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THE HIGHLAND COUNCIL
PROPOSAL TO FORM ARM'S LENGTH ORGANISATION
FOR
COMMUNITY LEARNING AND LEISURE SERVICES

COLLECTIONS AGREEMENT - OUTLINE OF KEY TERMS

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1 INTRODUCTION

- 1.1 It is understood that the elected members of The Highland Council (“**HC**”) agreed at the ECS Committee of 5 August 2010 the principle of advancing to an Arm’s Length Organisation (“**ALO**”) for the delivery of all of HC’s Community Learning and Leisure (“**CLL**”) activities. Following upon that meeting, we understand that further information was provided to the meetings of the ECS Committee held on 11 November 2010 and 13 January 2011.
- 1.2 This paper is intended to provide an outline of the key terms which would be included within the Collections Agreement - forming part of a wider suite of legal documentation¹ - if the decision were taken to proceed with the transfer of operations to the ALO.

2 COLLECTIONS AGREEMENT - OUTLINE OF KEY TERMS

- 2.1 The key terms currently envisaged for the Collections Agreement are set out below, under each of the main headings.

Definition of “collections”

- 2.2 For the purposes of the Collections Agreement “collections” would be defined as including the artefacts, special collections books, archives, artworks and similar items which:-
- are on display or stored within the facilities to be operated by the ALO as at the transfer date;
 - are on loan by the Council to a third party as at the transfer date;
 - are in transit or in a temporary location as at the transfer date (e.g. where items are the subject of conservation or research work at the time);

¹ A separate paper - headed “Suite of documentation - outline of key documents” - prepared by Burness provides further information on the key documents which would form part of that wider suite of documentation

- are acquired through the formal acquisitions process set out in the Collections Agreement after the transfer date; or
- are the subject of a loan to the Council.

It should be noted that in relation to library stock, it would be only rare/historical books which would fall within the scope of the Collections Agreement; the normal library stock would be governed by the terms of the Service Delivery Contract.

Right to use the collections

- 2.3 The Collections Agreement would grant to the ALO a licence to use the collections for certain purposes; the wording would go on to make it clear that no right of ownership of any item comprised in the collections would transfer to the ALO under the Collections Agreement. The rights of use would cover the normal range of operations of museum staff e.g. the rights to display and exhibit the item, carry out any necessary conservation work; photograph and/or digitise the item, etc. In each case, the rights of use would be subject to the obligations and restrictions imposed by the Collections Agreement, and also subject to compliance with all legal requirements, Council policies, treaties and codes of ethics.
- 2.4 A number of items would be subject to the terms and conditions of bequests, trust deeds and so on. The Collections Agreement would impose an obligation on the ALO to comply with any such terms and conditions as if it were directly bound by those terms and conditions.
- 2.5 The Collections Agreement would provide that, so far as possible, any new acquisitions should be entered into in the name of the Council so that the item became the property of the Council and not the ALO.
- 2.6 The Collections Agreement would prohibit the ALO from disposing of any item forming part of the collections – otherwise than in accordance with the acquisition and disposal policy set by the Council – without the Council’s prior written consent. The acquisition and disposal policy would, in relation to disposals, make it clear that a disposal could only occur in certain restricted circumstances, e.g. where an item had deteriorated to such an extent that it was no longer worthwhile to retain it.

Lending

- 2.7 The Collections Agreement would include provisions relating to situations where the ALO was proposing to lend any item to a third party, e.g. lending the item for display as part of a special museum exhibition in another part of Scotland. The procedures set out in the Collections Agreement would require the ALO to give advance notice to the Council, setting out full details of the items which were proposed to be the subject of such a loan; and the Council would be entitled to veto the proposal at its discretion.

- 2.8 The Collections Agreement would also include provisions regulating proposals whereby a third party was to lend items to the ALO.

Intellectual property rights

- 2.9 The ability to benefit from intellectual property rights related to the collections – which would include the ability to create reproductions of important paintings, for sale from museum shops etc – could represent a significant source of income for the ALO. The Collections Agreement would include a provision whereby the Council granted to the ALO a non-exclusive licence to use, copy, reproduce and exploit the intellectual property rights associated with the collections:-

- for educational purposes;
 - for the purpose of promoting the ALO, the facilities operated by ALO and the Highland Council area; and
 - for the purposes of generating income for the ALO.
- 2.10 It should be noted that certain potential uses of the intellectual property rights (broadly, anything which fell outwith the category of educational purposes) could carry the risk of tax assessments on the ALO, on the basis that they fell outwith the charity tax exemption. In order to avoid exposure to tax - and depending on the level of income which was anticipated - it might be appropriate to route activities of this nature through a non-charitable subsidiary of the ALO; and to cover that possibility, the Collections Agreement would allow a wholly-owned subsidiary of the ALO to make use of intellectual property rights where appropriate.
- 2.11 The Collections Agreement would include provisions allowing any infringement of intellectual property rights (e.g. a third party selling reproductions of paintings which formed part of the collections, in breach of copyright) to be challenged where appropriate.

Charge and superintendence obligations

- 2.12 The management of archives is subject to charge and superintendence agreements between the Keeper of the Records of Scotland and the Council. The Collections Agreement would impose obligations on the ALO to reflect the charge and superintendence agreements; these obligations would include the following:-

- to maintain appropriate arrangements for the archives, as approved by the Keeper;
- to comply with storage and handling requirements, as set out in the charge and superintendence agreement guidelines;
- to ensure that the archives were held under the oversight of the Council's professional archivist;

- not to remove the archives from the approved accommodation;
- to allow the Keeper access to the archives at all reasonable times;
- to carry out conservation treatment only with the prior approval of the Keeper and to a standard approved by the Keeper;
- to provide to the Keeper, on an annual basis, itemised details of usage and copying of the archives.

ALO's general obligations

2.13 The Collections Agreement would impose a range of obligations on the ALO – imposing responsibility on the ALO for the physical and intellectual integrity of the collections, and for supporting the public programmes within the facilities operated by the ALO. At a more detailed level, the obligations would include the following:-

- care and maintenance of the collections;
- developing and/or implementing conservation policies and practice in relation to the collections;
- repair in the event of damage to any items forming part of the collections;
- making appropriate security arrangements for the collections;
- developing special collections;
- developing and/or implementing appropriate collecting policies;
- collecting and making appropriate use of donations in relation to the collections;
- purchasing new items, to become part of the collections;
- developing and/or implementing the collections lending policy;
- enabling appropriate use of the collections for research.

2.14 The Collections Agreement would require the ALO to comply with all the various policies relating to the collections, as prescribed by the Council from time to time.

Council's responsibilities

2.15 The Collections Agreement would impose an obligation on the Council to co-operate with the ALO and provide it with information and assistance, so far as reasonably required to enable the ALO to perform its obligations. There would also be an obligation on the part of the Council to consult with the ALO prior to altering or replacing any of the policies, codes of ethics or standards with which the ALO was required to comply.

Insurance

- 2.16 The Council would continue to maintain insurances in relation to the collections, and would be responsible for any excess under the insurance policies. The insurances would, so far as possible, be effected in joint names of the Council and the ALO.
- 2.17 The Collections Agreement would include provisions whereby the Council could inspect the facilities operated by the ALO with a view to assessing areas of risk and making appropriate recommendations for control of risk – with the ALO being bound to take such reasonable measures to control risk as the Council prescribed.
- 2.18 In the event of loss, damage, theft or destruction of any item forming part of the collections, the ALO would be required under the Collections Agreement to give immediate notice, secure the affected area, and assist the Council in facilitating investigation of the damage and the pursuit of an insurance claim.

Monitoring and reporting

- 2.19 The Collections Agreement would require the ALO to report regularly to the Council in relation to each of the various areas of responsibility imposed on the ALO under the Collections Agreement. The matters to be covered in such reports would include loans to and from third parties, new acquisitions, archives, de-accessions and disposals, conservation and security incidents.
- 2.20 The Collections Agreement would also allow the Council to inspect the facilities operated by the ALO, to ensure that the ALO was complying with its obligations.
- 2.21 In addition, the Collections Agreement would provide for periodic review meetings between the Council and the ALO.

Termination

- 2.22 The Collections Agreement would remain in force throughout the period covered by the Service Delivery Contract – currently envisaged as 25 years. There would, however, be power for the Council to terminate the Collections Agreement at any time if there was a serious breach by the ALO of its obligations under the Collections Agreement. As a matter of practice, it is unlikely that the circumstances would be so extreme as to cause the Council to terminate the Collections Agreement; and therefore the Collections Agreement also includes a mechanism whereby the Council could alternatively enter into discussions where there was cause for concern and prescribe a remedial plan - which the ALO would be required to implement within a period specified by the Council.