where, in relation to the acquisition of an item into the Collections or the Libraries' Collection, the Trust is unable to ensure that the item becomes the property of the Council and where the only alternative would not be to acquire the item into the Collections or the Libraries' Collection, the Trust shall be entitled to take ownership of that item with the exception of Archival Deposits which shall remain the property of a Third Party. The Trust shall by its execution hereof transfer, in so far as it is competent to do so, to the Council all rights of ownership in any such items or any item required by the Trust in terms of Clause 7.5 or expiry or termination of the Agreement.
- 7.7 For the avoidance of doubt, nothing in clause 7.5 or 7.7 shall oblige the Trust to accession or otherwise acquire any item into the Collections or the Libraries' Collection. The Trust shall have delegated authority to accession or acquire items into the Collections provided such delegated authority is exercised in accordance with the Acquisitions and Disposal Policies in force from time to time.
- 7.8 Save as expressly set out in the Agreement, the Trust is not permitted to assign, transfer, sell, lease, sub-license, charge, lend or otherwise deal in or encumber the Collections or the Libraries' Collection (under explanation that items forming part of the Libraries' Collection can be acquired, sold, lent or disposed of provided any such dealing is carried out in accordance with the Libraries' Collection Policy), or any part of them.
- 7.9 The Trust shall not dispose of any item forming part of the Collections (otherwise than in accordance

REPORT TO BOARD OF TRUSTEES

with the Acquisitions and Disposal Policies or any Charge & Superintendence Agreement or deposit agreement), without the prior written consent of the Council, except in circumstances of immediate and substantial health and safety risk, when the Trust shall notify the Council of the circumstances as promptly as possible. Items subject to a Charge & Superintendence Agreement or deposit agreement, where the Council is not entitled to withhold consent shall nevertheless be notified to the Council prior to any disposal under these agreements.

Archival Deposits

- 7.10 In relation to any items forming part of the Collections which, as at the Commencement Date, are on deposit to the Council from a Third Party, the Council shall remain as the borrower in any deposit agreement or Charge & Superintendence Agreement with each such Third Party.
- 7.11 Any agreement relating to the deposit by a Third Party after the Commencement Date of any Archives shall be entered into between the Council and the Third Party, and shall acknowledge that the Council will delegate authority to the Trust to manage the Archival Deposit.
- 7.12 The Trust shall have delegated authority to accept small Archival Deposits on behalf of the Council on the advice of the archivist acting reasonably (where an entry form is sufficient and a deposit agreement is not required).
- 7.13 Proposals to place significant collections of Archives on deposit shall be referred to the Council by the Trust for approval, such approval not to be unreasonably withheld or delayed, and be subject to a deposit agreement or a Charge and Superintendence Agreement.
- 7.14 The Trust shall have delegated authority to accept additions to the collections of Archives which are subject to a deposit agreement or a Charge and Superintendence Agreement.

Lending Of The Collections (Outwards Lending)

- 7.15 The Trust shall have delegated authority to lend items from the Collections and the Libraries' Collection to a Third Party or internally within the Trust, in accordance with the Collections Development Strategy, the Trust being satisfied and having due regard to insurance, environmental conditions, security and other considerations and being mindful of the appropriateness of the proposed loan. Wherever possible the borrower shall be responsible for insuring the loan items for full value on an all risks of loss or damage basis. The borrower shall provide evidence of such insurance cover being in force prior to the commencement of the loan period.
- 7.16 In relation to any items forming part of the Collections and the Libraries' Collection which, as at the Commencement Date, are on loan to a Third party from the Council; the Council shall remain as the lender to any Loan Agreement with each such Third Party. Nevertheless, the Trust shall, at the expiry of any such Loan Agreement, have delegated authority to and may, acting reasonably, enter into a new Loan Agreement, to ensure appropriate preservation of and access to items in the Collections and the Libraries' Collection.
- 7.17 Without prejudice to the provisions of clause 7.15, the Trust shall provide to the Council, on a half-yearly basis, details of all items forming part of the Collections and the Libraries' Collection which the Trust has loaned to a Third Party.
- 7.18 For the avoidance of doubt, the Trust shall not (without the prior written consent of the Council) be entitled to lend, or agree to lend, to a Third Party any item forming part of the Collections or the Libraries' Collection where to do so would be in breach of the terms and conditions of any agreement, licence, bequest, the company deed, gift, donation or other instrument pertaining to that particular item or items.
- 7.19 For the avoidance of doubt, the Council shall not be entitled to oblige the Trust to lend any item to

REPORT TO BOARD OF TRUSTEES

a Third Party. The Trust shall nevertheless give full and reasonable consideration to any Council request to make a loan to a Third Party.

Inward Lending

- 7.20 In relation to any items which, as at the Commencement Date, are on loan to the Council from a Third Party, the Council shall remain as the borrower to any Loan In Agreement with each such Third Party. The Trust shall be the custodians of such items for the duration of such Loan in agreements
- 7.21 Any agreement relating to the lending by a Third Party after the Commencement Date of any item for the purpose of display, or any other purpose, in the Trust's Premises (or any of them) shall be entered into between the Trust and the Third Party.
- 7.22 Each of the items referred to in clause 7.20 and 7.21 shall (subject to clause 7.23) throughout that period be subject to the Trust's Obligations
- 7.23 The rights granted and obligations referred to in clause 7.22 are, in respect of each of the relevant items, subject to the terms and conditions of any Loan In Agreement pertaining to that item. The Trust shall comply with the requirements of any such terms and conditions in relation to the relevant item, as if it were directly bound by such terms and conditions (excluding from this any requirements which may only be exercised by the Council as the party to each such agreement).
- 7.24 For the avoidance of doubt, the Trust shall not be obliged to accept any loan in but shall give full and reasonable consideration to any such request from the Council.

Licence Of Collections' Intellectual Property

- 7.25 The Council hereby grants to the Trust (in so far as it has the right to do so in respect of each item forming part of the Collections and the Libraries' Collection) a royalty-free, worldwide, non-exclusive licence (or, where appropriate, sub-licences) to use, copy, reproduce and exploit (including the right to grant sub-licence) the Collections' Intellectual Property, being a defined term at Clause 1 hereof for educational purposes, for the purpose of promoting the Trust, the Trust's Premises and East Ayrshire.
- 7.26 For the avoidance of doubt, the granting of the licence in clause 7.25 will not preclude or restrict the Council (and/or anybody associated with and authorised by the Council) from utilising the Collections' Intellectual Property for the purpose of promoting East Ayrshire and/or events within East Ayrshire, the Council and its services, and any other body associated with the Council.
- 7.27 The Trust shall provide the Council with all such reasonable assistance and will follow all reasonable instructions and demands which the Council may require of the Trust from time to time in order to protect the Collections' Intellectual Property.
- 7.28 The Council and the Trust agree that all applications to protect the Collections' Intellectual Property and subsequent registrations will be in the name of the Council.
- 7.29 The Trust undertakes throughout the term of the Agreement that:
- 7.29.1 it will not dispute or challenge the validity of the Collections' Intellectual Property, or the Council's rights in it;
- 7.29.2 it will not knowingly do or authorise to be done any act, which in any jurisdiction might jeopardise or invalidate the Council's right or title to the Collections' Intellectual Property or the Council's ability to register to protect the Collections' Intellectual Property in the future; and
- 7.29.3 it will give the Council any information as to its use of the Collections' Intellectual Property which the Council may reasonably require.

REPORT TO BOARD OF TRUSTEES

7.30 For the purpose of clause 7.30.2 (but without prejudice to the ordinary meaning of “knowingly”) the Trust shall be deemed to have knowledge of a particular matter to the extent that:

7.30.1 it is referred to in records held by the Trust or to which the Trust has access in terms of the Agreement; and

7.30.2 it is referred to in records held by the Council to which the Trust does not have access in terms of the Agreement, and the Council provides such records (or the relevant parts of them) to the Trust.

7.31 Where the Trust issues to the Council a request for records (to which the Trust does not have access to in terms of the Agreement) relating to the Collections’ Intellectual Property, the Council, shall use reasonable endeavours to provide the Trust with all such relevant records, or copies of them.

7.32 The Trust shall not be liable to the Council for any breach of the provisions of clause 7.30.2 to the extent that such breach arises as a result of the unreasonable delay or failure of the Council to meet its obligations under clause 7.31.

7.33 In the event that the Trust or the Council becomes aware of:

7.33.1 any infringement or possible infringement by a Third Party of the Collections’ Intellectual Property; or

7.33.2 any Third Party alleging that the Collections’ Intellectual Property infringes any rights of the Third Party,

it shall notify the other party by written notice within 20 Business Days of the same.

7.34 Following notification from the Trust in accordance with clause 7.33 or otherwise, the Council, as proprietor of the Collections’ Intellectual Property, may (at its own expense) take any action in any jurisdiction (including but not limited to raising legal proceedings) as it deems appropriate to enforce and /or protect the Collections Intellectual Property against any Third Party. The Trust agrees to co-operate fully with the Council and to give the Council all reasonable information and assistance as the Council may require (at the Council’s expense) to enforce and /or protect the Collections’ Intellectual Property against a Third Party.

7.35 If the Council decides not to take any action of the nature referred to in clause 7.34 in relation to a particular infringement or alleged infringement, the Council, may, at its discretion allow the Trust (subject to clause 7.37 and at the Trust’s expense) conduct of any claim and /or negotiations in respect of that infringement or alleged infringement. The Council shall make such decision promptly and in a manner which is mindful to any conduct or other procedural deadline.

7.36 Where the Council decides not to allow the Trust to conduct any claim and /or negotiations in respect of an infringement or alleged infringement in terms of clause 7.35, the Council and the Trust shall enter into discussions as regards the best means of dealing with such infringement or alleged infringement. For the avoidance of doubt, failing agreement as to the best means of dealing with such infringement or alleged infringement the Trust shall comply with the directions of the Council.

7.37 Where the Trust takes a course of action of the nature referred to in clause 7.35 it shall:

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

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

7.37.3 not without the prior written consent of the Council make any compromise in respect of any

REPORT TO BOARD OF TRUSTEES

infringement or alleged infringement of the Collections' Intellectual Property.

Policies

- 7.38 The Trust shall prepare a definitive list of all of the policies relating to the Collections and the Libraries' Collection and shall submit such list along with the policies to the Council on or before the date falling 7 months after the Commencement Date.
- 7.39 The Trust and the Council shall enter into discussions as regard the list of policies referred to in clause 7.38, such discussions to include the addition of any policies which the Council considers to be relevant to the Collections and the Libraries' Collection, and both the Trust and the Council, shall use reasonable endeavours to agree a definitive list of policies relating to the Collections and the Libraries' Collection on or before the second anniversary of the Commencement Date
- 7.40 Following the agreement between the Council and the Trust of the definitive list of policies referred to in clause 7.39 the definition of "Policies" shall be deemed to substituted with the following.
- 7.41 "Policies" means the policies relating to the Collections and the Libraries' Collection referred to in the list agreed between the Council and the Trust in terms of the clauses 7.38 and 7.39 as the same may reasonably be amended, supplemented or replaced by the Council in consultation with the Trust from time to time and notified by the Council to the Trust from time to time. Until such times as each policy is altered, supplemented or replaced by the Council that policy shall be deemed to be amended in so far as necessary to reflect the transfer of the undertaking of the Council to the Trust in terms of the Asset Agreement.
- 7.42 Where any of the Policies are amended, supplemented or replaced the Council will notify the Trust of such amendment, supplement or replacement as soon as is reasonably practicable.

Obligations of The Trust

- 7.43 The Trust will perform the Trust's Obligations as set out in this clause 7.43 to 7.48 with effect from the Commencement Date in accordance with the terms and conditions of this agreement.
- 7.44 The Trust will perform the Trust's Obligations:
- 7.44.1 with all reasonable skill and care;
- 7.44.2 in a proper, diligent, expeditious and professional manner;
- 7.44.3 dutifully, timeously and in good faith;
- 7.44.4 to no less standard than that achieved by the Council in the period of 12 months immediately prior to the Commencement Date; and
- 7.44.5 in accordance with any policies and guidelines supplied by the Council to the Trust that are directly related to the Trust's Obligations or the Collection.
- 7.45 Subject to clauses 7.46 to 7.48 the Trust shall;
- 7.45.1 ensure that it complies with the law, policies, treaties and the Code of Ethics in relation to the Collections and the Libraries' Collection, including the Trust's Obligations;

REPORT TO BOARD OF TRUSTEES

- 7.45.2 ensure that each of the museums which is accredited under the Arts Council of England as at the Commencement Date retains that accreditation, as the same may be amended or supplemented from time to time, including any accreditation scheme which may replace the Arts Council of England's Accreditation Scheme; and use all reasonable endeavours to ensure that any museum (including any new museums) not so accredited attains that accreditation;
- 7.45.3 use all reasonable endeavours to meet the standards in so far as they relate to the Collections and the Libraries' Collection (or any part or parts of them) and /or to the Trust's Obligations;
- 7.45.4 where funding and resources permit, seek to achieve standards of best practice in relations to the Trust's Obligations;
- 7.45.5 during the Term ensure that only personnel who possess the appropriate experience, skills and qualifications necessary for the performance of the Trust's Obligations in accordance with the Agreement shall perform the Trust's Obligations in relations to the Collections;
- 7.45.6 procure that its employees, sub-contractors and representatives;
- 7.45.6.1 make themselves available at reasonable times and on reasonable notice to the Council, for the purpose of consultation and advice relating to the performance of the Trust's Obligations; and
- 7.45.6.2 attend meetings with representatives of the Council and such other parties as may be necessary for the performance of the Trust's Obligations;
- 7.45.7 provide to the Council, such information as the Council may reasonably request from time to time to enable the Council to monitor, verify and audit the performance of the Trust's Obligations;
- 7.45.8 ensure that it is not in breach of any agreements or any law in connection with the performance of the Trust's Obligations;
- 7.45.9 provide the Council with such information as the Council may reasonably require to enable the Council to ascertain that terms and conditions of the Agreement are being observed;
- 7.45.10 ensure that the Trust's obligations are carried out to the reasonable satisfaction of the Council; and
- 7.45.11 provide the Council and any person duly authorised by it with reasonable facilities to inspect and review all records, accounts, invoices and other material retained in connection with the performance of the Trust's Obligations upon the Council giving reasonable notice.
- 7.46 The Trust shall not be required to perform the Trust's Obligations in relation to any items forming part of the Collections and the Libraries' Collection which is in the custody of the Council.
- 7.47 The Trust shall not be liable for any failure to perform the Trust's obligations where any such failure arises as a direct result of:
- 7.47.1 the unreasonable delay of failure by the Council to perform or otherwise fulfil the Council's Responsibilities; or
- 7.47.2 the failure by the Council to meet its obligations under the Service Level Agreement, the Transfer Agreement and/or any Property Agreement.
- 7.48 The Trust shall not be in breach of 7.45.2 in relation to any museum losing its accreditation under The Accreditation Scheme referred to in this clause where;
- 7.48.1 the reason for the museum losing its accreditation related directly to the Trust's Premises in which

REPORT TO BOARD OF TRUSTEES

that museum is located failing to meet the standards required by the accreditation scheme: and

- 7.48.2 the reason for the Trust's Premises failing to meet the standards referred to in clause 7.48.1 is beyond the reasonable control of the Trust.
- 7.48.3 The Trust and the Council shall, to the fullest extent permitted by law co-operate with each other and comply with the requirements of their own internal and external auditors with any criminal investigations.
- 7.48.4 The Trust and the Council will ensure that the Agreement and those related arrangements comply with the requirements of the law, in particular in relation to European Procurement Rules and Best Value ("Best Value" being the Council's policies, procedures and guidelines in obtaining value for the public purse).

The Council's Responsibilities

- 7.49 The Council shall:
- 7.49.1 co-operate with the Trust and provide it with such information and assistance as it shall reasonably require to enable it to perform the Trust's Obligations;
- 7.49.2 ensure that key personnel are available to assist the Trust when reasonable notice is given by the Trust of this requirement;
- 7.49.3 ensure that it has in place all necessary and appropriate internal Council consents and approvals, in order to enable the Trust to perform the Trust's Obligations (but such that, for the avoidance of doubt, nothing in the Agreement shall oblige the Council to obtain a Third Party approval in relation to the rights granted under the Agreement) subject to the Council requiring to secure the consent of the Keeper of the Records of Scotland under the Local Government etc (Scotland) Act 1994 section 53 which the Council is required to do and exhibit to the Trust.
- 7.49.4 consult with the Trust and have due regard to its professional advice prior to altering, supplementing or replacing any of the Policies, Codes of Ethics or Standards which the Council has the right to alter in relation to the Agreement.
- 7.49.5 The Council shall not acquire items for inclusion in the Collections and the Libraries' Collection or dispose of items in the Collections and the Libraries' Collection without the agreement of the Trust, not to be unreasonably withheld; and
- 7.49.6 The Council acknowledges that the main source of advice on the Collections and the Libraries' Collection and on heritage matters will be the Trust and its professional staff, and will not act on these matters without prior consultation with the Trust.

(together the "Council's Responsibilities")

Insurance of The Collections And Libraries' Collection

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

REPORT TO BOARD OF TRUSTEES

- 7.51 The Trust acknowledges that the insurance policy or policies referred to in clause 7.50 is/are subject to an excess of £250 (Two Hundred and Fifty Pounds) Sterling in respect of each claim in relation to all items forming part of the Collections and the Libraries' Collection. The Council shall notify the Trust of any alterations to the amount of excess.
- 7.52 For the avoidance of doubt, the Council shall be responsible for payment of any excess under any of the insurance policies referred to in clause 7.50
- 7.53 The Council shall use reasonable endeavours to procure that the insurance policy or policies referred to in clause 7.50 is/are effected in joint names of the Council and the Trust.
- 7.54 The Council undertakes:
- 7.54.1 to provide to the Trust on request a summary of the insurance cover applicable to the collection; and
- 7.54.2 to advise the Trust as soon as reasonably practicable, in writing if any of the insurances maintained by the Council in pursuance of clause 7.50 are no longer to be maintained or if there is any significant change in the terms of the relevant insurance policies or the identity of the insurer.
- 7.55 The Council and its agents and advisers shall, on giving reasonable prior notice to the Trust, be given reasonable access to the Collections and the Libraries' Collection for the purpose of inspecting the Collections and the Libraries' Collection and carrying out risk control surveys. Following any such inspection or survey the Council (or its agents or advisers) shall, if necessary, make recommendations to the Trust on any issues identified by the inspection and/ or survey, including, without prejudice to that generality recommended measures to control risk.
- 7.56 The Council and the Trust shall each consider the recommendations referred to in clause 7.55 and shall enter into discussions in respect of the implementation of such recommendations and the time frame for doing so. The Council and the Trust each recognise that implementations of the recommendations referred to above may have significant financial implications and these shall be taken into account in such discussions and in implementing any measures in relation to the Collections.
- 7.57 The Trust undertakes to implement such measures to control risk as the Council and/or its insurers may reasonably require. It will take all reasonable precautions to protect the collection against loss or damage. As part of the process both parties will ensure that where contractors are employed to undertake any repairs to the premises all reasonable precautions will be taken to protect the collection and the premises from loss or damage. Where Hot Works are required to be undertaken the parties shall ensure that a "Hot Works" permit system is in place and is rigidly enforced throughout the period of the works.

Arrangements for Insurance Claims

- 7.58 In the event of loss, damage, theft or destruction of any item forming part of the Collections and the Libraries' Collection, or otherwise subject to the Trust's Obligations, the Trust shall:
- 7.58.1 give immediate verbal and written notice to the Council, giving details of the loss, damage, theft or destruction;
- 7.58.2 take immediate steps to secure the affected area, taking all appropriate temporary measures to limit further damage and address whatever issues may arise including, but not limited to health and safety; and
- 7.58.3 allow the Council (and any surveyor or other consultant engaged by the Council) all such assistance

REPORT TO BOARD OF TRUSTEES

as the Council may reasonably request to facilitate investigations of the damage and /or the pursuit of any insurance claims.

7.59 In addition to notifying the Council under clause 7.58, the Trust shall also notify in writing the Council's insurance section immediately upon becoming aware of such loss, damage, theft, or destruction of any items forming part of the Collections, or otherwise subject to the Trust's Obligations, where:

7.59.1 that item is on loan to the Council from a Third Party.

7.59.2 that item/s has been lost, stolen or destroyed and has a value higher than the highest amount of the insurance policy excess referred to in clause 7.51; or

7.59.3 that item has been damaged and:

7.59.3.1 the cost of conservation and/or repair in accordance with good industry practice;

7.59.3.2 the reduction in value of the item as a result of the damage; and

7.59.3.3 the aggregate of the sum referred to in clauses 7.59.3.1 and 7.59.3.2

7.60 Where the item has been lost, damaged, stolen or destroyed is on loan to the Council, the Council shall be responsible for the making and pursuing the claim with the insurers and will meet the cost of pursuing such claim. The Trust shall ensure that its staff are available as required by the insurer and provide all information and documentation and any other assistance required by the insurer in relation to any such claim (the cost of the Trust in doing so to be borne by the Trust).

7.61 Where the item which has been lost, damaged, stolen or destroyed is the property of the Council the Council shall at its absolute discretion (but following consultation with the Trust) determine whether to make an insurance claim and, if it does so, shall be responsible for pursuing the claim with the insurers and will meet the cost of doing so. Where the Council makes a claim against the insurance policy, the Trust shall ensure that its staff are available as required by the insurer and provide all information and documentation and any other assistance required by the insurer in relation to such claim (the cost of the Trust in doing so to be borne by the Trust).

7.62 If the claim against the insurance policy referred to in the preceding clauses is successful, the Council shall decide (following consultation with the Trust) whether to conserve an item, or where feasible to purchase a replacement item. If the Council decides to purchase a replacement item, it shall consult with the Trust as regards the item to be purchased. Notwithstanding the foregoing, for the avoidance of doubt, the decision as to whether a replacement item shall be purchased shall lie solely with the Council.

7.63 When an insurance claim is unsuccessful or is not pursued, the Council shall determine following consultation with the Trust whether a damaged item shall be conserved. If the Council decided that an item is to be conserved, it shall be conserved by recommended accredited conservators.

Intellectual Property

7.64 All right, title and interest in and to Intellectual Property Rights arising or created by or on behalf of the Trust as a result of the performance by the Trust's Obligations shall be the property of and vest in the Trust, subject to the terms of the licence granted pursuant to clause 7.1.

7.65 The Trust hereby grants to the Council a royalty free, non-exclusive licence in and to such Intellectual Property Rights including (with effect from its creation) all future rights, for the purposes of promoting the Council and its services (and services funded by the Council) and for the purposes of promoting East Ayrshire and the Trust's Premises. The Council shall be entitled to grant royalty free sub licences to Third Parties of the Intellectual Property Rights solely for the purpose specified in this clause.

REPORT TO BOARD OF TRUSTEES

- 7.66 The Trust shall provide the Council with details of Intellectual Property Rights arising or created by or on behalf of the Trust and shall provide the Council with information and reports on the Trust's use of the Intellectual Property Rights at such intervals and in such form or the Council may reasonably require from time to time.
- 7.67 The Trust acknowledges that it shall acquire no rights to any Intellectual Property Rights owned by the Council, other than which it acquires as licences pursuant to the Agreement.

REPORT TO BOARD OF TRUSTEES

Part I Right Granted

The rights granted under this Agreement in relation to the Collections and the Libraries' Collection are subject to the terms and conditions of clauses 7.3 to 7.13 and clauses 7.15 to 7.19 of the Agreement. Subject to the preceding sentence, the rights granted to the Collections and the Libraries' Collection are as follows:

The right to:

- select, appraise and acquire items for the Collections and the Libraries' Collection;
- create and manage appropriate documentation, including cataloguing within an electronic collections management system;
- preserve, conserve and store items in appropriate facilities;
- use items for the purposes of research, including third party research;
- make items available for public access;
- display and exhibit items in appropriate facilities and conditions;
- use items for public programmes;
- lend items to a Third Party;
- borrow items from a Third Party;
- photograph and /or digitise items;
- make reproductions, replicas and facsimiles of items;
- use an image of items for the purpose of marketing the Trust and /or the Collections and the Libraries' Collection;
- dispose of items in consultation with and following approval of the Council.
- subject, in each case, to compliance with the law and relevant standards, policies, treaties and codes of ethics and in accordance with the terms of the Agreement.

REPORT TO BOARD OF TRUSTEES

Part 2 The Trust's Premises

- Dick Institute
- Dean Castle
- Burns Monument Centre
- Burns House Museum
- Doon Valley Museum
- Baird Institute
- Darvel Library
- Stewarton Library
- Auchinleck Library
- Crosshouse Area Centre
- Galston Library
- Dick Institute Library
- Rothesay House Library
- AM Brown Institute Library Catrine
- Muirkirk Library
- Dalmellington Library
- Patna Library
- Drongan Library
- Newmilns Library
- Whatriggs Library
- Burns Monument Centre
- Wallace Chambers

All of the above premises are more particularly described in the Asset Agreement and may also include any other premises of the Trust from time to time within which the Collections and the Libraries' Collection are held.

REPORT TO BOARD OF TRUSTEES

Part 3 Collection Development Strategy and Policies

- Collection Development Strategy
- Collection Procedural Manual including
 1. Collections Development Policy comprising the following protocols:
 - Object entry
 - Acquisition and accessioning
 - Deaccessioning and disposal
 - Collection review
 2. Collections Information Policy comprising the following protocols:
 - Location and movement control
 - Inventory
 - Cataloguing
 - Object Exit
 - Documentation planning
 - Valuation
 - Insurance and indemnity
 - Rights management
 - Reproduction
 3. Collections Access Policy comprising the following protocols:
 - Loans in (borrowing objects)
 - Loans out (lending objects)
 - Use of collections
 4. Collections Care Policy comprising the following protocols:
 - Condition checking and technical assessment
 - Collections care and conservation
 - Emergency planning for collections
 - Damage and loss
 - Audit
- Emergency Plan.

REPORT TO BOARD OF TRUSTEES

Part 4 Laws, Standards, Guidelines and Codes of Ethics

Primary legislation for public archives

- The British Standard BS5454:2000 specifies a set of recommended conditions and this is used as the benchmark when assessing the environment of archival documents.
- Data Protection Act 2018
- General Data Protection Regulations ((EU) 2016/679)
- Human Rights Act 1998
- International Standard on Records Management, ISO 15489
- Society of Archivists and Records Management Society Code of Practice for Archivists and Records Managers
- 1995 – COSLA Public Library Standards
- 2007 – SLIC (Scottish Library and Information Council) Public Library Improvement Matrix
- The National Archives – Standards for Record Repositories

Primary legislation for public records

- Public Records (Scotland) Act, 1937
- National Heritage (Scotland) Act 1985
- Public Registers and Records (Scotland) Act 1948
- Public Records Act 1958
- Public Records Act 1977

Local government records legislation

- Local Government (Scotland) Act 1973
- Local Government (Access to Information) Act 1985
- Local Government etc. (Scotland) Act 1994
- Freedom of Information (Scotland) Act (2002) (FOISA)

Standards and Guidelines for Museums, Libraries and Archives in the UK

International Legislation and Guidance

- UNESCO (1954) convention and protocol for the protection of cultural property in the event of armed conflict (Hague convention) and the second protocol (1999).
- UNESCO (1970) convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property.
- UNESCO (1972) convention concerning the protection of the world cultural and natural heritage.
- UNESCO (1997) human rights commission principles and guidelines for the protection of the heritage of indigenous peoples.
- UNESCO (2003) Charter on the Preservation of the Digital Heritage.
- UNIDROIT (1995) convention on stolen and illegally exported cultural objects.
- United Nations (1993) declaration on the rights of indigenous peoples (Maatutua declaration).
- United Nation Convention on Biological Diversity – Rio de Janeiro, 1992 and the Cartagena protocol – Montreal, (2000).
- World Archaeological Congress, (1989) the Vermilion accord on human remains.
- Inter-Allied Declaration Against Acts of Dispossession Committed In Territories Under Enemy Occupation of Control (1943).
- Washington Conference on Holocaust-Era Assets (1998).
- *Corpus Vitrearum Medii Aevi (CVMA)*
- ECCO (European Confederation Of Conservator-Restorers' Organisations AISBL/Confederation Europeenne Des Organisations De Conservateurs-Restaurateurs AISBL)

REPORT TO BOARD OF TRUSTEES

- International Scientific Committee For Analysis And Restoration Of Architectural Heritage (ISCARSAH)
- American Institute For The Conservation Of Historic And Artistic Works (AIC)
- Australian Natural Heritage
- United Nations Educational, Scientific And Cultural Organisation
- ICOM Code of Ethics for Museums, 2007
- ICOM Ethics of Acquisition (revised 2004)
- ICOM Ename Charter for the Interpretation of Cultural Heritage Sites
- ICOMOS The Venice Charter
- ICOMOS The Athens Charter for the Restoration of Historic Monuments
- ICOMOS The Burra Charter
- ICOMOS Principles for the Preservation of Historic Timber Structures (1999)
- ICA Code of Ethics (1997)
- ECCO Professional Guidelines: Code Of Ethics (2002 – 2003)
- Guidelines for the Care on Natural History Collections (2004)
- IFLA Guidelines For Digitisation Projects For Collections And Holdings In The Public Domain (2002)
- World Federation of Friends and Museums Code of Ethics for Museum Friends and Volunteers (1997)

EU Legislation

- European convention (1973) on the protection of the archaeological heritage.
- EC council directive no. 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a member state.
- EU regulations (EEC no 3911/92) on export of cultural goods out of the European community.
- Council regulation (EC) no. 338/97: protection of species of wild fauna and flora by regulating the trade in these species.
- European commission regulation 939/97 corrigendum to commission regulation (EC) no 939/97 27th May, 1997 laying down detailed rules concerning the implementation of council regulation (EC) no 338/97 on the protection of species of wild fauna and flora by regulating trade therein.
- EC directive 2003/4/EC on public access to environmental information.
- Commission regulation (EC) no 349/2003 of 25th February, 2003. Suspend the introduction into the community of specimens certain species of wild fauna and flora.
- Commission regulation (EC) no 1497/2003 of 18th August, 2003 on the protection of species of wild fauna and flora by regulating trade therein.

UK Legislation and Guidance

- Endangered Species (Import and Export) Act (1977)
- Ancient Monuments and Archaeological Areas Act (1979)
- Wildlife and Countryside Act (1981) and subsequent amendments
- The Environmental Information Regulations 2004, Statutory Instrument 2004 No. 3391.
- Return of Cultural Objects regulations (1994)
- Law relating to treasure trove.
- Data Protection Act (2018)
- General Data Protection Regulations ((EU) 2016/679)
- Freedom of Information (Scotland) Act (2002).
- Copyright and Related Rights regulations (2003).
- Dealing in Cultural Objects (Offences) Act (2003).
- Human Tissue Act (2004).
- The Return of Cultural Objects Regulations 1994.
- The Return of Cultural Objects (Amendment) Regulations 1997
- Copyright, Design and Patents Act 1988
- Disability Discrimination Act 2005.

REPORT TO BOARD OF TRUSTEES

- Control of Substances Hazardous to Health (COSH).
- National Archives
- Planning a New Record Repository
- Standards for Record Repositories
- Code of Practice on Archives for Museums and Galleries in the UK (2002)
- National Occupational Standards In Publishing
- RNIB: Good Design Standards and Clear Print Guidelines
- Guild of Taxidermy Accreditation Standards
- Arts Council of England Accreditation Standards(2011)
- Arts Council England Benchmarks in Collection Care (2011)
- Arts Council of England Accreditation Scheme 2011
- Responding To Cultural Diversity : Guidance For Museums And Galleries (2000)
- Government Indemnity Scheme : National Heritage Act 1980 Indemnity Arrangements for Local Museums, Galleries and Other Non-Governmental Bodies (2000)
- National Heritage Act, 1980.
- Restitution and Repatriation : Guidelines For Good Practice (2000)
- Guidelines For Good Practice Series : Insurance For Museums (2000)
- Environmental Management : Guidelines For Museums And Galleries (1995)
- Museum Learning Online : Guidelines for Good Practice (2001)
- Standards in the Museum Care of Archaeological Collections (1992)
- Standards in the Museum Care of Biological Collections (1992)
- Standards in the Museum Care of Geological Collections (1992)
- Standards in the Museum Care of Musical Instruments Collections (1992)
- Standards in the Museum Care of Textile Collections (1992)
- Standards in the Museum Care of Larger And Working Objects Collections (1992)
- Standards in the Museum Care of Photographic Collections (1992)
- Standards and Guidelines for Museums, Libraries and Archives in the UK :
- Spectrum : The UK Documentation Standard (1997)
- MDA Guidelines On Disposing of Objects You May Not Own
- MDA Procedures for Collections Management
- Angus Council Conservation Charter
- Institute of Conservation
- The Institute of Paper Conservation
- London Metropolitan Archives Preservation and Conservation Policy April 2001
- Royal Armouries Museum, Conservation Department Policies And Procedures
- Society For The Preservation of Natural History Collections (SPNHC)
- United Kingdom Institute For Conservation of Historic and Artistic Works (UKIC) Code of Ethics and Rules of Practice
- MGS A National Collections Development Strategy for Scotland's Museums (2007)
- MGS A National Workforce Development Strategy for Scotland's Museums (2007)
- MGS A National Learning and Access Strategy for Museums and Galleries in Scotland (2005)
- MGS A National ICT Strategy for Scotland's Museums (2004)
- MGS Collections Care and Conservation Fact Sheets – various
- Museum Ethnographers Group Guidance Notes On Ethical Approaches In Museum Ethnography (2003)
- Museum Ethnographers Group Guidelines On The Management Of Human Remains (1994)
- The Standing Conference on Archives and Museums (SCAM) (2002)
- Museums Copyright Group A Guide to Copyright For Museums And Galleries (2000)
- National Preservation Office Good Handling Principles and Practice for Library and Archive Materials (2000)

REPORT TO BOARD OF TRUSTEES

- National Preservation Office Guidance for Exhibiting Archive and Library Materials (2000)
- National Preservation Officer Photocopying of library and archive materials (2000)
- Historical Manuscripts Commission Standard for Record Repositories (2001)
- BS 5454:2000 Recommendations on the Storage and Exhibition of Archival Documents (2000)
- BS ISO 15489-1:2001 Information and documentation. Records management
- Archaeological Archives: creation, preparation, transfer and curation (2007)
- Arts Humanities Data Service AND –ADS/HDS/VADS Digital Archives from Excavation and Fieldwork: Guide to Good Practice (2002)
- Code of Ethics for Museums : Ethical Principles For All Who Work or Govern Museums In The UK 2002

REPORT TO BOARD OF TRUSTEES

SECTION 8: SIGNATORIES

IN WITNESS WHEREOF these presents consisting of this and the preceding 150 pages together with the all parts are executed as follows:-

SUBSCRIBED for and on behalf of
EAST AYRSHIRE COUNCIL

by

at

on the day of

.....

Authorised Signatory

SUBSCRIBED for and on behalf of
EAST AYRSHIRE LEISURE TRUST

by

at

on the day of

.....

Authorised Signatory

in the presence of:-

.....

Witness:

Full Name:

Address:

.....