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PROPERTY AGREEMENT

between

THE HIGHLAND COUNCIL

and

HIGH LIFE HIGHLAND

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PROPERTY AGREEMENT

between

- (1) **THE HIGHLAND COUNCIL** established under the Local Government etc (Scotland) Act 1994 and having its principal offices at Glenurquhart Road, Inverness IV3 5NX (“**the Council**”); and
- (2) **HIGH LIFE HIGHLAND** a company which is a Scottish charity (Scottish charity number SC[●]) incorporated under the Companies Act 2006 with registered number SC[●] and having its registered office at 13 Ardross Street, Inverness IV3 5NS (“**HLH**”)

WHEREAS:

- (A) The Council has resolved to entrust HLH with the provision of certain services of general economic interest.
- (B) HLH has agreed to accept entrustment to it of the services of general economic interest referred to in preamble (A), and accepts that the provision of such services represent public service obligations incumbent upon HLH throughout the Prescribed Period (as defined below) by virtue of such entrustment.
- (C) In order to secure that the PSO Services (as defined below) are delivered in a manner which facilitates access to the PSO Services by communities across the area served by the Council (with an appropriate geographical balance), and also having regard to the responsibilities of the Council in (a) seeking to sustain civic buildings within the respective communities as one means of helping to secure community cohesion and (b) conserving the portfolio of cultural and sports venues within the area served by the Council (in recognition of the contribution which they make towards tourism and other strands of economic activity, appreciation of the built heritage, and other factors associated with the well-being of the citizens of the area served by the Council), HLH shall be under an obligation (subject to clauses 9 and 11, and the provisions of the Services Agreement (as defined below)) to supply the PSO Services from the respective venues comprised from time to time in the Property Portfolio (as defined below); and (subject to clauses 9 and 11, and the provisions of the Services Agreement) HLH shall not be entitled to terminate the supply of PSO Services from any of such venues otherwise than in accordance with the Services Agreement.
- (D) With reference to preamble (C), the Council, in order to secure an appropriate allocation of risks as between the Council and HLH in respect of the Property Portfolio and to enable the respective rights and obligations of the parties in that regard to be appropriately defined, has granted (or will shortly grant) to HLH a leasehold interest in each of the venues comprised in the Property Portfolio (and on the basis that, pending the grant of a Lease in respect of any such venue, a licence to occupy that venue shall be available to HLH, by

virtue of the provisions in that regard contained in the Transfer Agreement (as defined below)).

- (E) The Parties wish to record the arrangements which they have agreed in relation to various matters connected with the Leases and the Property Portfolio.

IT IS AGREED as follows:

1 DEFINITIONS

- 1.1 In the Agreement, unless the context otherwise requires, the following expressions will have the following meanings assigned to them:

“Agreement” means this agreement and the schedule annexed to this agreement;

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

“Capital Programme” means the programme of Capital Works Projects and New Facilities Projects adopted by the Council from time to time;

“Capital Improvement Works” means works in respect of a given Property which fall within any of the following categories:

- (a) improvements or upgrading to meet a new service capacity or function;
- (b) refurbishment to new condition to extend the capacity of the asset;
- (c) improvements and upgrading to newly-acquired assets to enable service delivery of function;
- (d) capital replacement of major components to extend the capacity of useful life of the asset;

“Capital Works Project” means a project involving Capital Improvement Works or New Facilities Works;

“Commencement Date” means 1 October 2011, notwithstanding the date of the Agreement;

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

“Financial Year” means the period from 1 October 2011 to 31 March 2012 and each period of a year ending on 31 March thereafter throughout the Prescribed Period;

“FSLA Works” means works, if any, identified (as a consequence of the assessments carried out in accordance with clauses 5.6, 5.7 and/or 5.8) as being required to comply with Health and Safety Legislation and which should have been carried out by the Council prior to the date of this Agreement to comply with Health and Safety Legislation at that time;

“HLH Default Works” means any works required to be carried out by HLH under the provisions of the Leases (or the corresponding provisions within the Licence) relating to damage/deterioration caused by any act or omission of HLH or failure by HLH to take appropriate steps to minimise the incidence of vandalism;

“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;

“Insured Risks” means the risks of fire, lightning, aircraft and explosion and such other risks (if any) as the Council may determine from time to time should be the subject of insurance cover;

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

“Leases” means the leases entered into, or about to be entered into, between the Council and HLH in respect of the Listed Properties, and the leases entered into between the Council and HLH in relation to any additional subjects in pursuance of clause 10 (but in each case, only insofar as such leases remain in force from time to time);

“Licence” means the Licence to Occupy conferred by clause [●] of the Transfer Agreement (as read with Part [●] of the Schedule to the Transfer Agreement);

“Listed Properties” means the properties specified in Parts 1A and 1B of the Schedule;

“Maintenance Works” means maintenance and repair works in respect of a given Property (other than as falling within the category of Capital Improvement Works, Statutory Works or HLH Default Works), excluding:

- (a) operational works to enable occupancy and use (including, without limitation, cleaning, security and waste removal);
- (b) supply of utilities;
- (c) major restoration as a result of damage/destruction (whether caused by insured risks or otherwise);
- (d) demolition of redundant buildings;
- (e) temporary structures;

“Minor Works Aggregate Spend Limit” means, in respect of any Financial Year, the threshold applicable to that Financial Year under clause 2.2;

“New Facilities Works” means works carried out to create a new facility which, upon completion, is to form part of the Property Portfolio;

“PSO Services” means the services of general economic interest (representing public service obligations) to be delivered by HLH in pursuance of the Services Agreement;

“Parties” means the Council and HLH; **“Party”** shall be construed accordingly;

“Premises Management Guide” means the document bearing that title (as such document may be amended from time to time) prepared by the Housing & Property Services Department of the Council (or any future department within the Council carrying out similar functions);

“Prescribed Performance Standards” means, at any given time, the performance standards for the PSO Services to be provided under the Services Agreement, as applying at that time under clause 7 of the Services Agreement;

“Prescribed Period” means the period commencing on the Commencement Date and expiring on 31 October 2036;

“Properties” means the properties comprised from time to time in the Property Portfolio; **“Property”** shall be construed accordingly;

“Property Portfolio” means (a) the properties let from time to time under the Leases and (b) the properties in respect of which HLH has a right of occupation from time to time under the Licence;

“Services Agreement” means the Services Agreement between the Council and HLH entered into on the date of this Agreement;

“Services Fee” has the meaning assigned to that expression in the Services Agreement;

“Services Specification Change” means a change to the Services Specification in accordance with clause [6] of the Services Agreement (as read with Part [3] of the Schedule to the Services Agreement);

“Services Specification” means, at any given time, the specification defining the PSO Services to be provided under the Services Agreement, as applying at that time under clauses [2] and [6] of the Services Agreement;

“Statutory Works” means works in respect of a given Property which require to be executed in order to secure compliance with statutory requirements (whether currently in force or introduced during the Prescribed Period) (including FSLA Works); and such that “works” for this purpose may include the installation of fire-fighting equipment or other fixtures and fittings;

“Subleases” has the meaning assigned to that expression in the Transfer Agreement;

“Title Defect” means, in respect of any Property, any defect in title (including, without prejudice to that generality, any competing interest in land) which has the effect that the Council does not have a valid marketable title to that Property;

“Transfer Agreement” means the Transfer Agreement between the Council and HLH entered into on the date of this Agreement.

1.2 In calculating the amount expended in relation to Maintenance Works or Statutory Works there shall be included:

1.2.1 all fees incurred in relation to specialist investigations, surveys and testing, and other preliminary work;

1.2.2 the costs (excluding internal costs, otherwise than as falling within paragraph 1.2.6 below) of any tender process associated with the selection and appointment of the contractor and members of the professional team;

1.2.3 all fees payable to external architects, external engineers and other external consultants in respect of the design and/or supervision of the works;

1.2.4 the cost of any statutory consents required in respect of the works;

1.2.5 all sums payable to contractors in respect of the execution of the works; and

1.2.6 a reasonable charge (not to exceed in each case the fees that could reasonably be expected to be payable to an external consultant within the relevant technical field) in respect of the time expended by Council personnel in the provision of architectural, engineering,

quantity surveying, planning supervisor and/or other technical support of a similar nature.

- 1.3 References in the Agreement to the Leases shall, wherever the context permits, be deemed to include the Subleases and the Licence.
- 1.4 Clause headings are included in the Agreement for ease of reference only and shall not affect the interpretation of the Agreement.
- 1.5 References to clauses and paragraphs and to the Schedule are (unless otherwise stated) references to the clauses and paragraphs of, and the Schedule to, the Agreement.
- 1.6 Where the context so admits or requires, words denoting the singular include the plural and vice versa.
- 1.7 References to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time (whether before or after the date of the Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification) and any subordinate legislation made under such provisions.

2 MAINTENANCE WORKS

- 2.1 The Council shall (subject to clause 2.2) carry out Maintenance Works to the Properties at the Council's cost, throughout the Prescribed Period.
- 2.2 The maximum amount (in aggregate; and exclusive of VAT) which the Council shall require to expend in respect of Maintenance Works and Statutory Works in relation to the Property Portfolio in any given Financial Year (and taking account of the provisions of clauses 1.2 and 1.3) shall be the sum agreed with reference to this clause 2.2 between the Council and HLH prior to the commencement of that Financial Year; the process for agreeing that sum shall be as set out in Part [2] of the Schedule.
- 2.3 With reference to clause 2.2, the Council and HLH acknowledge that they have agreed the Minor Works Aggregate Spend Limit applicable to the first Financial Year.
- 2.4 HLH undertakes:
 - 2.4.1 to monitor the condition of each of the Properties (including the conduct of all inspections and tests outlined in the Premises Management Guide at the intervals specified in the Premises Management Guide); and
 - 2.4.2 to advise the Council promptly in relation to any defects or other items requiring maintenance or repair in respect of each Propertyin accordance with the detailed requirements in this regard contained in the Premises Management Guide.

- 2.5 HLH acknowledges that the approach taken by the Council in relation to Maintenance Works, including (without limitation) (a) the order of priority which will be used in determining the order in which individual requests in respect of Maintenance Works arising from time to time will be addressed and (b) target response times in relation to the various categories of request shall reflect:
- 2.5.1 the Council's Strategic Maintenance Plan (as referred to in clause 2.9); and
 - 2.5.2 the Premises Management Guide.
- 2.6 The processes and procedures to be followed in relation to the various categories of request in respect of Maintenance Works shall be as specified in the Premises Management Guide.
- 2.7 HLH shall assign a particular individual as the Responsible Premises Officer in respect of each Property, on the basis that that individual will then have the roles and responsibilities in respect of that Property assigned to the Responsible Premises Officer in the Premises Management Guide; the following provisions shall apply in this regard:
- 2.7.1 HLH shall provide the Council, as soon as practicable after the date of this Agreement, with a comprehensive list showing the Responsible Premises Officer assigned to each Property;
 - 2.7.2 HLH shall notify the Council immediately upon any change in the Responsible Premises Officer assigned to each Property, advising the Council at that time of the new Responsible Premises Officer assigned to that Property;
 - 2.7.3 HLH shall monitor compliance by each of its Responsible Premises Officers with their roles and responsibilities as set out in the Premises Management Guide, and shall report any serious breach or non-compliance (or repeated infringements of a minor nature) promptly in writing to the Council;
 - 2.7.4 HLH shall ensure that all of its Responsible Premises Officers comply in all respects with their roles and responsibilities under the Premises Management Guide;
 - 2.7.5 HLH acknowledges that any breach or non-compliance by a Responsible Premises Officer with his/her roles and responsibilities under the Premises Management Guide shall be deemed to be a breach by HLH of its obligations under this Agreement.
- 2.8 Any dispute or difference of opinion which may arise between a Responsible Premises Officer assigned to a given Property and the Maintenance Officer (within the Housing and Property Services Department, or any successor department having similar functions) assigned to that Property shall be escalated for resolution in accordance with the Premises Management Guide.

- 2.9 HLH undertakes to participate in, and contribute such information as may be requested by the Council from time to time for the purposes of, the processes and procedures associated with
- 2.9.1 the development by the Council of its Strategic Maintenance Plan and Asset Management Plan for the Council's building assets (including the Property Portfolio); and
 - 2.9.2 the development (and periodic refresh) of the Council's property condition surveys to record the condition of the Council's building assets (including the Property Portfolio);
 - 2.9.3 the annual review of condition records, involving the Responsible Premises Officers and the Maintenance Officers, as referred to in the Premises Management Maintenance Guide;
 - 2.9.4 the annual planning process in respect of Maintenance Works (including notification to the Council of any Maintenance Works which HLH proposes to carry out itself under clause 2.10 in the course of the subsequent Financial Year), as referred to in the Premises Management Guide; and
 - 2.9.5 the five year Works Programme, as referred to in the Premises Management Guide.
- 2.10 In any case where HLH wishes to carry out Maintenance Works at its own cost in respect of any Property or requires to carry out HLH Default Works in respect of any Property:
- 2.10.1 HLH shall comply with the procurement policies of the Council in relation to the procurement of contractors (and, where applicable, the members of the professional team) which are to be engaged in relation to the works;
 - 2.10.2 HLH shall give to the Council at least [three] weeks' written notice, advising the Council of (a) the nature of the defect or deterioration which the works are intended to remedy (b) a detailed specification (including drawings) and method statement in respect of the works (c) details of the contractor which is to carry out the works and (d) the proposed start and completion dates in respect of the works;
 - 2.10.3 HLH shall not instruct the contractor to commence the works unless and until it has received the written approval of the Council in respect of the detailed specification and method statement in respect of the works, the identity of the contractor which is to carry out the works and the proposed start and completion dates in respect of the works;
 - 2.10.4 HLH shall allow the relevant Maintenance Officer to inspect the Property prior to the commencement of the works, during the course of execution of the works, and on completion of the works;

- 2.10.5 HLH shall ensure that the works are carried out in a good and workmanlike manner and in accordance with the detailed specification and method statement approved by the Council in accordance with paragraph 2.10.3;
- 2.10.6 HLH undertakes to enforce, in accordance with such reasonable directions as the Council may issue to HLH from time to time, such rights and remedies in respect of the contractor engaged in connection with the works, as may be available to HLH (whether relating to the remedy of defects within the defects liability period, or otherwise).
- 2.11 In the event of any unanticipated requirement arising in respect of Maintenance Works to the Properties (whether as a result of the breakdown of major plant and equipment, an acceleration in the deterioration of the building fabric, evidence of contamination posing a significant hazard, or otherwise):
- 2.11.1 HLH shall take immediate steps (at HLH's cost) to secure the affected area, taking all appropriate temporary measures to limit further damage and address issues of health and safety;
- 2.11.2 the parties shall negotiate in good faith with a view to determining whether and to what extent PSO Services delivered from that Property might be restricted (whether in relation to opening hours, the areas of the building to be used for that purpose, or otherwise) or otherwise adapted to meet the circumstances;
- 2.11.3 if the parties agree that the nature and extent of the destruction or damage is such that no PSO Services can be delivered from that Property, the obligation of HLH to occupy that Property shall be suspended for so long as those circumstances subsist.
- 2.12 Any tendering process associated with the selection and appointment of the contractor (where the works are not carried out by Council personnel), and (where applicable) the members of the professional team, in respect of any Maintenance Works to the Properties shall be carried out by the Council, but on the basis that HLH shall be allowed input into the procurement process.
- 2.13 The Council will liaise closely with HLH in relation to the supervision of any Maintenance Works, and shall use reasonable endeavours at the request of HLH to procure the rectification of any defects or deficiencies which may arise in relation to Maintenance Works.

3 STATUTORY WORKS

- 3.1 The Council undertakes (subject to clause 3.2) to carry out all Statutory Works which may require to be executed from time to time to the Properties, in order to secure compliance with statutory requirements (whether currently in force or introduced during the Prescribed Period).

- 3.2 The maximum amount (in aggregate; and exclusive of VAT) which the Council shall require to expend in respect of Maintenance Works and Statutory Works in relation to the Property Portfolio in any given Financial Year (and taking account of the provisions of clauses 1.2 and 1.3) shall be the Minor Works Aggregate Spend Limit applicable to that Financial Year.
- 3.3 In the event of a requirement for Statutory Works to any Property arising, the Council and HLH (each being bound to act reasonably) shall agree an appropriate project plan for the carrying out of such works, having regard to:
- 3.3.1 any statutory penalties, increased insurance premiums or other risks or liabilities likely to be incurred by HLH as a result of any non-compliance with the relevant statutory requirements;
 - 3.3.2 the nature and extent of the works (and taking account of any restrictions on the availability of contractors and/or materials); and
 - 3.3.3 the budget constraints to which the Council is subject at the time.
- 3.4 In the event that the expenditure associated with the carrying out of Statutory Works in respect of any Financial Year exceeds the allocation to Statutory Works within the budget used for the purposes of determining the Minor Works Aggregate Spend Limit for that Financial Year, the Council may (at its discretion, but in consultation with HLH)
- 3.4.1 allocate additional funds to Statutory Works from the budget applicable to Maintenance Works in respect of that Financial Year; and/or
 - 3.4.2 deduct a sum equal to such expenditure (or that part of the expenditure which the Council considers that it cannot reasonably accommodate from the Maintenance Works budget) from the sum which would otherwise be available to fund Capital Works in respect of that Financial Year; and/or
 - 3.4.3 resolve that all or some of such Statutory Works should be deferred.
- 3.5 The provisions of clauses 2.12 and 2.13 shall apply in relation to Statutory Works as they apply to Maintenance Works.
- 3.6 If any Statutory Works in respect of any Property constitute Capital Improvement Works, they will require to form a Capital Works Project to be submitted for inclusion in the Capital Improvement Programme in accordance with clause 6.

[note: material below in relation to health & safety, fire risk assessments, asbestos assessments, legionella to be reviewed and adjusted in line with split of responsibilities once Premises Management Guide has been updated to include further clarity on this]

- 3.7 The Parties agree that the Council has and maintains control of the Properties for the purposes of carrying out Statutory Works (which for the avoidance of doubt includes FSLA Works) which may require to be executed from time to time to the Properties in order to secure compliance with Health and Safety Legislation (whether currently in force or introduced during the Prescribed Period).
- 3.8 The Council 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 Properties to the extent that they have not been carried out as at the date of this Agreement.
- 3.9 The Council and HLH (each being bound to act reasonably) shall agree an appropriate project plan for the carrying out of such fire risk assessments and making documented arrangements.
- 3.10 The Council shall carry out asbestos assessments and make written plans required under the Control of Asbestos Regulations 2006 in relation to the Properties to the extent that they have not been carried out as at the date of this Agreement.
- 3.11 The Council and HLH (each being bound to act reasonably) shall agree an appropriate project plan for the carrying out of such asbestos assessments and making written plans.
- 3.12 The Council shall carry out risk assessments required under Health and Safety Legislation in respect of the risks posed by legionella bacteria in relation to the Properties to the extent that they have not been carried out as at the date of this Agreement.
- 3.13 HLH shall ensure that the Responsible Premises Officers carry out the inspections and tests specified in the Premises Management Guide, at such intervals and in accordance with the detailed requirements set out in the Premises Management Guide.

4 INDEMNITIES

- 4.1 HLH undertakes to indemnify the Council against 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 claim arises out of, or in connection with, any failure on the part of HLH to fulfil its obligations under this Agreement in respect of monitoring the condition of

the Properties and those aspects of health and safety which are assigned to the Responsible Premises Officers under the Premises Management Guide.

- 4.2 The Council undertakes to indemnify HLH against any claim by a third party against HLH (including the reasonable expenses associated with contesting any such claim on a solicitor/client basis, and any costs awarded against HLH in respect of any such claim), where such claim arises out of, or in connection with, any failure on the part of the Council to maintain the Properties in a good state of repair and in compliance with statutory requirements, except to the extent that such failure is attributable to
- 4.2.1 HLH's failure to fulfil its obligations under this Agreement in respect of monitoring the condition of the Properties in accordance with the Premises Management Guide; or
 - 4.2.2 HLH's failure to fulfil its obligations in respect of those aspects of health and safety which are assigned to the Responsible Premises Officers under the Premises Management Guide; or
 - 4.2.3 any outstanding works within the category of HLH Default Works.
- 4.3 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 4.1 or 4.2,
- 4.3.1 shall intimate 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 claim as is reasonably available to the Indemnified Party;
 - 4.3.2 shall 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);
 - 4.3.3 shall keep the Indemnifying Party closely apprised of all developments relating to the claim (including any insurance claim that may be pursued in connection with the relevant occurrence);
 - 4.3.4 shall not 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;

4.3.5 take all reasonable steps available to it to mitigate such loss or liability.

5 PREMISES MANAGEMENT GUIDE

- 5.1 The Council shall review the Premises Management Guide from time to time, and shall allow HLH the opportunity to contribute its views on areas within the Premises Management Guide where adjustments or additional material may be appropriate.
- 5.2 The Council shall supply HLH with an up-to-date copy of the Premises Management Guide immediately after any adjustments or additions are made to the Premises Management Guide; and any obligations of HLH or its Responsible Premises Officers in respect of compliance with any new or amended processes or procedures referred to in an updated version of the Premises Management Guide shall apply only as from the date on which the up-to-date copy is supplied to HLH (or with effect from such subsequent date as the Council may notify to HLH).

6 CAPITAL WORKS

- 6.1 The Council undertakes that it shall use reasonable endeavours throughout the Prescribed Period (but subject to budgetary constraints and the balance between competing priorities set from time to time through the Council's decision-making processes) to pursue the Capital Programme so as to improve the quality of accommodation for the activities taken forward by HLH in pursuance of the Services Agreement.
- 6.2 For the avoidance of doubt, HLH will require, in common with Council service departments, to submit a bid for any Capital Works Project to be included in the Capital Programme; any such bid will be assessed by the Council for inclusion in the Capital Programme on the basis of the assessment criteria for that purpose determined by the Council from time to time.
- 6.3 The Council acknowledges (but without prejudice to the caveats set out in clause 6.1) that
- 6.3.1 the proposals set out in Part 3 of the Schedule represent the Council's current Capital Programme for the period 1 April 2011 to ●;
 - 6.3.2 the current status of each project identified in Part 3 of the Schedule is as set out in Part 3 of the Schedule; and
 - 6.3.3 it is the Council's current intention to continue to take forward the projects set out in Part 3 of the Schedule, and in accordance with the indicative timetable set out in Part 3 of the Schedule.
- 6.4 HLH undertakes that it will contribute to the development and implementation of the Capital Programme; the processes to be adopted in that regard are as outlined in Part 4 of the Schedule.

- 6.5 For the avoidance of doubt (but subject to clause 7):
- 6.5.1 the Council shall be the employer in respect of all construction contracts, and the client in respect of all appointment agreements for the professional team (excluding those relating to initial feasibility work), relating to any Capital Works Project;
 - 6.5.2 the Council shall be wholly responsible for the funding of all Capital Works Projects (subject to the qualification that the internal costs associated with the work, of the nature referred to in clause 6.4, carried out by HLH will be met by HLH) and shall exercise full control in relation to all payments associated with the development and/or implementation of each Capital Works Project;
 - 6.5.3 HLH shall have no power to issue instructions to any member of the professional team or to the relevant contractor otherwise than in accordance with the express written authorities conferred upon it by the Council, and strictly within the financial and other limitations on its authority imposed by the Council;
 - 6.5.4 the Council shall be entitled to all intellectual property rights associated with any Capital Works Project (actual or proposed), and HLH shall, at the request of the Council, exercise all rights available to it to assign such intellectual property rights which would otherwise be vested in HLH, to the Council.
- 6.6 The provisions of clauses 2.12 and 2.13 shall apply in relation to the works associated with delivery of any Capital Works Project as they apply to Maintenance Works.
- 6.6 The Council undertakes that, at the request of HLH, it shall use all reasonable endeavours to enforce any rights and remedies available to the Council against any contractor or member of the professional team (excluding, for the avoidance of doubt, any employee of the Council who was involved in the provision of services of a nature which might otherwise have been provided by a member of an external professional team) in respect of any defect or deficiency in the works associated with any Capital Works Project; the costs of any such enforcement action shall be met by the Council.
- 6.7 In any case where a defect or deficiency in the works associated with any Capital Works Project has a significant impact on the operations of HLH in delivering the PSO Services from the relevant Property and the defect or deficiency is referable to negligence on the part of an employee of the Council who was involved in the provision of services in respect of that Capital Project of a nature which might otherwise have been provided by a member of an external professional team, the provisions of clause [6.2] (as read with clauses [6.5] and [6.6]) of the Services Agreement shall apply.
- 6.8 For the avoidance of doubt, the responsibilities of HLH in respect of maintenance and repair under clause [5.1] of each of the Leases shall not extend to any defect or deficiency in respect of which the Council has a right

or remedy against any contractor or member of the professional team as contemplated in clause 6.6.

7 CAPITAL WORKS FUNDED BY GRANTS TO HLH

- 7.1 In the event that HLH considers (acting reasonably) that funding from some source other than the Council is likely to be available in respect of a proposed Capital Works Project but only if HLH directly incurs costs to the contractors and professional team and has direct control and responsibility in relation to the design and/or construction process, it shall (subject to clause 7.2) engage in discussions with the Council with a view to that Capital Works Project being taken forward by HLH, and in those circumstances:
- 7.1.1 the Council shall, subject to such safeguards for the protection of its interests as owner of the relevant subjects as it may consider appropriate, facilitate the selection and engagement by HLH of contractors and the members of the professional team (but on the basis that HLH must comply with the procurement policies of the Council in relation to the procurement of contractors and the members of the professional team);
 - 7.1.2 HLH shall submit the detailed plans and specifications in respect of the proposed works to the Council for prior written approval (such approval not to be unreasonably withheld);
 - 7.1.3 HLH shall not appoint the contractor or any member of the professional team without the prior approval of the Council (such approval not to be unreasonably withheld) in respect of the firm which is proposed for appointment;
 - 7.1.4 HLH shall procure that the contractor, and each member of the professional team involved in the design of the works, grants collateral warranties (in terms which are approved by the Council, the Council being bound to act reasonably in this respect) to the Council and such other parties (if any) as the Council may reasonably direct;
 - 7.1.5 the Council shall be under an obligation to contribute to that Capital Works Project only the sums (if any) which it has expressly agreed to pay under the relevant funding agreement between the Council and HLH, and (without prejudice to that generality) the Council will not be responsible for funding the whole or part of any cost overrun, except to the extent (if any) otherwise expressly agreed in writing between the Council and HLH.
- 7.2 For the avoidance of doubt, the Council need not take any of the steps referred to in paragraphs 7.1.1 to 7.1.5 if the Council considers that the disadvantages to the Council and/or HLH associated with the Capital Works Project being taken forward by HLH in line with the arrangements contemplated in clause 7.1, having regard to VAT and/or other issues, outweigh the advantages of taking that approach.

8 INSURANCE ARRANGEMENTS

- 8.1 The Council shall use reasonable endeavours to effect and maintain insurances throughout the period when the Agreement is in force in respect of all of the Properties, as follows:
- 8.1.1 property insurance against the Insured Risks for such sum as the Council may consider appropriate from time to time (with an excess of such sum as the Council may determine from time to time);
 - 8.1.2 occupiers' liability insurance (as part of the Council's public liability insurance) for such sum as the Council may consider appropriate from time to time (with an excess of such sum as the Council may determine from time to time).
- 8.2 The Council shall use reasonable endeavours to procure that the insurers providing the insurance policy referred to in paragraph 8.1.1 (and any other insurer which may from time to time provide that insurance policy) waive their rights of subrogation against HLH.
- 8.3 For the avoidance of doubt, the Council shall be responsible for payment of any excess under either of the insurance policies referred to in clause 8.1.
- 8.4 The Council undertakes
- 8.4.1 to provide to HLH on request copies of the policy documents relating to the insurances maintained by the Council in pursuance of clause 8.1, together with such evidence as HLH may reasonably request to demonstrate that such policies are in force; and
 - 8.4.2 to advise HLH promptly in writing if either of the insurances maintained by the Council in pursuance of clause 8.1 is 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.
- 8.5 HLH shall use reasonable endeavours to effect and maintain, throughout the period when the Agreement is in force, occupiers' liability insurance (as part of HLH's public liability insurance) in respect of all of the Properties on such terms as the Council may agree (such agreement not to be unreasonably withheld).
- 8.6 With reference to clause 8.5,
- 8.6.1 HLH shall use all reasonable endeavours to ensure that the indemnity limit in respect of the public liability insurance maintained by HLH in pursuance of clause 8.5 is at least equal to the indemnity limit applying from time to time in respect of the public liability insurance maintained from time to time by the Council;
 - 8.6.2 (without prejudice to the provisions of clause 8.5 in respect of the Council's approval of the terms of the insurance) HLH shall not increase the amount of excess in respect of any of the insurance

referred to in clause 8.5 without the prior written consent of the Council (such consent not to be unreasonably withheld).

- 8.7 HLH shall use reasonable endeavours to procure that the insurers providing the insurance policy referred to in clause 8.5 (and any other insurer which may from time to time provide that insurance policy) waive their rights of subrogation against the Council.
- 8.8 For the avoidance of doubt, HLH shall be responsible for payment of any excess under the insurance policy referred to in clause 8.5.
- 8.9 HLH undertakes
- 8.9.1 to provide to the Council on request copies of the policy documents relating to the insurances maintained by HLH in pursuance of clause 8.5, together with such evidence as the Council may reasonably request to demonstrate that such policies are in force; and
- 8.9.2 to advise the Council promptly in writing if the insurance maintained by HLH in pursuance of clause 8.5 is no longer to be maintained or if there is any significant change in the terms of the relevant insurance policy or the identity of the insurer.
- 8.10 The Council and its agents and advisers shall, on giving not less than 24 hours prior notice to HLH, be given reasonable access to the Properties for the purposes of inspecting the Properties and carrying out risk control surveys; following any such inspection or survey, the Council (or its agents or advisers) shall make recommendations to HLH on any issues identified by the inspection and/or survey, including without prejudice to that generality, recommended measures to control risk.
- 8.11 The Council and HLH shall each consider the recommendations referred to in clause 8.10 and shall enter into discussions in respect of the implementation of such recommendations and the timeframe for doing so; the Council and HLH 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.
- 8.12 HLH undertakes to implement such measures to control risk as the Council may reasonably prescribe in the light of the recommendations made in pursuance of clause 8.11, and within the timeframe reasonably prescribed by the Council.

9 REINSTATEMENT FOLLOWING DAMAGE OR DESTRUCTION

- 9.1 In the event of any Property being destroyed or damaged (and irrespective of whether such destruction or damage was caused by an insured risk), HLH shall:
- 9.1.1 give immediate notice to the Council, giving details of the damage or destruction and the effect on HLH's operations;

- 9.1.2 take immediate steps to secure the affected area, taking all appropriate temporary measures to limit further damage and address issues of health and safety; and
 - 9.1.3 allow the Council (and any surveyor or other consultant engaged by the Council) all such assistance as the Council may reasonably request to facilitate investigation of the damage and/or the pursuit of any insurance claim.
- 9.2 In the event of any Property being destroyed or so damaged as to be wholly or partly unfit for use for the purposes of the provision by HLH of any one or more of the PSO Services which, prior to destruction or damage, were delivered from that Property (and irrespective of whether such destruction or damage was caused by an insured risk):
- 9.2.1 the parties shall negotiate in good faith with a view to determining whether and to what extent PSO Services delivered from that Property might be restricted (whether in relation to opening hours, the areas of the building to be used for that purpose, or otherwise) or otherwise adapted to meet the circumstances;
 - 9.2.2 if the parties agree that the nature and extent of the destruction or damage is such that no PSO Services can be delivered from that Property, the obligation of HLH to occupy that Property shall be suspended for so long as those circumstances subsist;
 - 9.2.3 if the parties agree that the nature and extent of the destruction or damage is such that no PSO Services can be delivered from a particular part or parts of that Property, the obligation of HLH to occupy the Property shall be suspended, in their application to that part or parts of the Property, for so long as those circumstances subsist;
 - 9.2.4 the Council shall, within nine months after the date on which destruction or damage occurred, intimate in writing to HLH whether or not the Council intends to reinstate the Property;
 - 9.2.5 if the Council intimates in pursuance of paragraph 9.2.4 that it intends to reinstate the Property, the Council shall use reasonable endeavours to secure that such reinstatement is carried out as soon as reasonably practicable and shall keep HLH informed of progress in relation to the various matters to be addressed in that regard;
 - 9.2.6 if the Council intimates in pursuance of paragraph 9.2.4 that it does not intend to reinstate the Property, the Council shall be entitled to terminate the Lease of that Property without any compensation being payable to HLH.
- 9.3 For the avoidance of doubt, HLH may, in the circumstances referred to in clause 9.2, make representations to the Council as to the steps which it considers that the Council should take in respect of reinstatement, the

allocation of some other site, a reduction or expansion of the size of the facility, a change in the nature of the facility and/or other relevant matters; the Council shall have due regard to any such representations, and if the Council considers appropriate may ask HLH to develop any proposal in further detail to facilitate any decisions and/or practical steps to be taken by the Council with regard to such matters.

- 9.4 In the event of any damage caused by an Insured Risk to a Property falling short of that which would fall within the provisions of clause 9.2, the Council shall (except in a case where the damage is referable, directly or indirectly, to failure on the part of HLH to implement its obligations as tenant under the Lease of the Property (as read with the Agreement)) be under an obligation to reinstate the Property at its cost (any excess being met by the Council out of its own funds) within a reasonable period after the occurrence of the damage is intimated by HLH to the Council in pursuance of clause 9.1.
- 9.5 In carrying out any reinstatement in pursuance of paragraph 9.2.5 or clause 9.4, the Council shall be entitled to make such changes (temporary or otherwise) to size, design, layout and/or materials as the Council considers appropriate, but subject to obtaining the prior written consent of HLH (such consent not to be unreasonably withheld) in relation to any change which would have a significant impact on the operations of HLH in delivering PSO Services from those Premises.
- 9.6 The Council undertakes that in the event that circumstances of the nature referred to in paragraphs 9.2.2 or 9.2.3 arise in respect of any Property, the Council shall not, so long as such circumstances continue to subsist, enforce a provision of the Lease relating to that Property to the extent that it would be manifestly unreasonable for the Council to do so having regard to the nature of that provision and the circumstances then pertaining.

10 ADDITION OF PROPERTIES TO THE PORTFOLIO

- 10.1 In relation to any Capital Works Project which involves the construction of a building, part of a building, playing fields or other facilities on land which falls outwith the subjects let under the Leases,
- 10.1.1 the Council and HLH shall negotiate in good faith with a view to agreeing the principal terms of the lease to be entered into between the Council and HLH in respect of the relevant subjects;
- 10.1.2 the heads of terms reflecting the principal terms, as agreed in pursuance of paragraph 10.1.1, shall be signed on behalf of both Parties prior to the Council entering into significant financial commitments in relation to the Capital Works Project.
- 10.2 The terms of any lease entered into in pursuance of the heads of terms agreed under clause 10.1 shall be in accordance with the model lease set out in Part [●] of the Schedule to the Transfer Agreement (subject to such adjustments to reflect the particularities of the subjects as the parties may agree (each being

bound to act reasonably in this respect)), and on the basis that the date of expiry of the lease shall correspond with the expiry of the Prescribed Period.

- 10.3 The date of entry under any lease to be entered into in pursuance of clauses 10.1 and 10.2 shall (subject to the completion of commissioning, and production to HLH of appropriate certificates, all in accordance with the provisions of Part 5 of the Schedule) be the date agreed by the Parties as appropriate (each being bound to act reasonably in this respect), having regard to the nature and extent of the fitting-out works and the respective responsibilities of the Parties with regard to fitting-out (and on the basis that, where appropriate, HLH shall be permitted to have access to the subjects of the proposed lease prior to the date of entry, subject to entering into a formal licence in such terms as the Council may reasonably request); and the subjects let under the lease shall, as from the date of entry, be taken to be comprised in the Properties.
- 10.4 The Council shall, at the time of granting any lease entered into in pursuance of clauses 10.1 and 10.2, deliver to HLH the items specified in paragraph [4.2.1.10 and 4.2.1.11] of the Transfer Agreement (subject to any necessary modifications) and on the basis that the provisions of paragraph [4.9.3] of the Transfer Agreement shall apply.

11 WITHDRAWAL OF PROPERTIES FROM THE PORTFOLIO

- 11.1 In the event that HLH considers, acting reasonably, that public access to a particular Property should be terminated on the grounds of significant health and safety concerns (whether by reason of breakdown of major plant, deterioration in the building fabric or otherwise) or as a result of service of a statutory notice or some other factor which significantly prejudices delivery of the PSO Services from that Property, HLH shall give written notice to the Council to that effect; following receipt of a notice under the preceding provisions of this clause:
- 11.1.1 the Council and HLH shall work in partnership with a view to determining whether or not it is appropriate that public access to the Property should be terminated or Maintenance Works should be carried out or other steps taken;
- 11.1.2 if the Council agrees (the Council being bound to act reasonably in this respect) that it is appropriate that public access to the Property should be terminated with effect from such date as the parties may agree (each being bound to act reasonably), the Council shall serve notice on HLH, terminating the Lease of that Property, with effect from that date.
- 11.2 For the avoidance of doubt, the provisions of paragraph 11.1.1 shall not be taken to derogate from the ability of HLH to suspend public access to a Property in the circumstances referred to in clause 11.1 on an interim basis if HLH considers (acting reasonably) that there is an immediate and substantial threat to health and safety.

- 11.3 The Council shall be entitled at any time to terminate any of the Leases, subject (other than in a case where the Lease is being terminated in pursuance of the right of irritancy conferred on the landlord under the Lease) to complying with the processes set out in Part 56 of the Schedule.
- 11.4 Where the Lease of a Property is terminated, the Agreement shall cease to apply to that Property with effect from the date of such termination, but without prejudice to any right or remedy of either Party against the other in respect of any breach of obligations under the Lease which was committed prior to termination.

12 TITLE DEFECTS/COMMON GOOD

- 12.1 The Council shall give immediate notice to HLH upon becoming aware of any Title Defect (insofar as not already known to HLH through the Reports on Title delivered to HLH in pursuance of the Transfer Agreement) that might reasonably be expected to give rise to a significant impact on the operations of HLH in delivering the PSO Services, giving details of the Title Defect, the steps (if any) which have been taken by any relevant third parties, and the anticipated effect on HLH's operations.
- 12.2 In the event that, at any time during the Prescribed Period, any Title Defect gives rise to a significant impact on the operations of HLH in delivering the PSO Services:
- 12.2.1 HLH shall give immediate notice to the Council, giving details of the Title Defect, the steps (if any) which have been taken by any relevant third parties, and the effect on HLH's operations;
- 12.2.2 HLH shall allow the Council (and any solicitor, surveyor or other consultant engaged by the Council) all such assistance as the Council may reasonably request to facilitate investigation of the Title Defect and/or the approach which might be adopted to resist or defend any claim by a third party and/or the steps which might be taken to minimise or eliminate any effect on HLH's operations;
- 12.2.3 the Council shall, if it considers appropriate, be entitled (at its option)
- 12.2.3.1 to take such steps (at the Council's cost) as it considers appropriate to remedy the Title Defect and/or resist or defend any claim by a third party; and/or
- 12.2.3.2 to require HLH to take such steps as the Council may reasonably request to minimise or eliminate any effect on HLH's operations (subject to the Council meeting any major expenditure associated with taking such steps);
- 12.2.4 the Council shall (irrespective of any steps taken in pursuance of paragraph 12.2.3) pursue the processes specified in clause [6] of the Services Agreement with a view to agreeing a Services Specification

Change, to apply for so long as the effect on HLH's operations subsists.

12.3 The provisions of clause 12.2 shall apply, with any necessary modifications, in the event of any challenge being raised against the grant of a Lease by the Council under the principles relating to common good, subject to the qualification that in addition to, or in substitution for, either or both of the possible steps referred to in paragraph 12.2.3, the Council may, if it considers appropriate (and providing that this course of action is not prohibited by the relevant court order)

12.3.1 grant a licence to HLH (on such terms as the Council may reasonably determine) allowing HLH to occupy the Property or Properties in question pending the outcome of the relevant court process or processes; and

12.3.2 upon grant of that licence, terminate the Lease(s) which is/are the subject of the challenge, but on the understanding that a fresh lease or leases, for the remainder of the term of the Lease(s) which was/were so terminated (and on the same terms and conditions as the Lease(s) which was/were so terminated), will be granted by the Council on conclusion of the relevant court process or processes (assuming the outcome is consistent with the Council doing so).

12.4 The Council undertakes that in the event that circumstances of the nature referred to in clauses 12.1 to 12.3 arise in respect of any Property, the Council shall not, so long as such circumstances continue to subsist, enforce a provision of the Lease relating to that Property to the extent that it would be manifestly unreasonable for the Council to do so having regard to the nature of that provision and the circumstances then pertaining.

13 CIVIL EMERGENCIES

13.1 Without prejudice to the other rights reserved to the landlord under the Leases, the Council shall be entitled to make use of certain Properties in the event of a civil emergency, in accordance with the provisions set out in Part 7 of the Schedule.

14 ELECTIONS AND SPECIAL EVENTS

14.1 Without prejudice to the other rights reserved to the landlord under the Leases:

14.1.1 the Council shall be entitled to make use of certain Properties in the event of an election, in accordance with the provisions set out in Part 8 of the Schedule; and

14.1.2 the Council shall be entitled to make use of certain Properties for special local events, subject to the availability of the relevant Property.

15 ENERGY AND CARBON PROTOCOL

- 15.1 HLH undertakes to reimburse the Council in respect of all costs incurred by the Council on energy consumed in each of the Properties; and on the basis that in any case where electricity or gas consumed in a given Property is not separately metered, the Council shall determine (on the basis of an appropriate allocation) the amount which has been consumed in respect of that Property.
- 15.2 HLH shall comply with the Council's energy policy (insofar as it relates to the Property Portfolio) as may be amended from time to time and notified to HLH.
- 15.3 The Council and its agents and advisers shall, on giving not less than 24 hours' prior notice to HLH, be given reasonable access to the Properties for the purposes of monitoring consumption of energy and (where applicable) controlling the heating systems by way of the Building Energy Management System or local control.
- 15.4 The Council shall be entitled to implement any energy efficiency projects in respect of the Properties which the Council considers appropriate from time to time, but shall consult with HLH prior to implementation of any such project; where the cost of any energy efficiency project are shared between the Council and HLH, the Parties shall negotiate in good faith with a view to making appropriate adjustments to the Services Fee to reflect the extent of their respective contributions to the project.
- 15.5 [Without prejudice to any other provision of this Agreement, HLH shall only allow the Council's approved contractors to have access to any heating plant or controls within any of the Properties, for the purposes of repairs or maintenance.]

16 INTER-RELATIONSHIP WITH SERVICES AGREEMENT

- 16.1 Without prejudice to the other provisions of the Agreement, clauses [6.2 to 6.8, 6.10, 6.11 and 6.15] of the Services Agreement may apply, so as to allow (among other things) for the adjustment of the Services Specification and/or Prescribed Performance Standards
- 16.1.1 where a Property is affected by Maintenance Works, Statutory Works or a Capital Works Project;
- 16.1.2 where a Property is affected by circumstances of the nature referred to in clauses 9.2, 11.1, 12.2 or 12.3;
- 16.1.3 where a Property is required in the event of a civil emergency (as provided for in clause 13); or
- 16.1.4 where a Property is required in the event of an election (as provided for in clause 14).

- 16.2 The Council undertakes that in the event that circumstances of the nature referred to in clause [6] of the Services Agreement arise in respect of any Property such that the Property becomes wholly or partly unavailable for use for delivery of any one or more of the relevant PSO Services, the Council shall not, so long as such circumstances continue to subsist, enforce a provision of the Lease relating to that Property to the extent that it would be manifestly unreasonable for the Council to do so having regard to the nature of that provision and the circumstances then pertaining.

17 FORWARDING OF NOTICES

- 17.1 Each Party undertakes to forward promptly to the other a copy of any notice by a third party of its intention to exercise rights of access over a Property, any intimation of a planning application relating to neighbouring property or any other notice, intimation or other communication which it may receive in respect of any of the Properties which could have a significant impact on the interests of the other Party.

18 FORCE MAJEURE

- 18.1 If either Party is prevented from or hindered or delayed in performing any obligations under this Agreement by reason of any circumstances beyond its reasonable control (including, without prejudice to that generality, strikes or lockout)

18.1.1 it shall be excused performance to the extent affected by the circumstances concerned, so long as it gives notice to the other Party of those circumstances promptly after they first affected performance and uses all reasonable commercial endeavours to eliminate or mitigate their cause or effect;

18.1.2 performance by that Party shall be excused for the period during which the inability of the Party to perform by reason of the circumstances concerned subsists (or, if a shorter period, the period for which it would have been unable to perform for that reason had it complied with its obligation under paragraph 18.1.1 to seek to eliminate or mitigate their cause or effect) but for no longer period, and shall be remedied as soon as possible; and

18.1.3 any time period for performance by that Party shall be extended by a period equal in duration to any period for which performance is excused under paragraph 18.1.2.

19 DEFAULT

- 19.1 The Council may at any time by notice in writing to HLH terminate this Agreement with immediate effect if:

19.1.1 HLH fails to observe or perform any of its material obligations contained in this Agreement where such failure is not remediable;

- 19.1.2 HLH fails to observe or perform any of its material obligations contained in this Agreement where such failure was capable of being remedied but was not remedied within 15 Business Days of being requested to do so by the Council;
 - 19.1.3 a petition is presented to wind up HLH or a meeting is convened for the purpose of passing a resolution to wind up HLH, otherwise than (in either case) for the purpose of amalgamation or reconstruction with the prior written consent of the Council;
 - 19.1.4 a receiver or administrative receiver or manager is appointed over or in respect of all or any part of the property, undertaking or assets of HLH;
 - 19.1.5 a petition is presented for an administration order to be made in relation to HLH;
 - 19.1.6 HLH convenes a meeting of its creditors or makes any proposal for or enter into any compromise, composition or scheme of arrangement with its creditors or makes any assignation for the benefit of its creditors;
 - 19.1.7 HLH ceases or threatens to cease to carry on HLH's operations or any material part of HLH's operations or sells or disposes of or attempts to sell or dispose of all or any part of its undertaking or assets except in the ordinary course of business;
 - 19.1.8 any representation or warranty made by HLH to the Council shall be found to have been untrue in any material respect at the date when such representation or warranty was made;
 - 19.1.9 any creditor or any other person does diligence against any of HLH's assets or attempts to levy any distress, execution, sequestration or other process or if the holder of any security takes or attempts to take possession of any of HLH's assets;
 - 19.1.10 funding from any other party or parties in respect of the PSO Services is withdrawn, where the withdrawal of such funding materially prejudices the viability of the PSO Services; or
 - 19.1.11 HLH, or an employee not acting independently of HLH but acting under the express authority of or with the actual knowledge of any one or more directors or senior officers of HLH, commits an offence under any Law creating offences in respect of fraudulent acts.
- 19.2 If the Council exercises its entitlement under clause 19.1 to terminate the Agreement it shall at the same time terminate all of the Leases.
- 19.3 In the event of any of the circumstances referred to in paragraphs 19.1.1 to 19.1.11 occurring, the Council shall, without prejudice to any other remedy competent to the Council, be entitled to terminate any contract, undertaking

or other legal commitment entered into or issued in pursuance of the provisions of the Agreement (or in pursuance of the arrangements contemplated in the Agreement) and shall be entitled to recover from HLH all liabilities incurred in connection with the early termination of such legal commitments; the Council shall, in addition, be entitled to damages for any other loss or liability which the Council may suffer as a result of breach of the Agreement.

- 19.4 This Agreement shall automatically terminate if the Council exercises any right to terminate the Services Agreement or the Collections Agreement or all, or a majority, of the Leases.
- 19.5 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, including (without prejudice to that generality), the right to recover any sums of money which are due to be paid under this Agreement.
- 19.6 Notwithstanding the provisions of this clause 19, the provisions of clauses 11.4, 18, 20, 22, 23, 25, 26.2, 27.2, 27.3, and 28 to 34 shall survive termination (for whatever reason) or expiry of this Agreement.

20 INTEREST

- 20.1 Interest will accrue and be payable by HLH to the Council on any sum due to the Council in terms of the Agreement which remains unpaid for 15 Business Days after the due date, such interest to run at the rate of 2% per annum above the base rate of the Bank of Scotland from the due date until payment.

21 ASSIGNATION

- 21.1 HLH shall not assign or otherwise dispose of its interest under the Agreement to any other party.
- 21.2 Without prejudice to the provisions of clause 21.1, the Council shall be entitled (without any requirement for HLH's consent)
- 21.2.1 to assign or otherwise dispose of the whole or any part of its interest under this Agreement to any body which acquires a major interest in, or is appointed to carry out a significant role in respect of management of, the whole or any part of the Council's property portfolio;
 - 21.2.2 to authorise any body of the nature referred to in paragraph 21.2.1 to exercise any of the rights or powers expressed in this Agreement to be exercisable by the Council; and/or
 - 21.2.3 to subcontract to any party the delivery or performance of any obligations or responsibilities incumbent upon the Council under this Agreement.

- 21.3 The Council undertakes that it will not transfer ownership of, or (as the case may be) assign its leasehold interest in, any of the Properties without ensuring that the new owner, or (as the case may be) the new holder of that leasehold interest, enters into an agreement (in the same terms as the Agreement, subject to any necessary modifications (complying with clause 21.4, where applicable); and including a provision in similar terms to this clause 21.3) with HLH at the time when it acquires ownership or (as the case may be) acquires that leasehold interest.
- 21.4 A modification which would have a significant financial or operational impact on HLH shall not be made under clause 21.3 except with the prior consent of HLH (such consent not to be unreasonably withheld).

22 LIMIT ON LIABILITY

- 22.1 Neither Party excludes or limits liability for death or personal injury arising as a result of its negligence.
- 22.2 Subject always to clause 22.1, 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):
- 22.2.1 any, indirect, incidental, special or consequential loss or damage (whether or not such loss or damage is of the type specified in clauses 22.2.1 to 22.2.7 below);
 - 22.2.2 loss of actual or anticipated profits;
 - 22.2.3 loss of goodwill;
 - 22.2.4 loss of business;
 - 22.2.5 loss of revenue or of the use of money;
 - 22.2.6 loss of contracts;
 - 22.2.7 loss of anticipated savings.
- 22.3 Neither Party shall be liable to the other in respect of any breach of any of its obligations under this Agreement in circumstances where it was prevented from fulfilling that obligation by an act or omission of the other Party, providing the Party having the relevant obligation used all reasonable endeavours to make alternative arrangements that would permit it to fulfil the obligation.

23 WAIVER

- 23.1 The failure of either Party to insist upon strict performance of any provision of the Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled under the Agreement, shall not constitute a waiver of that provision, right or remedy; and shall not prejudice the ability

of that Party to enforce that provision in accordance with its terms, or to exercise that right or remedy, on any future occasion.

- 23.2 No waiver of any of the provisions of the Agreement shall be effective unless it is expressly stated to be a waiver, identifies the specific provision(s) to which it relates, and is communicated to the other Party in writing, signed by a duly authorised representative of the Party which is waiving the relevant provision(s).

24 NOTICES

- 24.1 All notices and notifications under the Agreement shall be given or issued by letter or by other written document, or by way of facsimile transmission or other visible electronic means.

- 24.2 A notice or notification under the Agreement shall (subject to clauses 24.3 and 24.4) be deemed to be duly given:-

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

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

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

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

- 24.4 A notice sent by first class recorded delivery post (or equivalent postal service) shall be deemed to have been delivered during business hours on the Business Day following the date of posting; in proving that a notice was given, it shall be sufficient to prove that an envelope containing the notice was duly addressed and posted in accordance with clause 24.2.

- 24.5 For the purposes of clauses 24.3 and 24.4, “business hours” shall mean the period between 9.00 a.m. and 5.00 p.m. on a Business Day.

25 PARTNERSHIP

- 25.1 The Agreement shall not be deemed to constitute a partnership or a joint venture between the parties; neither Party is an agent, express or implied, of the other and neither Party shall hold itself out or submit itself to be held as such or as having any power or authority of any other kind to bind the other Party in respect of legal obligations to third parties.

26 DURATION

- 26.1 The Agreement shall commence on the Commencement Date and shall, unless earlier terminated, continue in full force and effect until the expiry of the Prescribed Period.
- 26.2 Save as otherwise agreed, termination of the Agreement shall be without prejudice to any accrued rights and obligations under the Agreement as at the date of termination.

27 PERSONAL DATA AND FREEDOM OF INFORMATION

- 27.1 Each Party shall comply with its obligations under the provisions of the Data Protection Act 1998.
- 27.2 All information (including, without limitation, any Confidential Information) submitted to either Party may need to be disclosed and/or published by either Party; without prejudice to that generality, either Party may disclose information in compliance with
- 27.2.1 the Freedom of Information (Scotland) Act 2002 (the decisions of either Party in the interpretation of that Act being final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms); or
- 27.2.2 any other law, or as a consequence of any judicial order or any order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner).
- 27.3 If either Party receives a request under the Freedom of Information (Scotland) Act 2002, (or, if applicable, a request under the Environmental Information (Scotland) Regulations 2004), which includes any Confidential Information,
- 27.3.1 the Party in receipt of the request may seek the consent of the other Party to release some or all of the Confidential Information in response to that request and shall do so if the Party in receipt of the request is minded to disclose such items, whether in terms of the public interest or otherwise;
- 27.3.2 if the other Party shall fail to respond to a request for consent of the nature referred to in paragraph 27.3.1 within 5 Business Days of the request being made, it shall be deemed to have consented to the release of information;
- 27.3.3 in all cases the Party in receipt of the request may, without the consent of the other Party, disclose any of the Confidential Information, if the Party in receipt of the request (acting reasonably) is satisfied that it is in the public interest for it to do so; and on the basis that in reaching that conclusion, the Party in receipt of the request shall take into account any representations made in connection with this by the other Party but the decisions of the Party in receipt of the request as to what constitutes public interest shall be final and

conclusive in any dispute, difference or question arising in respect of disclosure of the relevant Confidential Information.

28 DISPUTE RESOLUTION

- 28.1 All disputes between the parties arising out of or relating to this Agreement may be escalated, by either Party, to the Chief Operating Officer of HLH and the Directors of Housing and Property Services and Education, Culture and Sport Services of the Council.
- 28.2 If any dispute is not resolved at the level referred to in clause 28.1 within 10 Business Days after it has been escalated to that level, it may be further escalated by either Party to the Chief Executive of the Council, or to the board of directors of HLH and the Council's Education, Culture and Sport Committee, for resolution.
- 28.3 If a dispute cannot be resolved at the level referred to in clause 28.2 within 10 Business Days after it has been escalated to that level, the dispute may at any time thereafter be referred for final determination to an expert (the "**Expert**"), who shall be deemed to act as expert and not as arbiter; the following provisions shall apply:
- 28.3.1 the Expert shall be selected by mutual agreement or, failing agreement, within 14 days after a request by one Party to the other, shall be chosen at the request of either Party by the President (or other senior executive replacing or deputising for the President) at the time of the Law Society of Scotland, who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.
- 28.3.2 within 14 days after the Expert has accepted the appointment, the parties shall submit to the Expert a written report on the dispute.
- 28.3.3 both parties will then afford the Expert all necessary assistance which the Expert requires to consider the dispute.
- 28.3.4 the Expert shall be instructed to deliver his/her determination to the parties within 10 Business Days after the submission of the written reports pursuant to paragraph 28.3.2.
- 28.4 Save in the case of manifest error, decisions of an Expert shall be final and binding and shall not be subject to appeal.
- 28.5 An 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 such information as it has and is material to the matter to be resolved and which it could be required to produce on discovery.
- 28.6 The fees of an Expert shall be borne by the Parties in such proportion as shall be determined by the Expert, having regard (amongst other considerations) to the conduct of the parties.

29 SEVERABILITY

29.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

29.2 If

29.2.1 circumstances arise of the nature referred to in clause 29.1; or

29.2.2 either of the Parties (having regard to developments or anticipated developments in the law or other relevant factors) believes (acting reasonably) that a provision of the Agreement might be held invalid, illegal or unenforceable if challenged,

the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision which is found to be invalid, illegal or unenforceable or is considered to be vulnerable to challenge.

30 RIGHTS OF THIRD PARTIES

30.1 Save to the extent expressly set out in this Agreement, this Agreement is not intended to create nor shall it create, any rights, entitlement, claims or benefits enforceable by any person that is not a party to it.

31 COSTS

31.1 Except as otherwise provided in this Agreement, each Party shall pay its own costs in connection with negotiation, preparation and execution of this Agreement and all documents ancillary to it.

32 AMENDMENTS TO THE AGREEMENT

32.1 The Agreement shall not be varied or amended unless such variation or amendment is recorded in a written document, duly signed by a duly authorised representative of HLH on behalf of HLH and by a duly authorised representative of the Council on behalf of the Council.

33 CONFLICT WITH THE LEASES

33.1 In the event of any conflict between the provisions of the Leases and the provisions of the Agreement, the provisions of the Agreement shall prevail.

34 GOVERNING LAW

34.1 This Agreement is governed by and shall be construed in accordance with Scots law.

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

SEALED with the Common Seal of
the said THE HIGHLAND COUNCIL
and SUBSCRIBED for and on its
behalf

at

on

by

Print Full Name

Authorised Signatory

SUBSCRIBED for and on behalf of
the said HIGH LIFE HIGHLAND

at

on

by

Print Full Name

Director

before this witness

Print Full Name

Witness

Address

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

SCHEDULE

PART 1 – LIST OF PROPERTIES

PART 1A – PROPERTIES OWNED BY THE COUNCIL

**PART 1B – PROPERTIES IN WHICH THE COUNCIL HOLDS A
LEASEHOLD INTEREST**

**PART 2 - PROCESS FOR DETERMINING ANNUAL MINOR WORKS
AGGREGATE SPEND LIMIT**

PART 3 – CURRENT CAPITAL IMPROVEMENT PROGRAMME

PROJECT	BUDGET	COMMENTS/STATUS

PART 4 – HLH’S CONTRIBUTION TO DEVELOPMENT & IMPLEMENTATION OF THE CAPITAL PROGRAMME

[note: wording below is indicative only]

Outlined below is the proposed high level structure of the relationship between the Council and HLH in relation to the Capital Improvement Programme. This structure will be reviewed annually.

1. The Council will retain the responsibility for the delivery of Capital Works Projects.
2. HLH, given its specialist knowledge and expertise in leisure and culture services, will assume the role of “informed client” for each Capital Works Project. In addition, this role will be extended for identified Capital Works Projects, as agreed with the Council, to include project development and governance with the requirement to report regularly to the Council project governance board.
3. The Council will consult with HLH at all stages of each Capital Works Project including project initiation and feasibility.
4. HLH will identify a lead project officer for each Capital Works Project to work with the Council’s project manager.
5. The Council will be responsible for the procurement of external consultants and contractors.
6. HLH will be represented on the Council’s Corporate Asset Management Group as required.
7. Each party will deploy the necessary resources to each Capital Works Project to ensure that the Capital Works Project is delivered in line with the agreed programme.
8. The costs of HLH’s project officer(s) will be met by HLH unless otherwise agreed with the Council.
9. Where applicable HLH will prepare and submit funding applications for lottery and other funding bodies to be secured in line with the Capital Works Project’s programme.

PART 5 - PROCESS FOR COMMISSIONING AND CERTIFICATION OF CONCLUSION OF A CAPITAL WORKS PROJECT PRIOR TO HLH'S DATE OF ENTRY

[note: wording below is indicative only]

The process for commissioning and certification of a Capital Project prior to HLH's date of entry ("**DE**") presumes that the DE is the only outstanding issue in terms of the lease and that the work regarding Reports on Title, preparation of lease and title plans, use clauses and other relevant matters have been satisfactorily concluded.

Notwithstanding the above, six weeks prior to the anticipated date of practical completion for a Capital Project, the Council's Contract Administrator ("**CA**") will write to HLH's Client Officer ("**CO**") formally advising the date of practical completion and confirming that all relevant documentation and certification will be available at that time. The CA will copy this letter to the Council's Director of Development and Infrastructure ("**DAI**").

At this point (unless otherwise agreed), HLH's DE will be 28 days from the date of practical completion. No DE will fall on a Friday. The CA will continue to liaise with the CO and DAI as the anticipated date of practical completion approaches, to ensure that all parties are aware of any issues that may affect practical completion.

On the due date, the CO the CA and the representative from DAI will meet and

- agree what documentation/commissioning records are available;
- agree what documentation/commissioning records are still outstanding;
- provide the CA snagging list for the project;
- note if the DE is reasonable and still stands.

The CA will agree a date by which the outstanding documentation (for example operating and maintenance manuals) will be ready. This must be at least 5 days before the DE, to allow HLH's technical/maintenance officers to review and comment as appropriate.

Immediately following the above meeting, HLH will be permitted to survey the building with regard to technical and maintenance issues deemed relevant but not found on the CA's snagging list. HLH will list these technical and maintenance issues and pass to the CA for resolution. HLH will also pass a copy of this list to DAI.

Any issues which HLH deem might impact on the proposed DE will be specifically identified to both parties and a formal request for a revised DE will be made, to which DAI must respond reasonably.

The CA at DAI and the CO shall work in partnership with a view to overcoming any difficulties to HLH taking possession of the building by the agreed DE. However,

HLH will require to be satisfied that in terms of the building in question it is able to comply with all the requirements set out in the Council's model lease and this Property Agreement. If HLH believes (acting reasonably) that it cannot comply, it will again request a revised DE but continue to work in partnership with the other parties to ensure service delivery is commenced as soon as practically possible.

PART 6 – PROCESS TO BE FOLLOWED IF A LEASE IS TO BE TERMINATED

[note: wording below is indicative only]

- 1 In the event that a Property or Properties is proposed to be withdrawn from the Property Portfolio in terms of clause 11.3, the Council shall first provide a written submission (“**the Trigger Notice**”) to HLH outlining the reason for the proposal.
- 2 A period of reasonable consultation shall follow between the Council and HLH on the proposal, which shall not extend beyond three months from the date of the Trigger Notice.
- 3 A notice served under clause 11.3 shall not be valid unless the appropriate authority has been granted by the appropriate committee of the Council or under the Council’s scheme of delegation.
- 4 Subject to paragraphs 1, 2 and 3, the Council may terminate a Lease (or, as the case may be, HLH’s right to occupy the relevant Property under the Licence) by serving a written notice to quit to HLH specifying the date at which the Lease (or, as the case may be, the right to occupy) is to come to an end (“**the Date of Termination**”). The notice shall be served not more than 24 nor less than 12 months before the Date of Termination.

PART 7 – CIVIL EMERGENCIES

PART 8 – ELECTIONS