

TRUST BOARD MEETING

Date: 28 June 2022

Location: Dick Institute, Kilmarnock

Start time: 6pm

AGENDA			
AGENDA ITEM	FOR NOTING	FOR DISCUSSION	FOR APPROVAL/ DECISION
1. Apologies for Absence / Introductions	✓		
2. Declarations of Interest	✓		
3. Minutes of previous meetings 3.1 Board Meeting: 22 February 2022 3.2 P&ASC Meeting: 14 June 2022	✓		✓
4. Living Your Best Life – Strategic Programming			✓
5. Performance Report January – March 2022	✓		
6. 2021/22 Delivery Plan Highlights	✓		
7. Trustee Update			✓
8. Constitution and Service Level Agreement			✓
9. Organisational Review Update			✓
10. Organisational Learning Report	✓		
11. Staff Ambassador Report	✓		
12. AOCB			
13. Dates of Next Meetings: Performance & Audit Sub-Committee: 16 August 2022 AGM/Trust Board: 13 September 2022			

For further information please contact: Anneke Freel, Chief Officer
Email: Anneke.Freel@eastayrshireleisure.com Tel: 01563 554710

REPORT TO BOARD OF TRUSTEES

LIVING YOUR BEST LIFE: STRATEGIC PROGRAMMING

Date: 28 June 2022

Agenda Item: 4

Report by: Anneke Freel, Chief Officer

I PURPOSE OF REPORT

- 1.1 The purpose of this report is to present to Trustees for approval a Programme Development Strategy for the period 2022 -2026. East Ayrshire Leisure manages high quality leisure venues and services on behalf of East Ayrshire Council through our service level agreement, which provide us with the perfect stage for leading on, and supporting, a range of high profile, regional and partnership events that provide a national and international profile. This strategy will provide a framework and a mechanism for selecting and producing a range of events and programmes.

2 CATEGORISING EVENTS

2.1 **Category 1: Hallmark Events**

These will be major events or festivals with a national and international profile. They will bring significant income generation opportunities to the Trust as well as economic benefit to East Ayrshire as a whole. They will usually need substantial operational support from the Trust and will likely need financial support from East Ayrshire Council or other local, regional and national partners. Hallmark events are likely to take place in the Trust's main visitor or sporting attractions including Dean Castle Country Park and Ayrshire Athletics Arena.

2.2 **Category 2: Regional Events**

These are large one off events with a regional or national profile. They will bring significant benefit to the Trust either through generation of income or through the delivery of other social or wellbeing objectives within our Strategic Vision. Regional events are programmed for a specific purpose and audience with reach beyond the local community. These events are likely to have specific press interest.

2.3 **Category 3: Local Events**

Local events will be regular but not routine. They will link directly to local celebrations, festivals and programmes. Their primary audience is the local community, but they may attract some passing trade from visitors. The Trust will organise local events within our own venues as well as provide support and advice to events organised by the community groups.

2.4 **Category 4: Community Activities**

These events will be the regular and routine activities and workshops organised by the Trust through our venues and services. They will make up the regular programming by our teams.

2.5 **Category 5: Partnership Opportunities**

These will be regional or local events, which could be one off or regular that are organised in partnership with local partners.

2.6 **Category 6: Core Programming**

This category covers events that could be listed under category 1 or 2, but are part of the core programming within the performing arts or museum and arts teams. These will be restricted to the

REPORT TO BOARD OF TRUSTEES

exhibition programme and the programming of our performing arts venues. Each of these business areas have a unique process in place for programming.

3. ORGANISING EVENTS

3.1 As outlined in the Programme Development Strategy, the following will be key to the successful organisation of all events

- Establishment of a Young People's Programming Board
- Creation of a Strategic Programming Group
- Identifying Priorities for Investment
- Ensuring Fit with Strategy
- Development of Event Working Groups
- Liaison with Safety Advisory Group (SAG)
- Working in Partnership
- Measuring Impact

4. CONCLUSION

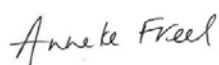
4.1 The Corporate Delivery Plan 2022-24 includes the creation of a Strategic Programming Group as a priority output under the Living Your Best Life Strategic Theme. The proposed Programme Development Strategy will provide a framework and guidance to ensure that all event management is delivered in a consistent and safe manner whilst allowing us to be creative, innovative and responsive to local, regional and national initiatives and programmes.

Recommendation/s:

It is recommended that Trustees:

- i. Consider and approve the Programme Development Strategy; and
- ii. Otherwise note the content of this report.

Signature:



Designation: Chief Officer

Date: 13 June 2022



EAST AYRSHIRE LEISURE TRUST
Programme Development Strategy
2022-2026

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SECTION 1: WHO WE ARE AND WHAT WE DO

1. Introduction

Situated in south west Scotland, East Ayrshire has a varied natural environment, a rich and diverse cultural heritage, a proud industrial history and a range of leisure activities, recreation and hospitality, which attract residents and visitors alike.

East Ayrshire is strategically located between the M77 corridor from Glasgow to the west coast and the M74 from Glasgow to the north of England. Kilmarnock is 20 minutes by car from Glasgow, 40 minutes from Glasgow Airport and only 15 minutes from Prestwick Airport. A half-hourly rail service is provided from Kilmarnock to Glasgow and further enhancements for the rail network are planned. These include ambitions to increase services and stations on the Glasgow to Carlisle route through East Ayrshire, which will improve accessibility and build on the good public transport connections which are already available, including local bus services, MyBus, school transport and community transport.

In addition, we have a good network of walking and cycling routes.

East Ayrshire is a vibrant area which provides the ideal place for hosting a wide range of events and festivals. Events make a contribution to our local economy through tourism, consumer spending in the local area and the development of skills and employment; to the wellbeing of our communities by providing a range of activities and opportunities that give space and time to allow people to 'live their best life'; to the creation of safer communities by contributing to an area where people want to live, work, invest and visit; and where we recognise and celebrate pride of place, local history and community endeavour.

East Ayrshire Leisure manages high quality leisure venues and services on behalf of East Ayrshire Council through our service level agreement, which provide us with the perfect stage for leading on, and supporting, a range of high profile, regional and partnership events that provide a national and international profile.

2. East Ayrshire Leisure's Strategic Vision

This document expands on our Strategic Vision 2020-2030 to give further information on our vision for East Ayrshire Leisure Trust and the events that we organise and support. It provides strong and ambitious objectives, gives specific strategic direction for our events that will contribute to developing the Trust into a more independent, resilient, innovative and inclusive organisation and East Ayrshire into an area recognised for high profile programming. 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

3. East Ayrshire Community Plan

The Community Plan continues to be recognised as the sovereign planning document for the East Ayrshire area, providing the overarching strategic policy framework for the delivery of services by all partners. The vision for the plan is that “East Ayrshire is a place with strong, safe and vibrant communities where everyone has a good quality of life and access to opportunities, choices and high quality services which are sustainable, accessible and meet people’s needs”.

Whilst contributing to all three Community Plan outcomes, this strategy sets out principles which will specifically contribute to the Economy and Skills Delivery Plan. The key driver underpinning our future prosperity and the ability to realise the potential of our communities is a local economy which develops and achieves sustainable growth. Delivering economic recovery and growth will contribute to improved outcomes for young and old, improved health, employment, inclusion, and safer and stronger communities.

4. Scotland the Perfect Stage

In 2015, EventScotland published its updated ‘Scotland the Perfect Stage 2015-2025’. This is the national event strategy, which comprises the event and festival aspects of ‘Tourism Scotland 2020’. The Vision in the strategy is “to develop, through a **one Scotland** approach, a strong and dynamic events industry producing a portfolio of events and festivals that delivers sustainable impact and international profile for Scotland.”

*“The revised **Scotland the Perfect Stage** aims to provide the strategic focus for all involved in any aspect of planning, securing, supporting and delivering events of all sizes in Scotland for the next decade. It seeks to resonate with and bring together all parts of the public, private and third sector that have a role in relation to events in Scotland in order to drive further progress for the benefit of people across Scotland.*

*The successful delivery of **Scotland the Perfect Stage** will allow for the development and growth of a flourishing, innovative and competitive events industry through which Scotland can enhance and sustain an inspirational portfolio of events year on year that generates business, creates jobs and boosts the economy whilst delivering impacts and legacy that benefit all of Scotland’s communities and build on our nation’s strong reputation and international attractiveness.”*

The national strategy will utilise and develop the assets that Scotland has which make it The Perfect Stage for events including:

- Our people
- Our cultural identity and heritage
- Our natural environment
- Our built facilities
- Our signature events

It will also focus on strategic programmes which provide world leading authentic experiences for residents and visitors. The Trust will ensure that this national strategy is used to influence our programming decisions.

5. Our Programme Development Strategy

In addition to our Strategic Vision, we have prepared a suite of Strategies, which explain our priorities, our governance, the processes, and protocols we adhere to and any other relevant regulations or documents that apply. Our Programme Development Strategy sets out the priorities and opportunities for event selection, how events will be managed and how our event development strategy relates to delivery plan themes and objectives for the period up to 2026.

Providing a supportive environment which facilitates the creation, production and development of events is an essential part of the success of this strategy. This means working in partnership with East Ayrshire Council and other partners and event promoters to ensure success.

Not all proposed events can take place. Therefore, in order to make decisions about whether the Trust will commit financial or staff resources to an event, we will assess the measurable impact the event could have.

We believe that our high quality venues and our ongoing investment through our Leisure Facility Strategy provides us with a competitive edge. We will use this advantage to develop and promote our venues to event organisers, promoters, governing and sporting bodies. By working together across all of our services areas, we will provide a unique offer and enable East Ayrshire to be one of the best destinations for events.

The Programme Development Strategy will contribute to delivering the Trust's ambitions, particularly under our strategic theme of 'Living Your best Life'. However, events will contribute to several of our other themes and objectives as outlined below:

5.1 Strategic Vision Theme: Sharing Our Vision

East Ayrshire Leisure will be widely recognised and acclaimed as a leisure provider that is firmly committed to listening to our customers, local residents, visitors and partners and developing facilities and services that meet their needs. In order to achieve this theme, we have established the following Strategic Objectives:

- 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.

5.2 Strategic Vision Theme: 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. In order to achieve this theme, we have established the following Strategic Objectives:

- 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

5.3 Strategic Vision Theme: 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 and charitable objectives. In order to achieve this theme, we have established the following Strategic Objectives:

- 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

The delivery of each objective is monitored through a supporting 2 year Corporate Delivery Plan and individual Service Delivery Plans, which outline specific actions and outputs.

SECTION 2: OUR VISION FOR OUR EVENTS

6. Categorising Events

6.1 Category 1: Hallmark Events

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6.2 Category 2: Regional Events

These are large one off events with a regional or national profile. They will bring significant benefit to the Trust either through generation of income or through the delivery of other social or wellbeing objectives within our Strategic Vision. Regional events are programmed for a specific purpose and audience with reach beyond the local community. These events are likely to have specific press interest.

6.3 Category 3: Local Events

Local events will be regular but not routine. They will link directly to local celebrations, festivals and programmes. Their primary audience is the local community, but they may attract some passing trade from visitors. The Trust will organise local events within our own venues as well as provide support and advice to events organised by the community groups.

6.4 Category 4: Community Activities

These events will be the regular and routine activities and workshops organised by the Trust through our venues and services. They will make up the regular programming by our teams.

6.5 Category 5: Partnership Opportunities

These will be regional or local events, which could be one off or regular that are organised in partnership with local partners.

6.6 Category 6: Core Programming

This category covers events that could be listed under category 1 or 2, but are part of the core programming within the performing arts or museum and arts teams. These will be restricted to the exhibition programme and the programming of our performing arts venues. Each of these business areas have a unique process in place for programming.

7. Event Opportunities

7.1 2022-24 Opportunities

Hallmark Events	<ul style="list-style-type: none">• Cycling World Championships• Year of Stories• Queen's Jubilee Beacon Event• Commonwealth Archery Championships Europe 2022 (CACE)• The Proclaimers
Regional Events	<ul style="list-style-type: none">• Reopening of Dean Castle• Reopening of Morton Hall• Opening of Galston Town Hall• Spirit of Christmas• RAW Challenge
Local Events	<ul style="list-style-type: none">• Imprint• Panto• EALT 10th Anniversary• Celebrate Kilmarnock – support various town centre events/ projects• Cumnock History Group• Annanhill Golf Course 65th Anniversary
Community Activities	<ul style="list-style-type: none">• Learn to Swim Programme• Sports Coaching Programme• Rookie Lifeguard Programme• School Swimming Lessons

	<ul style="list-style-type: none"> • School holiday programme • Group Fitness programme • Bookbug • Natural Health programme • Leisure at the Heart of the Community • Community Venue Programming • Summer Activity Programme • Cultural Engagement programmes (schools & community)
Partnership Opportunities	<ul style="list-style-type: none"> • Tamfest • Roon the Toon • Parkrun • Darvel Music Festival • Holy Fair • Irvine Valley Walking Festival • Dance Shows • Cumnock Tryst • Boswell Book Festival • Community Organisation Shows (LMS, KAOS, Youth Farmers, Choirs etc) • EAC Education Music & Dance Events • Remembering Together Covid Memorial Programme – Greenspace Scotland & EAC Creative Minds • Hilly Billy 10K • Come & Tri • Burns Birthday
Core Programming	<ul style="list-style-type: none"> • Quentin Blake Exhibition • Great and Small Exhibition • Artist Rooms Exhibition (Tate and NGS) • Arts Council Collection Georgia O’Keeffe Exhibition • Palace & Grand Hall Programming • EAYT

7.2 2024-26 Opportunities (ongoing review as part of Strategic Programming Group)

Hallmark Events	
Regional Events	<ul style="list-style-type: none"> • Launch of Cultural Kilmarnock
Local Events	<ul style="list-style-type: none"> • Reopening of Doon Valley Museum • Imprint • Panto
Community Activities	<ul style="list-style-type: none"> • Learn to Swim Programme • Sports Coaching Programme

	<ul style="list-style-type: none"> • Rookie Lifeguard Programme • School Swimming Lessons • School holiday programme • Group Fitness programme • Bookbug • Natural Health programme • Community Venue Programming • Summer Activity Programme
Partnership Opportunities	<ul style="list-style-type: none"> • Tamfest • Roon the Toon • Parkrun • Darvel Music Festival • Holy Fair • Irvine Valley Walking Festival • Dance Shows • Cumnock Tryst • Boswell Book Festival • Community Organisation Shows (LMS, KAOS, Take a Bow, Youth Farmers, Choirs etc) • EAC Education Music & Dance Events • Hilly Billy 10K • Come & Tri • Burns Birthday in Mauchline

8. Organising Events

8.1 Young People's Programming Board

Our commitment is to engage more young people in the development of our facilities, services and programmes. The establishment of a Young People's Programming Board will involve young people in programme planning and decision making. They will meet quarterly, be provided with updates and reports on potential events and influence the scale, range and added value that events will have. Impact and evaluation will also be reporting through the Young People's Programming Board.

8.2 Strategic Programming Group

The delivery and implementation of our strategic objectives, needs services across the Trust to work together. To ensure consistency, we will establish and operate a Strategic Programming Group. The Group will meet monthly and will oversee decision-making about which events the Trust will lead on, which partnerships we will engage in and which events we will support. The Group will also be responsible for ensuring that all events are properly evaluated. The Group will be led by the Head of Operations and will include officers from all teams. The group will provide reports to the Executive Management Team and the Young People's Programming Group.

8.3 Priorities for Investment

A scoring matrix will be developed to ensure transparency around decision making. This matrix will be used for all category 1, 2 and 5 events. Category 3, 4 and 6 events will be organised at team level and won't need to be presented to the Strategic Programming Group. The scoring matrix will be based on the following investment priorities:

- **Fit with Strategy:** does the event play to our strengths as an organisation and an area; does it celebrate our unique cultural heritage, our sporting talents and our landscape; does it develop our reputation as an excellent event host; does it increase opportunities for higher profile events; does it fit with the vision of the Perfect Stage
- **Attracting Visitors:** does the event have the potential to attract visitors from out with the area; Is there an opportunity to work with East Ayrshire Council and VisitScotland to promote overnight stays and return visits
- **Income Generation:** does the event create a significant opportunity for income generation; will the event have an impact on local businesses
- **Sense of Place:** does the event encourage a sense of place within our communities and contribute to community wealth building
- **Investing in People:** does the event provide opportunities for volunteering, skills and training, pathways to employment and health and wellbeing
- **Profile:** does the event enhance East Ayrshire Leisure's reputation on a regional and national stage
- **External funding:** does the event have the ability to attract added value and external funding to the area
- **Disruption:** are there plans in place to minimise disruption for local communities

8.4 Event Working Groups

Once an event has been presented to the Strategic Programming Board and the decision has been made to deliver the event, a working group will be established. A lead officer will be appointed by the Executive Management from across the Trust who will develop a brief and identify appropriate working group members. Working group members can be any East Ayrshire Leisure employee, as well as external partners from East Ayrshire Council, stakeholder groups and community representatives.

The working group will be responsible for all aspects of the event delivery including completing the pre-events application process, development of event management plans, risk assessments, licencing applications, marketing and evaluation.

The working group lead officer will be the primary point of contact for the event with a designated second should that person be unavailable.

8.5 Safety Advisory Group (SAG)

The SAG is a multi-agency forum that exists in an advisory role and is chaired by East Ayrshire Council's Event and Resilience Officer. It contributes to the safe planning of large scale events. The ultimate responsibility for the safety of any event is the working group lead officer or if appropriate an externally appointed event organiser.

The group comprises key personnel from multiple agencies with experience, competence and technical knowledge to advise on the safe delivery of events. The core membership being:

- East Ayrshire Council Events and Resilience Officer (Chair)
- Health and Safety
- Building Standards
- Licensing
- Roads- The Ayrshire Roads Alliance/Trunk Road Operator Transerve
- Environmental Health
- Risk Management

- Police Scotland
- Scottish Fire and Rescue Service
- NHS Ayrshire and Arran
- Ambulance
- Event Organiser
- Emergency Services

While the group has no statutory powers, there are options open to individual members in terms of their own powers and duties.

8.6 Working in Partnership

The Trust will work with East Ayrshire Council and other partners to ensure a joined up approach to decision making about category 1, 2 and 5 events. This joined up approach is essential in the delivery of the Trust's Strategic Vision and the East Ayrshire Community Plan.

8.7 Measuring Impact

In order to ensure that events are contributing directly to the objectives within our Strategic Vision, every event needs to be rigorously evaluated. As well as quantitative reporting, The Trust will use qualitative evaluation to monitor the impact of services, programmes and projects through an Organisational Learning process that will monitor the impact of services, programmes and projects. An organisational Learning Action Plan is developed on a quarterly basis. Evaluation techniques will be dependent on the measurement and information that we need to gather. This will be identified as part of the brief for each event and may include:

- Staff satisfaction surveys
- Marketing campaign evaluations
- Booking and Box Office reports
- Customer satisfaction surveys
- Impact Monitoring Surveys
- Business Case Development
- Feedback Systems
- Business Development Surveys
- Website and social media engagement
- Mystery Shopping

In line with EventScotland's recommendation, we will work with local, regional and national partners to implement an evaluation framework for category 1,2, 5 and 6 events based on the following key criteria.

Economic – Tourism	<ul style="list-style-type: none"> • Net additional spend in the host economy • Gross Value added • Equivalent jobs created/sustained
Economic – Business	<ul style="list-style-type: none"> • Number and value of contracts issued by event organisers, number and value of these to Scottish and local businesses • Number of businesses engaged, including Scottish and local breakdown • Supported by case studies • Ability to export the business skills and knowledge

Brand, Identity and Reputation	<ul style="list-style-type: none"> • Familiarity of the audience with a brand • Familiarity with brand values • Fit with Event Development Strategy • Fit with Strategic Vision
Media and Profile	<ul style="list-style-type: none"> • Amount of coverage • How media coverage contributed to the event's objectives • Impact of social media coverage both pre event marketing and during and post event evaluation
Social and Cultural	<ul style="list-style-type: none"> • Number of volunteers • Number of new volunteers • Volunteer hours • Number of attendees from local authority area • Percentage of attendees from local authority area • Sense of wellbeing in community • Sense of wellbeing in attendees • Case studies of interventions • Impact on creativity/learning • Impact on skills development / employability / resulting new opportunities
Sustainability	<ul style="list-style-type: none"> • Against British Standard BS8901:2007 on Sustainable Event Management • Meeting Scottish legal requirements • Undertaking Resource Efficient Scotland Pledge • Contribute to East Ayrshire's Climate Change Strategy

8.8 Funding Events

Category 1, 2 and 5 events are likely to need a commitment of resources from the Trust which are either financial or staff based. Therefore, all events will need to be clear about how the event contributes to the strategic themes and objectives. This will inform decision-making. We will continue to explore all opportunities for external and partnership funding to assist in delivery of events.

8.9 Sponsorship

Sponsorship can be effective in assisting with event funding. However, we must be clear with potential sponsors what benefits the opportunity brings them and provide them with robust evaluation of the event impact.

SECTION 3: FUTURE OPPORTUNITIES

9. Changing Portfolio

High quality facilities are crucial in the development of an innovative, creative and high quality event programme and strategy. Since our inception in 2013, the portfolio of facilities that the Trust manages on behalf of East Ayrshire Council has changed as some facilities are no longer viable, some have transferred to community ownership or management and new facilities have developed.

In line with our Strategic Vision and the audit and community consultation that was carried out in 2019 and 2020, our Leisure Facility Strategy sets out our vision for the venues that we currently manage that support leisure programming across the area without competing with, or duplicating, other provision in local communities.

In line with the Leisure Facility Strategy, the Trust will consider the current portfolio of venues and the opportunities to develop the service in terms of reaching further and developing our audiences.

10. Growing Partnerships

As well as being a leisure provider with a large portfolio of high quality leisure facilities, East Ayrshire Leisure Trust is also committed to supporting local community, charitable and private sector partners to maximise opportunities for community activity regardless of who the leisure provider is.

Working with key local, regional and national partners across the private, public and third sectors will allow us to deliver projects and programmes that will maximise income opportunities whilst also providing a range of quality, free and affordable activities and services, providing value for our customers and our communities.

Through the continued development of partnerships and the further development of our 4 and 5 star visitor attractions, we will support key regional tourism campaigns. We are also uniquely placed to work in partnership with tourism and hospitality providers to focus on East Ayrshire's unique selling point in relation to arts, heritage, sports and countryside.

REPORT TO BOARD OF TRUSTEES

PERFORMANCE REPORT JANUARY – MARCH 2022

Date: 28 June 2022

Agenda Item: 5

Report by: Anneke Freel, Chief Officer

I PURPOSE OF REPORT

- 1.1 This report provides details of the Trust's performance for the period January – March 2022, the final quarter of the 2021/22 financial year.
- 1.2 Whilst the report provides Trustees with a detailed analysis of Trust performance in the period, it is set within a context of ongoing restrictions brought about by Covid-19 and subsequent recovery. As we work towards increasing confidence, our venues and services are beginning to return to pre-covid performance figures and, in some cases, exceeding them.

2 FINANCIAL PERFORMANCE

- 2.1 The East Ayrshire Leisure Performs Q4 report provides detail of the Trust's financial performance for the period January – March 2022. The actual outturn for East Ayrshire Leisure at 31st March 2022 is a favourable position of £455,644 which will be reduced to £132,014 following designation of items that were included in the 2021/22 projections but were not completed or delivered by 31st March 2022. This designation of funds totals £323,630. Within these designated items is a recommendation that a further £20,000 is designated to Retained Reserves leaving the balance of £132,014 to be allocated to Unallocated Reserves. This position has been achieved due to substantial external funding (£246k) which the Trust has successfully obtained this financial year.
- 2.1 The projected outturn for East Ayrshire Leisure Trust at 31st March 2021 is a significant improvement since the Q2 position of £104,750.

3 PERFORMANCE STATISTICS

- 3.1 The performance figures across our cultural venues are beginning to show strong recovery and have returned to 80% of pre-covid figures. This is predominantly due to popular programming Cumnock Town Hall which in itself has shown an increase on pre-covid figures of 75%.
- 3.2 The Baird Institute has also had a successful quarter. Q4 is typically a quiet period for the museum. However, the Matisse exhibition that was on display attracted a number of visitors and the Baird saw an increase of 150% on the 2019/20 baseline. Other venues that are typically quiet in Q4, but have performed well are Annanhill Golf Course and Ayrshire Athletics Arena.
- 3.3 Online reader engagement has seen an increase of 88% in Q4 compared to the same period in 2019/20 prior to Covid restrictions.

4 QUARTER HIGHLIGHTS

- 4.1 In January 2022 the Palace & Grand Hall reopened again after the Christmas Covid closure and we are delighted that the venue started getting back into full swing in March, hosting our first full scale community show in 2 years – Shrek by Take a Bow in the Palace and the American jazz singer Curtis Stigers in the Grand Hall.

REPORT TO BOARD OF TRUSTEES

- 4.2 Our Fitness memberships by the end have shown full recovery post Covid. Our group fitness class programme has been extremely popular and we have been able to invest in 30 new top of the range Keiser spin bikes for the Rose Reilly Sports Centre. However, continue to experience significant challenges around the retention and recruitment of group fitness class instructors and are investigating a number of options to address this.
- 4.3 6 of our lifeguards were successfully received their Swimming Teacher Qualification during quarter 4. This will allow us to increase the number of Learn to Swim classes and help more children return to our swimming pools.
- 4.4 The #Active EA group's original members met to review and discuss the role of the group moving forward. It has been decided to increase its reach to enhance collaboration between partners focusing on three keys areas: Health & Wellbeing, Activity and the Outdoors.

5 RISK REGISTER

- 5.1 No changes have been made to the Risk Register as part of the quarterly reporting and monitoring.

Recommendation/s:

It is recommended that Trustees:

- i. Note the East Ayrshire Leisure Performs Report for the period January – March 2022; and
- ii. Otherwise note the content of this report.

Signature: 

Designation: Chief Officer

Date: 13 June 2022



EAST AYRSHIRE LEISURE PERFORMS

QUARTER 4

JANUARY - MARCH

2021/22



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PROGRESS AGAINST CORPORATE DELIVERY PLAN 2020-22







 - No Progress
  - Some Progress
  - Complete






KEY

Chief Officer	CO	Finance & Business Development Manager	F&BDM	Leisure Development Manager	LDM
Head of Corporate Services	HCS	Cultural Development Manager	CDM	Property & Estates Development Manager	P&EDM
Relationship & Business Development Manager	R&BDM	Community & Performing Arts Development Manager	C&PDM	Sports Development Manager	SDM






 - No Progress
  - Some Progress
  - Complete







SHARING OUR VISION				
Delivery Plan Output		Lead	Progress	Comments
Action: We will introduce Customer Exchange evenings at key venues to ensure that customers have the opportunity to discuss the priorities for facilities and services				
1	Organise 2 customer Exchange evenings each year at key venues	HCS		<u>Carried forward to 2022-24</u>
Action: We will be represented on appropriate community forums including community sports hubs, community councils and community action plan steering groups				
Actions Complete				
Action: We will develop a Plan which complements our Strategic Objectives, utilising the full marketing mix and ensuring tailored campaigns are created.				
3	Design a Communications Strategy	R&BDM		<u>Carried forward to 2022-24</u>
5	Campaigns for each project will be created, implemented and monitored	R&BDM		Marketing Campaigns are developed annually in conjunction with service managers.
7	A press and PR strategy will be developed to maximise coverage locally, nationally and through specialist press to drive visitor/audience growth	R&BDM		<u>Carried forward to 2022-24</u> Under Communications Strategy
8	Design, develop and deliver detailed evaluation strategy for all areas of Trust	R&BDM		An evaluation strategy has been developed and will form part of the Community Renewal Project.
Action: We will develop a collaborative working arrangement with East Ayrshire Vibrant Communities to explore potential shared services, partnership working and innovation in delivery				
Actions Complete				
Action: We will work with key partners to develop a Cultural Strategy for East Ayrshire				
10	Establish a working group with all key stakeholders represented	CDM		<u>Carried forward to 2022-24</u>








11	Develop a region wide document that sets a shared set of objectives, performance indicators and monitoring systems and outlines an agreed direction of the sector.	CDM		<u>Carried forward to 2022-24</u>
12	Maintain and develop futuremuseum.co.uk partnership increasing visits to site of 2% every 2 years	CDM		Carried forward to 2022-24 MGS bid SUCCESSFUL - £47,000.00 Project now underway.
Action: We will develop a formal collaborative arrangement with the Kilmarnock Leisure Centre Trust				
14	Reviewed existing services to reduce duplication and identify areas of best practice	CO		<u>Not achievable in 2020-22</u> Kilmarnock Leisure Centre Trust and East Ayrshire Leisure Trust are focusing on recovery from covid19 pandemic. Collaboration and partnership working will be considered when both organisations have fully reactivated. This output will not be delivered as part of the 2020-22 Delivery Plan
Action: We will review our customer service standards and charter and customer feedback forms introducing key customer performance targets which we will measure monitor and report on annually				
15	Benchmark customer service performance targets, identifying a range of relevant targets	HCS		<u>Carried forward to 2022-24</u>
16	Establish focus groups of customer and key partners in order to identify 3 key customer performance targets	HCS		<u>Carried forward to 2022-24</u>

 - No Progress
  - Some Progress
  - Complete







LEISURE AT THE HEART OF EVERY COMMUNITY






Delivery Plan Output		Lead	Progress	Comments
Action: We will use the information from the Facility Audit 2019/20 to develop a Facility and Investment Strategy Actions Complete				
Action: We will continue to invest in our significant cultural built environment assets (Dick Institute, Dean Castle, Baird Institute, Burns House Museum, Palace Theatre) to ensure all venues maintain at least four star Visit Scotland status Actions Complete				
Action: We will work with local partners to develop an options appraisal for the future of Auchinleck Leisure Centre Actions Complete				
Action: We will work with East Ayrshire Council on the development of Doon Leisure Centre as part of the new school development at Doon Academy Actions Complete				
Action: We will work with East Ayrshire Council to carry out a review of all synthetic and grass and pitches and pavilions as well as a floodlight replacement programme Actions Complete				
Action: We will develop an Improvement Plan for Ayrshire Athletics Arena that includes an extension to the outdoor spectator area at Ayrshire Athletics Arena to enhance the facility and attract National Athletics Events				
33	Liaise with key partners to develop a costed specification for spectator and other facilities at Ayrshire Athletics Arena	SDM		<u>Partially complete, carried forward to 2022-24</u> The new fitness suite has opened within the facility. It has not been possible to take forward feasibility works around the additional spectator facilities but will be included with the Corporate Delivery Plan 2022-2024.
34	Submit funding applications	SDM		<u>Carried forward to 2022-24</u>
35	Develop a sponsorship package	SDM		<u>Carried forward to 2022-24</u>






36	Increase spectator seating capacity by 50%	SDM		<u>Carried forward to 2022-24</u>
37	Work with Scottish Athletics and Kilmarnock Harriers to attract 2 national events to complement the local and regional programme of athletics events at the AAA	SDM		<u>Carried forward to 2022-24</u>
Action: We will continue to implement the East Ayrshire Strategic Route Network				
38	Implement a 40km paths network in the Irvine Valley	LDM		<p>During this period our contractor commenced work on Darvel to Loudoun Hill route, focusing on sections 1-3. Over this period the contractor successfully worked to prepare the ground, remove old fencing and styles, felled and pruned trees, cleared and created new drains, installed new fences and completed the construction of the new paths.</p> <p>Negotiations continued over several points raised by land owners' solicitors and EAC Legal Services provided revised drafts for Long Cairn Walk, Long Cairn Walk Connector, Section 6 and Section 4 path agreements.</p> <p><u>Project will continue in 2022-23</u></p>
42	Oversee implementation of the Doon Valley Way and the Lugar Water Trail as part of the Coalfield Communities Landscape Partnership	LDM		<p>Tender for Lugar Water Trails completed with 10 returns from potential contractors.</p> <p>Project will continue in 2022-24</p>
Action: To develop a masterplan for the development of the Palace Theatre and Grand Hall Complex and submit funding bids to implement the masterplan				
44	Submit external funding bids	CO		<u>Carried forward to 2022-24</u>
45	Develop community engagement and activity plan	CO		<u>Carried forward to 2022-24</u>










Action: We will develop a management plan for Annanhill Golf Course that maximises customer experience whilst protecting and enhancing nature conservation				
47	Development of a community engagement/consultation plan	P&EDM		Complete
50	Adoption of a 5 year management plan for the integrated site which includes parkland and golf course	P&EDM		<u>Carried forward to 2022-24</u>
51	Submit Greenflag Award application	P&EDM		This output will not be delivered as part of the 2020-22 Delivery Plan. Options will be considered within the Climate Change Strategy in the 2022-2024 Delivery Plan.
Action: We will review the Dean Castle Country Park management plan to ensure a that visitors continue to enjoy the country park whilst protecting and enhancing nature conservation				
52	Development of a community engagement/consultation plan	LDM		
56	Greenflag Award achieved	LDM		
Action: We will develop a maintenance and development plan for the River Ayr Way				
57	Development of a community engagement/consultation plan	LDM		
60	Adoption of a 5 year maintenance and development plan for the River Ayr Way	P&EDM		<u>Carried forward to 2022-24</u>












 - No Progress
  - Some Progress
  - Complete




LIVING YOUR BEST LIFE				
Delivery Plan Output		Lead	Progress	Comments
Action: We will develop an EAL specific cultural engagement strategy to outline our commitment to lifelong participation in visual and performing arts, libraries, museums and performing arts				
61	Establish a number of cultural engagement working groups to work on each area of engagement	CDM		Dean Castle Reopening Event: Funding bid submitted to REF. <u>Carried forward to 2022-24</u>
62	Develop an engagement strategy which outlines sustained engagement programmes such as Bookbug, E-books, reader development strategies; digital initiatives and participatory arts activities	CDM		The Cultural Development team have been working on an engagement strategy in parallel with the Digital Transformation Strategy. <u>Carried forward to 2022-24</u>
63	Include the Education Attainment Challenge Framework and other school facing activities and monitor related active involvement	CDM		The EACF and CfE are embedded within the research being undertaken as part of line 62 above. <u>Carried forward to 2022-24</u>
64	Align the above to a shared set of objectives, performance indicators and monitoring systems in relation to all cultural engagement activities	CDM		The development of the monitoring and evaluation strategy will follow on from the research and development of lines 62 and 63 above. <u>Carried forward to 2022-24</u>
Action: We will continue to programme high quality outward facing cultural programmes that profile East Ayrshire as a must visit destination.				
Actions Complete				
Action: We will continue to offer a varied programme of events and activities across our performing arts venues and extend the programme to community venues				
68	Deliver a programming policy which supports an innovative programme of dance, music and drama across all community and performing arts venues	C&PDM		Draft updated policy under review
69	Support community partners in the delivery of their performing arts workshops and programmes	C&PDM		CAMPS supported in their annual Panto production at Cumnock Town Hall; LMS supported with their Nov show in Grand Hall and Crossroads YF and Take a Bow's Shrek in February 2022. In March 2022 an

				amended EAC Dance Fest took place. Less shows supported than normal due to Covid.
71	Present 2 EAYT productions each year.	C&PDM		EAYT had showcase shows in June & November 2021 in the Palace Theatre and they were very well received.
Action: We will complete the refurbishment and restoration of Dean Castle and establish the importance of the re-opening of the newly refurbished venue				
72	Deliver the five year plan which forms part of the funded programme commitment.	CDM		<p>Building Works – ongoing and scope of work under review. Work to Chapel, Gatehouse, Laundry buildings being reviewed.</p> <p>Interpretation – Text and image review of panels 80% achieved. Review of animation, sound interactives and props yet to begin. Musical Instrument catalogue being developed.</p> <p>Conservation – Working with EAC procurement around the development of a new conservation framework which will support the conservation of approx. 1,000 objects for redisplay. First specialists conservators have visited to review the collections and quote for conservation.</p> <p>Activity and Engagement – plans being redeveloped to include blended digital school engagement and online audience events. Contact with schools made for Autumn term workshops.</p> <p><u>Carried forward to 2022-24</u></p>
73	Carry out detailed evaluation plan linked to the funded programme.	CDM		
74	Relaunch Dean Castle in 2021	CDM		<p>Relaunch Event – funding bid submitted.</p> <p><u>Carried forward to 2022-24</u></p>
Action: We will prepare an East Ayrshire Aquatics Strategy				
76	Establish a Swimming Development working group with all key stakeholders represented	SDM		<u>Carried forward to 2022-24</u>






				Providers main focus has been on reactivation of services throughout the pandemic. This will be something that is developed further within the new delivery plan.
77	Develop an district wide aquatics strategy which sets a shared set of objectives, performance indicators and monitoring systems in relation to all aquatics sports and activities	SDM		<u>Carried forward to 2022-24</u> , however it will initially focus on East Ayrshire Leisure.
78	Increase 'Learn to Swim' membership by 10%	SDM		<u>Carried forward to 2022-24</u> Learn to Swim membership has increased at Loudoun LC, however Parent & Toddler lessons have been unable to return due to instructor challenges. Due to a lack of instructors we have been unable to reactivate all our previous LTS memberships at Auchinleck and Doon Valley Leisure Centre. Revised KPI's will be included with the Sports Development Strategy, which is part of the 2022-204 Delivery Plan.
80	Provide internal and external opportunities for training and recruitment of Scottish Swimming Tutors	SDM		<u>Started but carried forward to 2022-24</u> Training and Recruitment will feature within the Sports Development Strategy.
Action: We will develop a Community Golf Development Plan to encourage participation school, community and club golf				
82	Develop a Golf Development Plan which sets a shared set of objectives, performance indicators and monitoring systems in relation to school, community and club golf	SDM		<u>Started but carried forward to 2022-24</u> This will form part of the Sports Development Strategy.
Action: We will develop a Sports Coaching Strategy that will identify the progression from grassroots activity to club participation for priority sports and will introduce foundation skills for priority sports, coach education and employment				
84	Establish a Coaching Development working group with all key stakeholders represented	SDM		<u>Carried forward to 2022-24</u> The ActiveEA group will become the platform for this to be established through a sub-group.

85	Develop a district wide sports coaching strategy which sets a shared set of objectives, performance indicators and monitoring systems in relation to all sports and activities	SDM		<u>Started but carried forward to 2022-24</u> The Trust's key sports will be Swimming, Gymnastics, Golf, Athletics, Multi Sports and Mini-Movers.
86	Develop a subsidised coach education programme with integrated volunteer hours	SDM		<u>Carried forward to 2022-24</u>
87	Introduce a coaching programme with 3 annual blocks for each priority sport	SDM		<u>Partially completed, carried forward to 2022-24</u>
88	Develop a partnership with each club associated with priority sport	SDM		<u>Partially completed, carried forward to 2022-24</u>
Action: We will develop a plan for Outdoor Learning that introduces young people to outdoor, experiential learning				
91	Participate annually in Playday	LDM		Event did not take place due to Covid-19 restrictions
Action: We will develop a Recreation Plan for East Ayrshire which will promote walking, cycling and other outdoor pursuits throughout East Ayrshire				
Actions Complete				
Action: We will continue to attract local and national sporting events to our community sporting events				
Actions Complete				
Action: We will continue to work on an innovative programme to raise the profile of the Grand Hall as a regional and national venue for large scale music events and programmes				
97	Organise at least 2 large scale events annually	C&PDM		In November 2021 the Grand Hall played host to Dr Hook and December had Abbamania and The Drifters. Jazz musician Curtis Stigers played in 17 March 2022
98	Represent East Ayrshire Leisure at relevant trade fairs and conferences	C&PDM		DM continues to represent EAL at online forums
Action: We will continue work with Imagine Theatre on a collaborative approach to Pantomime production				
99	Formalise a co-production plan with Imagine Theatre for 2020-22	C&PDM		Contract in place for 2021 but 2022 still be be addressed
100	Present an annual pantomime performance including: 2020: Aladdin, 2021: Snow White, 2022: Peter Pan (tbc)	C&PDM		Aladdin 2021 went ahead but run had to be shorten by 2 weeks at the beginning due to non attendance of schools and for 1 week post Xmas due to change of Covid regulations make this unviable

101	Increase income by 3% and reduce subsidy by 3% by the end of the plan period using 2019 as a baseline	C&PDM		Increased income will not be achievable due to Covid-19
102	Organise annual pantomime educational workshop	C&PDM		No Pantomime workshops due to Covid-19
Action: To host Illuminight with Lidl at Dean Castle Country Park for the 4th year				
103	Increase in attendances by 10% with 2019 as baseline	LDM		
104	Increase in profit by 3% with 2019 as baseline	LDM		
105	3 sponsors engaged in event	LDM		
106	£10k external funds to enhance creative	LDM		
107	10 student placements	LDM		
108	10 volunteers	LDM		
Action: We will enhance and develop our annual running programme that introduces people to running, provides a progressive pathway and attracts national competitors to East Ayrshire				
Actions Complete				
Action: We will encourage community participation in fitness through the introduction of a GP Referral Scheme and a programme of fitness classes and activities				
118	Organise 4 'come and try' fitness open days at each community sports facility each year	SDM		<u>Not achievable in 2020-22</u> Due to COVID restrictions these have been unable to be organised, once restrictions ease further we will look to organise. This output will not be delivered as part of the 2020-22 Delivery Plan
120	Develop a partnership with Kilmarnock Leisure Centre Trust to jointly promote and develop fitness activities	SDM		<u>Not achievable in 2020-22</u> Kilmarnock Leisure Centre Trust and East Ayrshire Leisure Trust are focusing on recovery from covid19 pandemic. Collaboration and partnership working will be considered when both organisations have fully reactivated. This output will not be delivered as part of the 2020-22 Delivery Plan
122	Introduce Personal Training sessions to 5 community sports venues	SDM		<u>Carried forward to 2022-24</u>

Action: We will provide experiential learning opportunities for young people through our Treehouse Residential Centre				
124	Treehouse: Promote the services offered through the residential centre to East Ayrshire Headteachers	LDM		Confirmed booking from Dalrymple PS, scheduled for May 2022.
125	Treehouse: Work with community groups to raise the profile of the residential centre	LDM		Activities programme and catering options updated and promotional material prepared for promotion with schools and uniform groups.
126	Treehouse: Organise 5 week long residential, experiential programmes each year	LDM		As part of the reactivation plan we have successfully recruited 3 new Bank Customer Experience Assistants to work within the Centre.

 - No Progress
  - Some Progress
  - Complete

INVESTING IN OUR PEOPLE & EMBRACING OUR VALUES				
Delivery Plan Output		Lead	Progress	Comments
Action: We will design and implement a People Strategy that will support and facilitate the delivery of operational objectives				
127	Development of an Equality and Diversity Statement	HCS		Partially complete and included within the Corporate Delivery Plan 2022-24
128	Implementation of an Organisational Development Framework	HCS		Included within the Corporate Delivery Plan 2022-24
Action: We will embed and develop our 'Exchange' programme in all forums and structures for communication				
Actions Complete				
Action: We will develop a Volunteer Strategy We will develop a Volunteer Strategy that will allow employees and the community to engage in volunteering opportunities				
139	Develop a Community Path Warden Scheme and recruit 3 volunteer path wardens each year	LDM		Further promotion of scheme presented at Kilmarnock and District Ramblers Association meeting. This proposal for the scheme will be <u>carried forward to 2022-24</u>
140	Develop and deliver a programme of mentoring and training	LDM		<u>Carried forward to 2022-24</u>
143	Develop a Volunteer Strategy which identifies opportunities for: Regular volunteer placements, Community volunteer events, School work experience, Modern apprenticeships, Employee volunteering days	LDM		Volunteer Procedure Protocol developed and available to advise staff how to deal with any volunteer enquiry as well as how to take forward a volunteering opportunity including the advertisement of the position and application process. In addition the next steps for training, support and supervising volunteers have been outlined. Develop volunteering roles across all areas of the Trust will carry forward to 2022-24.

Action: We will review our annual employee review process and develop a Review and Development Programme that ensures BEST practice across all of our service areas.






Actions Complete








Action: We will designate Trustees as ambassadors for key areas of the business

Actions Complete



CREATING A SOLID FOUNDATION FOR GROWTH

Delivery Plan Output		Lead	Progress	Comments
Action: We will develop and maintain robust health and safety and risk management processes to ensure that our people and customers are in a safe environment				
Actions Complete				
Action: To review and continually improve and enhance our information technology infrastructure and operations and to embrace digital technology				
156	Develop stock and ordering system to streamline processes	HCS		Partially complete and forms part of the Digital Transformation Action Plan
Action: We will review, develop and maintain robust financial processes to ensure financial sustainability of our organisation				
157	Design Financial Strategy	HCS		Financial Strategy has been developed and presented to the Board in February 2022.
Action: We will carry out a review of income and expenditure across all cost centre and expenditure codes to streamline financial monitoring and reporting				
Actions Complete				
Action: We will review the existing Service Level Agreement with East Ayrshire Council to ensure high quality service delivery				
165	Revised Service Level Agreement for the period 2020 – 2025	CO		Revised service level agreement will be in draft form by December 2021 and presented to Board in February 2022.
Action: We will develop partnerships and collaborative working arrangements with partners and key stakeholders				
Actions Complete				
166	Identify and explore all opportunities to promote full East Ayrshire Leisure offering	CO		
167	Establish a liaison group at shared sites to ensure cross service promotion and integrated working arrangements	CO		

Action: We will create a programme of internal and external review, analysing both customer and staff satisfaction levels, highlighting areas of success and identifying areas for development				
169	Mystery shopping carried out annually	R&BDM		Included within the Corporate Delivery Plan 2022-24 – linked to Output 17
170	Staff satisfaction surveys carried out every two years	R&BDM		Included within the Corporate Delivery Plan 2022-24
Action: We will identify areas for growth across all areas of the Trust with a focus on retail, hospitality, membership and other key business areas.				
173	Development of a Retail Strategy to identify opportunities across venues and organisational areas	HCS		Included within the Corporate Delivery Plan 2022-24
174	Development of a range of membership packages	HCS		Partially complete and included within the Corporate Delivery Plan 2022-24
175	Development of a Hospitality Plan which identifies opportunities for bars, cafes, vending and event catering	HCS		Continue to develop the hospitality offer in conjunction with our programme. Work is underway developing a revised offer for reactivation of bars and improved vending offer. Partially complete, included within the Corporate Delivery Plan 2022-24
Action: We will create a robust performance framework and systems which will support all staff to successfully implement delivery planning priorities and improve workplace performance				
182	Design and implement key quality indicators in order to measure the quality of our performance	HCS		Partially complete, included within the Corporate Delivery Plan 2022-24
183	Review, measure, monitor and report upon key performance indicators	HCS		Partially complete, included within the Corporate Delivery Plan 2022-24

- No Progress

- Some Progress

- Complete

Protecting Our Environment				
Delivery Plan Output		Lead	Progress	Comments
Action: We will publish an annual Climate Change Declaration that outlines our carbon footprint and our priorities for carbon reduction				
186	Report on annual carbon use by April of each year	P&EDM		<u>Carried forward to 2022-24</u>
187	Develop an annual action plan to identify measures to reduce carbon use and improve environmental efficiency.	P&EDM		<u>Carried forward to 2022-24</u>
Action: We will participate in the VisitScotland Green Business Scheme to reduce the impact our organisation has on the environment				
188	Organise a liaison meeting with VisitScotland to identify key actions for inclusion within the Green Business Scheme	P&EDM		<u>Carried forward to 2022-24</u>
189	Develop an action plan to adopt the principles of the Green Business Scheme	P&EDM		<u>Carried forward to 2022-24</u>
190	Apply for accreditation within the scheme	P&EDM		<u>Carried forward to 2022-24</u>
191	Apply for Green Business Accreditation	P&EDM		<u>Carried forward to 2022-24</u>
Action: We will develop an organisational wide Sustainable Transport Strategy and embed the principles of Active and Sustainable Travel throughout our organisation, projects and programmes				
192	Establish a working group and agree a set of objectives and actions for the development of the strategy	P&EDM		<u>Carried forward to 2022-24</u>
193	Develop a Sustainable Transport Strategy which includes priorities for active travel including travel to work and travel for work, as well as opportunities for customers to access our facilities using sustainable transport choices	P&EDM		<u>Carried forward to 2022-24</u>
194	Carry out a programme of staff awareness sessions	P&EDM		<u>Carried forward to 2022-24</u>
195	Reduce staff mileage by 5%	P&EDM		Complete

KEY UPDATES

Insurance Claims

The following information provides an update on the number of live claims in progress during the period January – March 2022:-

Public Liability	3 claims ongoing
Employers' Liability	1 claim closed
Motor Claim	n/a

Gifts & Hospitality

No gifts or hospitality were received during this period.

Customer Complaints

During the January – March 2022 period 185 comments were received and logged by the Marketing & Development Team; 9 of these were complaints, and were categorised as follows:

Category	No Received	Stage 1 / 2	Status
Equipment/Resources	2	1	Responses provided
Events/Activities/Classes	2	1	Responses provided
Online payments/bookings/box office	1	1	Response provided
Other: <ul style="list-style-type: none">Ayrshire Athletics Arena – gatesGeneral Sports – COVID restrictionsMcIlvanney Campus – no accessRose Reilly Sports Centre - ball in garden	1 1 1	1 1 1	Telephone calls and left voice message, but never received any call back or further information. Email sent asking what venue it referred to, but never received a response back Response provided Response provided

Positive Comments

We received 32 positive comments during the period, some examples are shown below:

- Well done to everyone involved @EALeisure in bringing Grayson Perry Exhibition to Killie.
- Lovely to hear. I had one of the best hot chocolates there last week. (In relation to DI Café partnership with Mossiel Farm)
- Google Review 5* DCCP - Lovely place for walking, scenery plus nice cafe which is spotlessly clean.
- I would like to thank xxxx at the Hunter Centre for his continued support and dedicated service to the centre. Always keen to help out in any way.
- Just a quick note to extend my thanks to all staff involved today in making our granddaughter's first birthday party a great experience. The caretakers were fantastic. Thank you so much. (Darvel Town Hall)



FINANCIAL PERFORMANCE TO 31.03.22

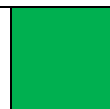


FINANCIAL PERFORMANCE KEY:

ADVERSE:



FAVOURABLE:





Notes:

All financial figures are cumulative to the current quarter and project to the end of the financial year, i.e Qtr 3 shows the actual amounts for Qtr 1 - 3, combined with projections up to the end of March 2022.

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.



PERFORMANCE & AUDIT SUB COMMITTEE

2021/22 East Ayrshire Leisure budget

As at 31st March 2022 – Quarter 4 – Period 12

The actual outturn for East Ayrshire Leisure at 31st March 2022 is a favourable position of £455,644 which will be reduced to £132,014 following designation of items below totalling £323,630. This position has been achieved due to substantial external funding (£246k) which the Trust has successfully obtained this financial year.

The following items require funding designated for the future financial year to support service improvement and development.

Items for Designation	
CTH Lighting Desk - cost £12,600 less 21/22 depn £2,520 = £10,050	10,050
Spin Bikes - RRSC	34,635
RAW Signage (partially funded by SAC - SAC funds received 21/22 but deferred to 22/23)	8,730
Sport Equipment & Repairs	4,335
Secure Portal Upgrade	4,880
DCCP Canopy - additional works (incl replacement furniture)	14,500
People Counters	3,000
Increase in Retained Reserves	20,000
Venue Equipment	3,000
Box Office/Booking System	12,000
Valuations	4,000
Ebooks	4,500
Equipment Replacement Programme	200,000
TOTAL	£323,630

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 2021/22 savings approved at 23rd February 2021 Board.

Service Division	Annual Budget 2021/22	Annual Budget 2021/22 Qtr 1	Annual Budget 2021/22 Qtr 2	Annual Budget 2021/22 Qtr 3	Annual Budget 2021/22 Qtr 4
EXECUTIVE MANAGEMENT	1,287,410	1,274,150	1,269,180	1,185,790	1,446,230
CULTURAL DEVELOPMENT	1,451,970	1,445,990	1,449,920	1,490,660	1,494,710
COMMUNITY & PERFORMING ARTS DEVELOPMENT	418,150	402,820	407,180	425,390	444,710
LEISURE DEVELOPMENT	652,640	610,950	610,950	633,350	648,660
SPORTS DEVELOPMENT	630,770	594,520	611,270	671,690	750,690
PROPERTY & ESTATES DEVELOPMENT	193,800	195,370	195,370	199,430	199,430
SAVINGS TO BE ALLOCATED	(2,880)				
TOTAL	4,634,740	4,523,800	4,543,870	4,606,310	4,984,430
Management Fee	(4,634,740)	(4,523,800)	(4,530,190)	(4,583,930)	(4,966,120)
Reserves	0	0	(13,680)	(22,380)	(18,310)
TOTAL	0	0	0	0	0

Venues Allocated to Sport Areas:-

Community Sports Area 1	Grange Leisure Centre, St Josephs Leisure Centre, William McIlvanney Campus, Stewarton Sports Centre, Ayrshire Athletics Arena, Scott Ellis Pavilion
Community Sports Area 2	Auchinleck Leisure Centre, Doon Valley Leisure Centre, Loudoun Leisure Centre, Hunter Fitness Suite, Barony Campus, Annanhill Golf Course
Sports Temporary Facilities	Venues temporarily held by EALT, operating under management arrangements with community groups, funded by EAC



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

Columns 1 and 2 refer to information for prior year; 1st column provides prior year information for same period and the 2nd column provides final position for full prior year

Column 3 refers to the Service Areas

Column 4 provides the Annual Budget – this reconciles to the Annual Budget table above

Column 5 provides the Actuals to date (including commitments)

Column 6 provides Actual Expenditure as a % of Annual Budget

Column 7 provides anticipated projected position for end of financial year

Column 8 provides anticipated projected variance for current financial year – (Favourable)/Adverse)

Final column provides quick review of favourable/adverse position

TABLE A – OVERALL NET POSITION

Revised Actual Exp. to 31/3/21	Actual Out-turn to 31/03/21	Service Division	Annual Estimate 2021/22	Revised Actual Exp. to 31/3/22	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/22	Variance (Favourable) / Adverse	
1,535,894	1,535,894	EXECUTIVE MANAGEMENT	1,446,230	1,271,227	88%	1,271,227	(175,003)	
1,141,275	1,141,275	Corporate Services	1,094,940	927,465	85%	927,465	(167,475)	
326,915	326,915	Relationship & Business Development	399,210	332,586	83%	332,586	(66,624)	
67,704	67,704	Hospitality Development	(47,920)	11,177	-23%	11,177	59,097	
1,341,352	1,341,352	CULTURAL DEVELOPMENT	1,494,710	1,459,442	98%	1,459,442	(35,268)	
267,477	267,477	Cultural Development	283,050	280,864	99%	280,864	(2,186)	
99,890	99,890	Collection Care	106,090	121,783	115%	121,783	15,693	
27,424	27,424	Visual Arts Development	38,480	31,623	82%	31,623	(6,857)	
108,332	108,332	Museums Development	122,530	124,510	102%	124,510	1,980	
838,229	838,229	Libraries	944,560	900,661	95%	900,661	(43,899)	
616,339	616,339	COMMUNITY & PERFORMING ARTS DEVELOPMENT	444,710	480,694	108%	480,694	35,984	
295,326	295,326	Performing Arts Development	233,290	206,584	89%	206,584	(26,706)	
303,399	303,399	Community Development	229,820	269,971	117%	269,971	40,151	
17,614	17,614	Community Lettings & Co-Managed Centres - Lets	(18,400)	4,139	-22%	4,139	22,539	
645,901	645,901	LEISURE DEVELOPMENT	648,660	566,145	87%	566,145	(82,515)	
155,475	155,475	Leisure Development	159,490	111,316	70%	111,316	(48,174)	
455,335	455,335	Countryside & Visitors Development	443,240	406,336	92%	406,336	(36,904)	
35,369	35,369	Green Infrastructure Development	45,930	48,292	105%	48,292	2,362	
(278)	(278)	Volunteer Development	0	201		201	201	
1,339,265	1,339,265	SPORTS DEVELOPMENT	750,690	817,724	109%	817,724	67,034	
237,819	237,819	Sports Development Team	264,000	193,956	73%	193,956	(70,044)	
440,555	440,555	Community Sports Area 1	71,170	200,210	281%	200,210	129,040	
642,071	642,071	Community Sports Area 2	382,730	397,989	104%	397,989	15,259	
8,416	8,416	Temporary Facilities	9,380	9,576	102%	9,576	196	
10,404	10,404	Football Venues	23,410	15,992	68%	15,992	(7,418)	
174,754	174,754	PROPERTY & ESTATES DEVELOPMENT	199,430	177,918	89%	177,918	(21,512)	
5,653,506	5,653,506	TOTAL	4,984,430	4,773,150	96%	4,773,150	(211,280)	
(4,857,569)	(4,857,569)	Management Fee	(4,966,120)	(4,966,113)	100%	(4,966,113)	7	
795,937	795,937	TOTAL	18,310	(192,963)		(192,963)	(211,273)	
(9,510)	(9,510)	Trs From Reserves	(18,310)	(18,305)	100%	(18,305)	5	
786,427	786,427	TOTAL (after transfer from reserves)	0	(211,268)		(211,268)	(211,268)	
(1,296,866)	(1,296,866)	External Funding	0	(244,377)		(244,377)	(244,377)	
(510,439)	(510,439)	TOTAL (after external funding)	0	(455,644)	0	(455,644)	(455,644)	

TABLE B – OVERALL NET POSITION

Revised Actual Exp. to 31/3/21	Actual Out-turn to 31/03/21	Service Division	Annual Estimate 2021/22	Revised Actual Exp. to 31/3/22	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/22	Variance (Favourable) / Adverse	
(506,021)	(506,021)	Income From Charitable Activities	(2,272,760)	(1,576,461)	69%	(1,576,461)	696,299	
(4,857,569)	(4,857,569)	Management Fee	(4,966,120)	(4,966,113)	100%	(4,966,113)	7	
(1,296,866)	(1,296,866)	External Funding	0	(244,377)		(244,377)	(244,377)	
(6,660,456)	(6,660,456)	TOTAL INCOME	(7,238,880)	(6,786,951)	94%	(6,786,951)	451,929	
4,535,999	4,535,999	Employee Costs	5,269,310	4,715,489	89%	4,715,489	(553,821)	
39,012	39,012	Transport Costs	38,540	40,318	105%	40,318	1,778	
483,462	483,462	Premises Costs	572,660	546,910	96%	546,910	(25,750)	
844,823	844,823	Supplies & Services	1,055,820	757,089	72%	757,089	(298,731)	
12,880	12,880	Financing Costs	5,840	8,360		8,360	2,520	
187,400	187,400	Support Costs	187,400	187,400		187,400	0	
55,950	55,950	Governance Costs	127,620	94,045	74%	94,045	(33,575)	
6,159,527	6,159,527	TOTAL RESOURCES EXPENDED	7,257,190	6,349,611	87%	6,349,611	(907,579)	
(500,929)	(500,929)	NET POSITION	18,310	(437,339)		(437,339)	(455,649)	
(9,510)	(9,510)	Trs From Reserves	(18,310)	(18,305)	100%	(18,305)	5	
(510,439)	(510,439)	TOTAL (after transfer from reserves)	0	(455,644)		(455,644)	(455,644)	



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

Revised Actual Exp. to 31/3/21	Actual Out- turn to 31/03/21	EXECUTIVE MANAGEMENT	Annual Estimate 2021/22	Revised Actual Exp. to 31/3/22	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/22	Variance (Favourable) / Adverse
1,141,275	1,141,275	Corporate Services	1,094,940	927,465	85%	927,465	(167,475)
326,915	326,915	Relationship & Business Development	399,210	332,586	83%	332,586	(66,624)
67,704	67,704	Hospitality Development	(47,920)	11,177	-23%	11,177	59,097
(1,296,866)	(1,296,866)	External Funding	0	(244,377)		(244,377)	(244,377)
(4,857,569)	(4,857,569)	Management Fee	(4,966,120)	(4,966,113)	100%	(4,966,113)	7
(470)	(470)	Trs From Reserves	(4,220)	(4,220)		(4,220)	0
(4,619,011)	(4,619,011)	TOTAL OBJECTIVE ANALYSIS	(3,524,110)	(3,943,482)	112%	(3,943,482)	(419,372)
(186,154)	(186,154)	Income From Charitable Activities	(360,040)	(233,277)	65%	(233,277)	126,763
(4,857,569)	(4,857,569)	Management Fee	(4,966,120)	(4,966,113)	100%	(4,966,113)	7
(1,296,866)	(1,296,866)	External funding	0	(244,377)		(244,377)	(244,377)
(6,340,589)	(6,340,589)	TOTAL INCOME	(5,326,160)	(5,443,767)	102%	(5,443,767)	(117,607)
1,030,393	1,030,393	Employee Costs	1,218,540	1,055,148	87%	1,055,148	(163,392)
0	0	Transport Costs	0	0		0	0
3,095	3,095	Premises Costs	2,680	5,545	207%	5,545	2,865
478,805	478,805	Supplies & Services	361,550	226,072	63%	226,072	(135,478)
0	0	Financing Costs	0	0		0	0
187,400	187,400	Support Costs	187,400	187,400		187,400	0
22,355	22,355	Governance Costs	36,100	30,340	84%	30,340	(5,760)
1,722,048	1,722,048	TOTAL RESOURCES EXPENDED	1,806,270	1,504,505	83%	1,504,505	(301,765)
(4,618,541)	(4,618,541)	NET POSITION	(3,519,890)	(3,939,262)	112%	(3,939,262)	(419,372)
(470)	(470)	Trs From Reserves	(4,220)	(4,220)		(4,220)	0
(4,619,011)	(4,619,011)	TOTAL (after transfer from reserves)	(3,524,110)	(3,943,482)	112%	(3,943,482)	(419,372)

Comments
<p>Executive Management encompasses Trust Board, Chief Officer and Corporate Services. Corporate Services has responsibility for the following areas: Relationship & Business Development, Finance & Business Development, Business Support and Hospitality. The Hospitality Service operates across all operational services.</p> <p><u>Corporate Services</u> Favourable variance relates mainly to vacancies which have not be filled in financial year 2021-22 and additional income generation from NHS relating to support of Testing and Vaccination Programme.</p> <p><u>Relationship & Business Development</u> Savings from reduced service provision during this period.</p> <p><u>Hospitality</u> Reduction in Hospitality Income due to closure of venues and postponement of events offset by savings from reduced hospitality provision during facilities closures.</p>

CULTURAL DEVELOPMENT SERVICE ANALYSIS

Revised Actual Exp. to 31/3/21	Actual Out- turn to 31/03/21	CULTURAL DEVELOPMENT	Annual Estimate 2021/22	Revised Actual Exp. to 31/3/22	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/22	Variance (Favourable) / Adverse
267,477	267,477	Cultural Development	283,050	280,864	99%	280,864	(2,186)
99,890	99,890	Collection Care	106,090	121,783	115%	121,783	15,693
27,424	27,424	Visual Arts Development	38,480	31,623	82%	31,623	(6,857)
108,332	108,332	Museums Development	122,530	124,510	102%	124,510	1,980
838,229	838,229	Libraries	944,560	900,661	95%	900,661	(43,899)
(1,720)	(1,720)	Trs From Reserves	(3,770)	(3,765)	100%	(3,765)	5
1,339,632	1,339,632	TOTAL OBJECTIVE ANALYSIS	1,490,940	1,455,677	98%	1,455,677	(35,263)
(61,548)	(61,548)	Income From Charitable Activities	(90,500)	(69,619)	77%	(69,619)	20,881
(61,548)	(61,548)	TOTAL INCOME	(90,500)	(69,619)	77%	(69,619)	20,881
1,069,957	1,069,957	Employee Costs	1,179,450	1,156,810	98%	1,156,810	(22,640)
7,744	7,744	Transport Costs	11,980	12,059	101%	12,059	79
134,804	134,804	Premises Costs	139,340	142,900	103%	142,900	3,560
181,742	181,742	Supplies & Services	237,950	209,950	88%	209,950	(28,000)
5,560	5,560	Financing Costs	0	0		0	0
0	0	Support Costs	0	0		0	0
3,093	3,093	Governance Costs	16,490	7,341	45%	7,341	(9,149)
1,402,900	1,402,900	TOTAL RESOURCES EXPENDED	1,585,210	1,529,060	96%	1,529,060	(56,150)
1,341,352	1,341,352	NET POSITION	1,494,710	1,459,442	98%	1,459,442	(35,268)
(1,720)	(1,720)	Trs From Reserves	(3,770)	(3,765)	100%	(3,765)	5
1,339,632	1,339,632	TOTAL (after transfer from reserves)	1,490,940	1,455,677	98%	1,455,677	(35,263)

Comments
<p>Cultural Development has responsibility for the operation of museums, EAC collections, statutory library provision and the creative programming across all venues with a particular focus on museums, libraries, visual arts and exhibitions. The team is made up of key service areas: Collection Care Development, Visual Arts Development, Museums Development, Libraries Operations and Libraries Programmes.</p> <p><u>Cultural Development - Overall</u></p> <p>£21k income shortfall due to covid restrictions having an impact on planned library events and cultural exhibitions and the introduction of cashless processes across venues. This has been funded from £56.1k in savings predominantly from vacancies not being filled to offset the income shortfall.</p>

COMMUNITY & PERFORMING ARTS DEVELOPMENT SERVICE ANALYSIS

Revised Actual Exp. to 31/3/21	Actual Out- turn to 31/03/21	COMMUNITY & PERFORMING ARTS DEVELOPMENT	Annual Estimate 2021/22	Revised Actual Exp. to 31/3/22	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/22	Variance (Favourable) / Adverse
295,326	295,326	Performing Arts Development	233,290	206,584	89%	206,584	(26,706)
303,399	303,399	Community Development	229,820	269,971	117%	269,971	40,151
17,614	17,614	Community Lettings & Co-Managed Centres - Lets	(18,400)	4,139	-22%	4,139	22,539
0	0	Trs From Reserves	(1,850)	(1,850)		(1,850)	0
616,339	616,339	TOTAL OBJECTIVE ANALYSIS	442,860	478,844	108%	478,844	35,984
(26,452)	(26,452)	Income From Charitable Activities	(628,340)	(353,388)	56%	(353,388)	274,952
(26,452)	(26,452)	TOTAL INCOME	(628,340)	(353,388)	56%	(353,388)	274,952
436,390	436,390	Employee Costs	524,030	424,329	81%	424,329	(99,701)
0	0	Transport Costs	0	0		0	0
176,694	176,694	Premises Costs	226,370	204,333	90%	204,333	(22,037)
26,624	26,624	Supplies & Services	274,300	169,835	62%	169,835	(104,465)
0	0	Financing Costs	1,850	4,370		4,370	2,520
0	0	Support Costs	0	0		0	0
3,083	3,083	Governance Costs	46,500	31,214	67%	31,214	(15,286)
642,791	642,791	TOTAL RESOURCES EXPENDED	1,073,050	834,082	78%	834,082	(238,968)
616,339	616,339	NET POSITION	444,710	480,694	108%	480,694	35,984
0	0	Trs From Reserves	(1,850)	(1,850)		(1,850)	0
616,339	616,339	TOTAL (after transfer from reserves)	442,860	478,844	108%	478,844	35,984

Comments
<p>Community & Performing Arts Development has responsibility for Cumnock Town Hall, the Palace Theatre and Grand Hall and Community Venues across East Ayrshire and works with a range of local, regional, national providers and commercial companies to deliver high profile events and opportunities through our full range of venues with both a local and regional focus. The team is made up of 2 key service areas: Performing Arts Development and Community Development.</p> <p><u>Community & Performing Arts Development - Overall</u> £275k income shortfall due to closure of venues and Grand Hall being used by NHS until August. These shortfalls have been offset by £239k in savings predominantly from vacancies not being filled and bank staffing budgets not being required due to restrictions in addition to £139.3k projected in savings across the rest of expenditure.</p>

LEISURE DEVELOPMENT SERVICE ANALYSIS

Revised Actual Exp. to 31/3/21	Actual Out- turn to 31/03/21	LEISURE DEVELOPMENT	Annual Estimate 2021/22	Revised Actual Exp. to 31/3/22	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/22	Variance (Favourable) / Adverse
155,475	155,475	Leisure Development	159,490	111,316	70%	111,316	(48,174)
455,335	455,335	Countryside & Visitors Development	443,240	406,336	92%	406,336	(36,904)
35,369	35,369	Green Infrastructure Development	45,930	48,292	105%	48,292	2,362
(278)	(278)	Volunteer Development	0	201		201	201
0	0	Trs From Reserves	(6,010)	(6,010)		(6,010)	0
645,901	645,901	TOTAL OBJECTIVE ANALYSIS	642,650	560,135	87%	560,135	(82,515)
(16,450)	(16,450)	Income From Charitable Activities	(56,340)	(21,366)	38%	(21,366)	34,974
(16,450)	(16,450)	TOTAL INCOME	(56,340)	(21,366)	38%	(21,366)	34,974
516,341	516,341	Employee Costs	581,380	474,874	82%	474,874	(106,506)
17,267	17,267	Transport Costs	19,930	17,220	86%	17,220	(2,710)
55,410	55,410	Premises Costs	50,510	53,918	107%	53,918	3,408
69,752	69,752	Supplies & Services	34,270	30,070	88%	30,070	(4,200)
0	0	Financing Costs	2,010	2,010		2,010	0
0	0	Support Costs	0	0		0	0
3,582	3,582	Governance Costs	16,900	9,419	56%	9,419	(7,481)
662,351	662,351	TOTAL RESOURCES EXPENDED	705,000	587,512	83%	587,512	(117,488)
645,901	645,901	NET POSITION	648,660	566,145	87%	566,145	(82,515)
0	0	Trs From Reserves	(6,010)	(6,010)		(6,010)	0
645,901	645,901	TOTAL (after transfer from reserves)	642,650	560,135	87%	560,135	(82,515)

Comments
<p>Leisure Development has responsibility over more passive recreation and outdoor pursuits that introduce people to physical activity. The team includes the following services: Countryside & Visitor Development, Green Infrastructure and Volunteer Development.</p> <p><u>Leisure Development - Overall</u></p> <p>£35k income shortfall due to events being scaled back or postponement due to Covid restrictions. Furthermore, no income in the current financial year from the residential centre, however we are optimistic that bookings for next financial year will materialise. A marketing campaign has been developed to raise the profile of the Residential Centre with schools and uniform groups. This income shortfall has been offset by £117.5k in expenditure savings relating predominantly to vacancies not being filled.</p>

SPORTS DEVELOPMENT SERVICE ANALYSIS

Revised Actual Exp. to 31/3/21	Actual Out- turn to 31/03/21	SPORTS DEVELOPMENT	Annual Estimate 2021/22	Revised Actual Exp. to 31/3/22	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/22	Variance (Favourable) / Adverse
237,819	237,819	Sports Development Team	264,000	193,956	73%	193,956	(70,044)
440,555	440,555	Community Sports Area 1	71,170	200,210	281%	200,210	129,040
642,071	642,071	Community Sports Area 2	382,730	397,989	104%	397,989	15,259
8,416	8,416	Temporary Facilities	9,380	9,576	102%	9,576	196
10,404	10,404	Football Venues	23,410	15,992	68%	15,992	(7,418)
(7,320)	(7,320)	Trs From Reserves	(2,460)	(2,460)		(2,460)	0
1,331,945	1,331,945	TOTAL OBJECTIVE ANALYSIS	748,230	815,264	109%	815,264	67,034
(215,417)	(215,417)	Income From Charitable Activities	(1,137,540)	(898,810)	79%	(898,810)	238,730
(215,417)	(215,417)	TOTAL INCOME	(1,137,540)	(898,810)	79%	(898,810)	238,730
1,323,160	1,323,160	Employee Costs	1,583,370	1,437,221	91%	1,437,221	(146,149)
12,675	12,675	Transport Costs	3,880	10,291	265%	10,291	6,411
110,465	110,465	Premises Costs	150,760	137,217	91%	137,217	(13,543)
77,225	77,225	Supplies & Services	136,610	114,095	84%	114,095	(22,515)
7,320	7,320	Financing Costs	1,980	1,980		1,980	0
0	0	Support Costs	0	0		0	0
23,838	23,838	Governance Costs	11,630	15,731	135%	15,731	4,101
1,554,682	1,554,682	TOTAL RESOURCES EXPENDED	1,888,230	1,716,534	91%	1,716,534	(171,696)
1,339,265	1,339,265	NET POSITION	750,690	817,724	109%	817,724	67,034
(7,320)	(7,320)	Trs From Reserves	(2,460)	(2,460)		(2,460)	0
1,331,945	1,331,945	TOTAL (after transfer from reserves)	748,230	815,264	109%	815,264	67,034

Comments

Sports Development has responsibility for programming activities within our community leisure centres and promotion of sports including badminton, football, gymnastics and swimming, as well as working with key local partners. The team manages our gyms and fitness programme and will work with EA Vibrant Communities in encouraging physical activity. The team has key service areas: Sport Operations, Community Sport Development, Fitness Development and Activity and Coaching Development.

Income

£238.7k income shortfall due predominantly to the reasons noted below. Income moved favourably by £127.3k since Qtr 3 projection - performed better than had anticipated after the festive period.

- Community spaces and indoor sports hall hire not being fully utilised due to restrictions, limited return of local clubs and community organisations.
- High level of membership cancellations during lockdown - Fitness Membership structure has been reviewed resulting in the categories being stream lined and pricing reduced to support communities back into physical activity.
- Limited sports coaching due to the restrictions has made it difficult to fully develop a sustainable sports coaching programme at present. Kids activities sessions have recently resumed.
- Restrictions impacting on our capacity and ability to take the same level of SGP bookings.
- Learn to swim programme has resumed but we are still unable to welcome back all levels of ability due to a lack of qualified staff.
- Parties have restarted but limited to 1 per day.
- Limited capacity within the gym and classes due to the current restrictions combined with a reduced membership rate has had a detrimental impact on our PAYG offer and users.
- Restrictions on sports equipment hire has affected the income target attached to the hire of the golf boards.
- Limited return of aquatic clubs has also adversely affected public swim sessions and pool hire bookings.

Expenditure

Income shortfall offset against £146k staffing savings in year due to not being able to fill all vacancies and high staff turnover within the year. £25k savings across other expenditure due to lower water costs, equipment purchases and servicing and subsequent repair work scheduled for the year not being completed in time and PRS being much lower than anticipated due to closure times and credits received for the prior year.

PROPERTY & ESTATES DEVELOPMENT SERVICE ANALYSIS

Revised Actual Exp. to 31/3/21	Actual Out- turn to 31/03/21	PROPERTY & ESTATES DEVELOPMENT	Annual Estimate 2021/22	Revised Actual Exp. to 31/3/22	Actual Exp as % of Annual Estimate	Actual Out-turn to 31/03/22	Variance (Favourable) / Adverse
174,754	174,754	Property & Estates Development	199,430	177,918	89%	177,918	(21,512)
0	0	Trs From Reserves	0	0		0	0
174,754	174,754	TOTAL OBJECTIVE ANALYSIS	199,430	177,918	89%	177,918	(21,512)
0	0	Income From Charitable Activities	0	0		0	0
0	0	TOTAL INCOME	0	0		0	0
159,758	159,758	Employee Costs	182,540	167,107	92%	167,107	(15,433)
1,327	1,327	Transport Costs	2,750	748	27%	748	(2,002)
2,995	2,995	Premises Costs	3,000	2,997	100%	2,997	(3)
10,674	10,674	Supplies & Services	11,140	7,067	63%	7,067	(4,073)
0	0	Financing Costs	0	0		0	0
0	0	Support Costs	0	0		0	0
0	0	Governance Costs	0	0		0	0
174,754	174,754	TOTAL RESOURCES EXPENDED	199,430	177,918	89%	177,918	(21,512)
174,754	174,754	NET POSITION	199,430	177,918	89%	177,918	(21,512)
0	0	Trs From Reserves	0	0		0	0
174,754	174,754	TOTAL (after transfer from reserves)	199,430	177,918	89%	177,918	(21,512)

Comments
<p>Property & Estates Development was a new service area created 2020/21 as part of the management review and has responsibility for co-ordinating the management, maintenance, health and safety and development of the facilities within East Ayrshire Leisure's remit. Maintaining and developing high quality facilities is paramount for the growth of our business. The team includes facility and estate management and sustainable development and will lead on our environmental responsibilities through the implementation of our annual Climate Change Declaration. The creation of this dedicated team has released managers from various premise management responsibilities to allow them to focus on the development of the programmes and services to our customers.</p> <p><u>Expenditure</u> £15.4k employee cost savings due to a vacancy within the Service which has now been filled.</p>



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”. In June 2021, The Board allocated a further £110k to Retained Reserves to bring Reserves up to £250k, which equates to approx a payroll.

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

RESERVES AS AT 31 MARCH 2022

Summary

UNRESTRICTED RESERVES	2020/21 b/f	2020/21 SURPLUS	BALANCE 31 March 2021	APPROVED ALLOCATIONS	REVISED BALANCE	PROPOSED DRAWDOWN	Q1	Q2	Q3	Q4	BALANCE	NOTES
RETAINED RESERVES	140,000		140,000	110,000	250,000						250,000	
UNUSEABLE RESERVES				27,380	27,380		0	0	0	5,840	21,540	
UNALLOCATED RESERVES		510,439	510,439	-130,750	379,689						379,689	
ALLOCATED RESERVES	10,000		10,000	10,840	20,840		3,765	0	8,700	0	8,375	see Allocated Table
MGTR FUNDS	39,670		39,670		39,670		(28,033)				67,703	
FIXED ASSET RESERVE	34,920		34,920		34,920						34,920	
HOLIDAY PAY PROVISION	(60,874)		(60,874)		(60,874)						(60,874)	
TOTAL UNRESTRICTED RESERVES	163,716	510,439	674,156	17,470	691,625	0	(24,268)	0	8,700	5,840	701,353	

Allocated Reserves Analysis

ALLOCATED RESERVES	2020/21 b/f	2020/21 SURPLUS	BALANCE 31 March 2021	APPROVED ALLOCATIONS	REVISED BALANCE	Q1	Q2	Q3	Q4	BALANCE	APPROVAL	STATUS	NOTES
Dower House Upgrades	10,000		10,000	-10,000	0					0	4 June 2019 Board, 1 June 2021	Complete	Redesignate as Unallocated Reserves
IT Equipment - Corporate Services, P&E			0	6,000	6,000			3,200		2,800	1 June 2021 Board	Ongoing	
Cultural - Additional Totem Signage at DI			0	3,765	3,765	3,765				0	1 June 2021 Board	Complete	
P&E - RAW Equipment			0	4,000	4,000			4,000		0	1 June 2021 Board	Complete	
Libraries - Lorensbergs Netloan Upgrade			0	1,600	1,600					1,600	1 June 2021 Board	Ongoing	
Box Office/Booking System			0	5,475	5,475			1,500		3,975	1 June 2021 Board	Ongoing	
TOTAL ALLOCATED RESERVES	10,000	0	10,000	10,840	20,840	3,765	0	8,700	0	8,375			



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.

GENERAL PROJECTS

Project	Partners	Balance b/f 01.04.21	Balance at 31.03.22	Expected Completion Date
Ayrshire Libraries Forum	North Ayrshire Council/South Ayrshire Council/East Ayrshire Council	(£4,015)	(£3,909)	Ongoing
Burns Birthday in Mauchline	Event Scotland	(£861)	(£861)	Ongoing
Kilmarnock Green Infrastructure	Sustrans	(£14,955)	(£14,955)	Ongoing
Digital Storyteller in Residence	Scottish Book Trust	(£2,416)	(£2,372)	Ongoing
Irvine Valley Trails 2019 onwards	LCTT, Transport Scotland, EAC Renewable Energy Fund	(£24,258)	£160,950	Ongoing
Dean Castle Event		£0	(£5,000)	Ongoing
SHOUT	EAC	(£5,000)	(£5,000)	Ongoing
Wifi Project	EAC	(£20,000)	(£19,700)	Ongoing
DCCP Parks for People (Jul 20-Mar 21)	HLF/EAC	(£15,500)	(£6,773)	Jun 2022
Grayson Perry	EALT	(£22,005)	(£6,686)	May 2022
Foster Carer Service - Memberships	EAC	(£4,000)	(£4,000)	Ongoing
Youth Memberships	EAC	£0	(£2,432)	Ongoing
Annick Valley Leisure Facilities	EAC	£0	(£199,029)	Ongoing
Patna Leisure Facilities	EAC	£0	(£810)	Ongoing
FutureMuseum.co.uk Redevelopment	Museum Gallery Scotland	£0	(£15,750)	Aug 2023
Seedscares: Future Proofing Nature	Creative Scotland	£0	(£3,574)	May 2022
Leisure at the Heart of All Communities	UK Government	£0	£34,345	Jun 2022
Fruit and Nut Tree Woodland	EAC	£0	£13,114	Sep 2022
Sharing Stories	SLIC via Scottish Government	£0	(£8,965)	Dec 2022

Additional Information

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.

Burns Birthday in Mauchline – The project normally takes place on the last Saturday in January at Burns House Museum, Mauchline Parish Church Halls and Mauchline Kirkyard. The family event which is funded by EventScotland is free and includes lots of Burns related activity including visual art, puppet making, Kirkyard tours with our partners Mauchline Burns Club, curator talks and a very special performance by pupils of Mauchline Primary School. The event did not take place in 2021 due to EventScotland funding being withdrawn due to Covid 19 but the 2022 event should be going ahead.

Kilmarnock Green Infrastructure - The design and feasibility work has been completed for the Kilmarnock Green Infrastructure Project. £300k has been secured from Sustrans for further design work for a multi-million pound application later in the year. A Project Board, chaired by East Ayrshire Leisure, has been established to oversee the development and implementation of this 18 mile cycle route project for Kilmarnock made up of officers from East Ayrshire Leisure, East Ayrshire Council and Ayrshire Roads Alliance.

Digital Storyteller in Residence - The project which was funded by the Scottish Book Trust has now come to an end. The initiative worked with people facing social isolation for whatever reason, to encourage participation in and the use of digital platforms to tell their own personal story. The Arts, Libraries and Museums Development team led the project with partners in Kilmarnock Station Railway Heritage Trust (KRSHT) and Vibrant Communities. The project was externally recognised by being shortlisted for Community Project of the Year at the Herald Society Awards. There is a surplus balance which Scottish Book Trust have said we can use towards further Digital Storytelling activities. We are currently paying for further training for KRSHT from the fund, and have invested in suitable transit cases to keep the kit safe when loaned out to our partners.

Irvine Valley Trails - The Renewable Energy Fund has agreed that the shortfall in spend in the development stage grant can be reallocated to the Trails capital grant of £213,964. The Irvine Valley Trails project also received funding from the Low Carbon Travel and Transport Fund and Transport Scotland to implement a series of routes throughout the Irvine Valley that support active travel. All funding is in place for this project and implementation started Autumn 2019.

Dean Castle Event - 2 funding bids will be submitted for this event – the outcome for the first submission is due June 2022 and the second bid still to be done. £5k has been identified as match funding. The event as a focal point for the reopening of the Castle will provide a celebratory, collaborative and high profile occasion through our confirmed partnerships with key Scottish cultural heavyweights including The Cumnock Tryst headed up by one of the world's most important composers, Sir James MacMillan, Professor Alistair McDonald - Composer and Sound Artist (Royal Conservatoire of Scotland), Professor Kirsteen McCue - historian and musician (Glasgow University, Burns Scotland), and Colin Currie – world renowned percussionist. The project will take a wholly accessible, collaborative and engaging approach, working with local pupils to

develop a newly commissioned work which will feature at the centre of the event, and welcoming on the spot participation for visitors through a unique series of percussion sculptures, an entirely new collection of musical instruments created by a local artist blacksmith for this event.

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

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 wifi across all East Ayrshire Leisure standalone venues.

DCCP Parks for People (Jul 20-Mar 21) – HLF have confirmed agreement that previously approved funding has been allocated to specific projects with an initial extension to May 2021. Given current restrictions HLF recognise a further extension may be necessary and have extended this to July 2021.

Grayson Perry – Our planned high profile exhibition for 2020/21 period ‘GRAYSON PERRY – The Vanity of Small Differences’ had to be postponed due to lockdown and travel restrictions. We are in communication with the lender to reorganise the exhibition for later in the year.

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.

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.

FutureMuseum.co.uk Redevelopment - A successful bid was submitted to Museums Galleries Scotland for £47,000 to support the redevelopment of the south west Scotland partnership project. The project is estimated to take two years to complete. FutureMuseum.co.uk is a partnership between East Ayrshire Leisure Trust, Dumfries and Galloway Council, North Ayrshire Council and South Ayrshire Council. The objectives of the project are to maximise access to the museum and gallery collections of the South-West of Scotland, to deepen people's understanding of the history of the region, and to drive footfall to the museums and galleries in the region. A redesign of the website will make it more accessible through improved design, site navigation and effective use of analytical tools to support content generation.

Seedscares: Future Proofing Nature - A successful bid for £13,524 was secured to make a body of new contemporary visual art work through an artist-led participatory programme with young people exploring art, activism and climate change in response to COP26 and to the SEEDSCAPES exhibition in the Dick Institute Main Gallery. In a mutual exchange of perspectives the work will reflect a unique moment in time considering nature, biodiversity and the environment. The work will be

presented through photography, exhibition and installation and will explore the vital interconnection between seeds, plants and human survival at this critical juncture in a world facing climate crisis and shaped by Covid.

Leisure at the Heart of All Communities – We have received funding through the UK Government's Community Renewal Fund for the Leisure at the Heart of All Communities project, which aims to bring physical activity, cultural, heritage and greenspace activities right to every community in East Ayrshire. The project will refurbish 4 buses to deliver programmes throughout East Ayrshire from March to August 2022.

Fruit and Nut Tree Woodland – Funding has been secured through the Scottish Government Naturalisation Funding, to transform an area of unimproved grassland to a community woodland which focuses on the principles of 'food for free'. The woodland will be developed and planted by East Ayrshire Woodland's trainees as well as through community events organised by East Ayrshire Leisure's Countryside Ranger Service. The project also includes the establishment of a native hedgerow along the boundary of the site. To date, the native hedgerow has been planted through a number of volunteer sessions involving Ayrshire College, young people being looked after by EAC, the local community and corporate volunteers from Teleperformance Call Centre based at Rowallan Business Park.

Sharing Stories – This Project is supported by the Scottish Government Public Library COVID Recovery Fund and Scottish Library & Information Council. The primary aim of this project is to engage, build relationships with, and provide support for the many different groups within our communities who may have been adversely affected by the Covid-19 pandemic. Also to help rebuild our library service post-pandemic by enabling us to provide more and varied activities and purchase additional related resources, which will hopefully encourage people back through our doors and generate an upturn in usage and footfall – both of which have seen a steep decline as a direct result of Covid-19. We will be focusing on supporting children with learning disabilities, dementia sufferers, adults with low literacy levels and ESOL.



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 (JANUARY – MARCH 2022)



EXTERNAL FUNDING APPROVED APPLICATIONS

(*denotes funding not available to East Ayrshire Council)

Section	Name of Funding Provider and Project	Value of Funding/Support	Received in 2021/22
Cultural Development	Scottish Book Trust - Live Literature	£525	£525
Cultural Development	Creative Scotland - Covid 19 Cancellation Fund for Cultural Organisations	£104,764	£104,764
Cultural Development	Creative Scotland - Cultural Recovery Fund	£149,566	£0
Cultural Development	EAC - Morton Hall & Library	£30,000	£0
Leisure Development	EAC - Queen's Jubilee Event	£25,000	£0

EXTERNAL FUNDING DECLINED APPLICATIONS

Section	Name of Funding Provider and Project	Value of Funding/Support	Comments
Leisure Development	SPT - KGIL Construction	£3,000,000	Application submitted too early in the funding cycle. Will be resubmitted for implementation in 2023.
Sports Development	SFA - Loudoun Pitch Replacement	£180,000	Overall score based on the criteria of the funding application was not high enough to be successful.
TOTAL		£3,180,000	



EXTERNAL FUNDING (APRIL 2021 – MARCH 2022)



EXTERNAL FUNDING APPROVED APPLICATIONS

(*denotes funding not available to East Ayrshire Council)

Section	Name of Funding Provider and Project	Value of Funding/Support	Received in 2021/22
Cultural Development	Creative Scotland - Seascapes Future Proofing Nature	£13,524	£10,143
Cultural Development	Museums Galleries Scotland - FutureMuseum.co.uk Redevelopment	£47,000	£11,750
Cultural Development	Creative Scotland - Cultural Venues Recovery Fund Round 2	£65,000	£65,000
Cultural Development	SLIC - #StreamMyStory	£2,738	£2,738

Cultural Development	Scottish Book Trust - Book Week Scotland	£750	£750
Cultural Development	Museums Galleries Scotland - Climate and the Landscape	£4,500	£0
Sports Development	October Activity Programme	£10,000	£10,000
Sports Development	Youth Memberships	£5,000	£5,000
Cultural Development	SLIC via Scottish Government - Sharing Stories	£15,000	£10,500
EALT	UK Government - Leisure at the Heart of All Communities	£668,422	£13,154

Leisure Development	EAC - Fruit and Nut Tree Woodland	£25,000	£0
Cultural Development	Scottish Book Trust - Live Literature	£525	£525
Cultural Development	Creative Scotland - Covid 19 Cancellation Fund for Cultural Organisations	£104,764	£104,764
Cultural Development	Creative Scotland - Cultural Recovery Fund	£149,566	£0
Cultural Development	EAC - Morton Hall & Library	£30,000	£0
Leisure Development	EAC - Queen's Jubilee Event	£25,000	£0
TOTAL		£1,166,789	£234,324

Note 1

East Ayrshire Leisure registered for Coronavirus Job Retention Scheme (CJRS) and in 2021/22 received £74,612.54 (£1,123,600.82 was received 2020/21). The scheme continued until September 2021. Grants received were dependant on the number of staff on furlough which reduced as our services were reactivated.

EXTERNAL FUNDING DECLINED APPLICATIONS

Section	Name of Funding Provider and Project	Value of Funding/Support	Comments
Leisure Development	BBC Children in Need - Residential or Overnight stays	£21,960	Primarily unsuccessful as East Ayrshire Leisure manages and operates the Treehouse Residential Centre and funder would not be willing to fund notional costs associated with the hire of our own venue.
Property & Estates Development	NatureScot - Annanhill Biodiversity Project	£149,742	Highly competitive. Funder wanted to see greater links to other greenspaces in the area.
Community & Performing Arts Development	HLF - Palace Redevelopment	£4,600,000	Advised too high an application & more heritage focus required.
Cultural Development	Scottish Book Trust - Live Literature	£3,500	High demand and more detail required. Can reapply for next round of funding.
Cultural Development	SLIC - SLIC Award	£5,000	High demand on fund
Leisure Development	VisitScotland Rural Tourism Infrastructure Fund	£115,815	Application not considered a high priority for RTIF fund

Leisure Development	SPT - KGIL Construction	£3,000,000	Application submitted too early in the funding cycle. Will be resubmitted for implementation in 2023.
Sports Development	SFA - Loudoun Pitch Replacement	£180,000	Overall score based on the criteria of the funding application was not high enough to be successful.
TOTAL		£8,076,017	

Debt Identified for Write off

Bad and doubtful debts totalling £402.71 has been identified for write-off. Provision exists within the Annual Accounts for debt write-off and is currently valued at £22,568.52.

Reason for write-off are summarised below:-

Reason for Write-Off	No of Accounts	Amount
Debt is uneconomical to pursue	-	-
Poor recovery prospects	1	£ 402.71
Total	1	£ 402.71



PERFORMANCE SCORECARD



EALT PI Report

Generated on: 01 June 2022 13:41

Cannot group these rows by Theme

Code & Short Name	Current Value	Current Target	Short Term Trend	Long Term Trend	Latest Note	Trend Chart	Traffic Light Icon																																																
EALT1 Average Days Lost per Employee	3.08	2	↓	↓	Absence during this period is predominantly due to long term absence. All staff are managed and supported in accordance with our Supporting Attendance at Work Policy.	<p>EALT1 Average Days Lost per Employee</p> <table><caption>EALT1 Average Days Lost per Employee Data</caption><thead><tr><th>Quarter</th><th>Value</th></tr></thead><tbody><tr><td>Q1 2016/17</td><td>1.8</td></tr><tr><td>Q2 2016/17</td><td>2.6</td></tr><tr><td>Q3 2016/17</td><td>2.56</td></tr><tr><td>Q4 2016/17</td><td>3.37</td></tr><tr><td>Q1 2017/18</td><td>2.98</td></tr><tr><td>Q2 2017/18</td><td>2.22</td></tr><tr><td>Q3 2017/18</td><td>3.9</td></tr><tr><td>Q4 2017/18</td><td>1.84</td></tr><tr><td>Q1 2018/19</td><td>0.85</td></tr><tr><td>Q2 2018/19</td><td>1.74</td></tr><tr><td>Q3 2018/19</td><td>2.06</td></tr><tr><td>Q4 2018/19</td><td>1.47</td></tr><tr><td>Q1 2019/20</td><td>0.95</td></tr><tr><td>Q2 2019/20</td><td>2.24</td></tr><tr><td>Q3 2019/20</td><td>1.97</td></tr><tr><td>Q4 2019/20</td><td>0.68</td></tr><tr><td>Q1 2020/21</td><td>0.36</td></tr><tr><td>Q2 2020/21</td><td>2.01</td></tr><tr><td>Q3 2020/21</td><td>1.21</td></tr><tr><td>Q4 2020/21</td><td>1.78</td></tr><tr><td>Q1 2021/22</td><td>1.92</td></tr><tr><td>Q2 2021/22</td><td>2.73</td></tr><tr><td>Q3 2021/22</td><td>3.08</td></tr></tbody></table>	Quarter	Value	Q1 2016/17	1.8	Q2 2016/17	2.6	Q3 2016/17	2.56	Q4 2016/17	3.37	Q1 2017/18	2.98	Q2 2017/18	2.22	Q3 2017/18	3.9	Q4 2017/18	1.84	Q1 2018/19	0.85	Q2 2018/19	1.74	Q3 2018/19	2.06	Q4 2018/19	1.47	Q1 2019/20	0.95	Q2 2019/20	2.24	Q3 2019/20	1.97	Q4 2019/20	0.68	Q1 2020/21	0.36	Q2 2020/21	2.01	Q3 2020/21	1.21	Q4 2020/21	1.78	Q1 2021/22	1.92	Q2 2021/22	2.73	Q3 2021/22	3.08	🔴
Quarter	Value																																																						
Q1 2016/17	1.8																																																						
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Q1 2021/22	1.92																																																						
Q2 2021/22	2.73																																																						
Q3 2021/22	3.08																																																						
EALT4 Culture	66,817	102,283	↓	↑	Performing Arts venues are now recovering well after the covid 19 closures. However, libraries, museums and community venues have shown a slower return to pre-covid numbers. This is being monitored and a new approach to these venues has been outlined within the Leisure Facility Strategy	<p>EALT4 Culture</p> <table><caption>EALT4 Culture Data</caption><thead><tr><th>Quarter</th><th>Value</th></tr></thead><tbody><tr><td>Q1 2016/17</td><td>112,660</td></tr><tr><td>Q2 2016/17</td><td>103,950</td></tr><tr><td>Q3 2016/17</td><td>122,310</td></tr><tr><td>Q4 2016/17</td><td>103,081</td></tr><tr><td>Q1 2017/18</td><td>101,541</td></tr><tr><td>Q2 2017/18</td><td>127,444</td></tr><tr><td>Q3 2017/18</td><td>83,510</td></tr><tr><td>Q4 2017/18</td><td>102,119</td></tr><tr><td>Q1 2018/19</td><td>104,892</td></tr><tr><td>Q2 2018/19</td><td>83,838</td></tr><tr><td>Q3 2018/19</td><td>85,593</td></tr><tr><td>Q4 2018/19</td><td>0</td></tr><tr><td>Q1 2019/20</td><td>19,656</td></tr><tr><td>Q2 2019/20</td><td>23,121</td></tr><tr><td>Q3 2019/20</td><td>3,876</td></tr><tr><td>Q4 2019/20</td><td>39,831</td></tr><tr><td>Q1 2020/21</td><td>44,606</td></tr><tr><td>Q2 2020/21</td><td>92,029</td></tr><tr><td>Q3 2020/21</td><td>66,817</td></tr></tbody></table>	Quarter	Value	Q1 2016/17	112,660	Q2 2016/17	103,950	Q3 2016/17	122,310	Q4 2016/17	103,081	Q1 2017/18	101,541	Q2 2017/18	127,444	Q3 2017/18	83,510	Q4 2017/18	102,119	Q1 2018/19	104,892	Q2 2018/19	83,838	Q3 2018/19	85,593	Q4 2018/19	0	Q1 2019/20	19,656	Q2 2019/20	23,121	Q3 2019/20	3,876	Q4 2019/20	39,831	Q1 2020/21	44,606	Q2 2020/21	92,029	Q3 2020/21	66,817	🔴								
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Q3 2020/21	66,817																																																						

Code & Short Name	Current Value	Current Target	Short Term Trend	Long Term Trend	Latest Note	Trend Chart	Traffic Light Icon
EALT5 Sport and Community Venues	176,725	179,362	▲	▲		<p>EALT5 Sport and Community Venues</p> <p>■ Quarters — Target (Quarters)</p>	▲
EALT6 Countryside	18,971	203,611	▼	▼	This figure does not reflect the numbers currently using Dean Castle Country Park or River Ayr Way. The people counters on the River Ayr Way are currently not working and so we can't monitor numbers using the route. We are currently introducing new people counters to all the countryside venues and will be adopting a new approach to monitoring numbers.	<p>EALT6 Countryside</p> <p>■ Quarters — Target (Quarters)</p>	●

Code & Short Name	Current Value	Current Target	Short Term Trend	Long Term Trend	Latest Note	Trend Chart	Traffic Light Icon
EALT7 Future Museum (Virtual Service)	54,623	50,000	↓	↓		<p>EALT7 Future Museum (Virtual Service)</p> <p>■ Quarters — Target (Quarters)</p>	✓
EALT8 Eastayshireleisure.com (Virtual Service)	138,743		↑	↑		<p>EALT8 Eastayshireleisure.com (Virtual Service)</p> <p>■ Quarters — Target (Quarters)</p>	?

PI Status	
	Alert
	Warning
	OK
	Unknown
	Data Only

Long Term Trends	
	Improving
	No Change
	Getting Worse

Short Term Trends	
	Improving
	No Change
	Getting Worse



RISK REGISTER



Risk Register

No.	Risk	Lead Officer	Likelihood	Impact	Total Risk Score (L x I)	Risk Category	Controls
1	There will be a 20% 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. • Best Value Review Implementation • PR; communications with staff and customers
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 & Development Managers	4	3	12 RISK APPETITE: OPEN (Reputation)	MEDIUM	<ul style="list-style-type: none"> • Business Planning • Positive Public Relations • Equipment Replacement Policy • Continued dialogue with Council • Employee Recognition Scheme • Review of B.E.S.T. practise - ongoing training and development of staff
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 Business Plan	Executive Managers & Development Managers	3	3	9 RISK APPETITE: OPEN (Reputation)	LOW	<ul style="list-style-type: none"> • Service reviews • Positive Public Relations • Service Level Agreements/Contracts

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 & Development Managers	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 • Environmental Management, Monitoring and reporting • Leisure Facility Strategy
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 & Development Managers	4	3	12 RISK APPETITE: OPEN (Financial)	MEDIUM	<ul style="list-style-type: none"> • Attendance at Events • Recruitment and Selection procedure • Review of Best Practise • Training and development programme

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 & Development Managers	3	2	6 RISK APPETITE: OPEN (Operation)	LOW	<ul style="list-style-type: none"> • Training and development • Ongoing review of Training matrices • Induction Process • Review of B.E.S.T. Practise • Recruitment and selection procedure • 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 & Development Managers	1	4	4 RISK APPETITE: CAUTIOUS (Compliance)	LOW	<ul style="list-style-type: none"> • Partnerships Working Groups • Service Level Agreement • Support from East Ayrshire Council

Risk Register - COVID 19

No.	Risk	Lead Officer	Likelihood	Impact	Total Risk Score (L x I)	Risk Category	Controls
8	There is a threat to the viability of current Business Operations arising from Business closure resulting in reduction in service provision and the inability to fully deliver Strategic Delivery Plan.	Executive Management and Development Managers	5	3	15 RISK APPETITE: OPEN (Operation)	MEDIUM	<ul style="list-style-type: none"> Consider and review the implications of COVID-19 including social distancing measures Review actions within the Strategic Delivery Plan Continue to deliver and develop alternative services Social media and website presence Customer e-newsletters Working from home policy
9	There is a risk to the organisation's management due to the high dependency on the 2 members of Executive Management Team and Development Management team.	Chief Officer	3	3	9 RISK APPETITE: OPEN (Operation)	LOW	<ul style="list-style-type: none"> Business Continuity Plan Monthly DMT Business Meetings Stress Management training Monitoring workloads through 1-1 meetings
10	There is a threat to the financial stability of the organisation resulting from loss of income. Ongoing closure could have an impact on the management fee received from East Ayrshire Council.	Executive Management and Development Managers	5	4	20 RISK APPETITE: OPEN (Financial)	HIGH	<ul style="list-style-type: none"> Continued dialogue with East Ayrshire Council in relation to the management fee Consider financial support available to the organisation as a result of the coronavirus Claim employees wages through Job Retention Schedule Monitor cashflow and reduce expenditure where possible Continued support & guidance given by Community Leisure UK Online services including sales Maximise additional income streams

No.	Risk	Lead Officer	Likelihood	Impact	Total Risk Score (L x I)	Risk Category	Controls
11	Reduction in workforce from COVID 19 resulting in loss of key staff and skills. Potential reduction in availability of all staff to resume roles resulting in inability to deliver all services with potential loss of income.	Executive Management and Development Managers	4	3	12 RISK APPETITE: OPEN (Operation)	MEDIUM	<ul style="list-style-type: none"> Alternative service provision – transformation Training & Development Programme Recruitment & Selection procedure Working from home policy
12	There is a risk to our reputation if we do not adhere to government guidance in an appropriate timely manner to ensure both staff and customers are in safe and controlled environment.	Executive Management and Development Managers	2	4	8 RISK APPETITE: OPEN (Reputation)	LOW	<ul style="list-style-type: none"> Follow and monitor Local, Scottish and National Government guidance Consider and review the implications of COVID-19 on the operation of our business Support from East Ayrshire Council Effective communication with staff and customers
13	There is a risk that East Ayrshire Leisure staff morale could be at an all time low due to the impact of COVID 19. (financial, bereavement, domestic circumstances, furlough etc)	Executive Management and Development Managers	3	4	12 RISK APPETITE: OPEN (Operation)	MEDIUM	<ul style="list-style-type: none"> Regular communication with staff Access to support services eg counselling services Staff trained in mental health practices Staff engagement programme Access to Support & Wellbeing Programme Staff Recognition Scheme
14	There is a risk that East Ayrshire Leisure will not be in a position to attract existing customers back to our facilities	Executive Management and	3	4	12 RISK APPETITE: OPEN	MEDIUM	<ul style="list-style-type: none"> Review of service provision – transformation Customer engagement programme Customer e-newsletters

No.	Risk	Lead Officer	Likelihood	Impact	Total Risk Score (L x I)	Risk Category	Controls
	due to financial constraints, alternative opportunities being available and loss of confidence.	Development Managers			(Financial)		
15	There is a risk that East Ayrshire Leisure's business continuity will be affected if key decisions cannot be made due to the inability to hold Trustee board and performance and audit meetings.	Chief Officer	1	5	5 RISK APPETITE: OPEN (Operation)	LOW	<ul style="list-style-type: none"> Regular liaison with Chair and Vice Chair Regular Trustee updates Review of agenda items Establishment of video conferencing
16	There is a risk that building and/or equipment maintenance and repairs cannot be carried out either due to lack of staff or companies no longer operating, resulting in non-service provision or loss/damage to our facilities.	Executive Management and Development Managers	2	4	8 RISK APPETITE: OPEN (Reputation)	LOW	<ul style="list-style-type: none"> Regular communication with EAC Business Continuity Plan Alternative service delivery Maintenance Liaison Group
17	There is a risk that capital projects cannot proceed which will impact on planned and unplanned opportunity to upgrade existing facilities.	Executive Management and Development Managers	2	3	6 RISK APPETITE: OPEN (Operation)	LOW	<ul style="list-style-type: none"> Regular communication with EAC and other partners Work in partnership to resolve issues and minimise impact Effective communication with staff and customers
18	There is a risk that external funding may be withdrawn or have to be repaid due to projects no longer being viable	Executive Management and	2	3	6 RISK APPETITE: OPEN	LOW	<ul style="list-style-type: none"> Regular communication with funders and partners

No.	Risk	Lead Officer	Likelihood	Impact	Total Risk Score (L x I)	Risk Category	Controls
	or East Ayrshire Leisure being unable to fulfil requirements to meet funding obligations.	Development Managers			(Operation)		<ul style="list-style-type: none"> • Work in partnership to resolve issues and minimise impact eg extend funding, consider alternative delivery option • Effective communication with customers

REPORT TO BOARD OF TRUSTEES

2021/22 CORPORATE DELIVERY PLAN HIGHLIGHTS

Date: 28 June 2022

Agenda Item: 6

Report by: Anneke Freel, Chief Officer

I PURPOSE OF REPORT

- 1.1 The purpose of this report is to outline for Trustees some of the highlights from the corporate delivery plan for the period 2021/22

2 CORPORATE DELIVERY PLAN HIGHLIGHTS

2.1 Staff Recognition Scheme

With the Staff Recognition Scheme coming to an end we would want to take the opportunity to acknowledge all those members of staff who were nominated, or won either an Internal or External award, throughout the past 6 years. Many of our staff have been recognised for their excellent customer service skills, their ingenuity, creativity and professionalism and we will continue to support, encourage and empower our teams through our Staff Ambassador Programme which is currently being developed.

2.2 Report and Accounts

At our Annual General Meeting in September 2021 our Board of Trustees approved our 2020/21 report and accounts securing another unqualified audit. This in itself is a great achievement. However, since the inception of the Trust in 2013 we have successfully received an unqualified audit with limited management recommendations. This is recognition of the governance and financial management framework that we have in place, which has been further strengthened by the creation of our Financial Strategy.

2.3 Sport Spring Holiday Programme

Over the School Spring Holiday period 52 activity sessions took place across five venues, Ayrshire Athletics Arena, Loudoun Leisure Centre, Auchinleck Leisure Centre, Doon Valley Leisure Centre, and Rose Reilly Sports Centre. The activity sessions attracted 931 attendances over the 2 weeks. It was fantastic to see so many young children back at our facilities enjoying their sports based activity sessions after the difficult 2020 period. The feedback from parents and children was extremely positive.

2.3 Ayrshire Athletics Arena

Ayrshire Athletics Arena hosted the first full-programmed athletics competition in Scotland for senior men, women and para athletes. Despite the typical Scottish weather there was a real sense of excitement, relief and togetherness from all the athletes, officials, volunteers and staff who made the event possible. The enthusiasm will hopefully start to reignite athletics participation in Scotland and competitions will assist in driving this momentum post pandemic. It was a great delight for East Ayrshire Leisure to be part of the first event for athletes from across Scotland.

REPORT TO BOARD OF TRUSTEES

2.4 Killie Heartmates

The Killie Heartmates - Outdoor Cardiac Exercise Class group enjoyed their first face to face exercise class since going into lockdown last March at the Ayrshire Athletics Arena last week. The cold weather did not dim the group's pleasure in being back together and the usual banter and laughs soon started. The group extended their thanks to East Ayrshire Vibrant Communities and East Ayrshire Leisure for helping the Killie Heartmates become first peer group in Scotland to return to outdoor cardiac exercise.

Group Secretary, Sheena Thomson said, "Having been established for 25 years this year, it was great to finally get back together again as it's been such a long year for everyone. The weather was cold but the hearts were warm and we are thrilled to be able to get members back to outdoor exercise." East Ayrshire Leisure's Activity & Coaching Development Officer said "We were delighted to welcome the Killie Heartmates to the Ayrshire Athletics Arena for the first time. We also had small sprints group from the Harriers and over 30 children taking part in our Easter programme - it was fantastic to see a buzz about the venue again!"

2.5 Summer of Activities

Over July and August we successfully obtained £43,000 from the Scottish Government to deliver a summer programme of activities to help improve the wellbeing of children and young people across East Ayrshire.

It provided us with a great opportunity to work with local and national partners to coordinate and deliver holiday activities and experiences, integrating food and wider family support where needed, and target low income families, children and young people particularly adversely affected by the impacts of the pandemic.

Our programmes were held at Dean Castle Country Park, various Sports facilities and Community Centre's and offered children, young people and families the opportunity to take part in indoor and outdoor activities that focused on being active, biodiversity and wellbeing. In total we had over 4000 attendances and issued out 41 yearly Fitness memberships to individuals within the Care Experienced Programme and 32 youth golf memberships that would give access to Annanhill Golf Course for the remainder of the season. Some other highlights included Den building, Orienteering/ Map Skills, Woodland Art, Sow & Grow, Pond Dipping, Family Swims, Sports Coaching, Community Drama & Dance workshops, entry to the popular McDougall's show and much more.

During July and August the Countryside Ranger team also led five guided walks in the Country Park for an English Language Learners Group. Participants came from China, Syria, Iraq and India. The seasonal walks covered a variety of themes including foraging, plant identification, woodland animals and pond dipping

2.6 Eric Bennett Memorial Festival

Barony Sports Village hosted the Eric Bennett Memorial Festival organised by Cumnock Juniors Community Enterprise (CJCE) in July. The festival, after being postponed twice, finally took place over 3 days welcoming over 1200 young people from all over Scotland. The event demonstrated what can be achieved through partnership working as outlined by Derek King from CJCE

"Grassroots football is a huge part of my life and I have struggled as I watched our beautiful game suffer over the last 16 months...Our Young players needed something to look forward to, I must thank Keith Stewart and Joe MacDonald from East Ayrshire Council who helped prepare, Thank you to Greig Russell and his staff at East Ayrshire Leisure for their support. Thank you to Scott Guy and East Ayrshire Vibrant Communities for their support".

REPORT TO BOARD OF TRUSTEES

2.7 Fitness Membership Programme

In March 2020 when the Country was put into lockdown we froze 1102 Direct Debit Fitness Memberships. Coming out of lockdown and implementing our recovery strategy 503 Direct Debit Fitness Memberships were re-instated. As of 31st March 2022 we had 1095 Active Direct Debit Fitness Members giving us a 99.3% recovery from COVID.

2.8 Annanhill Golf Course

It was also a busy summer at Annanhill golf course with a huge amount of work taking place to improve the condition of the course. As a result, we now have over 580 session ticket holders, which is an approximate increase of 200 members from the previous season. We now also have a healthy number of (over 70) and youth (u18) members, and are working with Annanhill Golf Club to develop a youth section for the club. The course has also received high praise:

“In all my 25 years visiting the course and course walks I have never seen the course in better condition and presented as well”.

“Brief note to compliment you & your excellent green keeping staff on the condition of both the greens & the links overall. I'm aware that the recent spell of good weather may have been a major contributing factor, however, the consistency of pace on the greens & holding ability for a well struck shot surpasses any that I have recently played on "private" links courses in Ayrshire.....”

2.9 Cultural Partnerships

Throughout 2021/22, we continued to work with local and regional partnership to deliver high profile cultural programmes. Some of the partnerships included:

- Working with Ayrshire Hospice, we created a beautiful Forget-Me-Not Meadow in front of the Dick Institute
- Our Cultural Development team were delighted to support Celebrate Kilmarnock in the development of public art for St Marnock Square.
- The team also supported the Green Action Trust and Cumnock Action Plan in the development of a garden and public art for dementia sufferers
- East Ayrshire Libraries team supported the Boswell Book Festival in addressing the digital divide in relation to access to the festival.
- Visual Arts worked in partnership to deliver the Peter Howson exhibition and a programme of curators talks at the Baird throughout the duration of the Cumnock Tryst Festival.

2.10 Natural Health Programme

The Natural Health Project has been running since May 2021 at the Dean Castle Country Park. The programme has been designed to help support children, adults and families who are impacted by a range of mental health problems. Using the ‘green environment’ including woodlands at the Country Park, participants have taken part in a range of outdoor activities that have a focus on:

- Improving mental health and overall wellbeing
- Reducing anxiety and stress levels
- Increasing social interactions and improving self-confidence
- Improving physical health and mobility
- Providing opportunities to learn new skills such as foraging, woodland recipes, wildlife id and bush craft

Development of a new orienteering circuit within the Dean Castle Country Park has also been undertaken to support and promote outdoor learning and health and wellbeing.

REPORT TO BOARD OF TRUSTEES

2.11 Winter Festival

East Ayrshire Council have previously presented a Christmas Light Switch-on event each year to celebrate the launch of the festive season in Kilmarnock. In 2019, they commissioned East Ayrshire Leisure to arrange the management and staging of the event and this arrangement was due to continue in 2020. However, with the outbreak of the COVID-19 pandemic in 2020 we provided an alternative festive programme bringing cheer to the community, whilst adhering to social distancing guidance and Scottish government advice, and avoiding the mass gatherings normally associated with Light-Switch on events.

It was clear early in 2021 that the Covid-19 Pandemic was far from over so it was agreed that EAL would again programme a Winter Festival of events to bring the festive season to life, while meeting any Covid restrictions that would still be in place in November/December.

Building on the success of last year's projection project to encompass other communities in East Ayrshire it was agreed that the projection project would return and visit other locations across the authority.

Whilst restrictions initially allowed The Palace Pantomime, Aladdin, to go ahead with adjustments to casting, meaning no young performers were permitted, and having robust Covid procedures in place for the cast, crew, front of house team and patrons, we were forced to close early with the increase in the new variant of Covid 19. Despite all of the challenges that the pandemic brought about, the winter festival and panto in particular were very well received.

Recommendation/s:

It is recommended that Trustees:

- i. Note the highlights from the Corporate Delivery Plan 2021/22; and
- ii. Otherwise note the content of this report.

Signature: 

Designation: Chief Officer

Date: 13 June 2022

REPORT TO BOARD OF TRUSTEES

UPDATE ON BOARD OF TRUSTEE MEMBERSHIP

Date: 28 June 2022

Agenda Item: 7

Report by: Anneke Freel, Chief Officer

I PURPOSE OF REPORT

- 1.1 The purpose of this report is to provide Trustees with an update following the Scottish Council Local Elections in May 2022 and seeks approval for nominations to each Trustee Ambassador Role.

2 TRUSTEE AMBASSADOR NOMINATIONS

- 2.1 Following the local elections, the inaugural meeting of East Ayrshire Council took place on 19 May 2022. At this meeting Councillors Adams, Boyd, Holland, Linton and Maitland were selected to take a role of elected member trustees on the East Ayrshire Leisure Trust Board. Councillor Claire Maitland was selected to remain as the Chair of the Board
- 2.2 This change in trustee membership has provided us with an opportunity to realign the Trustee Ambassador roles in response to the skills and experience that all Trustees bring to the role. The following table outlines the proposals for aligning Trustees to the various strategic themes.

Ambassador Role	Trustee
Living Your Best Life: Sport & Wellbeing	Jackie Livingston Councillor James Adams
Living Your Best Life: Leisure and Outdoors	Robbie Mann
Living Your Best Life: Culture & the Arts	David Ross Councillor Graham Boyd
Leisure at the Heart of the Community	Councillor Iain Linton Councillor Linda Holland
Investing in our People & Embracing our Values	Andy Wilson
Creating a Solid Foundation for Growth	Robin Hume
Sharing our Vision	Councillor Claire Maitland
Protecting Our Environment	Vacant

- 2.3 Councillor James Adams has now changed from an independent trustee to an elected member trustee. The vacant independent trustee position will be advertised and a nominations committee convened to appoint a new trustee to the board.

Recommendation/s:

It is recommended that Trustees:

- i. Approved the nominations for Trustee Ambassadors; and
- ii. Otherwise note the content of this report.

REPORT TO BOARD OF TRUSTEES

Signature: *Anneke Freed*

Designation: Chief Officer

Date: 9 June 2022

REPORT TO BOARD OF TRUSTEES

REVISED CONSTITUTION AND SERVICE LEVEL AGREEMENT

Date: 28 June 2022

Agenda Item: 8

Report by: Anneke Freel, Chief Officer

I 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. Trustees are being asked to approve the revised constitution and to recommend approval of the service agreements to East Ayrshire Council.

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 In 2015, OSCR carried out a review of ALEOs across Scotland and made several recommendations:
- Memorandum of Understanding – Local Authorities should only exercise sole member powers in exceptional circumstances and a memorandum of understanding would set out these circumstances more clearly.
 - Robust induction procedures - Councillor Trustees may change regularly due to the election process. Charitable ALEOs should ensure that their induction processes are robust to manage this change effectively and ensure that new trustees fully understand their duties.
 - Councillor trustees selected by skills set - Trustee boards should contain an appropriate mix of skills. Councillor trustees should be selected in a similar manner to Independent Trustees based on their skills and experience
 - Regular reviews – As the ALEO develops they must ensure that the ALEO board and its objects continues to be fit for purpose.
 - Separation from the local authority – ALEOs should have greater autonomy and include unique governance and scrutiny arrangements. Elected members who sit on governance and scrutiny committees within the local authority should not sit on the ALEO Board. Where there is a crossover, the effectiveness of scrutiny is thought to be diminished.
 - Sub committees – Sub-committees should be headed by independent trustees, allowing for greater assurance of independent nature.
- 2.3 In 2018, East Ayrshire Council's Internal Audit Service carried out a review of all EALT's governance arrangements. The majority of recommendations from this advisory review were implemented in 2018/19. The outstanding recommendation was for the review of the constitution and Service Level Agreement in line with revised recommendations from OSCR's review of 2015.
- 2.4 As part of EALT's internal audit plan, Internal Audit also carried out work in 2019/20 and 2020/21 to assess the control environment for heritage assets with six recommendations made for continuous improvement. The EALT's improvement agenda included the introduction of the museums software package Axiell to record assets and improve the audit trail. The 2019/20 EALT Internal Audit Plan also

included an advisory assignment to review the existing Collections policy; identify gaps and improvements; verify that operational procedures were in place and operating effectively within EALT to support the policy where required and that they reflected the requirements of the Museum Accreditation Scheme (MSG) and insurance requirements.

3. EAST AYRSHIRE LEISURE TRUST CONSTITUTION

3.1 In line with OSCR recommendations, the EALT constitution (Appendix 1) has been reviewed and updated. The following changes have been made and approved by the EALT board of Trustees:

- The SCIO purposes have been updated to reflect the EALT Strategic Vision 2020-2030.
- Clause 18.2 has been updated to allow the Depute Chief Executive and the Chief Finance Officer and ICT of East Ayrshire Council as ex officio members of the Board to appoint nominated representatives
- The inclusion of the need to establish a nominations committee to appoint Independent Trustees to the Board. The nominations committee will consist of 2 charity trustees and an officer from the Executive Management Team
- The Performance and Audit Sub-Committee membership has been revised to include three charity trustees regardless of whether they are elected member or independent trustees. Previously, elected member trustees had greater representation. The Chair of the Performance and Audit Committee will be the Vice Chair of the Board and in line with OSCR recommendations will be an independent trustee

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

4.1 The agreements between EALT and EAC were established in 2013 prior to the registration of EALT as a charitable organisation. The 2013 agreements included separate 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

4.2 There was significant duplication across all of these agreements. Therefore, the revised proposal is to have one agreement with various parts that covers the entire required elements outlined above. This is included as appendix 2 to this report.

4.3 The following changes have been made and recommended by the EALT board of Trustees for approval by East Ayrshire Cabinet:

- The agreement includes an introductory section which outlines who EALT is and reflects the priorities set out within the EALT Strategic Vision
- A section is included with definitions and interpretations. This was duplicated across all 5 agreements in the previous arrangements

REPORT TO BOARD OF TRUSTEES

- A section is included for general arrangements. Again, this was duplicated across all 5 of the 2013 agreements
- Section 4 outlines the services that EALT will provide on behalf of EAC and has been updated to reflect recent organisational and business reviews. It has also been updated to include EALT's service performance framework and reporting, as agreed with EAC Internal Audit, and a recognition of EALT's support to policy and strategy development
- The Support Services Agreement has been updated as Section 5 within the agreement. EAC's Council Management Team has individually reviewed the relevant sections in partnership with EALT's Chief Officer and has provided an updated description of the support services that EALT will receive from EAC. These take account of recent EAC organisational reviews. The Mechanical Services Agreement has been incorporated into this section.
- The Transfer and Lease Agreements have been replaced with an Assets Agreement. This section outlines the premises that EALT currently manages and their category as outlined in the Leisure Facility Strategy. A section has been included to outline the roles and responsibilities that each party has for each category of facility. This has been developed in partnership with colleagues from Education, Facility and Property Management and Internal Audit. This section continues to provide provision for elections, referenda and emergency events
- The final section within the agreement outlines the responsibilities for the management of the East Ayrshire Collection. This has been updated to reflect the revised Collection Development Strategy and Collection Procedural Manual. The Laws, Standards, Guidelines and Code of Ethics has been updated to reflect changes in national and international policy

4.4 No other changes have been made to the agreement between EAC and EALT.

5 CONCLUSION

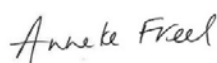
- 5.1 EALT will be reaching its 10th anniversary in 2023. Since 2013, it has consistently achieved clean external audits and responded to recommendations made by Internal Audit. A complete review of governance arrangements, which includes a programme of regular review, continues to demonstrate the commitment of the EALT Management Team and EAC in developing an organisation, which creates a solid foundation for growth and sustainability.

Recommendation/s:

It is recommended that Trustees:

- Consider and approve the revised East Ayrshire Leisure Trust constitution;
- Recommend the Service Level Agreement between East Ayrshire Council and East Ayrshire Leisure Trust to East Ayrshire Council for approval; and
- Otherwise note the content of this report.

Signature:



Designation: Chief Officer

Date: 13 June 2022



EAST AYRSHIRE LEISURE TRUST CONSTITUTION

CONSTITUTION
of
EAST AYRSHIRE LEISURE TRUST

CONSTITUTION
of
EAST AYRSHIRE LEISURE TRUST

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GENERAL	type of organisation, Scottish principal office, name, purposes, powers, liability of members, general structure	clauses 1 - 11
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ADMINISTRATION	sub-committees, Nominations Committee, operation of accounts, accounting records and annual accounts	clauses 85 - 98
MISCELLANEOUS	winding up, alterations to the constitution, interpretation	clauses 98-104

GENERAL

Type of organisation

- 1 The organisation (“the SCIO”) will, upon registration, be a Scottish Charitable Incorporated Organisation.

Scottish principal office

- 2 The principal office of the SCIO will be in Scotland (and must remain in Scotland).

Name

- 3 The name of the SCIO is “East Ayrshire Leisure Trust”.

Purposes

- 4 The SCIO’s purposes are:

- 4.1 Sharing our Vision: East Ayrshire Leisure will be widely recognised and acclaimed as a leisure 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

- 4.2 Leisure at the Heart of Every Community: East Ayrshire Leisure will continue to provide high quality leisure facilities that are relevant and modern and will support other leisure providers in ensuring that leisure is truly at the heart of every community regardless of who the provider is.

- To work with community, local authority and private providers to develop a Leisure Facility Plan that identifies all leisure provision throughout East Ayrshire and maximises the opportunities for our communities to participate in leisure activity
- To work with partners to explore funding opportunities for refurbishment and development of leisure facilities
- To work with East Ayrshire Council in reviewing and refining repair and maintenance plans and schedules for all facilities within our remit which include an annual programme of planned maintenance and decoration

- 4.3 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 in leisure activities
- 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

4.4 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 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

4.5 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 and charitable objectives.

- 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

4.6 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

- 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

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, 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 healthy exercise); (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.

Powers

- 5 The SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so and is not prevented by any provision hereof whether express or implied from the creation, control and ownership of any formally constituted trading subsidiary.
- 6 For the avoidance of doubt, the whole income and property of the SCIO shall be applied solely towards the promotion of its purposes set out in Clause 4 above and it is hereby expressly declared that no portion thereof shall be paid or transferred directly or indirectly in any manner howsoever by way of profit to any Charity Trustee and no Charity Trustee shall be paid salary or fees, or receive any remuneration or any other benefit in money or money's worth from the SCIO for discharging his duties as such.
- 7 No part of the income or assets of the SCIO may be paid or transferred (directly or indirectly) to the Charity Trustees either in the course of the SCIO's existence or on dissolution.
- 8 It is further hereby expressly declared that any surplus income or profits of the SCIO:
 - 8.1 derived from the provision of sport or leisure activities must be reapplied to the provision and furtherance of leisure activities; or
 - 8.2 derived from the provision of cultural activities must be reapplied to the provision and furtherance of cultural activities; or
 - 8.3 derived from the provision of educational activities must be reapplied to the provision and furtherance of educational activities.

General structure

- 9 The structure of the SCIO consists of the Charity Trustees who are also the SCIO'S only members and comprise the SCIO'S Board. The Board have important powers under the constitution, take decisions on changes to the constitution itself, hold regular meetings, and

generally control the activities of the SCIO; for example, without prejudice to the generality of the foregoing, the Board is responsible for monitoring and controlling the financial position of the SCIO.

Liability of Charity Trustees (Members)

- 10 The Charity Trustees have no liability to pay any sums to help to meet the debts (or other liabilities) of the SCIO if it is wound up; accordingly, if the SCIO is unable to meet its debts, the Charity Trustees will not be held responsible.
- 11 The Charity Trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 8 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

BOARD

Qualifications for Charity Trusteeship

- 12 Charity Trusteeship is open to:
 - 12.1 any person aged 16 or over; and/or
 - 12.2 any individual who has been nominated for membership by an unincorporated organisation; and/or
 - 12.3 any corporate body,

who subscribes to the purposes of the organisation and wishes to see them fulfilled.

Application for Charity Trusteeship

- 11. Any person, nominated individual or body who/which wishes to become a Charity Trustee must sign a written application for Charity Trusteeship; and for a corporate body, that application must be signed by an appropriately authorised officer of that body who will remain as the representative of the corporate body until such time as the corporate body informs the Board otherwise.
- 12. The application will then be considered by the Nominations Committee, further to which the application may, at the Board's discretion, be referred to Full Board or the Nominations Committee in terms of Clause 93.
- 13. The Board however may, at its discretion, refuse to admit any person, nominated individual or corporate body, or veto the proposed authorised officer acting as a representative of a corporate body, to Charity Trusteeship.
- 14. The Board must notify each applicant promptly in writing (which includes by e-mail) of its decision on whether or not to admit the applicant to Charity Trusteeship.

Subscription to the SCIO

- 15. No subscription will be payable.

Number of Charity Trustees

- 16. The maximum number of Charity Trustees is 13
- 17. The minimum number of Charity Trustees is 5.

Composition of the Board

- 18. Subject to any vacancies which may exist from time to time, the Board shall consist of:
 - 18.1 5 Charity Trustees who are elected members of the Council;
 - 18.2 2 Charity Trustees who shall be the Depute Chief Executive and the Chief Financial Officer and Chief Finance Officer and Head of ICT of East Ayrshire Council ex officio or their nominated representatives, which Charity Trustees shall have no voting rights on any matter or issue being considered by the Board but shall be regarded as specialist Local Authority advisors to the Board specifically (but not exclusively) on all matters detailed within the purposes of the SCIO as detailed within paragraph 4 hereof; and
 - 18.3 6 Charity Trustees who are neither elected members nor officers of the Council (one of which may be an employee representative) ("independent Charity Trustees).

Eligibility

- 19 A person will not be eligible for appointment to the Board if he/she is disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005.

Annual General Meeting

- 20 The Board must arrange for a meeting of the Charity Trustees (an annual general meeting or "AGM") in each calendar year, reporting on the immediately preceding financial year of the organisation.
- 21 The gap between one AGM and the next must not be longer than 15 months.
- 22 Notwithstanding Clause 21, an AGM does not need to be held during the calendar year in which the organisation is formed; but the first AGM must still be held within 15 months of the date on which the organisation is incorporated and entered on the Scottish Charity Register.

Appointment of Charity Trustees

- 23 Notwithstanding the terms of clauses 11-14, the Council may by notice in writing given to the SCIO:-
 - 23.1 appoint any individual (providing he/she is willing so to act) to be a Charity Trustee (elected member); or
 - 23.2 remove any individual previously appointed by it, from office as a Charity Trustee (elected member).
- 24 Any appointment or removal of a Charity Trustee under clause 23 shall have effect from
 - 24.1 the date on which the relevant notice is given to the SCIO; or

- 24.2 any later date stated in the notice.
- 25 A notice under clause 23 shall be valid only if signed by an appropriate officer of the Council.
- 26 The Council shall exercise its powers of appointment and removal under clause 23 in such a way as to reflect the intended composition of the Board, as set out in clause 18.
- 27 The Council shall be guided by the Nominations Committee (as defined in clause 95) in relation to the selection of appropriate individuals for appointment as Charity Trustees under clause 18.3.

Retiral/re-appointment of independent Charity Trustees

- 28 At the conclusion of each AGM occurring on every consecutive second year, 3 out of the 6 Charity Trustees appointed under paragraph 18.3 (independent Charity Trustees) shall retire from office, but (subject to clauses 30 and 31) may then be re-appointed (subject to Clause 23) unless:-
- 28.1 he/she/it advises the Board prior to the conclusion of the AGM that he/she/it does not wish to be re-appointed as a Charity Trustee; or
- 28.2 an election process was held at the AGM and he/she/it was not among those elected/re-elected through that process; or
- 28.3 a resolution under Clauses 36.5, 36.6 or 36.7 was put to the AGM and carried.
- 29 The Charity Trustees to retire under clause 28 shall consist of those who have been longest in office since they were last appointed or re-appointed; as between Charity Trustees who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by lot.
- 30 Subject to clause 29, a Charity Trustee appointed by the Council under paragraph 18.3 (independent Charity Trustees) who has served for a period of six years shall not be eligible for re-appointment until a further period of one year has elapsed.
- 31 The Board may, by way of a resolution passed by majority vote at a Board meeting, waive the provisions of clause 30 in relation to a particular Charity Trustee if they consider that exceptional considerations make that appropriate.
- 32 For the purposes of clause 30:
- 32.1 the period between the date on which an individual was appointed as a Charity Trustee and the annual general meeting which next follows shall be deemed to be a period of one year, unless it is of less than six months' duration (in which case it shall be disregarded);
- 32.2 the period between one annual general meeting and the next shall be deemed to be a period of one year;
- 32.3 if an individual ceases to hold office as a Charity Trustee and is re-appointed as a Charity Trustee within a period of six months, he/she shall be deemed to have held office as a Charity Trustee continuously.

Retiral of other Charity Trustees

- 33 A Charity Trustee appointed by the Council under paragraph 18.1 (elected member) who has held office for a period of six years shall retire from office at the AGM which next follows the end of that six-year period, and shall then not be eligible for re-appointment until a further period of one year has elapsed.
- 34 The provisions of clause 32 shall apply in relation to the interpretation of clause 33.
- 35 For the avoidance of doubt, Charity Trustees appointed by the Council under paragraph 18.1 (elected members) shall not require to retire from office at any AGM, except as provided for in clause 33.

Termination of office

- 36 A Charity Trustee will automatically cease to hold office if: -
- 36.1 he/she becomes disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - 36.2 he/she becomes incapable for medical reasons of carrying out his/her duties as a Charity Trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
 - 36.3 in the case of a Charity Trustee appointed under paragraph 18.1, he/she ceases to be an elected member of the Council;
 - 36.4 he/she gives the SCIO a notice of resignation, signed by him/her;
 - 36.5 he/she is absent (without good reason, in the opinion of the Board) from more than three consecutive meetings of the Board - but only if the Board resolves to remove him/her from office;
 - 36.6 he/she is removed from office by resolution of the Board on the grounds that he/she is considered to have committed a material breach of the code of conduct for Charity Trustees (as referred to in clause 57);
 - 36.7 he/she is removed from office by resolution of the Board on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
- 37 A resolution under paragraph 36.5, 36.6, or 36.7 shall be valid only if: -
- 37.1 the Charity Trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for his/her removal is to be proposed;
 - 37.2 the Charity Trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
 - 37.3 at least two thirds (to the nearest round number) of the Charity Trustees then in office vote in favour of the resolution.

Register of Charity Trustees

- 38 The Board must keep a register of Charity Trustees, setting out

- 38.1 for each current Charity Trustee:
 - 38.1.1 his/her full name and address;
 - 38.1.2 the date on which he/she was appointed as a Charity Trustee;
 - 38.1.3 the category into which he/she falls (i.e. by identifying the paragraph of clause 18 under which he/she was appointed); and
 - 38.1.4 any office held by him/her in the SCIO;
- 38.2 for each former Charity Trustee - for at least 6 years from the date on which he/she ceased to be a Charity Trustee:
 - 38.2.1 the name of the Charity Trustee;
 - 38.2.2 the category into which he/she fell (as interpreted for the purposes of paragraph 38.1.3);
 - 38.2.3 any office (under clauses 41 to 47) held by him/her in the SCIO; and
 - 38.2.4 the date on which he/she ceased to be a Charity Trustee.
- 39 The Board must ensure that the register of Charity Trustees is updated within 28 days of any change:
 - 39.1 which arises from a resolution of the Board of the SCIO; or
 - 39.2 which is notified to the SCIO.
- 40 If any person requests a copy of the register of Charity Trustees, the Board must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; If the request is made by a person who is not a Charity Trustee of the SCIO, the Board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

Office-bearers

- 41 The Charity Trustees must elect (from amongst themselves) a chair and a vice chair.
- 42 Charity Trustees appointed under paragraphs 18.1 (Elected Members) and 18.3 (independent Trustees) shall be eligible for election as chair or vice chair
- 43 For the avoidance of doubt (notwithstanding the provisions of Clauses 42 and 43) there shall be no prohibition on both the chair and the vice chair being Charity Trustees appointed under paragraph 18.3 (independent Charity Trustees).
- 44 In addition to the office-bearers required under clause 41, the Charity Trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 45 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 41 or 44 at the first Board meeting after the AGM.
- 46 A person elected to any office will automatically cease to hold that office: -

- 46.1 if he/she ceases to be a Charity Trustee; or
- 46.2 if he/she gives to the SCIO a notice of resignation from that office, signed by him/her.

Powers of Board

- 47 Except where this constitution states otherwise, the SCIO (and its assets and operations) will be managed by the Board; and the Board may exercise all the powers of the SCIO.
- 48 A meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.
- 49 The members may, by way of a resolution passed by majority vote (either at a members' meeting or via a written resolution), direct the Board to take any particular step or direct the Board not to take any particular step; and the Board shall give effect to any such direction accordingly.
- 50 The members shall, in exercising their powers under clause 49, comply with the duties imposed on members of a SCIO by section 51 of the Charities and Trustee Investment (Scotland) Act 2005.

Charity trustees - general duties

- 51 Each of the Charity Trustees has a duty, in exercising functions as a Charity Trustee, to act in the interests of the SCIO; and, in particular, must:-
 - 51.1 seek, in good faith, to ensure that the SCIO acts in a manner which is in accordance with its purposes;
 - 51.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - 51.3 in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party:
 - 51.3.1 put the interests of the SCIO before that of the other party;
 - 51.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the SCIO and refrain from participating in any deliberation or decision of the other Charity Trustees with regard to the matter in question;
 - 51.4 ensure that the SCIO complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 52 In addition to the duties outlined in clause 51, all of the Charity Trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
 - 52.1 that any breach of any of those duties by a Charity Trustee is remedied by the Charity Trustee concerned and not repeated; and
 - 52.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.

- 53 Provided he/she has declared his/her interest - and has not voted on the question of whether or not the SCIO should enter into the arrangement - a Charity Trustee will not be debarred from entering into an arrangement with the SCIO in which he/she has a personal interest; and (subject to clause 55 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005) he/she may retain any personal benefit which arises from that arrangement.
- 54 No Charity Trustee may serve as an employee (full time or part time) of the SCIO; and no Charity Trustee may be given any remuneration by the SCIO for carrying out his/her duties as a Charity Trustee.
- 55 The Charity Trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

Code of conduct for Charity Trustees

- 56 Each of the Charity Trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the Board from time to time.
- 57 The code of conduct referred to in clause 56 shall be supplemental to the provisions relating to the conduct of Charity Trustees contained in this constitution and the duties imposed on Charity Trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

DECISION-MAKING BY THE CHARITY TRUSTEES

Notice of meetings

- 58 Any Charity Trustee may request that a meeting of the Board be called subject to the submission of a written motion to that effect to the chair which motion must be subscribed by a minimum of three Charity Trustees appointed by virtue of Clauses 18.1 or 18.3.
- 59 At least 14 days' notice must be given of the AGM, or of a Board meeting at which the business of the meeting includes consideration of any resolution.
- 60 At least 7 days' notice must be given of each Board meeting, unless (in the opinion of the chair) there is a degree of urgency which makes that inappropriate.
- 61 The notice calling an AGM or a Board meeting at which the business of the meeting includes consideration of any resolution, must specify in general terms what business is to be dealt with at the meeting.
- 62 Notwithstanding the provisions of clauses 58 to 61 inclusive, at every AGM the Board will be required to approve the formal schedule of meetings for the ensuing year.
- 63 Notice of the AGM and Board meetings must be given to all the Charity Trustees; but the accidental omission to give notice to one or more Charity Trustees will not invalidate the proceedings at the meeting.
- 64 Any notice which requires to be given to a Charity Trustee under this constitution must be:-

- 64.1 sent by post to the Charity Trustee, at the address last notified by him/her/it to the SCIO and on the register of Charity Trustees as described in clause 40.1.1; and/or
- 64.2 sent by e-mail to the Charity Trustee, at the e-mail address last notified by him/her/it to the SCIO. It is the responsibility of each Charity Trustee to keep their personal email details up to date.

Procedure at Board meetings

- 65 No valid decisions can be taken at a Board meeting unless a quorum is present; the quorum for Board meetings shall (subject to Clauses 66 and 67) be 5 Charity Trustees (specifically excluding the Charity Trustees detailed in clause 18.2 hereof), present in person.
- 66 A quorum shall not be deemed to be constituted at any Board meeting unless there is at least two Charity Trustee falling under paragraph 18.1 (elected members) and at least three Charity Trustees falling under paragraph 18.3 (independent Charity Trustees) present at the meeting.
- 67 If at any time the number of Charity Trustees in office falls below the number required at the time to form a quorum, the remaining Charity Trustee(s) will have power to fill the vacancies - but will not be able to take any other valid decisions.
- 68 A Charity Trustee may participate in a Board meeting (or a meeting of a committee of Charity Trustees) by means of a conference telephone, video conferencing facility or similar communications equipment whereby all the Charity Trustees participating in the meeting can hear each other; a Charity Trustee participating in a meeting in this manner shall be deemed to be present in person at the meeting
- 69 The chair of the SCIO should (subject to clauses 70, 71 and 72) act as chairperson of each Board meeting.
- 70 If the chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the vice chair should act as chairperson.
- 71 If the chair of the SCIO considers that he/she has a significant conflict of interest in relation to a particular item to be discussed at a Board meeting, he/she shall allow the vice chair to take over from him/her as chairperson of the meeting while that item is being dealt with.
- 72 If neither the chair nor the vice chair is present within 15 minutes after the time at which the meeting was due to start - or if neither of them is willing to act as chairperson - the Charity Trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
- 73 Every Charity Trustee (with the specific exception of those Charity Trustees appointed in terms of Clause 18.2 who have no voting rights) has one vote, which must be given personally.
- 74 All decisions at Board meetings will be made by majority vote.
- 75 If there are an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.

- 76 The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at an AGM or Board meeting (or if passed by way of a written resolution under clause 82):
- 77.1 a resolution amending the constitution;
 - 77.2 a resolution approving the amalgamation of the SCIO with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
 - 77.3 a resolution to the effect that all of the SCIO's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities); and
 - 80.4 a resolution for the winding up or dissolution of the SCIO.
- 77 The Board may, at its discretion, allow any person to attend and speak at a Board meeting notwithstanding that he/she is not a Charity Trustee - but on the basis that he/she must not participate in decision-making.
- 78 A Charity Trustee must not vote at a Board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which he/she has a personal interest or duty which conflicts (or may conflict) with the interests of the SCIO; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 79 For the purposes of clause 78: -
- 79.1 an interest held by an individual who is "connected" with the Charity Trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that Charity Trustee;
 - 79.2 a Charity Trustee will (subject to clause 80) be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.
- 80 A Charity Trustee appointed under paragraph 18.1 shall, notwithstanding the provisions of clause 78 and paragraph 79.2, be entitled to vote in relation to a particular matter notwithstanding that the Council has an interest in that matter; but on the basis that in exercising his/her voting rights in respect of any such matter, the Charity Trustee shall comply with the provisions of clauses 58 and 59 and in particular (but without limitation) must give priority to the interests of the SCIO.
- 81 For the avoidance of doubt, Charity Trustees shall not be entitled to vote at a Board meeting unless they are personally present, or are participating in the meeting in a manner permitted under clause 68; Charity Trustees are not entitled to appoint substitutes to vote in their place at Board meetings.

Written Resolutions by Charity Trustees

- 82 A resolution agreed to in writing (or by e-mail) by all the Charity Trustees will be as valid as if it had been passed as an AGM or Board meeting; the date of the resolution will be taken to be the date of which the last Charity Trustee agreed to it.

Minutes

- 83 The Board must ensure that proper minutes are kept in relation to all Board meetings and meetings of sub-committees.
- 84 The minutes to be kept under clause 83 must include the names of those present; and (insofar as possible) should be signed by the chairperson of the meeting.

ADMINISTRATION

Delegation by the Board

- 85 The Board may delegate any of their powers to sub-committees; a sub-committee must include at least one Charity Trustee, but other members of a sub-committee need not be Charity Trustees.
- 86 The Board may also delegate to the chair of the SCIO (or the holder of any other post) such of their powers as they may consider appropriate.
- 87 When delegating powers under clause 85 or 86, the Board must set out appropriate conditions (which must include an obligation to report regularly to the Board).
- 88 Any delegation of powers under clause 85 or 86 may be revoked or altered by the Board at any time.
- 89 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the Board.
- 90 The Board may also approve the terms of a formal scheme of delegation and administration in order to advance the purposes of the SCIO as detailed within Clause 4 hereof.

Nominations Committee

- 91 The Board shall establish a committee (referred to in this constitution as “the Nominations Committee”) to make recommendations to the Board in relation to the selection of appropriate individuals for appointment as Charity Trustees under paragraph 18.3 (independent Charity Trustees).
- 92 The members of the Nominations Committee shall comprise:
 - 92.1 two Charity Trustees appointed in terms of paragraph 18(1) and (18.3); and
 - 92.2 one further individual from the Executive Management Team. These officers will not have voting rights on the Nominations Committee
- 93 Subject to clause 89, the composition and proceedings of the Nominations Committee shall be governed by such standing orders as may be issued by the Board from time to time.
- 94 In carrying out its functions, the Nominations Committee shall give effect to the following principles:
 - 94.1 the Nominations Committee should set an appropriate skills matrix to guide it in selecting and evaluating appropriate candidates, and should review and adjust that skills matrix from time to time;

- 94.2 nominations for Charity Trustees falling within the remit of the Nominations Committee should be sought from a range of appropriate sources;
- 94.3 all expressions of interest should be considered by the Nominations Committee; and
- 94.4 the Nominations Committee should maintain a register of suitable candidates for future reference.

Performance and Audit Committee

- 95 The Board shall establish a committee (referred to in this constitution as “the Performance and Audit Committee”) to make provide governance and scrutiny of finance and performance
- 96 The members of the Performance and Audit Committee shall comprise:
 - 96.1 three Charity Trustees appointed in terms of paragraph 18(1) and (18.3); and
 - 96.2 one further individual from the Executive Management Team. This officer will not have voting rights on the Performance and Audit Committee
- 97 Subject to clause 89, the composition and proceedings of the Performance and Audit Committee shall be governed by such standing orders as may be issued by the Board from time to time.

Operation of accounts

- 98 Subject to clause 100, the signatures of two out of three signatories appointed by the Board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the SCIO.
- 99 Where the SCIO uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 98.

Accounting records and annual accounts

- 100 The Board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements and in particular must ensure that the Following the Public Pound Code principles of openness, integrity and accountability apply to all financial intrmissions of the SCIO.
- 101 The Board must prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions (or if the Board consider that an audit would be appropriate for some other reason), the Board should ensure that an audit of the accounts is carried out by a qualified auditor.

MISCELLANEOUS

Winding-up

- 102 If the SCIO is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee

Investment (Scotland) Act 2005 and the Scottish Charitable Incorporated Organisation (Removal from Register and Dissolution) Regulations 2011.

- 103 Any surplus assets available to the SCIO immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the SCIO, as set out in this constitution.

Alterations to the constitution

- 104 This constitution may (subject to clause 106) be altered by resolution of the members passed at an AGM or Board meeting (subject to achieving the two thirds majority referred to in clause 76) or by way of a written resolution of the Board.
- 105 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

Interpretation

- 106 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- 106.1 any statutory provision which adds to, modifies or replaces that Act; and
- 106.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 107 above.
- 107 In this constitution: -
- 107.1 “charity” means a body which is either a “Scottish charity” within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a “charity” within the meaning of section 1 of the Charities Act 2006, providing (in either case) that its objects are limited to charitable purposes;
- 107.2 “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.
- 107.3 “Council” means East Ayrshire Council incorporated in terms of the Local Government Etc. Scotland Act 1994 and having its principal offices at Council Headquarters, London Road, Kilmarnock, KA3 7BU.

This is the proposed constitution referred to in the accompanying form, applying for a SCIO to be constituted with the name set out in clause 3 above.



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



East Ayrshire Council
Comhairle Siorrachd Àir an Ear

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”);

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

1. Introduction

1.1 East Ayrshire Leisure's Strategic Vision

This document expands on our Strategic Vision 2020-2030 to give further information on our vision for East Ayrshire Leisure Trust and the facilities that we manage. 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 leisure 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 that are relevant and modern and will support other leisure providers in ensuring that leisure is truly at the heart of every community regardless of who the provider is.

- To work with community, local authority and private providers to develop a Leisure Facility Plan that identifies all leisure provision throughout East Ayrshire and maximises the opportunities for our communities to participate in leisure activity
- To work with partners to explore funding opportunities for refurbishment and development of leisure facilities
- To work with East Ayrshire Council in reviewing and refining repair and maintenance plans and schedules for all facilities within our remit which include an annual programme of planned maintenance and decoration

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 in leisure activities
- 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 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 and charitable objectives.

- 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.

- 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

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, 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 healthy exercise); (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.

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 services.

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

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

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 and all Schedules;

"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, 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;

“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;

“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 preceeding 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;

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

"DPA" means the Data Protection Act 1998;

"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 issued 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 transfer

or has reasonable grounds to believe that such action may be brought against the Trust arising out of the employees employment with the transfer or;

- (e) information about any collective agreement that will have effect after the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

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

"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;

"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;

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

"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 managed by the Trust

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

"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;

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

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

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

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

"Properties" means the properties owned by the Council, brief particulars of which are set out in the Asset Agreement;

"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;

"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 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;

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

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

"Replacement 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 display or other private purposes;

"Schedule" means the schedule annexed and executed as relative hereto;

"Schools Estate" means any school 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 the Provision of Services Agreement and the Support Services Agreement (and including all requirements and obligations set out in those Sections);

"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 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;

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

"Standards" – means the standards 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;

"Training Courses" means the training courses on First Aid at Work to be delivered by the Trust and the expression Training Course" shall mean any one of them;

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

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

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

"The Trust Representative" means the representative of the Trust appointed

"The Trust's Responsibilities" means the responsibilities assigned to the Trust

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

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

"Trust 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;

"Trust's Premises" means (a) the premises holding part of the Collections and (b) those premises holding part of the Libraries' Collection;

"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;

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

"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, paragraph or schedule shall be to, respectively, a clause, paragraph, or schedule 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;
- 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.

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) although 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 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 Service Monitoring and Performance Measurement

- 3.2.1 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.
- 3.2.2 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 populating the Council's Pentana System or by providing the Council with the necessary information to allow it do so.

3.3 Outcomes of the Services

- 3.3.1 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 services.
- 3.3.2 The Council aims to provide, or enable to be provided, working in partnership with the Trust, the best services that current resources allow.
- 3.3.3 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.

3.4 Following the Public Pound

- 3.4.1 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.
- 3.4.2 Both parties will also ensure that the principles of openness, integrity and accountability are enshrined within the operation of this Agreement

3.5 Warranties

- 3.5.1 The Trust warrants, represents and undertakes to the Council that:
- 3.5.1.1 the Trust has full capacity and authority to enter into the Agreement;
 - 3.5.1.2 the Trust's Obligations will be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments;
 - 3.5.1.3 the performance of the Trust Obligations shall not infringe any Intellectual Property Rights of any Third Party; and
 - 3.5.1.4 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.
- 3.5.2 The Council warrants, represents and undertakes to the Trust that the Council has full capacity and authority to enter into the Agreement.

3.6 Liability and Indemnity

- 3.6.1 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:
- 3.6.1.1 a breach of any of the warranties given by the Trust in the Agreement;
 - 3.6.1.2 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
 - 3.6.1.3 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).
- 3.6.2 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:
- 3.6.2.1 a breach of any of the warranties given by the Council in the Agreement; and
 - 3.6.2.2 the negligence, recklessness or wilful misconduct of the Council, its employees, agents, contractors or otherwise in the course of performing the Council's Responsibilities,
- provided always that the Trust shall use all reasonable endeavours to minimise any such liabilities, losses, changes, costs or expenses and that the Trust shall not take any steps which may increase any such liability (without having first obtained the written approval of the Council to such steps).
- 3.6.3 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:

- 3.6.3.1 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;
- 3.6.3.2 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));
- 3.6.3.3 shall keep the other party closely appraised 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);
- 3.6.3.4 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);
- 3.6.3.5 take all reasonable steps available to it to mitigate such loss or liability; and
- 3.6.3.6 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.
- 3.6.4 No party to the Agreement excludes or limits liability for the death or personal injury arising as a result of its negligence.
- 3.6.5 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):
 - 3.6.5.1 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);
 - 3.6.5.2 loss of actual or anticipated profits;
 - 3.6.5.3 loss of goodwill;
 - 3.6.5.4 loss of business;
 - 3.6.5.5 loss of revenue or of the use of money;
 - 3.6.5.6 loss of contracts; and
 - 3.6.5.7 loss of anticipated savings.

3.7 Contract Arrangements

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

3.8 Problem Escalation

- 3.8.1 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.
- 3.8.2 Any complaints which may not be resolved by the respective manager may be raised with the relevant Section Head and will be reviewed subsequently by the Head of Service and discussed with all relevant parties before also being raised at 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.
- 3.8.3 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.
- 3.8.4 If appropriate resolution cannot be achieved, then mutual agreement will be sought by escalation to:
- 3.4.1.1 Relevant senior management and equivalent customer representative; or
 - 3.4.1.2 The Chief Executive of East Ayrshire Council and Chief Officer of East Ayrshire Leisure
- 3.8.5 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.

3.5 Data Protection and Freedom of Information

- 3.5.1 Each Party shall comply with its obligations under the provisions of the General Data Protection Act 1998.
- 3.5.2 Where the Council, as part of the provision of Services under this Agreement, processes personal data on behalf of the Trust, then in relation to such personal data the Council shall:-
- 3.5.2.1 act only on instructions from the Trust; and

- 3.5.2.2 comply with the Trust's instructions in relation to the processing of such personal data, as such instructions are given and varied from time to time by the Trust; and
- 3.5.2.3 take all appropriate technical and organisational measures against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, such personal data.
- 3.5.3 The provisions of clause 3.5.2 shall apply in relation to any personal data processed by the Trust on behalf of the Council under this Agreement as if each reference in that clause to the Council were a reference to the Trust and vice versa.
- 3.5.4 For the purposes of clause 3.5.2, the terms "personal data" and "processing" shall have the meanings ascribed to them in the General Data Protection Act 1998.
- 3.5.5 The Trust acknowledges the Council's obligations under the Freedom of Information (Scotland) Act 2002 ("the Act") and the Environmental Information (Scotland) Regulations 2004 ("the Regulations") and acknowledges in particular that the Council may be required to provide information relating to this Agreement or the Trust to any person on request in order to comply with the Act or the Regulations.
- 3.5.6 Where the Council seeks to consult the Trust in connection with a request for information made under the Act or the Regulations the Trust will facilitate the Council's compliance with the Act or the Regulations by responding timeously to the Council.
- 3.5.7 In the event that the Trust is or becomes a designated Scottish public authority by Order of the Scottish Ministers under Section 5 of the Act the Trust shall comply with the said Act and the Regulations.
- 3.5.8 Where the Trust receives a request for information, pursuant to Clause 3.5.7 or otherwise, which relates to or is likely to have an effect on the interests of the Council, the Trust shall consult with the Council before responding to such request.

3.6 Dispute Resolution Procedure

- 3.6.1 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 3.6.
- 3.6.2 Either Party shall give to the other notice in writing of the dispute (the Dispute Notice"), setting out its nature and reasonable particulars with the relevant supporting documentation. On service of the Dispute Notice, the Council Officer and the Trust Representative shall seek in good faith to resolve the dispute.
- 3.6.3 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.
- 3.6.4 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.

- 3.6.5 The fees of the mediator and the cost of mediation shall be borne equally by the Parties.
- 3.6.6 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.

3.7 Publicity

- 3.7.1 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:-
 - 3.7.1.1 comply with the law or the requirements of auditors;
 - 3.7.1.2 provide information to HM Revenue & Customs or to its professional advisers;
 - 3.7.1.3 provide information to a Party's professional advisers; or
 - 3.7.1.4 provide information to potential New Suppliers.
- 3.7.2 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.

3.8 Non Solicitation

- 3.8.1 Subject to clause 3.8.2, 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.
- 3.8.2 Nothing in clause 3.8.1 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.

3.9 Notices

3.9.1 Without prejudice to Clause 3.7.4, 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 3.7.3 or by sending it by pre-paid recorded delivery to the address of the relevant Party set out in Clause 3.7.3.

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

3.9.2.1 if delivered personally, at the time of delivery;

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

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

3.9.3.1 in the case of the Council:-

Position: Chief Executive

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

3.9.3.2 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.

3.9.4 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.

3.10 Variation and Waiver

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

- 3.10.2 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.
- 3.10.3 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.
- 3.10.4 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.
- 3.10.5 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

3.11 Costs

- 3.11.1 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.

3.12 Severability

- 3.12.1 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.

3.13 Assignment

- 3.13.1 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.

3.14 No Partnership or Agency

- 3.14.1 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.

3.15 Termination

3.15.1 If:-

- 3.15.1.1 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

- 3.15.1.2 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
- 3.15.2 the Trust fails to establish and agree or implement a Final Rectification Plan pursuant to Clause 4.52; or
- 3.15.3 the Council exercises its right to terminate all, or a majority, of the Leases set out in the Asset Agreement; or
- 3.15.4 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.
- 3.15.5 The Trust may terminate this Agreement by giving not less than twelve months prior written notice to the Council.

3.16 Consequences of Termination

- 3.16.1 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.
- 3.16.2 In the event of termination or expiry of this Agreement for any reason:
- 3.16.2.1 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;
- 3.16.2.2 the Council shall be entitled to terminate the Support Services Agreement;
- 3.16.2.3 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;
- 3.16.2.4 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;
- 3.16.2.5 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;

- 3.16.2.6 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;
- 3.16.2.7 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
- 3.16.2.8 the Trust will immediately pay to the Council all sums then due to the Council under this Agreement.
- 3.16.3 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).

3.17 Entire Agreement

- 3.17.1 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:-
- 3.17.1.1 together constitute the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement; and
- 3.17.1.2 (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).
- 3.17.2 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.

3.18 Change Control Procedures

Principles

- 3.18.1 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.
- 3.18.2 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 3.18.1 continue to perform the Trust Obligations in accordance with the Agreement.

- 3.18.3 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

- 3.18.4 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:

3.18.4.1 the title of the proposed change

3.18.4.2 the reason for the proposed change; and

3.18.4.3 detail of the proposed change

- 3.18.5 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:

3.18.6 the title of the proposed change;

3.18.6.1 technical details of how to implement the change;

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

3.18.6.3 a timetable for delivery of change;

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

3.18.6.5 associated revisions to be made to the Agreement.

- 3.18.7 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:

3.18.7.1 title of the proposed change;

3.18.7.2 technical details of how to implement change;

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

3.18.7.4 a timetable for delivery of the change;

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

3.18.7.6 Associated revisions to be made to the Agreement;

- 3.18.8 Each CCN shall be uniquely identified by a sequential number.
- 3.18.9 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).
- 3.18.10 Following acceptance of a CCN, the agreement shall be deemed to be revised as set out in the CCN.
- 3.18.11 A CCN may only be used to vary the terms of the Schedule to the Agreement, all other amendments being subject to the provisions of clause 3.18.

Review

- 3.18.12 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
- 3.18.13 On completion of any Agreement review in accordance with paragraph 3.17.1, either Party may make a proposal for a change to the Services.
- 3.18.14 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.
- 3.18.15 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.
- 3.18.16 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.
- 3.18.17 The Contract Manager shall be responsible for preparing minutes of all meetings.
- 3.18.18 A copy of the minutes prepared by the Contract Manager in pursuance of clause 3.17.6 shall be forwarded to the Trust Representative by the Contract Manager within 5 Business Days of the date of the meeting.
- 3.18.19 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 3.17.7 within 5 Business Days of receipt of a copy of the minutes in accordance with clause 3.17.7; and the Contract Manager will make such revisions to the minutes as are agreed between the Trust Representative and

the Contract Manager.

3.19 Force Majeure

- 3.19.1 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").
- 3.19.2 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.
- 3.19.3 Either Party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that:
- 3.19.3.1 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;
 - 3.19.3.2 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
 - 3.19.3.3 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.
- 3.19.4 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.

3.20 Applicable Law and Jurisdiction

- 3.20.1 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.

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 October in each calendar year;
- 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;

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 for approval. 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 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
- 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.

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 commencing with an initial payment no later than 1st July 2013 and thereafter on the basis of a schedule of payments to be agreed between the parties.

4.20 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.
- 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 1998 and the Police Act 1997, has carried out such checks as the Trust may lawfully undertake to establish that no such person has any unspent and, where appropriate, spent criminal convictions in terms of the Rehabilitation of Offenders Act 1974 that makes them unsuitable for employment in the provision of the Services.
- 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 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.
- 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 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

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

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 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 and physical activity 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, 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 2006.

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;
- 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
- 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)
- 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
- East Ayrshire Council 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 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

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 3 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 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>Visual 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>Organisational Learning</u> <ul style="list-style-type: none"> • Feedback and complaints • VisitScotland accreditation • Performance monitoring • Staff recognition • Staff and customer surveys
<u>Training 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 which are within the portfolio for this service area are included in the table below.

<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
<u>Community Libraries</u> <ul style="list-style-type: none"> • Cumnock Library • Auchinleck Library • Crosshouse Library • Dick Institute Library • Mobile Libraries • Homeward Services
<u>Community Lifestyle Hubs</u> <ul style="list-style-type: none"> • Loudoun Leisure Centre • Doon Valley Leisure Centre • Rose Reilly Sports Centre • Hunter Fitness Centre
<u>Community Sports Hubs</u> <ul style="list-style-type: none"> • Grange Leisure Centre • St. Joseph's Lesiure Centre • William McIlvanney Leisure Centre • Barony Sports Village

- **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

<u>Strategic Programming (Physical Activity)</u> <ul style="list-style-type: none"> • Ayrshire Athletics Arena (programme) • Annanhill Golf Course (programme) • Sporting events • Active Travel • Coaching • Physical activity programming
<u>Strategic Programming (Museums)</u> <ul style="list-style-type: none"> • Dean Castle • Baird Institute

<ul style="list-style-type: none"> • Burns House Museum • Burns Monument Centre • Dick Institute Museums • Futuremuseums • Museum programming • Collection care
<u>Strategic Programming (Performing Arts)</u> <ul style="list-style-type: none"> • Palace Theatre • Grand Hall • East Ayrshire Youth Theatre • Performance programming
<u>Strategic Programming (the Arts)</u> <ul style="list-style-type: none"> • Dick Institute Galleries • Visual arts programming • Public art

- **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
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<ul style="list-style-type: none"> • External funding co-ordination
<u>Hospitality and Retail</u> <ul style="list-style-type: none"> • Bars • Cafes • Vending • Gift shops • On-line retrieval • Secondary spend programming
<u>Commercial Development</u> <ul style="list-style-type: none"> • Donations • Sponsorships • Memberships • Commercial / business opportunities

- **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.

<u>Sustainability</u> <ul style="list-style-type: none"> • Facility management • Sustainable transport • Sustainability • Climate change reporting • Leisure Facility Strategy
<u>Estates</u> <ul style="list-style-type: none"> • Annanhill Golf Course (Estate) • Dean Castle Country Park • Strategic Path Network • Green infrastructure strategy • Ayrshire Athletics Arena (Estate)
<u>Countryside</u> <ul style="list-style-type: none"> • Natural health programming • Outdoor activities • Recreation Plan • Land Reform • Biodiversity • Outdoor learning • Treehouse residential centre • Rural Life Centre including the urban farm

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 (quantitative)

Performance Indicator	2018 Baseline Figure	Our 2030 Aspirations
People attending our venues	2.6 million	2.8 million
People engaging in our programme	0.9 million	0.99 million
Our eastayrshireleisure.com online visitors	0.32 million	0.38 million
Our futuremuseums.com online visitors	0.24 million	0.25 million

Number of programmes for 12 - 25 year olds annually	20	30
Number of programmes for 60+ years annually	7	15
Number of local and regional events and exhibitions	28	40
Number of children engaged in our education programme	12000	20000
Opportunities that we have offered to volunteers and work placements	17	50
Our absence levels	Maintain absence to below acceptable level of 8 days per annum	Maintain absence to below acceptable level of 8 days per annum
Our staff turnover rates	10%	7 - 10%
Number of community initiatives that we support annually	17	30
Number of partnership projects that we are engaged in	25	40
Our Carbon Footprint	1103tCO ₂ e	990tCO ₂ e

Key Performance Indicators (qualitative)

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:

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

Local Government Benchmarking Framework

The LGBF is a high-level benchmarking tool designed to support senior management teams and elected members to ask questions about key council services.

It reflects a commitment by SOLACE (Scotland) and COSLA to develop better measurement and comparable data as a catalyst for improving services, targeting resources to areas of greatest impact and enhancing public accountability.

The framework provides high-level 'can openers' which are designed to focus questions on why variations in cost and performance are occurring between similar councils. They do not supply the answers. That happens as councils engage with each other to 'drill down' and explore why these variations are happening.

The LGBF helps councils compare their performance against a suite of efficiency, output and outcome indicators that cover all areas of local government activity. The framework now has 8 years of data. Publication of the LGBF forms part of each council's statutory requirements for public performance reporting, replacing the previous SPI regime.

East Ayrshire Leisure supports East Ayrshire Council in the collation of the following indicators:

- C&L1: Cost per attendance at sports facilities
- C&L2: Cost per library visit
- C&L3: Cost of museums per visit
- C&L4: Cost of parks & open spaces per 1,000 population
- C&L5a: Percentage of adults satisfied with libraries
- C&L5b: Percentage of adults satisfied with parks and open spaces
- C&L5c: Percentage of adults satisfied with museums and galleries
- C&L5d: Percentage of adults satisfied with leisure facilities

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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 Core Path Plan
- East Ayrshire Green Infrastructure Framework
- East Ayrshire Biodiversity Duty Report

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.

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;

- 5.8.3 comply with any specific requirements in respect of the Council as are outlined in Part I 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 I 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 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 I 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.

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;
- 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 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.

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 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.

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

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

In-service training

- Delivery of In-service training courses, including health and safety provision
- Access to e-learning modules
- 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

Corporate Communications Services

- 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.
- 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.
- Provide dedicated support for large scale branded projects as required, for an agreed additional professional fee (e.g. brand development and graphic design input for external funded projects).

Part 2 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 performance 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 notifiable incidents to the Health & Safety Executive within required timescales upon notification
- Provide advice and support in relation to incident investigations
- Provide direct assistance to the Trust on investigations into serious incidents

- Provide support, guidance and assistance to the Trust in liaising with enforcement agencies, including HSE and Scottish Fire and Rescue.

COSHH

- Provide guidance and advice to the Trust in relation to compliance with the COSHH regulations
- Identify suitable training provider relating to conducting COSHH risk assessments and managing substances harmful to health.

Asbestos

- In conjunction with the Council's Facilities and Property Management Services, ensure that buildings occupied by the Trust have an up to date asbestos register in compliance with the Control of Asbestos Regulations 2012
- Provide advice and support to the Trust in managing the risks posed by Asbestos.

Audit and Inspection

- Support the Trust in maintaining robust safety management arrangements through periodic inspection and audit of Trust activities and premises as appropriate.

Events

- Provide support and advice to the Trust on complying with applicable and recognised safety standards associated with events organised by the Trust.

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.

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 licensing (liquor, gambling and miscellaneous civic government)

Part 5 Facility and Property Management

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

Estates Management

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

Architecture and Asset Planning

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

Asset and Facilities Support

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

Part 6 Finance and ICT

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

Financial Systems

- Provide a hosted financial management system via corporate system – Civica Financials, including: General Ledger; Accounts Payable; Accounts Receivable; Income Management
- Provide systems support services – processing of feeders, 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 reporting requirements
- Manage all Civica interfaces with approved subsidiary systems (PECOS; CHRIS21) where these are available / utilised

Financial Reporting

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

Creditor Payments

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

Income Management/Cash Receipting

- Provide for the secure uplift and lodgement of income as part of the Council's term contract

- Provide a system to allow Direct Debit / Standing Order payments to be utilised

Sundry Debtors

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

Insurance and Risk Management

- Ensure appropriate policies and covers are in place
- Handle claims within excess including liaison with the Insurer, appointed loss adjuster etc.
- Provide point of contact for all dealings with the Insurer
- Administer PA/Travel Scheme
- Provide adhoc. support as required

VAT

- Provide adhoc. advice as required

Treasury Management / Exchequer

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

Information Technology

- Project Management
- PC Installation and Support (including, but not limited to desktops, laptops and mobile devices (e.g. tablets, iPads etc)
- Applications Development and Support
- Data and Voice Communications Support
- World Wide Web (WWW) and Email Support
- Database Administration
- IT Equipment Procurement
- IT equipment and software inventory
- Licensing
- Systems Operation and Management
- Contingency and Disaster Recovery
- Systems and Information Security
- Service Desk for IT and Property faults.

Part 7 Internal Audit

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

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

Part 9 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)
- A work/service history will be maintained for each machine/piece of equipment
- Arrange External suppliers for tyres etc.
- Training

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 group will be established and will include representatives from the Trust and the Council. The group will monitor all facility maintenance issues and will meet every 4 weeks

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

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

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

The Council's Capital Programme

6.5 The Leisure Trust will be expected to support the delivery of the Council's capital programme whenever capital projects involve Council facilities or buildings managed by the Trust. Staff with appropriate skills and experience may be required to lead or support Project Boards or Implementation teams established to 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

6.6 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:

6.6.1 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;

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

- 6.6.3 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;
 - 6.6.4 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;
 - 6.6.5 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;
 - 6.6.6 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;
 - 6.6.7 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;
 - 6.6.8 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;
 - 6.6.9 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.
- 6.7 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

- 6.8 If an Emergency Event occurs the Council shall be entitled:-
- 6.8.1 to occupy all or any part of the Properties and use the equipment therein; and/or
 - 6.8.2 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 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.

6.10 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.

6.11 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:-

6.11.1 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

6.11.2 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.

6.12 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.

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

6.13.1 the Required Action has been completed; or

6.13.2 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

6.14 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.

6.15 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.

6.16 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.

6.17 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.

New Asset Transfers

6.18 The Council shall transfer to the Trust, and the Trust shall accept, in each case with effect from the Effective Time:-

6.18.1 the Undertaking; and

6.18.2 all of the assets associated with the conduct of the Undertaking (with the exception of the Excluded Assets), including without prejudice to that generality:-

6.18.2.1 (subject to clause 6.52) the Council's interest under each of the Transferring Contracts;

6.18.2.2 the Equipment & Furniture;

6.18.2.3 the Stock;

6.18.2.4 the Third Party Rights; and

6.18.2.5 the Petty Cash.

6.19 For the avoidance of doubt, the following assets associated with the conduct of the Undertaking are excluded from the Transfer:-

6.19.1 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);

6.19.2 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);

6.19.3 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);

6.19.4 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

6.19.5 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;

6.19.6 the Debtors; and

6.19.7 the Creditors.

6.20 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.

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

6.22 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

6.23 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).

6.24 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

6.25 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.

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

6.25.1.1 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);

6.25.1.2 copies of the following documents, to the extent only that they have been maintained by the Council and are in the Council's possession (and in each case only to the extent that they relate to the Properties and existing

fittings and fixtures and equipment):-

- (a) asbestos assessments and written plans required under the Control of Asbestos Regulations 2012;
- (b) fire risk assessments and documented arrangements required under the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006;
- (c) health and safety files required under the Construction (Design and Management) Regulations 1997;
- (d) risk assessments and control plans required under the Control of Substances Hazardous to Health Regulations 2002;
- (e) risk assessments required under the Management of Health and Safety at Work Regulations 1999;
- (f) risk assessments required under the Workplace (Health, Safety and Welfare) Regulations 1992;
- (g) any risk assessments, documented controls, maintenance manuals, information and written instructions required under the Provision and Use of Work Equipment Regulations 1988;
- (h) any records of assessments required under the Health and Safety (Display Screen Equipment) Regulations 1992; and
- (i) any records of assessments, control measures, health surveillance, information, instruction and training required under the Control of Noise at Work Regulations 2005;

provided that following Completion the Council shall also make available to the Trust copies of the documents relating to health and safety and fire safety reasonably requested by the Trust, to the extent only that they have been maintained by the Council and are in the Council's possession (and only to the extent that they relate to the Properties and fittings and fixtures and equipment existing as at Completion);

6.25.1.3 (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;

6.25.1.4 copies of the Transferring Contracts, so far as held by or to the order of

the Council;

6.25.1.5 a certificate showing the amount comprised in the Petty Cash;

6.25.1.6 the Employee List;

6.25.1.7 the Non-Collections Assets List;

6.25.1.8 the Pensions Guarantee, duly executed by the Council,

6.25.2 the Council and the Trust shall execute, in each case in the Agreed Form:-

6.25.2.1 the Provision of Services Agreement;

6.25.2.2 (subject to clause 6.33) the Leases;

6.25.2.3 (subject to clause 6.33) the Sublease;

6.25.2.4 the Collections Agreement;

6.25.2.5 the Support Services Agreement; and

and

6.26 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 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.

6.27 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.

6.28 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.

6.29 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.

6.30 The licences granted pursuant to clauses 6.26 and 6.28 shall terminate only upon termination of the Provision of Services Agreement, howsoever arising.

6.31 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.

6.32 For the avoidance of doubt:-

6.32.1 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;

6.32.2 property, ownership and risk in respect of the Assets shall pass to the Trust at Completion;

6.33 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

6.34 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.

6.35 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).

6.36 In the event that the value of the Stock has not been agreed between the Council and the Trust by the expiry of a period of 15 Business Days following Completion, either of them may refer the matter(s) in dispute to an independent expert (the "Expert") appointed by agreement between them, or (failing such agreement) nominated on the application of either Party by the President at the time of the Institute of Chartered Accountants of Scotland.

6.37 The following provisions shall apply in relation to any reference to an Expert in pursuance of clause:-

6.37.1 the Expert shall act as an expert and not as an arbiter;

6.37.2 he/she shall have the right to seek such professional advice and assistance as he/she may reasonably require;

6.37.3 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.

- 6.37.4 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.
- 6.37.5 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.
- 6.37.6 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

- 6.38 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.
- 6.39 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.
- 6.40 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.
- 6.41 All sums due by the tenant under the Head Lease shall be apportioned between the Council and the Trust as at the Effective Date (but only to the extent that the Trust is required to meet such sums under the terms of the Sublease), and on the basis that any annual payment shall be deemed to accrue at a uniform daily rate throughout the year.
- 6.42 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.
- 6.43 Subject to clauses 6.38 to 6.42 and without prejudice to any other provision of this Agreement:
- 6.43.1 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;

- 6.43.2 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;
- 6.43.3 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;
- 6.43.4 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
- 6.43.5 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.
- 6.44 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).
- 6.45 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

- 6.46 The Trust undertakes that:-
- 6.46.1 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;
- 6.46.2 within five Business Days of receipt of the extract of each of the Leases, it shall forward

one extract to the Council;

6.46.3 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;

6.46.4 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).

6.47 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.

6.48 In relation to each of the Properties for transfer:-

6.48.1 the Council and the Trust undertake that:-

6.48.1.1 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));

6.48.1.2 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

6.48.1.3 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);

6.48.2 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.

6.49 The Council undertakes:-

6.49.1 to issue, as soon as reasonably practicable after Completion, to any tenants/licensees/occupiers under the Third Party Leases a notice intimating the change of landlord/licensor under the relevant Third Party Lease, in such terms as the Council and the Trust may agree (each being bound to act reasonably in this respect); and

- 6.49.2 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

- 6.50 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.

- 6.51 In respect of each of the Transferring Contracts:-

- 6.51.1 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

- 6.51.2 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.

- 6.52 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

- 6.52.1 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

- 6.52.2 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..

- 6.53 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.

6.54 If the Parties are unable to secure the assignation of any Transferring Contract, the assumption by the Trust of responsibility for performance of the relevant obligations in respect of the remainder of the term of that Transferring Contract may (subject to the consent and cooperation of the other party or parties to that Transferring Contract) be dealt with by novation; the provisions of clauses 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.

6.55 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.

6.56 The parties acknowledge that it is the intention that:-

6.56.1 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;

6.56.2 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 assignation 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.

6.57 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:-

6.57.1 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

6.57.2 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

6.58 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.

6.59 Without prejudice to the generality of clause 6.58, the Council shall provide the Trust with all such assistance and co-operation as the Trust may reasonably request:-

6.59.1 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

6.59.2 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

6.60 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.

6.61 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.

6.62 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:-

6.62.1 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;

6.62.2 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);

6.62.3 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);

- 6.62.4 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;
- 6.62.5 take all reasonable steps available to it to mitigate such loss or liability, and shall comply at all times with insurers claims handling protocols. In particular the Trust shall notify the Council immediately in writing of any situation that might give rise to a claim; it must also notify Police Scotland in the event of any theft or malicious damage losses and provide the Council with a crime reference number. All insured losses should be reported immediately to the Council as failure to notify same within a 30 day period from the date of loss could entitle insurers to void the claim.

including, without prejudice to that generality, the indemnities contained in clause 6.73.

Insurance Arrangements

- 6.63 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).

- 6.64 With reference to clause 6.63:-

- 6.64.1 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.

- 6.64.2 (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).

- 6.65 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.

- 6.66 The Council undertakes:-

- 6.66.1 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;

- 6.66.2 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.

6.67 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.

6.68 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.

6.69 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.

6.70 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.

6.71 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.

6.72 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

6.73 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.

- 6.74 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.
- 6.75 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.
- 6.76 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 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.
- 6.77 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.
- 6.78 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.
- 6.79 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.
- 6.80 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.

6.81 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.

6.82 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:-

6.82.1 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;

6.82.2 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;

6.82.3 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;

6.82.4 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:-

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

6.82.4.2 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.

6.83 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.

6.84 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.

6.85 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:-

6.85.1 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

6.85.2 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

6.85.3 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.

6.85.4 Notwithstanding clause 6.87:

6.85.4.1 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;

6.85.4.2 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.

6.86 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.

6.87 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.

6.88 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.

6.89 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.

Pensions

6.90 Trust to be an Admission Body

6.90.1 The Trust shall ensure that all Employees are offered membership of the LGPS on and from the Effective Time.

6.91 Indemnity for breach of the Admission Agreement

6.91.1 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.

6.92 Trust ceasing to be an Admission Body

6.92.1 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:-

6.92.2 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:-

6.92.2.1 established within three months of the Cessation Date or such longer period as the Council may agree;

6.92.2.2 reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed); and

6.92.2.3 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;

6.92.2.4 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;

6.92.2.5 the Trust undertakes to the Council to procure that:-

6.92.2.6 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;

6.92.2.7 if the Replacement Scheme is terminated, the Trust shall provide a replacement arrangement or arrangements for the Employees;

6.92.3 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;

6.92.4 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 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

- 6.92.5 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

- 6.93 The Trust undertakes to the Council:-

- 6.93.1 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;
- 6.93.2 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;
- 6.93.3 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;
- 6.93.4 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
- 6.93.5 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

- 6.94 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:-

- 6.94.1 relate to pension rights in respect of periods of employment on and after the Effective Time; or
- 6.94.2 arise out of the failure of the Trust to comply with the provisions of clause 6.94.

Transfer to another Employer

6.95 If the employment of any Employee transfers to another employer (by way of a transfer under the TUPE Regulations), the Trust shall:-

- 6.95.1 consult with and inform those Employees of the pension provisions relating to that transfer; and
- 6.95.2 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

6.96 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:-

- 6.96.1 each of them (and their successors) will meet the Additional Pension Costs (if any) arising by virtue of its own actions and omissions;
- 6.96.2 neither of them (nor their successors) will be liable for the Additional Pension Costs in respect of the other's actions and omissions;
- 6.96.3 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;
- 6.96.4 "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.

6.97 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:-

- 6.97.1 providing any and all required information in connection with the Employees;
- 6.97.2 liaising as appropriate with the LGPS; and
- 6.97.3 communicating with the Employees.

6.98 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

- 6.99 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.

Transferring Records

- 6.100 The Council undertakes:-

6.100.1 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;

6.100.2 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.

6.101 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

6.102 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.

6.103 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.

6.104 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

6.105 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.

6.106 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.

6.107 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

6.108 The Trust shall accept without objection such title as the Council may have to the Assets.

6.109 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

6.110 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.

6.111 The Council undertakes:-

6.111.1 not by any act or omission to cause (directly or indirectly) any of the Warranties to be breached after the date of this Agreement;

6.111.2 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.

6.112 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

6.113 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.

6.114 The Council undertakes to notify the Trust in writing as soon as reasonably practicable:-

6.114.1 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

6.114.2 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.

6.115 Without prejudice to the provisions of clause 6.113 :-

6.115.1 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);

6.115.2 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.

6.116 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

6.117 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.

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;

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 January 2022. 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
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Shared Sites – Community Hubs

Facility	Operators
Hunter Fitness Suite (North West Area Centre)	East Ayrshire Leisure East Ayrshire Council NHS
Patna Library	East Ayrshire Leisure East Ayrshire Council Patna Community Association
Crosshouse Library	East Ayrshire Leisure East Ayrshire Council NHS
Cumnock Library	East Ayrshire Leisure East Ayrshire Council
Drongan Library	East Ayrshire Leisure East Ayrshire Council Drongan Community Association
Whatriggs Library	East Ayrshire Leisure East Ayrshire Council
Burns Monument Centre	East Ayrshire Leisure East Ayrshire Council

Standalone Sites

Facility	Operators
Annanhill Golf Course	East Ayrshire Leisure
Auchinleck Leisure Centre	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
Palace Theatre	East Ayrshire Leisure
Morton Hall	East Ayrshire Leisure
Rose Reilly Sports Centre	East Ayrshire Leisure
Stewarton Area Centre	East Ayrshire Leisure
The Joughs	East Ayrshire Leisure
Burns Memorial Tower	East Ayrshire Leisure (leased to private party)

Community Management Arrangements

Facility	Operators
Logan Day Care Centre	Logan Centre User Group
Onthank Community Campus	Kilmarnock North West Community Partnership
Catrine Games Hall	Catrine Games Hall Trust

AM Brown Insitute	Catrine Community Trust
Patna Community Centre	Patna Community Association
Rankinston Community Education Centre	Rankinston Community Association

Shared Community Management Arrangements

Facility	Operators
Auchinleck Boswell Centre	Auchinleck Community Development Initiative
Galston Community Centre	Galston Community Association

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
Dalrymple	East Ayrshire Leisure
George V Fenwick	East Ayrshire Leisure
Hurlford Richardson Park	East Ayrshire Leisure
Knockentiber	East Ayrshire Leisure
Mauchline	East Ayrshire Leisure
Merlin Park	East Ayrshire Leisure
Ochiltree	East Ayrshire Leisure
Scott Ellis	East Ayrshire Leisure
Riccarton	East Ayrshire Leisure
Netherthird	East Ayrshire Leisure

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> <i>Sports Hall (within PE Dept)</i>	√	√	n/a
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>		√	√

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)		√	√		√	√
Gas Safety Certificate		√	√		√	√
Handheld Fire Equipment		√	√		√	√
Lightening Conductors		√	√		√	√
Pallet Truck Inspections <i>Determined by Inventory</i>	√	√	√	√	√	√
Poolside hoist		√	√		√	√
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)

- 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

- 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 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.

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>		√	

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.

Access and Security

East Ayrshire Council will be responsible for ensuring safe access, egress and the security of the building.

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

- 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

- 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 agree between the Trust and the Council prior to being instructed

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 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 lets 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
- 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.
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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 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.

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 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.
- 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 the risks posed by legionella bacteria in relation to Ule 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 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 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 Licence to Occupy

1. The Grant

- 1.1 The Landlords hereby grants a licence to occupy the Premises (together with any Additional Rights) to the Tenants under reservation of the Reserved Rights and subject to the Third Party Rights and that for the Duration at a rent of ONE POUND STERLING (£1) per annum (if asked) exclusive of any Value Added Tax which may be payable thereon annually in arrears in consideration of the grant of this Licence.

2 Rent and Other Payments

- 2.1 The Tenants bind and oblige themselves during the Duration to pay (a) the rent specified in clause 1 hereof (if demanded) from time to time payable in terms of this Licence without deduction (b) any additional charges to ensure compliance with the obligations specified therein (c) any contra-charge imposed in terms of Clause 3.5 hereof (d) any insurance related charges imposed in terms of clauses 9.2 and 9.7 hereof and (e) all existing and future rates, taxes, charges (including without prejudice to the foregoing generality charges for utilities irrespective of how these are charged), assessments, impositions on (including without prejudice to the foregoing generality those imposed in terms of the titles, statute, or common law) and outgoings whatsoever charged (whether payable by an owner or occupier), assessed or imposed on in respect of the Premises (excepting any tax, charge, assessment or imposition payable in respect of the rent or any other sums payable hereunder to the Landlords or by virtue of the grant of this Licence or any disposal or dealing with the Landlords' interest in the Premises or any part hereof) together with any Value Added Tax and /or any other tax or charge of a similar nature as shall be properly chargeable in respect of all monies undertaken to be paid by the Tenant under this licence all of which moneys are for the avoidance of doubt expressed exclusive of Value Added Tax or such other tax as aforesaid.
- 2.2 The demand for or acceptance of rent (or other sums) by the Landlords or their agents at any time shall not in any circumstances constitute nor be construed to be a waiver of any of the Tenants' obligations under this Licence nor of the Landlords' remedies for breach thereof.

3 Repair and Maintenance

- 3.1 The Tenants accept the Premises at the Date of Entry in their present condition and state of repair and decoration and undertake to carry out throughout the Duration the Tenants Repairing Obligations (subject to the provisions of clause 3.3 below) in accordance with the Landlord's Policies, Procedures and Standards, the Asset Transfer, Services and Finance Agreement and any Support Services Agreement or Service Level Agreement from time to time in place during the Duration
- 3.2 The Tenants shall permit the Landlords and others authorised by them at all reasonable times throughout the Duration and on reasonable prior notice (except in the case of emergency, when no notice shall be required) to enter, examine and record the condition of the Premises and upon notice being served by the Landlords to execute all works of cleaning, decoration, maintenance and repair to the Premises as the Landlords may require to procure compliance by the Tenants with the Tenants Repairing Obligations within such reasonable period as is specified in such notice,

and that to the satisfaction of the Landlords and, in case of default by the Tenants, the Landlords and others as aforesaid shall be entitled to enter the Premises to execute all such works as aforesaid and the whole costs and expenses incurred by the Landlords in so doing shall be due and payable by the Tenants to the Landlords on demand.

- 3.3 Notwithstanding the foregoing provisions of clause 4.1 above or any other provision indicating the contrary, the Tenants shall not be liable for any of the Tenants' Repairing Obligations required as a result of damage or destruction to the Premises caused by (a) an insured Risk, save to the extent that the insurance monies are rendered irrecoverable in consequence of some act, omission or default of the Tenants, or (b) the negligence of the Landlords.
- 3.4 The Landlords shall at their own cost, subject to availability of financial resources carry out throughout the Duration the Landlords Repairing Obligations in accordance with the Landlord's Policies, Procedures and Standards, the Landlords' Property Contracts, the Asset Transfer Agreement, Services and Finance Agreement and any Support Services Agreement or Service Level Agreement from time to time in place during the Duration.
- 3.5 The Tenants shall notify the Landlords of any specific items of repair and/or maintenance deemed by the Tenants to be required to the Premises which fall within the Landlords' Repairing Obligations immediately on same being identified by the Tenants, said notification to be made in accordance with the Council's Policies, Procedures and Standards for reporting of property repairs. In the event of any such item of repair and /or maintenance not being notified to the Landlords in accordance with the provisions of this clause 3.5, the Landlords may at their discretion contra-charge the Tenants for the value of any additional works required as a result of the said item of repair and /or maintenance not being notified to the Landlords.
- 3.6 The Tenants shall permit the Landlords and others authorised by them at all reasonable times and on reasonable prior notice (except in the case of emergency, when no notice shall be required) to enter, examine and record the condition of the Premises and execute all works of repair to the Premises as the Landlords may deem necessary and of which the Landlords shall be the sole judge to procure compliance by the Landlords with the Landlords' Repairing Obligations within such time period as is deemed by the Landlords to be reasonable in the circumstances.

4 Statutory and Other Compliance

- 4.1 The Tenants shall comply at their own expense with the provisions and requirements of all European Union, United Kingdom and Scotland statutes and subordinate legislation, regulations and directives, and any notices and directions issued thereunder (including without prejudice to the foregoing generality the Planning Acts, the Factories Act 1961 The Workplace (Health, Safety and Welfare) Regulations 1992 and Provision and Use of Work Equipment Regulations 1998, the Offices, Shops and Railway Premises Act 1963, the Fire Precautions Act 1971, the Health and Safety at Work etc. Act 1974, the Environmental Protection Act 1990, the Disability Discrimination Act 1995 Equality Act 2010, the Environmental Act 1995, the Construction (Design and Management) Regulations 2007, the Control of Asbestos Regulations 2012, the Fire (Scotland) Act 2005 and Fire Safety (Scotland) Regulations 2006, and any other legislation from time to time in force throughout the Duration (save that the Tenants' obligations under this Clause 5.1 shall not extend to any actions required to be carried out by the Landlords in terms of the Landlords Repairing Obligations or to the Landlords' obligations in respect of statutory works as detailed in Clauses 4.2, 4.3, 4.4 and 4.5 below)

- 4.2 Subject to the availability of funding the Landlords shall carry out all Statutory Works, which may require to be executed from time to time to the Premises throughout the Duration in order to secure compliance with statutory requirements (including without prejudice to the fore-going generality Health and Safety Legislation whether currently in force or introduced during the Duration). In order to ensure compliance with this Clause 4.2 and Clauses 4.3, 4.4 and 4.5 below the Landlords shall have and shall maintain control of the Premises throughout the Duration.
- 4.1 The Landlords shall carry out fire risk assessments and make documented arrangements required under the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006 in relation to the Premises throughout the Duration in accordance with the Landlords Policies Procedures and Standards.
- 4.2 The Landlords shall carry out asbestos assessments and make written plans required under the Control of Asbestos Regulations 2012 in relation to the Premises throughout the Duration in accordance with the Landlords Policies Procedures and Standards.
- 4.3 The Landlords shall carry out risk assessments required under Health and Safety Legislation in respect of the risks posed by legionella bacteria in relation to the Premises throughout the Duration in accordance with the Landlords Policies, Procedures and Standards.
- 4.4 The Tenants shall comply with the whole provisions contained in the title deeds and all existing servitudes and rights of way leave whether or not formally constituted (including without prejudice to the foregoing generality those for laying and maintaining of sewers ,drains , pipes ,cables ,wires and stays) relating to the Premises ,all requirements or regulations of the Landlords' insurers or of any competent authority relating to the Premises and their use and the Landlords Policies and Standards.
- 4.5 The Tenants shall provide to the Landlords at any time during the Duration on request and at the Tenants' expense copies of the Health and Safety file (if a Health and Safety file is required at the time in respect of the Premises) and any certificates, consents, warrants, notices and other documentation relating to the Premises as the Landlords may require as evidence of compliance with Clause 3.1 and 3.6 above.

5 Planning, Alteration and Signage

- 5.1 The Tenants shall not make any application, representation or objection, nor commence any development permitted under the Planning Acts except with prior written consent of the Landlords which consent shall not be unreasonably withheld and shall give the Landlords forthwith upon receipt a copy of any notice received under the Planning Acts or any other statutory provision.
- 5.2 The Tenants shall not make or permit to be made any alterations or additions structural or otherwise in or upon the Premises ,nor to place or permit to be placed in or upon the Premises any additional erection or building and not to exhibit or affix any light, sign, aerial or other articles (including without prejudice to the foregoing generality any hoarding or advertisement) whatsoever on the exterior of any building upon the Premises or of which the Premises comprise part except with the prior written consent of the Landlords and only in accordance with such conditions as the Landlords may impose and with plans and specifications approved in writing by the Landlords in advance, which consent and approval shall not be unreasonably withheld. The Landlords reserve the right to erect hoardings for public advertising but such right

shall be exercised in such a way as to cause the minimum disruption or hindrance to the Tenant in his occupation or use of the Premises.

6 Use

- 6.1 The Tenant shall occupy and use the Premises for the Permitted Use and for no other purposes whatsoever, except with the prior written consent of the Landlords in respect of any proposed change to any incidental use subsisting at the Date of Entry, in and only in accordance with such conditions as the Landlords may impose, which consent shall not be unreasonably withheld. For the avoidance of doubt the Tenants shall not use the Premises for residential purposes nor shall the Tenants shall the tenants keep livestock, pets or guard dogs in or about the Premises except in so far as same are necessary and incidental to the Permitted Use of which the Landlords acting reasonably shall be the sole judge .
- 6.2 The Tenants shall not use the Premises for any noxious, noisy, offensive, dangerous or immoral trade or business including without prejudice to the foregoing generality the sale or disposal or advertisement of solvents, combat knives and handguns from the Premises or for any purpose which, in the reasonable opinion of the Landlord may be undesirable or cause a nuisance, annoyance, disturbance or inconvenience to the Landlords or any of their tenants or to any occupier of premises in the neighbourhood nor shall the Tenants display or suspend goods or articles for sale out-with the Premises .
- 6.3 The Tenants shall not overload any floor surfaces in the Premises and shall keep the Premises free from any undue deposit or refuse or other materials (not being refuse) or things which may in the reasonable opinion of the Landlords be deemed to be offensive or a nuisance or injurious to the amenity of the Premises .
- 6.4 The Tenants shall not overload the electrical or ICT system in the Premises, terminate any ICT Services or Network Connection provided by the Landlords and shall not install within the Premises any ICT equipment or software except with the written consent of the Landlord and in accordance with such conditions as the Landlords may impose which consent shall not be unreasonably withheld.
- 6.5 The Tenants shall take reasonable precautions against fire and shall not bring onto the Premises any hazardous, explosive, dangerous or combustible goods or materials save for any such goods or materials used by the Tenants in the normal course of business provided they are stored and used in accordance with the relevant Health & Safety regulations, the Landlords' Policies, Procedures and Standards and the requirements of the Landlords' Insurer
- 6.6 In the event of an Automatic Fire Suppression System being installed in the Premises the Tenants shall ensure that the weekly test/ test card is completed and that during winter months heating is maintained in accordance with the manufacturer's specification in accordance with the Landlords' Policies, Procedures and Standards and the requirements of the Landlords' Insurers. It is a specific requirement notwithstanding the foregoing generality that the ambient temperature throughout the period 1st October to 31st March annually should be maintained at a sufficient level to provide frost protection.
- 6.7 The Tenants shall not cease to use the Premises for any period throughout the Duration of more than 30 days except with the prior written consent of the Landlords which consent will not be unreasonably withheld and in accordance with such conditions as the Landlords and /or their

insurers may impose including without prejudice to the foregoing generality an obligation to take such steps and continue to take such steps as may be required by the Landlords and/or the Landlords' insurers in respect of security of the Premises (in addition to those required whilst the Premises are in use) and/or any other matter during such period as the Tenants cease to use the Premises.

- 6.8 The Tenants shall only engage security contractors holding all appropriate licences from the Security Industry Authority as required in terms of the Private Security Industry Act 2001 and registered with the Security Industry Authority's voluntary Approved Contractor Vetting Scheme for the relevant category of service to be provided
- 6.9 The Tenants shall not pass or allow to pass into the pipes, drains, sewers or others serving the Premises any polluting agent or noxious or deleterious effluent or other substance which might cause any obstruction or injury to said pipes and others or otherwise cause contamination (the normal operation of a swimming pool facility been taken to fall out -with the preceding provisions of this Clause 6.9) but to employ such plant for treating such effluent before it enters the drains as may be required by any local or public authority or by the Landlords and to make good and remedy any such injury or contamination which occurs to the satisfaction of the Landlords, and not to permit any smoke, effluvia, vapour or grit to be emitted from the Premises.

7 Alienation

- 7.1 The Tenants shall not assign this Licence in whole or in part nor to part with or share possession or occupation of the whole or any part of the Premises, nor sublet the whole or any part of the Premises, nor charge nor grant rights over the same in favour of third parties, except in the case of the Third Party Rights, so long as they subsist or as otherwise provided for in the Services and Finance Agreement except with the prior written consent of the Landlords, and in accordance with such conditions as the Landlords may impose, which consent shall not be unreasonably withheld.

8 Indemnity

- 8.1 The Tenants shall free , relieve and indemnify the Landlords from and against liability in respect of any injury to or the death of any person, damage to any property, heritable or moveable, any interdict or court action, the infringement, disturbance or destruction of any right, servitude or privilege or otherwise or any other loss, liability, third party claim or additional costs by reason of or arising directly or indirectly out of the repair, state of repair or condition of the Premises (notwithstanding that the Tenants are not in breach of their obligations as specified at Clause 2.1 hereof but not where such liability arises out of any act, neglect or default of the Landlords) or any alteration or addition or improvement to the Premises or the use of the Premises or from any act, omission or default of the Tenants in the implementation and observance of the obligations contained in this Licence and from all fees, penalties, charges, proceedings, costs, claims, expenses and demands of whatsoever nature in respect of any such liability or alleged liability or any such act, omission or default.

9. Insurance

- 9.1 The Landlords shall for the Duration (unless prevented from doing so by any act, omission or default of the Tenants or otherwise) keep the Premises constantly insured against loss or damage by or in consequence of the Insured Risks (but only for so long as and to the extent that the Landlords are reasonably able to obtain such cover at reasonable commercial rates subject to reasonable policy excesses of which the Landlords shall be the sole judge) in their full reinstatement value (as determined by the Landlords) together with an amount to cover the costs of shoring up, propping, hoarding, demolition, site clearance and incidental expenses and architects' and other professional fees in relation to the rebuilding, repairing or restoring of the Premises or any part thereof and any Value Added Tax properly chargeable on such costs and others all in the name of the Landlords (and such other names as the Landlords may require) with the interest of the Tenants noted thereon. For the avoidance of doubt, the Insurance cover provided by the Landlords shall not cover subsidence, accident damage; damage caused in the furtherance of theft or attempted theft, and Tenants' improvements.
- 9.2 The Landlords shall not be liable for any property damage, loss of property or injury arising directly or indirectly as a result of the Tenants' use of the subjects or the use thereof by third parties (if any). The Landlords shall use reasonable endeavours to procure that the foregoing policy of insurance shall contain a waiver of subrogation rights, either generically or specifically, against the Tenants. In addition, the Landlords shall effect insurance against property owners' and third party liability and such other risks as the Landlords may require, for such amounts and on such terms as the Landlords may require.
- 9.3 If requested by the Tenants, the Landlords shall provide the Tenants with a summary of the risks insured against and amount of cover provided by the Landlords' insurances. If requested by the Tenants following exhibition of summary of risks and amount of cover provided the Landlords will give consideration to increasing the level of insurance cover but will not be obligated to do. Any increase to the level of cover will be subject to the Tenants being responsible for payment of any additional premium.
- 9.4 The Tenants shall be responsible for effecting and maintaining at their own cost with a reputable insurance company Trustees Indemnity insurance at a level deemed adequate by the Landlords in respect of the Tenants' occupancy and use of the Premises. If requested by the Landlords the Tenants shall provide the Landlords with a summary of the said insurance (including the amount of cover provided) and a receipt for the payment of the last premium or other evidence that the insurances are in force.
- 9.5 The Tenants shall comply with the terms and conditions of all insurance covers taken out in respect of the Premises by the Landlords throughout the Duration in accordance with the Landlord's insurance obligations specified in clause 9.1 above and any warranties imposed upon the Landlord by its insurers. The Tenants shall notify the Landlords immediately of any incident likely to give rise to an insurance claim in compliance with the Council's Policies, Procedures and Standards.
- 9.6 The Tenants shall, without prejudice to the provisions of clause 9.4 above, notify the Landlords immediately of any material change in risk impacting on the terms and conditions of any insurance cover taken out by the Landlords in respect of the Premises, in accordance with the Landlord's insurance obligations specified in clause 9.1 above and any warranties imposed upon the Landlords by its insurers, including but not limited to those arising in respect of the premises becoming unoccupied, any alarm, security systems or CCTV systems failing and the hiring of any plant or equipment.

- 9.7 The Tenants shall take all reasonable precautions to avoid injury loss or harm and shall not do or permit on the Premises any act or omission or default whereby any insurance policy effected by the Landlords relating to the Premises or any other property in which the Landlords have an interest, may be or become void or voidable or whereby any shortfall may arise in the insurance monies which would otherwise have been recovered by the Landlords or whereby there may be any increase in the cost of insuring the Premises or any other property in which the Landlords have an interest above the rate which would otherwise be payable .
- 9.8 In the event of the cost of the insurance cover arranged by the Landlords in accordance with their insurance obligation specified in clause 10.1 above and / or the terms thereto being prejudiced as a result of any act or omission by the Tenants or any loss to the Tenants howsoever realised throughout the Duration the Landlords shall review the current insurance arrangements and at their own discretion acted reasonably apportion the insurance costs between the Landlords and the Tenants
- 9.9 In the event of each and every claim made by the Tenants against the insurance cover arranged by the Landlords in accordance with their insurance obligations specified in clause 8.1 above to pay to the Landlords or their Insurers any policy excess applied by the Landlords' Insurers in respect of any claim made by the Landlords for an insured loss in respect of the Premises or any part or part thereof.

10. Reinstatement

- 10.1 If and whenever during the Duration the Premises or any part or part thereof are damaged or destroyed by any of the Insured Risks and provided always that the relative policy of insurance is not vitiated nor payment of any of the policy monies refused in whole or in part by reason of any act, omission or default of the Tenants then as soon as reasonably practicable the Landlords shall, subject to all requisite statutory or other consents being obtained, apply all monies received under the policy of insurance (other than monies in respect of loss of rent, property owners' and third party liability insurance) in reinstating (which in this context may include works and fees which the Landlords and/or their insurers deem to be a prerequisite of reinstatement) the Premises or such part of the Premises as shall have been so destroyed or damaged to provide accommodation and facilities approximately equivalent to that which existed prior to such damage or destruction and shall make good from their own resources and shall make good from their own resources any shortfall in the monies required to carry out such re-instatement save where any shortfall is caused by the negligent act of the Tenants
- 10.2 This Licence shall not be determined by reason of any damage to or the destruction in whole or in part of the Premises by the Insured Risks or otherwise but shall nevertheless continue in full force and effect and the rent (if demanded) shall be payable for the Duration provided however that without prejudice to the foregoing, in the event that the Site or the Buildings or any part thereof shall be destroyed or damaged by any of the Insured Risks so as to be unfit for occupation and use and such destruction or damage shall not have been made good within a period of three years following its occurrence then either the Landlords or the Tenants may terminate this Licence by giving written notice within six months of the expiry of said three year period and this Licence shall terminate on the date of any such notice but without prejudice to any claims by either party in relation to any prior breach of the obligations under this Licence.

11. Termination

- 11.1 In the event of the Tenants determining that they have no long term use for the Premises or any part or parts thereof for the Permitted Use, the Tenants shall intimate the proposed closure in writing and withdrawal of service to the Landlords at least three months in advance of any proposed closure date ("the Tenants Trigger Notice")
- 11.2 In the event of the Tenants intimating any proposed closure and withdrawal of service to the Landlords by the service of the Tenants Trigger Notice in accordance with the provisions of clause 11.1 above it shall be for the Landlords at their sole discretion acting reasonably to determine if they are prepared to consent to the proposed closure and withdrawal of service. Any consent granted in terms of this clause will be in writing and will be subject to such terms and conditions as the Landlords may impose and will not be unreasonably withheld. In the event of the Landlords granting consent in terms of this clause the Licence shall nevertheless continue in full force and effect until terminated by the Landlords in accordance with the provisions of Clause 11.3 below
- 11.3 The Landlords may ((other than in a case where the Licence is being terminated in pursuance of the right of irritancy conferred on the landlords in terms of Clause 14.1 below) terminate the Licence at any time during the Duration by serving a written notice to quit to the Tenants specifying the date at which the Licence) is to come to an end ("the Date of Termination"). The notice shall be served at least 40 days prior to the Date of Termination.
- 11.4 The Landlords' option to terminate under Clause 11.2 above may be validly exercised for any purpose of without prejudice to the foregoing generality in the event of legislation being passed removing either in whole or in part the National Non-Domestic Rates relief available in respect of the Premises or to enable re-development or use by the Landlords for any operational purpose or to enable servitude or other heritable and irredeemable rights to be granted to a third party by the Landlords over the Premises or part thereof
- 11.5 The date of termination of the Licence in respect of the Premises or part thereof pursuant to the exercise of the Landlords' option shall be the date specified in the relevant notice or such other date as may be agreed. On the date of termination the Tenants shall deliver to the Landlords a Partial Renunciation or Renunciation of this Licence and as from such date of termination the provisions of this Licence shall cease to apply to the Premises or relevant part thereof but (in the case of partial renunciation) the Licence shall otherwise continue in full force and effect subject to such variations as the Landlords and Tenants (both acting reasonably) may agree are required as a consequence of the subdivision of the Premises or any building or buildings erected thereon .

12 Removal and Dilapidations

- 12.1 On the expiry or earlier termination of this Licence the Tenants shall flit and remove from the Premises without any process of removal being used against them to that effect and to surrender the Premises to the Landlords together with all additions and improvements made thereto (without any compensation being payable by the Landlords to the Tenants in respect thereof), and all Landlords' fixtures and fittings in a state of repair and condition which is consistent with the due performance of the Tenants' obligations under this Licence.

12.2 The Tenants shall further permit the Landlords at any time throughout the Duration or after the date of expiry or earlier termination of this Licence reasonable prior to enter, examine and record the condition of the Premises and compile a Schedule of Dilapidations being a list of those works which are in the opinion of the Landlords required to restore the Premises to a state of repair and condition commensurate with full compliance with the Tenants' obligations under this Licence and the Tenants shall be required upon notice being served by the Landlords to carry out such works specified in the Schedule of Dilapidations within such reasonable period as is specified in such notice.

13. Landlords' Warranty

13.1 The Landlords warrant that the Tenants may, on paying the rent (if demanded) and performing the obligations herein contained, and subject to all Reserved Rights and Third Party Rights, quietly enjoy the Premises during the Duration. Nothing contained in this Licence shall however be deemed to constitute any warranty by the Landlords that the Premises or any part thereof are authorised for the Permitted Use under the Planning Acts or otherwise for any specific purpose or that the Premises are fit for any of the Tenants' purposes under this Licence.

14. Irritancy

14.1 If the rent (if demanded) or any other sums due by the Tenants to the Landlords under this Licence (whether or not the same has been demanded) shall remain unpaid for 21 days after demand or if the Tenants ceases to occupy the Premises or any part thereof for the Permitted use except with the consent of the Landlord or shall fail to perform or observe any of the obligations undertaken by them in this Licence or if the Services and Finance Agreement or the Collections Agreement or the Asset Transfer Agreement is terminated or if the Tenants (being a SCIO) is removed from the Charities Register , is dissolved or otherwise ceases to operate (except in the event of an amalgamation with or transfer of undertakings to another SCIO with the prior written consent of the Landlords which consent shall not be unreasonably withheld) in accordance with the provisions of the provisions of the Charities and Trustees Investment (Scotland) Act 2005 ,as amended , the Scottish Charitable Incorporated Organisations Regulations 2011 , the Scottish Charitable Incorporated Organisations (Removal from the Register and Dissolution Regulations) 2011 and any other legislation or Statutory Instrument from time to time in force in relation to SCIOs throughout the Duration , it shall be at the option of the Landlords by notice to bring this Licence to an end forthwith without any declarator or process of law to that effect and to remove the Tenants from possession of the Premises, and repossess and enjoy the same as if this Licence had not been granted, provided always that in a case of a breach or non-performance by the Tenants (including the non-payment of rent) which is capable of being remedied albeit late the Landlords will not exercise such option of termination unless and until it shall first have given under express threat of irritancy, written notice to the Tenants and any creditor under any fixed or floating charge previously intimated to the Landlords requiring the same to be remedied and the Tenants and any such creditor shall have failed to remedy the same within such reasonable period as shall be provided in the notice which in the case of non-payment of rent or other sum of money shall be 21 days only. Further, it shall be lawful for the Landlords to enter into and upon the Premises with full power to hold and dispose thereof as if the Licence had not been entered into without prejudice, however, to the Landlords' rights and remedies hereunder, at common law or otherwise, which irritancy is hereby declared to be pactional and not penal and not purgeable at the bar.

15. Termination

15.1 Termination of this Licence in pursuance of Clause 11.3 or 14.1 shall be without prejudice to any other remedy of the Landlords in respect of any antecedent breach of any of the Tenants' obligations hereunder, and such termination shall be under reservation of all rights and claims competent to the Landlords in terms of this Licence (including those in respect of rent and other monies due to the date of removal and termination).

16. Notices

16.1 All notices which require to be given in terms of this Licence shall be in writing and shall be deemed to be sufficiently given if sent by recorded delivery post addressed (One) in the case of the Tenants, to their registered office or to such other address as the Tenants may have notified in writing to the Landlords and (Two) in the case of the Landlords to their headquarters or such other such alternative address as the Landlords may have notified in writing to the Tenants and any such notice shall be deemed to have been served on the second business day after the date on which the same Was posted (excluding weekends and public and statutory holidays). In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Landlords or the Tenants, as the case may be, in accordance with this Clause and posted to the place to which it was so addressed.

17. Stamp Duty and Registration Dues

17.1 The Landlord shall be responsible for the payment of the Stamp Duty Land Tax (if any) payable on any land transaction pursuant to which this Licence is entered into together with the recording and registration dues of these presents as provided for in the Asset Transfer Agreement

18. Arbitration

18.1 All disputes between the parties arising out of or in connection with this Licence may be escalated by either party, to the Chief Executive of the Landlords and to the board of Charity Trustees of the Tenants for resolution.

18.2 If the dispute cannot be resolved pursuant to Clause 17.1 within 10 Business days, the dispute may at any time thereafter be referred for final determination to the Independent Expert who shall be deemed to act as expert and not as arbiter.

18.3 Within 14 days after the Expert has accepted the appointment the parties shall submit to the Independent Expert a written report on the dispute.

18.4 Following the submission of the report in pursuance of Clause 12.3, both parties shall afford the Independent Expert all information and assistance which the Independent Expert requires to consider the dispute.

18.5 The Independent Expert shall be instructed to deliver his/her determination to the parties within 10 Business Days after the submission of the written report pursuant to Clause 17.3.

18.6 Save in the case of manifest error, decisions of the Independent Expert shall be final and binding and not subject to appeal.

18.7 The Independent Expert shall have the same powers to require any party to produce any documents or information to him and the other party as an arbiter; and each party shall in any event supply to him/her all such information held by that party or to that party's order which is material to the matter to be resolved and which it could be required to produce on discovery.

18.8 The fees of the Independent Expert shall be borne by the parties in such proportion as shall be determined by the Independent Expert having regard (amongst other factors) to the conduct of the parties.

19. Jurisdiction

19.1 The construction, validity and performance and all other matters arising out or in connection with this Licence shall be governed by the Law of Scotland and be subject to the exclusive jurisdiction of the Scottish Courts

Part 8 Reserved Rights

There are excepted and reserved to the Landlords and their tenants and all other persons to whom the Landlords may grant such rights:-

- the right to free and uninterrupted passage and running of water, soil, drainage, gas, electricity, telephone and all other services in and through the sewers, pipes, wires and cables now or at any time hereafter lying in, on, under, over or through the Premises;
- the right of pedestrian and vehicular access over such route or routes if any within the Premises for any reasonable purpose, subject to making good any damage caused to the Premises thereby;
- the right to enter upon the Premises, with or without workmen and appliances, on all necessary occasions and on reasonable prior notice (except in case of emergency) for any other reasonable, subject to making good any damage caused to the Premises thereby;
- the right to erect and/or permit the erection of any new building or to alter, demolish or rebuild and/or permit the alteration, demolition or rebuilding of any building on any land forming part of the Premises or on any land adjacent to, neighbouring or opposite the Premises;
- the right of full use and occupation of the Premises without notice in the case of a civil emergency until a return to normality is achieved (as more particularly provided for in the Asset Transfer Agreement and/or the Services and Finance Agreement).
- the right to make use of the Premises for special local events (including without prejudice to the foregoing generality elections and as more particularly provided for in the Asset Transfer Agreement and/or the Services and Finance Agreement)

There are excepted and reserved to all statutory undertakers rights of wayleave for all existing supply pipes, cables, drains and other service media within the Premises with all necessary rights of access to the same for the purpose of inspection, maintenance, repair and renewal thereof subject always to minimising any disruption to the Tenants and making good all damage caused thereby.

Part 9 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.

East Ayrshire Council Obligations

- Subject to the availability of funding to maintain and repair and when necessary reinstate the Premises in good tenable condition (normal fair wear and tear excepted).
- 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.

Part 10 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.

Part II 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 lots 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.

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 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 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.
- 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 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;
 - 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 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).
- 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 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 proceeding clauses is successful, the Council shall decide (following consultation with the Trust) whether to conserve an item, or where feasible to purchase a replacement item. If the Council decides to purchase a replacement item, it shall consult with the Trust as regards the item to be purchased. Notwithstanding the foregoing, for the avoidance of doubt, the decision as to whether a replacement item shall be purchased shall lie solely with the Council.

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 it's creation) all future rights, for the purposes of promoting the Council and its services (and services funded by the Council) and for the purposes of promoting East Ayrshire and the Trust's Premises. The Council shall be entitled to grant royalty free sub licences to Third Parties of the Intellectual Property Rights solely for the purpose specified in this clause.

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.

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.

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

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.

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.

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, 1998
- Human Rights Act 1998
- International Standard on Records Management, ISO 15489
- Society of Archivists and Records Management Society Code of Practice for Archivists and Records Managers
- 1995 – COSLA Public Library Standards
- 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 Nations 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 Européenne Des Organisations De Conservateurs-Restaurateurs AISBL)
- 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 391 I/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.
- General Data Protection Act (1998)
- Freedom of Information (Scotland) Act (2002).
- Copyright and Related Rights regulations (2003).
- Dealing in Cultural Objects (Offences) Act (2003).

- Human Tissue Act (2004).
- The Return of Cultural Objects Regulations 1994.
- The Return of Cultural Objects (Amendment) Regulations 1997
- Copyright, Design and Patents Act 1988
- Disability Discrimination Act 2005.
- Control of Substances Hazardous to Health (COSH).
- National Archives
- Planning a New Record Repository
- Standards for Record Repositories
- 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)
- 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

SECTION 8: SIGNATORIES

IN WITNESS WHEREOF these presents consisting of this and the preceding 159 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:

.....

REPORT TO BOARD OF TRUSTEES

ORGANISATIONAL REVIEW UPDATE

Date: 28 June 2022

Agenda Item: 9

Report by: Anneke Freel, Chief Officer

1 PURPOSE OF REPORT

The purpose of this report is to provide Trustees with an update on the implementation of the organisational review that was approved on 2 November 2021, to outline the timetable for the consultation for changes that are scheduled to take place on 1st April 2023 and to seek approval for some amendments to the approved review.

2 ORGANISATION REVIEW UPDATE

2.1 The following actions have been undertaken to implement proposals that were scheduled for 2021 and 2022:

- It was decided to delay the recruitment of the Head of Operations until June 2022. Instead of appointing on a temporary basis to be involved in the change management process, we have elected to recruit to the post on a permanent basis. A recruitment agency were appointed to take candidates through an assessment centre prior to the formal interview. The Head of Operations is scheduled to be in post by August or September 2022
- Changes to short hour contracts within libraries has been delayed until 2023. Recovery after the pandemic has been slower than anticipated and the management team would like to take the opportunity to review library services including on-line provision and opening hours
- Designated public holidays have been introduced across all front line services. This allows us to open all venues, where there is a business case to do so, on all public holidays except for 25th and 26th December and the 1st and 2nd January.
- Discussions have been ongoing to transfer Galston Community Centre to Galston Community Association. After consideration, the community association has decided to withdraw from management of the community centre. This will now become a core venue and will be managed in line with all other community venues and flexible spaces.
- New seasonal posts have been added to the structures within Annanhill Golf Course and Dean Castle Country Park and the changes to Countryside Development have now been fully implemented
- All cleaning posts are in the process of redesignated as Facility Assistants

3 AMENDMENTS TO ORGANISATION REVIEW

3.1 During the employee consultation exercise for the proposals that are scheduled to be implemented in 2022/23, a number of issues and suggestions have been discussed and further considered.

3.2 Auchinleck Boswell Centre is currently co-managed by EALT and Auchinleck Community Development Initiative (ACDI). ACDI has asked the Trust to consider greater responsibility for the

REPORT TO BOARD OF TRUSTEES

running of the facility. In line with other community management arrangements, EALT will transfer full management, with the exception of Auchinleck Library, to the community group. The member of staff currently at this venue would not be part of the transfer and would be subject to redeployment/redundancy. This will allow a consistent approach to the management of community facilities. Implementation is planned for October 2022.

- 3.3 As part of the proposals, it was our intention to delete the post of Duty Supervisor and replace it with a new dual role of Community Lifestyle Assistant/Community Lifestyle Co-ordinator. This proposal would affect two posts, one of which is currently vacant. However, following discussions with the joint trade unions and the employees, concerns have been raised about the logistics of the dual post. Therefore, it is now recommended that the all pool sites will have two Co-ordinator posts rather than one Co-ordinator and a dual role post. This will ensure that there is a supervisory role within the wetside venues at all times.

4 2022/23 ORGANISATION REVIEW CONSULTATION PLAN

- 4.1 The following timetable sets out the key dates for information sessions, the consultation programme and for recruitment, selection and appointment.

Date	Action
June 22	Exchange Session – EMT 20 June, Grand Hall at 1pm Exchange Sessions - All Staff Team 27 th June, Grand Hall at 2pm 29 th June, CTH at 10am & 2pm 30 th June, Grand Hall at 4pm & 6pm **Chief Officer will present organisation and an on-line platform will be developed to enable all staff to ask questions**
July 22	Programme of Coffee Chats 19 th July, AAA at 10am 19 th July, Darvel Town Hall at 1pm 20 th July, CTH at 10am and 1pm
Aug 22	Consultation – Strategic Leads Consultation – Development Officer
Sept 22	Appointment of Head of Operations
Oct 22	
Nov 22	Interview Strategic Leads
Dec 22	Strategic Leads commence their new role The Head of Operations/ Head of Corporate will develop a Training & Development Programme for their Strategic Leads

REPORT TO BOARD OF TRUSTEES

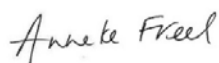
Jan 23	Interview Development Officers Commence the Strategic Leads Training & Development Programme Commence the Leadership Development Programme for Development Officers
Feb 23	Continue the Leadership Development Programme for Development Officers
Mar 23	Continue and complete the Leadership Development Programme for Development Officers
April 23	Development Officers commence their new role All staff report to their new Development Officer/Strategic Lead

Recommendation/s:

It is recommended that Trustees:

- i. Approve the amendments to the Organisational Review; and
- ii. Otherwise note the content of this report.

Signature:



Designation: Chief Officer

Date: 13 June 2022

REPORT TO BOARD OF TRUSTEES

ORGANISATIONAL LEARNING

Date: 28 June 2022

Agenda Item: 10

Report by: Dianne Reid, Relationship & Business Development Manager

1. PURPOSE OF REPORT

- 1.1 This purpose of this report is to provide Trustees with detail of our 'Organisational Learning' process and associated practices, and our commitment to embedding the ethos of continuous improvement.

2 BACKGROUND INFORMATION

- 2.1 All forms of feedback and performance monitoring are extremely important to East Ayrshire Leisure Trust and enable us to grow, develop and deliver the best possible services to our communities. We use a variety of mechanisms to gather as much information as possible.
- 2.2 Previously, Action Plans were devised for individual service areas following specific reviews or audits. However, it was recognised that often there is a need to collectively share and review processes, procedures, appreciate/celebrate good practice and acknowledge where there were opportunities to learn from others. Organisational Learning is the term given to this new process and the intelligence is shared amongst the full staff team.

3 INFORMATION COLLATED

- 3.1 Performance Monitoring
Our Performance Monitoring Protocol has recently been introduced which outlines all forms of data capture and feedback mechanisms, including:
- **Quantitative Data:** gathered for reporting of our Statutory Performance Indicators (SPIs) and Key Performance Indicators (KPIs)
 - **Qualitative Information:** taken from feedback forms, VisitScotland Accreditation Reports, Mystery Shopping exercises, customer satisfaction surveys, community consultations, complaints handling process.
- 3.2 Additional sources
In addition to the processes outlined above, we also interrogate our quarterly Health & Safety Reports, SHE system reports, Internal Audit reports, any findings from Investigations and Unannounced Visits.
- ### 4. ORGANISATIONAL LEARNING FORMAT
- 4.1 All the information outlined in Section 3 above is analysed quarterly; any issues are dealt with through appropriate channels and at individual management/service level, however, if it is felt that there can be universal learning, it is also dealt with through the Organisational Learning process, and an Action Plan is devised.

REPORT TO BOARD OF TRUSTEES

- 4.2 Within the Organisational Learning Action Plan, all points for consideration are categorised into 'Learning Themes', for example, Customer Care, Health & Safety, Premises Management. A brief outline/narrative is provided for each, alongside any recommendations and action(s) required.
- 4.3 'Actions required' are also categorised into themes which are subject to review. This Action Plan is discussed quarterly at DMT with information subsequently disseminated through wider staff teams. Where there is a re-occurring issue, this is highlighted, discussed in detail and further actions put in place if appropriate.
- 4.4 Where it is identified that there is a requirement for Training sessions to be delivered, these are discussed with the Training & Development Officer, scheduled into our Training & Development Plan and communicated to staff.

5. MONITORING & REVIEW

- 5.1 To introduce this new concept of Organisational Learning, an information session was held for Development Officers to explain the processes and benefits of the practice who in turn would inform their teams. It is envisaged that more sessions will be held to embed the practice further and to ensure that all staff are as engaged with the process as possible.
- 5.2 The full process will be monitored and developed frequently to ensure we continue to maximise benefit for the organisation.

Recommendation/s:

It is recommended that Trustees:

- i. Note the contents of this report

Signature: Dianne Reid

Designation: Relationship & Business Development Manager

Date: 23 May 2022

STAFF AMBASSADOR PROGRAMME

Date: 28 June 2022

Agenda Item: 11

Report by: Dianne Reid, Relationship & Business Development Manager

1. PURPOSE OF REPORT

- 1.1 This purpose of this report is to provide Trustees with detail of our proposed Staff Ambassador Programme and to remit to the Manager to develop and implement the proposal fully.

2 BACKGROUND INFORMATION

- 2.1 As previously reported to P&ASC, the Staff Recognition Scheme has now come to an end. Many of our staff have been recognised throughout the span of the scheme for their excellent customer service skills, their ingenuity, creativity and professionalism and we would like to continue to support, encourage and empower our teams to embed these examples of good practice through peer-to-peer support.
- 2.2 During staff Exchange events, many of our employees indicated that they would like more opportunities to share skills, exchange ideas and experiences, and learn from colleagues within other areas of the organisation.
- 2.3 A Staff Ambassador programme would allow for the expansion of understanding of different job roles within our service areas and encourage staff to explore how the work we do impacts on our communities, how we can make better and more meaningful connections and would enable investigations into new ways of communication, engagement and collaboration.

3 THE PROGRAMME

- 3.1 Through a variety of activities, training and hands-on opportunities, the programme will provide new ways of learning, by helping staff develop the skills, confidence and abilities to think creatively and collaborate in new ways with each other which will not only contribute to their own personal and professional development but will also enrich the overall organisation, and the communities we serve.

4. THE ROLE

- 4.1 Staff Ambassadors will be recruited into roles in line with our Strategic Vision Themes and shadowing the portfolios of our Trustee Ambassadors; Sharing Our Vision, Leisure at the Heart of Every Community, Living Your Best Life, Investing in Our People & Embracing Our Values, Creating A Solid Foundation for Growth and Protecting Our Environment.
- 4.2 It is envisaged that anyone within the organisation from Grade 7 and below could apply to become an Ambassador.
- 4.3 Specific duties would be assigned to each Ambassador portfolio, but all would share the overall remit of providing regular and positive promotion, sharing knowledge, experience and good practice both

internally and externally, offering peer support and guidance and becoming an advocate of all areas of the business. Positive interactions and collaborations with other staff, whilst always demonstrating the Values and Behaviours of our organisation, will be essential.

- 4.4 A full programme of activities, knowledge-sharing sessions, training and opportunities to explore different working environments through visits to other venues and initiatives would be planned for each Ambassador cohort.

5. IMPLEMENTATION

- 5.1 We will work closely with our Trustee Ambassador for Investing in Our People & Embracing Our Values on the development of the Staff Ambassador Scheme, and plan to implement during the 2023/24 Delivery Plan period, as part of our 10 Year Anniversary celebrations.

Recommendation/s:

It is recommended that Trustees:

- i. Note the contents of this report; and
- ii. To approve the proposal and remit to the Development Manager to implement the scheme

Signature: Dianne Reid

Designation: Relationship & Business Development Manager

Date: 23 May 2022