

Item: 13

Education, Leisure and Housing Committee: 5 June 2019.

Pickaquoy Centre Trust – Revised Service Agreement.

Report by Executive Director of Education, Leisure and Housing.

1. Purpose of Report

To consider the revised Service Agreement between the Council and Pickaquoy Centre Trust.

2. Recommendations

The Committee is invited to note:

2.1.

That the Service Agreement between the Council and Pickaquoy Centre Trust in place from 2012 to 2015 was extended a number of times, the latest being until April 2019.

2.2.

That the draft Service Agreement 2019 to 2022, attached as Appendix 1 to this report, which incorporates meaningful outcome related aims and priorities, has been reviewed and agreed by Pickaquoy Centre Trust's Board of Trustees.

It is recommended:

2.3.

That the Service Agreement 2019 to 2022 between the Council and Pickaquoy Centre Trust, attached as Appendix 1 to this report, be approved.

3. Background

3.1.

The current Service Agreement between the Council and Pickaquoy Centre Trust was in place for a term of three years to 31 March 2015. It was extended initially until 1 November 2015 then again until 31 July 2018 and continued to 1 April 2019.

3.2.

During 2015 to 2016, the Internal Audit section undertook an audit to review the Service Agreement arrangements between Pickaquoy Centre Trust and the Council. The audit scope was:

- To review whether current arrangements between the Council and Pickaquoy Centre Trust were operating in accordance with the Service Agreement.
- To examine whether the current Service Agreement adequately reflected the current and future requirements in the arrangements between the Council and Pickaquoy Centre Trust.

3.3.

The audit report was presented to the Monitoring and Audit Committee on 29 September 2016 and contained a total of 16 recommendations, some of which referred to items for inclusion in a revised Service Agreement. These items have been included in the draft Service Agreement 2019 to 2022 attached as Appendix 1 to this report.

4. Service Agreement 2019 to 2022

4.1.

The Sport and Leisure Service Manager has been working closely with the Pickaquoy Centre Trust's Managing Director, who took up post on 27 August 2018, to ensure that the Service Agreement 2019 to 2022 adequately reflects the future requirements of the Council and Pickaquoy Centre Trust, as well as meeting the recommendations of the 2016 internal audit report.

4.2.

A number of meaningful aims and priorities, as detailed below, have been included in the Service Agreement 2019 to 2022 to provide a clear link between the aims and priorities of not only the Council but those of its partners such as Sportscotland and Orkney's Community Planning Partnership:

4.2.1.

- Aim – Provision of Leisure Facilities – to provide specialist venues, staff and activities to Promote Sport, Leisure and Learning.
- Priorities:
 - Provide facilities that comply with Health and Safety legislation and statutory guidelines.
 - Provide opportunities to schools for delivery of curriculum and after school activities.
 - Provide opportunities for casual use by the public.
 - Provide specialist venues for use by sports clubs.
 - Provide specialist venues for use by specific target groups – exercise referral/disability.
 - Provide specialist venues and supervision/guidance for athletes who are part of the Sportscotland Institute of Sport/Performance Development Programme.
 - Contribute to delivery of the Council's Pitch and Facilities Strategy and Physical Activity and Sport Strategy.

4.2.2.

- Aim – Provision of Physical Activity and Sport – to increase the number of people taking part in physical activity.
- Priorities:
 - Work with Active Schools to develop pathways for young people to progress from school to after school and community sport.
 - Develop and monitor a range of physical activity and sport opportunities.
 - Develop and retain specialist staff for disability and exercise referral delivery.
 - Work with specialist sports officers of national governing bodies and Orkney's Community Sports Hub Officer to contribute to the development of sport in Orkney.
 - Contribute to the roll out of Orkney's Sport Club accreditation scheme to ensure the good practice and governance of facility users.
 - Provide Swim Club lane hours for training.
 - Deliver the Scottish National Swimming Framework Learn to Swim Programme.
 - Develop and deliver a programme of coach led activities for all age groups.
 - Develop and deliver holiday programmes.
 - Contribute to the reduction of childhood obesity in primary school children.
 - Work with other agencies in contributing to delivering a reduction in inequalities in relation to physical activity and healthy weight.
 - Operate an exercise referral programme to support healthy eating and increase physical activity.
 - Report on the number of children attending Learn to Swim Programme and numbers completing the programme and progressing on to the Orkney Amateur Swimming Club.
 - Contribute to the long-term outcome of increasing the proportion of Orkney's population with a healthy weight.

4.3.

The attached draft Service Agreement 2019 to 2022 has been reviewed and agreed with the Pickaquooy Centre Trust Board of Trustees.

5. Corporate Governance

This report relates to governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

6. Financial Implications

6.1.

In accordance with the Code of Guidance on funding External Bodies and following the Public Pound, the Council has a duty to ensure adequate stewardship of Council funds at all times. It should be viewed as good practice that the Council ensures that the necessary systems and controls are in place to protect its investments.

6.2.

The approved budget for the Pickaquooy Centre Trust for 2019 to 2020 is £776,600, which has not experienced any efficiency savings in the budget setting process unlike other services within the Education, Leisure and Housing Service.

7. Legal Aspects

The purpose of the Service Agreement is to provide fiscal savings and, in addition, gives the Council the opportunity to monitor Pickaquooy Centre Trust on performance management principles.

8. Contact Officers

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9. Appendix

Appendix 1: Draft Service Agreement 2019 to 2022.

Appendix 1

SERVICE AGREEMENT

between

ORKNEY ISLANDS COUNCIL

and

THE PICKAQUOY CENTRE TRUST

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INTRODUCTION

THIS AGREEMENT is made on 2 July 2019 notwithstanding the date or dates hereof.

BETWEEN:

ORKNEY ISLANDS COUNCIL (the 'Council'), incorporated under the Local Government (Scotland) Act 1973 (as amended) and the Local Government etc (Scotland) Act 1994 and having its principal offices at School Place, Kirkwall, Orkney, KW15 1NY.

and

THE PICKAQUOY CENTRE TRUST (the 'Trust'), a Charitable Trust registered with the Scottish Charity Commission on 6 April 1999 with registration number SC028833 and which is registered at The Pickaquoy Centre, Muddisdale Road, Kirkwall, Orkney, KW15 1LR.

WHEREAS :

- a) The Trust has been established as a Charitable Trust with the primary charitable purpose to provide or assist in the provision of facilities and services for recreational, sporting or other leisure time occupation for the public at large and in the interests of social welfare a facility for this purpose has been constructed and is in operation at the Pickaquoy Centre at Kirkwall, Orkney.
- b) The Council has resolved, pursuant to its duties of best value under the Local Government (Scotland) Act 2003 and in accordance with its corporate objectives for sport and leisure services to work in partnership with public, private and voluntary sector bodies to improve the delivery of public services for the benefit and wellbeing of the local community.
- c) The Council will make a payment to the Trust for the services provided by the Trust on behalf of the Council.
- d) The Council acknowledges that the Trust is an independent organisation and this Agreement sets out the terms of the services required by the Council in relation to certain activities and objectives of the Trust which are complementary to the objectives of the Council.

1 BACKGROUND

1.1 Agreement for Provision of Services

- 1.1.1 The Agreement for Provision of Services (hereinafter referred to as 'the Agreement') forms the basis of the contractual arrangement between the Council and the Trust. It is based upon the requirement under the Local Government and Planning (Scotland) Act 1982, Section 14, for the Council to ensure that there is adequate provision of facilities for the inhabitants of their area for recreational, sporting, cultural and social activities.
- 1.1.2 The Agreement will operate in conjunction with the prior Agreements and any amendments thereto as specified in Appendix A hereto. Any conflict between this Agreement and the prior Agreements in respect of terms and provisions, prior Agreements will take precedence.
- 1.1.3 The parties will adhere to the schedule of responsibilities referred to in Clause 44 and appended at Appendix F.
- 1.1.4 The Council has agreed to make payments to the Trust for the supply of services as detailed in this Agreement. The term of the Agreement will be for three years and the amount of payment for services will be reviewed annually to determine the requisite annual payment for an agreed level of service provision. The terms of the Agreement to be agreed annually in advance of the service provision commencing.

2 OBJECTIVES OF ORKNEY ISLANDS COUNCIL

The following sets out the aims and priorities to be achieved by the Trust

2.1 Provision of Leisure Facilities

To provide specialist venues, staff and activities to Promote Sport, Leisure and Learning.

- 2.1.1 Provide facilities that comply with Orkney Island Council's Health and Safety legislation and statutory guidelines.
- 2.1.2 Provide opportunities to schools for the delivery of curriculum and after school activities.
- 2.1.3 Provide opportunities for casual use by the public.
- 2.1.4 Provide specialist venues for use by sports clubs.
- 2.1.5 Provide specialist venues for use by specific target groups – exercise referral/disability.
- 2.1.6 Provide specialist venues and supervision/guidance for athletes that are part of the sportscotland Institute of Sport/PDP programme.
- 2.1.7 Contribute to the delivery of Orkney Island Council's Pitch and Facilities Strategy and Physical Activity and Sport Strategy.

2.2 Provision of Physical Activity and Sport

To increase the number of people taking part in physical activity.

- 2.2.1 Work with Active Schools to develop pathways for young people to progress from school to after school and community sport.

- 2.2.2 Develop and monitor a range of physical activity and sport opportunities.
- 2.2.3 Develop and retain specialist staff for disability and exercise referral delivery.
- 2.2.4 Work with specialist sports officers of national governing bodies and Community Sports Hub Officer to contribute to the development of Sport in Orkney.
- 2.2.5 Contribute to the roll out of Orkney's Sport Club accreditation scheme to ensure the good practice and governance of facility users.
- 2.2.6 Provide Swim Club lane hours for training.
- 2.2.7 Deliver the Scottish National Swimming Framework Learn to Swim Programme.
- 2.2.8 Develop and deliver a programme of coach led activities for all age groups.
- 2.2.9 Develop and deliver holiday programmes.
- 2.2.10 Contribute to the reduction of childhood obesity in Primary School children.
- 2.2.11 Work with other agencies in contributing to delivering a reduction in inequalities in relation to physical activity and healthy weight.
- 2.2.12 Operate an exercise referral programme to support healthy eating and increase physical activity.
- 2.2.13 Report on the number of children attending Learn to swim Programme and number completing the programme and progressing on the Orkney Amateur Swimming Club.
- 2.2.14 Contribute to the long-term outcome of increasing the proportion of Orkney's population with a healthy weight.

3 SCOPE OF SERVICE AGREEMENT

3.1 Agreement Payment

- 3.1.1 The Agreement will provide for an annual payment for Services to be made by the Council to the Trust in return for the provision of services detailed herein.
- 3.1.2 The management fee payable by the Council to the Trust in respect of the first financial year shall be £776,600.
- 3.1.3 The management fee payable by the Council to the Trust for each financial year shall be based on the previous years Management Fee and adjusted annually up and down as part of the Council's budget setting process.
- 3.1.4 The Trust will use this payment for services only for the charitable objects of the Trust.
- 3.1.5 The level of payment will be determined, taking into account the level of service provision required by the Council, the performance measures to be employed to determine the level of service actually provided, and the period for which the term of the Agreement relates.

The resultant payment and service will be agreed by a process of negotiation taking into account the above factors, but will be fixed in advance of the service term commencing.

The term of the service Agreement will be a fixed three year period, and will be subject to an annual review process to agree the specific terms and conditions (financial year cycle), and actual level of payment applicable.

- 3.1.6 The Trust will invoice the Council monthly for the management fee. Payment of invoices will be made by BACS payment.
- 3.1.7 The agreed management fee is made up of two parts.
Original Building - £600,900.
Swimming Pool and Squash Courts - £175,700

- 3.2 The payment for services provided by the Council will be considered as part of the Council's budget setting process. If the Council proposes an alternative amount, the Trust shall review the proposals and implications and submit revised priorities for consideration. The Trust shall operate within their available financial resources. Should exceptional circumstances arise which cause the agreed levels of budgeted expenditure to exceed accumulated income and reserves, the situation should be brought to the attention of the Council Officer at the earliest opportunity together with details of the Trust's plans to rectify the situation.

The Trust will be able to accumulate reserves for investment in service developments and to provide a contingency to meet unexpected events. Any accumulated resources assigned to specific developments that are in line with the Councils priorities will have no bearing during the Council's budget setting process.

3.3 Public Opening Hours

- 3.3.1 Core opening hours in respect of the first year of this Agreement shall be Monday to Friday, 6.30 – 22.00 and Saturday to Sunday 09.00 – 20.00. These hours may be varied, subject to the agreement of both parties.
- 3.3.2 If the Council requests an increase in opening hours, and the Trust agrees to them, the financial implications will be assessed by the Trust and the Council will give consideration to varying the payment for services to ensure that the Trust is not financially disadvantaged and conversely should the Council request a decrease in opening hours the payment for services may be similarly adjusted.
- 3.3.3 The times when specific activities and services are available within the opening hours will be stated in all marketing material produced by the Trust, where appropriate.

3.4 Closures

- 3.4.1 At the discretion of the Trust, the Centre may be closed for up to five public holidays per year. Subject to public demand, reduced hours may also be offered between Christmas and New Year, subject to approval by the Council Officer at least one month in advance.
- 3.4.2 The Centre may be closed in whole or in part to allow for essential repairs and maintenance, and the Council Officer must be informed of this in advance.
- 3.4.3 The Trust may close specific areas of the Centre to allow for the set up and take down of equipment for special events.

3.5 Charging and Admission Policy

- 3.5.1 The Trust's charging policy should take into account those on low income.
- 3.5.2 The Trust shall ensure that the legal rights of the public are protected and preserved, and that all payments received are accurately recorded and receipts issued on demand.
- 3.5.3 No charge shall be made for admission to the Centre for those who are not participating in an activity. The Trust shall, at its discretion, determine whether spectators shall be permitted for any activities.

3.6 Statutory Performance Indicators

The Trust shall maintain performance data and provide the Council with Statutory Performance Indicators, as required by Audit Scotland and set out in Appendix E, including details of usage for the following:

- Indoor Sports and Leisure Activities
- Indoor sports (Arena)
- Other indoor leisure activities
- Gym

- Strength, Conditioning and Functional Training Area
- Health Suite
- Group Exercise Classes
- Swimming
- Squash

Changes to the information required may be made at the discretion of Council Officer.

3.7 Agreement Term

The Agreement Term will be for a period of three years and shall commence on 1 April 2019. Any alteration to the terms of this Agreement will be by variation as specified in Clause 38 hereof. Terms of the Agreement will be reviewed annually. The Council can trigger a review of the Agreement out with the specified annual review under specific circumstances including change of Managing Director or significant changes in financial regulations.

3.8 Business Development Outwith Orkney

3.8.1 The Payment for Services provided under this Agreement shall only be applied in relation to the rights and obligations specified in this Agreement and in the performance of the obligations contained in this Service Specification.

3.8.2 None of the Payment for Services provided hereunder shall be applied to any activities outwith Orkney, without the Council's prior consent. The Trust will provide financial statements showing, in a transparent manner, the application and apportionment of all overhead and central costs to the financial management of the Trust's budget. The Trust will, in its annual report, which will be prepared in the form required by the Charities and Trustee investment (Scotland) Act 2005 and any codes of practice and guidance issued by the Office of the Scottish Charities Regulator, detail any proposed development or ongoing business activity outwith Orkney in form or substance acceptable to the Council.

4 **DEFINITIONS AND INTERPRETATIONS**

These are shown in Appendix B.

5 **SPECIFICATION OF SERVICES**

The specification of services is outlined in Appendix C.

5.1 Service Delivery

The Trust shall provide, as required, information on how it will manage these services, activities and all its elements at the Centre to meet its primary charitable purpose.

Throughout the period of the Agreement in the course of execution of the Services the Trust shall have due regard to and shall fully comply with the Council's policies and objectives as detailed in the Agreement of Service and elsewhere in the documentation and shall not at any time throughout the period of the Agreement act or cause any of its employees to act in any way which shall contravene or obstruct those policies and objectives .

In order to implement the Council's said policies and objectives, the Trust shall execute following services:

- a) Ensure and provide the following:
 - opportunities for development of sporting skill.
 - opportunities providing direction and focus for youthful energies.
 - opportunities to achieve excellence in sport so as to promote national and community pride in performance.
 - stimulation of community development and cohesion.
 - promotion of equal opportunities for all members of the community.
 - promotion of opportunities for participation in the arts and cultural activities.
- b) Ensure that all its employees maintain and display suitable, positive and progressive attitudes and ensure that it provides an optimum service and good customer care.
- c) The Trust shall comply with all relevant legislation.

5.2 Education Use

Teachers will provide supervision and instruction for school groups, but this does not release the Trust from other operational functions.

5.3 Talented Sports People

The Trust will provide free access to talented sports people identified as part of the sportscotland performance development programme. Details of these visits will be recorded by the Trust and should be reviewed annually in conjunction with sportscotland.

5.4 Clothes Storage

The Trust shall ensure that a sufficient number of lockers are available to meet the needs of the customers for the purpose of storage of clothes and ancillary items while they are engaged in a sport or activity at the Centre.

5.5 Marketing and Promotion of Orkney Islands Council

The Council and/or Trust's Managing Director may issue press releases on the Centre at any time throughout the Period of this Agreement. Prior notification and full details of any significant press release must be given to the Trust's Managing Director, and vice versa, prior notification and full details must be given to the Council Officer.

5.6 Advertising

All advertising promoting the Council will be displayed by the Trust on the reasonable request of the Council.

5.7 Programme

The quality and range of programme is fundamental to the service delivery and it is essential that the programme reflects the following groups. There will be an overlap between some of these groups, but they can be broadly divided into the following areas:

- toddlers.
- juniors.
- adults.
- those with disabilities.
- sports clubs.
- senior citizens.
- those entitled to concessions.
- those recovering from myocardial infarction conditions or long term health conditions.
- those groups identified within PASS: Hard to reach groups, girls and young women.

5.8 Sports and Leisure

The Centre shall provide a facility for sport and leisure, relaxation and recuperation, and customers shall be allowed to use the facility for such purposes. This does not include loitering and the Trust may use discretion in this respect.

5.8.1 Type of User

A reasonable and adequate amount of activity space must be made available for the following types of user:

- casual use - adequate and a reasonable provision.
- training for sports clubs.
- competitions.
- coaching sessions.
- skills development.
- sessions targeted at disadvantaged user groups.

5.8.2 Range of Sports

The Trust should provide a balanced programme in such a way as to provide opportunities to participate in a wide range of sports. The exact range of sports offered at any time will be in line with the level of demand from the above users.

5.8.3 Types of Programme

The Trust should provide the following types of programme:

- a range of instructed exercise classes that offers a varied programme and caters for various abilities (from beginners to advanced).
- a range of junior courses to introduce core skills and participation in sports and the arts.
- taster sessions - a range of activities that allow juniors and adults the opportunity to try activities.
- open days - an opportunity to promote the Centre's activities and encourage increased participation.

5.8.4 Customer Base

The Centre's activities and facilities will be available and accessible to all the community and the programme/availability should reflect all representative groups, which includes (but not exclusively):

- toddlers.
- juniors.
- adults.
- those with disabilities.
- sports clubs.
- senior citizens.
- those entitled to concessions.
- those recovering from myocardial infarction conditions or long term health conditions.
- those groups identified within PASS: Hard to reach groups, girls and young women.

5.8.5 Fitness

The Centre shall provide a fitness suite and offer fitness programmes and sessions suitable for all users of 14 years or over in compliance with the Council's policy. Only those aged 16 and over may use the facility unsupervised, while 14 and 15 year olds must be supervised by someone 18 years or older.

5.8.6 Exercise

The Centre timetables a range of exercise classes under the supervision of qualified instructors suitable for various age groups and abilities.

5.8.7 Swimming Pools

Summary of the pool requirements the Trust will provide is as follows:

- A minimum of 30 hours public use.
- A minimum of 23 hours school use for Primary and Secondary Schools.
- A minimum of 25 hours club use.
- Swimming lessons - including Scottish Swimming National Framework.
- 5 hours per week swimming Instructor for primary swim sessions.
- Junior inflatable sessions.
- Private hire (for birthday parties) etc.
- National Pool Lifeguard Qualification courses.

5.8.7.1 Primary School Swimming

The core programme for primary school swimming, currently delivered on Tuesday and Friday afternoons, will be retained by the Trust. The Trust will make available to the Schools Service swim lanes available in accordance with the table below to deliver the school swimming curriculum. The timetable will be identified by the Council who will advise the Trust in writing in June each year of the requirements for the forthcoming academic session. The Council will follow the PCT booking process in relation to this.

The Council will advise the Managing Director, giving three months' notice, of any proposed changes to this arrangement. If the Trust propose any changes to this arrangement these must be discussed and agreed with the Client Officer.

Number of Lanes	Number of Pupils
3 Lanes	Up to 30 pupils
4 Lanes	30+ pupils

5.8.7.2 Staffing of the primary school swimming programme

The Trust will provide sufficient and appropriately qualified swimming instruction staff to teach the primary school swimming programme for five hours per week (term time) currently on Tuesday and Friday afternoon sessions.

5.8.7.3 Secondary School Swimming Programme

The core program for secondary school swimming will be retained by the Trust. The Trust will make available to the Schools Service swim lanes available in accordance with the table below to deliver the school swimming curriculum. The timetable will be identified by the Council who will advise the Trust in writing in June each year of the requirements for the forthcoming academic session. The Council will follow the PCT booking process in relation to this.

The Council will advise the Managing Director, giving three months' notice, of any proposed changes to this arrangement. If the Trust propose any changes to this arrangement these must be discussed and agreed with the Client Officer.

Number of Lanes	Number of Pupils
3 Lanes	Up to 30 pupils
4 Lanes	30+ pupils

5.8.7.4 Extra-curricular Activities

The Trust will retain free use of the swimming pool(s) for existing extra-curricular pool based activities for Kirkwall Grammar School up to 5pm weekdays, during school term time that are organised by the school. Normal booking procedure must be followed at all times.

5.8.7.5 Swimming Club use

The Trust will offer Orkney Amateur Swimming Club, the same level of use as previously provided at the Kirkwall Pool through the provision of free use of the pool for 31.5 lane hours per week, term time only.

These club sessions will be provided Free of Charge under the terms of this Agreement, galas will be charged as per PCT advised rates.

5.8.7.6 Health and Safety policies and procedures

The Trust will operate the Swimming Pool to industry standards set out by the Royal Lifesaving Society, CIMSPA (etc.). These standards include:

- Royal Lifesaving Society and Institute of Qualified Lifeguards (IQL) - The Trust will be an Approved Training Centre
- European Pool Safety Award
- At least one member of staff who is a qualified Trainer Assessor

The Pool Safety Operating Procedures should be updated annually. The Council monitoring officer will monitor Health and Safety policies and procedures for the Pool.

5.8.8 Squash Courts

The squash courts have been funded by Orkney Islands Council, Scottish Government and sportscotland.

The versatility of the courts allows multi use of this facility but is essential that there is adequate provision for squash for the club and the general public.

Squash courts should be available to the general public 7 days per week where possible unless there are specific events taking place when public time may be restricted.

5.9 Arts

St Magnus Festival

The Centre is integral to the Festival's ability to provide a high quality programme in high quality facilities. The Arena is the main venue for orchestra and drama performances and the Festival will have priority use of this facility for the duration of the event for performances and rehearsals. This will be approximately 10 days in total. Charges will be made for this as negotiated between the Festival Manager and the Managing Director of the Trust.

Ancillary facilities may include the use of smaller meetings rooms for performances, rehearsals, or dressing rooms.

Other Performances

The Centre will accommodate arts performances from other local groups, or touring groups wishing to visit Orkney, where it can do so without taking an unreasonable level of financial risk.

The Phoenix Fringe

The Phoenix Fringe is established to show non-mainstream films, normally twice per month. The Phoenix Fringe will recommend films to the Senior Cinema Projectionist for approval. Approved films will be added to the monthly cinema programme and hence are available to all members of the public (subject to the film's licence restrictions).

5.10 Commercial Activities and Special Events

Commercial events are not permitted under the terms of the Declaration of Trust and the Trust's Lease, in that any business must be in terms of the Trust's charitable objectives although non commercial events such as lifestyle exhibitions or hobby displays where no commercial sales take place are acceptable. Special events, including musical and comic performances, will be accommodated on the basis that there is minimal disruption to the normal activity programme, and a minimum of two weeks notice should be given to the customers when a regular activity is cancelled.

Prior permission shall be obtained from the Council Officer for special events other than those of an arts or social nature to ensure that they comply with the Trusts charitable requirements.

5.11 Service Variation

5.11.1 Where either party wishes to propose a Service Variation under this Agreement such requests will be made in writing ("a Service Variation Notice").

- a. Giving at least two months' notice to either party where the request or proposal arises out of circumstances within the control of the Party requesting or proposing the Service Variation; or
- b. Giving as much notice as possible where the circumstances leading to the request or proposal for a Service Variation are outwith the control of the party requesting or proposing the Service Variation.

5.12.2 Upon receipt of Service Variation notice the Trust and the Council shall where appropriate, discuss the proposal. Where the Service Variation is marked urgent the receiving party shall respond in writing to the Service Variation as soon as possible. In the event that further consideration is still required by either party the parties shall use all reasonable endeavours to agree the Service Variation however, if the Service Variation is refused the party refusing shall give the other party written reasons for such refusal. The other party may then refer the refusal to the Dispute Resolution Procedure contained in Clause 46 hereof.

5.12.3 The payment for Services will be adjusted accordingly if the variation is acceptable to both parties and the party requesting the variation will be responsible for the other parties reasonable costs.

5.12.4 A Service Variation notice is shown in Appendix D.

6 ENVIRONMENT CONDITIONS AND GROUND MAINTENANCE

Please refer to Appendix G.

7 APPOINTMENT OF THE TRUST AND SUB CONTRACTING

7.1 Agreement

7.1.1 Subject to the terms of this Agreement, the Council appoints the Trust to provide the Services from the Commencement Date and the Trust accepts the appointment subject to the terms of this Agreement.

7.1.2 The Trust shall not sub-contract the performance of the Services as a whole or a significant part thereof to any other person without written consent of the Council, but the Trust may sub-contract the ancillary, financial and administrative service as well as being able to renew Agreements that are currently sub-contracted, which consent (if given) shall not relieve the Trust from any obligation under this Agreement and the Trust shall be responsible to the Council for the acts, defaults or neglect of any sub-contract.

7.1.3 The Trust may grant to any sub-contractor such Licence to use the facilities as may be necessary to enable it to properly perform the Services and to discharge its obligations under this Agreement but for no other purpose.

7.2 Code of Practice for Staff and Pensions

7.2.1 The Trust will be a model employer and adopt good practice in all respects and employ staff on such terms and conditions as it considers reasonable and which comply with all relevant legislation.

7.2.2 The Trust shall have Admitted Body Status to the Council's Local Government Pension Scheme and therefore throughout the Agreement, the Trust shall provide at its own expense continuous pension provision within the Local Government Pension Scheme to all employees who do not opt out of the scheme.

7.2.3 Alternative pension models may be identified during the Agreement for new employees, whilst retaining the Council's Local Government Pension Scheme for those already enrolled.

8 CODE OF PRACTICE

The Trust is required by law to have regard to Equal Opportunities both in employment and activities provided.

9 INFORMATION, AUDIT AND INSPECTION

- 9.1 The Trust shall maintain, provide and ensure that any sub-contractors maintain and provide, adequate financial records, if required, in relation to the delivery of the services including details of all income and expenditure which the Council may reasonably require.
- 9.2 The Council may inspect any relevant and necessary financial and operational records of the Trust as they relate to the Services for the following purposes (including, but not limited to):
- a) to monitor the delivery of services.
 - b) to monitor reporting and recording of maintenance, vandalism and defect reporting in connection with the Swimming Pool and Squash Courts.
 - c) to monitor operational practices in respect of routine cleaning and maintenance of the Swimming Pool and Squash Courts extension.
 - d) to verify any aspect of the monthly and quarterly reports and annual statement.
 - e) to monitor the achievement of Key Performance Indicators.
 - f) to demonstrate and verify any cost estimate for any variation of the Services requested by the Council or the Trust.
- 9.3 The Council may request a statement from the Trust's auditors to verify any financial information provided by the Trust in accordance with the Agreement, including a statement from the Trust's auditors in relation to the income and expenditure items included in the Trust's accounts and to confirm that these accounts are a true and accurate statement of the Trust's affairs in relation to this Agreement.
- 9.4 The Trust shall comply with the statutory requirements and any statements of the recommended accounting practice which apply to the Trust.
- 9.5 External auditors have the right of access to key records and any explanations they consider necessary from representatives of the Trust.
- 9.6 The Trust shall provide the Council with a copy of its draft Audited Accounts by 22 May, completion of audit and notification of material amendments to accounts by 22 June, with approved audited accounts by 22 September.
- 9.7 The Trust shall co-operate with the Council's internal and/or external auditors with regard to any audit requirements of the Council's internal and/or external auditors in connection with the Trust's delivery of Services under this Agreement.

9.8 In the event that the Trust fails to comply with the requirements of the Clauses at 9.1 - 9.6 then, without prejudice to any other rights or remedies available to the Council, the Council Officer or such other person nominated by the Council Officer shall be given access to all and any accounts, documents and information (and the assets, stocks, stores or other evidence which supports such documentation) in the possession, custody or control of the Trust to enable the Council to carry out its own audit of the Trust. In such circumstances, the Trust shall:

- provide the accounts and prime records of transactions at the principal place of business of the Council Officer (or his nominee) to enable him to examine any such accounts.
- permit the Council Officer (or his nominee) to inspect copies of the accounts and other relevant documents subject to the Council Officer (or his nominee) giving an undertaking within seven days of demand to return to the Trust any originals of such documents).
- provide such information and/or explanation as the Council Officer (or his nominee) may consider appropriate or necessary to carry out the audit.
- ensure that any person acting on behalf of the Trust (including any subcontractors) who has relevant account information provides access to such to the Council Officer (or his nominee).

9.9 The Trust shall co-operate in a timely manner with any reasonable requests by the Council to assist with the provisions of financial information required by any central government department or agency of Orkney Islands Council.

9.10 Time table for Annual Financial Accounts, unless amended by the Council shall be:

Year end	31 March
Audit Start	22 May
Audit Complete	22 June
Trust AGM	September
Approved Accounts to OIC	End of September

10 RECORD KEEPING AND REPORTING

10.1 User and Income Statistics

Detailed records of admissions figures, bookings and income shall be kept by the Trust. The Council Officer may inspect any Leisure Management System records or other information at any reasonable time during the Agreement period.

The Trust shall monitor visitor satisfaction level at least once a year through a quantifiable survey.

10.2 Information Relating to Performance of Service

The Council Officer may request any information relating to the performance of Service and such information shall be supplied by the Council within seven days of the request being made or within a timescale agreed with the Council Officer. Furthermore the Council Officer will be notified of any development undertaken by the Council which is likely to impact on the provision of information necessary to fulfil the objectives of this Agreement.

10.3 Provision of Financial Information

The Trust shall provide to the Council Officer information in relation to the financial operations of the Trust including information relating to income and expenditure levels at each centre. Such information shall be supplied by the Trust on a monthly basis or within 14 days of the request being made by the Council Officer or otherwise as soon as reasonably practical. This information shall include a schedule detailing all payments under loans and lease Agreements entered into by the Trust and guaranteed by the Council, which schedule shall include the level of borrowing, all new borrowing, capital repayments, and any deferred interest arrangements and planned repayments for the year. This information will be detailed in the quarterly and annual reports as detailed under Appendix A hereof.

11 **COUNCIL OFFICER**

11.1 Appointment of Council Officer

The Council Officer, namely the Chief Executive of the Council shall appoint a liaison between the Trust and the Council and delegate his function to that appointee who shall act in his stead and shall give notice in writing to the Trust of any subsequent appointments. In addition to this appointee, an additional appointee with specific responsibility for monitoring the Swimming Pool and Squash Courts will also be identified.

Any notice, information or communication given or made to or by the Council Officer shall be deemed to have been given or made to or by the Council.

11.2 Access by Council Officer

11.2.1 The Service provided by the Trust will be regularly inspected to ensure compliance with the Agreement. The Council Officer and his/her nominated Depute may undertake the review of performance by way of any appropriate method agreed between the parties. In particular, the Council or the Council's Representatives, acting reasonably, may inspect work at the Centre and shall be given reasonable access to any and all documentation in the possession, facilities, custody or control of the Trust.

11.2.2 For the avoidance of doubt this power will include the power to interview staff, take copies of any and all examined documentation connected with the Agreement and have access to computer data held of the purposes of the Agreement subject to both parties complying with the requirements of the Data Protection Act.

11.2.3 The Trust shall therefore at all time during the Agreement Period allow the Council Officer and his/her nominated Depute access to:

- the Centre for the purpose of inspecting work being performed pursuant to the provision of the Services.
- the Centre for the purpose of inspecting records and documents in the possession of the Trust in connection with the provision of the Services.
- materials, stores and spare parts in order to ensure that such items comply with manufacturers specifications and have been obtained from such suppliers as are specified in the Agreement.
- any staff of the Trust for the purpose of interviewing him/her/them in connection with the carrying out all or any part of the Services.

11.2.4 From time to time the Council Officer or his/her nominated depute will request information in the course of undertaking monitoring duties, the Trust will respond to this request as soon as reasonably practical and within 14 calendar days.

12 MONITORING

12.1 The Council Officer and the Managing Director shall have the power to nominate a suitably experienced and skilled employee to deal with any task mentioned in this Clause provided that prior written notice of the appointment of the employee for that purpose has been given to the other party.

12.2 The Trust acknowledges the Council's duty to be accountable for any Payment for services made by the Council and agrees that throughout the Agreement it shall:

- ensure the attendance of a nominated employee of the Trust at a Review Meeting with a nominated employee of the Council each month to review the previous month's financial performance (and such additional meetings as may be reasonably required to address or remedy an urgent matter arising in relation to the Trust's performance of the Services pursuant to this Agreement);
- ensure the attendance of the Managing Director at a monthly meeting with the Council Officer to provide financial and operational performance information; monthly financial report (broken down into cost centres), programme developments, repairs and maintenance, customer survey (where appropriate), usage figures on a quarterly basis. Performance indicators should show performance against target.

In addition:

- Confirmation that the Equipment Inventory is up to date and that a copy has been sent to the Council's Insurance Liaison Officer.
- financial accounts for the year just ended duly audited and certified by the Trust's auditors. The accounts should be completed by June with an approved.
- copy to the Council by the end of September (AGM in September).
- annual performance against the previous year's Annual Performance Targets.
- provide such financial, statistical and such other information as required by the Council (acting reasonably) to complete statutory returns.

- a report on the outcome of any action plan issued by the Council together with details of any acts, omissions, breaches or failures of the Trust under the terms of this Agreement.
- notify the Council forthwith of any changes to the status of the Trust or any change of control of the Trust.
- Shall adhere to specific monitoring and review arrangements in relation to this particular Agreement which are that this Agreement incorporates the "Joint Code of Guidance on Funding External Bodies and Following the Public Pound" issued by COSLA and the Accounts Commission for Scotland on the 24th May 1996.

12.3 The Trust hereby agrees that it will not amend the Terms of the Trust Deed without notifying the Council at least 28 days prior to the board meeting at which such amendments are to be tabled and the Trust agrees that it will at such Board meeting give consideration to any comments made by the Council thereon and if it does not accept any such comments will record in the minutes of the meeting its reasons for not accepting such comments .

12.4 The Trust shall not do any act or carry out any procedure or fail to do any act or procedure which is likely to result in the withdrawal of its charitable status.

13 LIABILITY OF THE TRUST

13.1 Subject to the limitations set out below, the Trust shall be liable for and shall indemnify the Council, its officers, servant, employees, agents or others against any demands, losses, costs, claims or proceedings whatsoever whether in delict or under statute or common law arising directly or indirectly out of or in connection with the provision of the Services by the Trust save where the same shall have arisen in whole or in part as a result of any act or omission of the Council.

13.2 Provided always that:

- the Trust shall indemnify and hold harmless the Council against all demands, liability, damages, costs, losses, claims or proceedings for which the Trust may be liable, save that the Trust's liability to indemnify the Council hereunder may be reduced proportionately to the extent that the act or omission of the Council, its servant or agent has contributed to such liability;
- nothing herein contained shall be deemed to render the Trust liable for, or in respect of, or to indemnify the Council against any claim for compensation or damage to persons or property resulting from any act of neglect or breach of statutory duty done or committed by the Council, its agents, servants or any others not being employed by the Trust (or for, or in respect of any claims, demands , proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto).

14 LIABILITY OF THE COUNCIL

14.1 The Council shall be responsible for, and accept and promptly discharge its liability in connection with all and any claims, costs, demands, actions or any other liabilities relating to the Services (and whether the same arose before or after the Commencement Date) resulting from any act, default, transaction or circumstance of the Council, its employees or agents occurring on or before the Commencement Date and shall indemnify the Trust fully at all times from and against all actions, proceedings, costs, claims, demands or liabilities arising in connection therewith save where the same shall have arisen in whole or in part as a result of any act or omission of the Trust.

15 OCCASIONAL USE OF FACILITIES BY COUNCIL

15.1 Use in Case of Emergency

15.1.1 At the request of the Council, the Trust shall allow the Facilities to be used by persons made homeless as a result of an emergency and evacuees for as long as reasonably required.

15.1.2 The Trust shall liaise with the Council and such other organisations as the Council shall decide in order to co-ordinate action in dealing with persons made homeless as a result of the emergency and evacuees including the provision of such services as the Council shall require.

15.1.3 The Trust shall, subject to reimbursement, provide arrangements to ensure that the evacuees are kept safe and shall liaise with the police and other relevant bodies.

15.1.4 The Council shall provide reimbursement to the Trust within 28 days of receipt of an invoice setting out the reasonable costs incurred by the Trust.

15.1.5 In the event of emergency use as provided by this Clause the Trust's obligations in respect of provision of/providing Services for the facilities required in such an emergency set out in this Agreement shall be suspended in whole or in part for the duration of such emergency use.

16 HEALTH AND SAFETY

16.1 The Trust shall ensure that its employees, sub-contractors and agents shall in the course of this Agreement comply with the Health and Safety Act 1974 together with any other reasonable practice/industry guidance.

16.2 The Trust shall adopt any safe methods of work in order to protect the health and safety of its Employees, the employees of the Council and of all other persons entering the premises including members of the public.

16.3 The Trust shall properly maintain records of all accidents and incidents at the Centre, and these shall be available to the Council Officer.

16.4 The Council may suspend the delivery of any part or parts of the services by the Trust in accordance with this Agreement in the event of material non-compliance by the Trust with Health and Safety regulations or procedures including matters affecting the public safety, the Council or the Trust's Employees where such non compliance means that the services cannot safely continue to be provided by the Trust.

17 BEST VALUE DUTIES

17.1 The Trust acknowledges that the Council is subject to Best Value Duties and shall assist the Council to comply with the provisions relating to the Best Value Duties contained in the Local Government (Scotland) Act 2003. The Trust shall, throughout the Service period, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness. Following the Public Pound Report, March 2014.

18 INSURANCES

18.1 With effect from the commencement date, the Trust shall arrange such policy or policies of insurance approved by the Council as may be necessary to insure the Trust against all risks as may be anticipated by a prudent agency/body engaged in providing the Services and any insurances as may be required by law for the Service period including (without limitation to) in respect of the following risks and, where stated, in the following amounts :-

18.1.1 Business interruption insurance for minimum period of 18 months;

18.1.2 Trust will take out an appropriate level of indemnity cover

18.1.3 Public liability, such insurance cover being in an amount not less than £ 10,000,000 (ten million pounds) in respect of each and every claim, the number of claims in any period of insurance to be unlimited;

18.1.4 Employer's liability including (without limitation) in respect of personal injury or death of any person arising under an Agreement of Services with the Trust and/or arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969; such insurance shall not be less than £10,000,000 (ten million pounds) in respect of any one incident, the number of claims in any one period of insurance to be unlimited.

18.1.5 Contents insurance for all items in which the Trust has an insurable interest.

18.1.6 The Trust will have adequate risk management processes in place with effect from the commencement date of the Agreement.

19 LICENCES

19.1 Performing Rights

The Trust shall conform to all the requirements of the Performing Rights Society Limited and Phonographic Performance Limited and shall submit all returns and pay all fees due to them.

19.2 Licences

19.2.1 The Trust shall apply for or, where appropriate, renew all licenses, permissions and authorisations required for the carrying out of its business. The Trust shall obtain and fulfil the conditions of all licenses, permits and authorisations throughout the Service Period and shall comply with all statutory requirements in respect of the same.

19.2.2 Without prejudice to the foregoing generality licenses required include those for:

- Indoor Sports and Entertainment
- Performing Rights Society
- Liquor (where appropriate)
- Television
- Cinema
- Theatre
- Phonographic Performance
- PPL
- Body Training Systems

20 **FORCE MAJEURE**

20.1 No failure or omission by any party to carry out or observe any of the stipulations or conditions of this Agreement shall, except in relation to obligations to make payments hereunder and except as herein expressly provided to the contrary, give rise to any claim against that party or be deemed to breach this Agreement if such failure or omission arises from any cause reasonably beyond the control of that party including, but not limited to, national emergency, war, prohibitive governmental regulations or any other cause beyond the reasonable control of the parties which renders performance of this Agreement impossible (a "Force Majeure Event").

20.2 Each party agrees to notify the other as soon as reasonably practicable upon becoming aware of a Force Majeure Event and the parties shall then work together in such a manner as is reasonable in the circumstances to deal with the Force Majeure Event and shall use all reasonable endeavours to mitigate any adverse effects on the provision of the Services and any losses arising from the Force Majeure Event and continue to perform as far as is possible their obligations under this Agreement notwithstanding the Force Majeure Event.

20.3 In the event that a party is unable to fulfil its obligations as a result of Force Majeure Event the obligations hereunder of such party shall be suspended. The party whose obligations have been suspended as aforesaid shall give notice of such suspension as soon as reasonably possible to the other party stating the date and extent of such suspension and cause thereof. Any party whose obligations have been suspended as aforesaid shall resume the performance of such obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party.

20.4 Each party shall bear its own costs in rectifying a Force Majeure Event and neither party shall be entitled to bring a claim for breaching of this Agreement or impose any liability on the other party for any losses or damages arising from a Force Majeure Event.

20.5 Where a Force Majeure Event has a material effect on the provision of all or any significant part of the Services for more than 90 days then either party shall be entitled to terminate this Agreement in relation to the part of the Service and/or Facilities affected by giving not less than 90 days' prior written notice to the other.

21 NOTICES

21.1 Each party to this Agreement may only serve notice on the other party and by either delivering it by hand to the other party, by sending it by first class recorded delivery post addressed to the other party at the address shown in this Clause or such other address as the parties may notify each other from time to time. Every notice to the Council shall be made for the attention of the Council Officer at aforesaid and every notice to the Trust shall be made for the attention of the Managing Director.

21.2 Every notice will be treated as served at the end of the day that it is delivered if it is delivered by hand, two Business Days after a receipt if it is sent by first class recorded delivery post, or, if it is emailed, at 10.00 am on the next working day following dispatch.

21.3 In proving that service has been effected it is sufficient to show that, in the case of delivery by hand that it has been signed for by the other party, or its employee, agent or duly authorised representative, in the case of delivery by post that the letter was properly addressed, pre-paid and posted, and in the case of an email transmission, that a Request a Delivery Receipt and a Request a Read Receipt be used.

22 INTEREST

22.1 If either party fails to pay any sum due under this Agreement on the due date for payment, that party shall pay interest on that sum from the due date up to the date of actual payment (as well after as before a court judgment if appropriate) at the Prescribed Rate.

23 SET- OFF

23.1 The Council shall be entitled to set off any amounts payable by the Council to the Trust under this Agreement or any Service Payment arrangement agreed between the parties against any amounts owed by the Trust to the Council under this Agreement.

24 SEVERABILITY

24.1 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement.

24.2 Without prejudice to Clause 24.1, should any competent authority or court indicate that this Agreement will only be exempt from, or fall outside the scope of, any applicable laws or regulations if it is amended in certain respects or any provision of this Agreement be discovered or declared (whether formally or informally) by any competent authority or court to be legally void or unenforceable in whole or in part, then the parties shall meet with a view to reaching Agreement upon amendments that are acceptable to the competent authority or court and most nearly achieve the object of the objectionable, allegedly void or unenforceable provision and upon such other

amendments as may be appropriate, having regard to the changed nature of the Agreement.

25 ASSIGNMENT

25.1 No party to this Agreement may assign or transfer its rights or obligations under this Agreement.

26 ADVERTISING AND SPONSORSHIP

26.1 Offensive Advertising

26.1.1 The Trust shall ensure that no advertising shall be displayed which could reasonably be expected to cause offence or which has been prohibited by the Council. No advertising of a political nature and no material which could be considered indecent, racist or obscene may be displayed.

26.1.2 Any item which, in the opinion of the Council Officer, acting reasonably, is considered to infringe these conditions must be removed from display immediately and no compensation will be paid for any resulting loss of revenue.

26.2 Restrictions on Advertising

Materials marked with the Council logo shall not be used by the Trust for any purpose other than for approved uses in connection with the Agreement and shall not be used at all after the expiry of the term of the Lease or upon the termination of the Lease whichever shall first occur.

26.3 External Signage

The Trust will ensure that any external signs are appropriate and updated in compliance with the terms of this Agreement to reflect the ownership of Orkney Islands Council. However, if a new sign is instructed by the Council, it will bear the cost of this. However, if a current sign is upgraded by the Trust, the Trust will bear the cost.

27 CONFIDENTIALITY

27.1 All information in whatever format must be treated with strict confidentiality by the other party unless agreed in writing by both parties that this information can be disclosed.

27.2 Each party undertakes to the other to keep secret and confidential all information (whether written, pictorial, in machine readable form or oral) and in whatever form received during the continuance of this Agreement or obtained as a result of entering into or performing this Agreement concerning the business or affairs of the other party including without limitation:

- information concerning the trade secrets, customers, suppliers or business associations of the other party; and
- information concerning the financial, operational, technical or commercial affairs of the other party;

- all of which shall be the "Confidential Information".
- the provisions of this Agreement are excluded from this Clause.

27.3 Each party undertakes to the other not to use the Confidential Information of the other party except for the purposes of this Agreement and shall not (without the prior written consent of the other party) disclose the same to any person save to the extent necessary for the performance of this Agreement and except to the extent that such information:

- is required to be disclosed by the law of any relevant jurisdiction;
- is trivial or obvious;
- is already in the public domain at the time of disclosure or thereafter shall fall into the public domain other than as a result of breach of this Clause;
- is in the disclosing party's possession (as evidenced by written records) otherwise than as a result of a breach of this Clause;
- becomes known to the disclosing party from a source other than the other party to this Agreement otherwise than as a result of a breach of this Clause;
- was disclosed after the express prior written approval of the party to whom such information belongs;
- is required to be disclosed by the Council for the purposes of best value or performance assessments;
- and in any event subject to the disclosing party having notified the other party to this Agreement in writing prior to making such disclosure.

27.4 The Trust shall assist the Council at no additional cost to the Trust in meeting any reasonable requests for information in relation to this Agreement which are made to the Council in connection with the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof or any related guidelines or codes of practice. The Council may, from time to time serve on the Trust an information notice requiring the Trust within such time and in such form as is reasonably specified in the information notice (having regard to the statutory timescales and requirements), to furnish to the Council such information as the Council may reasonably require relating to such requests for information.

27.5 The Trust acknowledges that in responding to requests for information described above the Council shall be entitled to provide information relating to this Agreement provided that:

- the Council shall not, in responding to such requests for information, disclose any confidential information as defined by and which is exempted from disclosure under any provisions of the Freedom of Information Act 2000; and
- the Council shall not disclose any information relating to this Agreement pursuant to the Freedom of Information Act 2000 without first consulting with the Trust and shall take the Trust's reasonable views into account (to the extent it is permitted to do so under the Freedom of Information Act 2000 and guidance issued pursuant to that Act) in deciding whether or not to disclose the information.

27.6 Notwithstanding anything contained elsewhere in this Agreement, the provisions of Clause 27.4 shall survive the termination or expiry of this Agreement.

28 COPYRIGHT

28.1 Copyright in the documents comprising this Agreement shall vest in the Council but the Trust may obtain or make at its own expense any further copies for use by it in performing the Services.

29 DUE PERFORMANCE AND DEFAULT PROVISIONS

29.1 The Trust shall carry out all work forming part of the Services strictly in accordance with all statutory requirements and with any special requirements notified to the Trust by the Council unless either party has applied for a variation of Services.

29.2 The Trust shall comply strictly with any reasonable target times and dates and start and completion times and dates specified by the Council.

29.3 If the Trust fails to comply with sub-clause 29.1 then unless the failure is due to events beyond the Trust's control the Council shall be entitled to deduct from the payments referred to herein the actual amount lost/occasioned or such sum as is described at sub-clauses 29.7, 29.8 and 29.9 due to the consequent loss of service provision by the Trust to the Council together with the Council's administrative costs reasonably incurred in connection therewith.

29.4 In the opinion of the Council or Council Officer the Trust has omitted to perform any part of the Services satisfactorily the Council shall be entitled to issue a written notice (hereinafter called an 'omission notice') which shall give full details of the failure to perform the services and the rectification if any which is required of the Trust.

29.5 Upon receipt of an omission notice containing rectification requirements the Trust shall undertake that part of the Services specified in the omission notice on the same day if the omission notice is issued before 12 noon or by 12 noon on the next working day otherwise.

29.6 In the event that the Trust complies with the omission notice to the reasonable satisfaction of the Council no deduction from the payment to the Trust shall be made.

29.7 In the event the Trust fails to comply with the rectification requirements of an omissions notice to the reasonable satisfaction of the Council or if rectification is not requested by the Council within an omissions notice then the Council shall be entitled to deduct from the payment to the Trust such sum or sums as shall appear reasonable to the Council having reference to hereto together with an administrative charge of £100 in respect of each omission notice issued.

29.8 In the event that the Trust fails to comply with the omission notice to the reasonable satisfaction of the Council the Council shall be additionally entitled to issue a further omissions notice in respect of the same default or without further reference to the Trust to secure another party to rectify the default the subject of omissions notice and to deduct from the relevant payment to the Trust the cost of the said rectification together with an administrative charge of £100 and the Council shall in taking such a course of action be under no obligation to the Trust to secure the lowest price for the said rectification of the default.

- 29.9 If any deduction from a payment fails to be made the Council shall be entitled to retain a reasonable additional sum not greater than 10 per cent of the total sum due to the Trust in relation to default as shall seem to the Council a prudent retention against any additional cost which may be incurred in consequence of the Trust's default out of such payment and also from any consequent payments for a period not exceeding six months from the date of the initial payment from which a deduction fell to be made.
- 29.10 If five omission notices are issued within three monthly time period the Council will be entitled to consider the Trust in material breach under the terms of Clause 30 Termination.

30 TERMINATION

30.1 The Council may, without prejudice to any of its other rights arising hereunder, terminate all or part of this Agreement forthwith upon giving written notice in any of the circumstances set out below:

- if the Trust is in material breach which is having a detrimental impact on the quality of the Services offered, or fails to comply materially with the priorities detailed in section 2 and the breach cannot be easily remedied;
- if an order is made or a resolution is passed for the winding-up of the Trust except in the case of a voluntary winding-up for the purposes of a scheme of reconstruction or amalgamation the terms of which shall previously have been approved in writing by the Council (such approval not to be unreasonably withheld or delayed);
- if an administration order is made in respect of the Trust;
- if the Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- if any voluntary arrangement to wind the Trust up is proposed in respect of the Trust;
- if the Trust declares an intention to cease to carry on business;
- if the Trust is wound up;
- if the Trust commits a persistent breach of any of its obligations under this Agreement, the Lease, and/or the Admissions Agreement provided always that in respect of each breach the Council has served written notice on the Trust setting out the nature of the breach, what is required to remedy it and the timescale. For the purposes of this Clause, a persistent breach shall mean a breach that is repeated more than five times within three months of the first breach having been drawn to the attention of the Trust by the Council;
- the Trust uses the Payment for services for purposes other than for which it has been expressly provided within the Agreement;
- the Trust or any trustee of the Trust shall in connection with this Agreement commit a Prohibited Act; or;
- the Trust, on becoming aware of the commission of a Prohibited Act by a Board member has not taken immediate steps to rectify the situation including (but not limited to) the dismissal of the Board member of the Trust;
- if the Trust ceases to be a charity registered with the Office of the Scottish Charity Regulator.

30.2 With effect from the date of termination of this Agreement, the rights and obligations of the parties under this Agreement shall cease but such termination shall be without prejudice to any rights or liabilities which have accrued or have been incurred on or prior to termination including, without limitation, unpaid amounts outstanding in respect of Services performed prior to termination and conversely repayment to the Council for Service not performed.

31 PARTIAL TERMINATION

31.1 In the event of the Council being entitled to terminate this Agreement for any of the reasons specified herein and, without prejudice to any of the Council's rights and remedies under this Agreement, the Council may, without prejudice, terminate the whole of this Agreement, terminate this Agreement in respect of part of the Services only by serving three months' written notice upon the Trust, whereupon the Council, at its absolute discretion may itself provide or procure a third party to provide such part of the Services in accordance with this Agreement or cease or close all or such part of the Services or any Facility where this has arisen at a result of a failure of the Trust, and the Council shall be entitled to recover such costs incurred from the Trust and for the avoidance of doubt these provisions would apply in respect of any Facility subject to a joint use or similar Agreement with Orkney Islands Council.

32 CONSEQUENCES OF TERMINATION

32.1 In the event that this Agreement is terminated or expires by effluxion of time then;

32.1.1 the Council shall be entitled to repossess the Facilities, the Equipment and the Trust Equipment including for the avoidance of doubt replacement Equipment; and the Trust shall be obliged to pay any costs, claims, demands or expenses howsoever arising in respect of this provision.

32.1.2 the Council shall be entitled to make alternative arrangements for carrying out the Services and shall be entitled to employ and pay other persons to provide and deliver the provision of the Services or any part thereof.

32.1.3 the Trust shall deliver the Business Information which may be necessary to enable the Council or any replacement service provider to carry on the Services.

32.1.4 all intellectual property rights in all documents, procedures, manuals and databases (whether intangible or in electronic form) prepared by or on behalf of the Trust exclusively for the delivery of the Services at the Facilities shall be delivered up to and shall vest in the Council and shall not be used by the Trust for any other purpose. The Trust shall grant to the Council (or the Council's agent, sub-contractor or new service provider) a non exclusive, non transferable, world-wide, royalty free Licence to use any intellectual property of the Trust which the Council (or its agent, sub-contractor or new service provider) may reasonably require to continue to provide the Services following termination of this Agreement up to a maximum period of six months following such termination.

- 32.1.5 the Council shall at any time during or within 30 days of termination (in the event of termination being effective with immediate effect) be entitled to serve notice on the Trust specifying which of the Trust Equipment it wishes to acquire and that notice shall take effect subject to the following terms.
- 32.1.6 in the case of Equipment not subject to any hire or hire purchase or operating or finance leases or other credit arrangements, at Market Value PROVIDED THAT if the Trust and the Council cannot agree on the Market Value of any of the Equipment subject to the Council's notice exercising its right to purchase Equipment under this Clause within seven days of the date of the Council's exercise of its right to purchase the price payable by the Council shall be determined by an independent valuer appointed by the parties and in default of Agreement within a further seven days appointed on the application of either party following notice to the other requesting it to concur in an appointment by the President of the Royal Institution of Chartered Surveyors or his nominated officer.
- 32.1.7 whose determination as to valuation shall be final and binding between the parties in the absence of manifest error.
- 32.1.8 who shall be entitled to request such information as he considers necessary from either party.
- 32.1.9 who shall be granted access to relevant Facilities for the purpose of conducting the valuation.
- 32.1.10 whose costs shall be paid as he determines or in default of determination by the parties in equal shares and the Council shall pay the agreed or determined sum for the Trust Equipment that the Council elects to acquire within 30 Business Days of the date of Agreement or of determination of the appropriate price for all the Trust Equipment so acquired, as the case may be.
- 32.1.11 the Council shall not be obliged to purchase any Trust Equipment of the Trust subject to hire or hire purchase or operating or finance or other credit arrangements unless and upon such terms as the parties may agree.
- 32.1.12 the provisions of this Clause 32 shall apply mutatis mutandis in respect of partial termination or complete termination in respect of the relevant Services and/or Facility affected thereby.
- 32.1.13 the Council shall be entitled to require the repayment of any payment for Services or other monies paid to the Trust in relation to the Facilities for which this Agreement is terminated which has not been expended at the time of expiry or termination of this Agreement.

33 EXIT AND HANDOVER ON TERMINATION

33.1 In the event of this Agreement terminating or expiring by effluxion of time then:

33.1.1 within 28 days of notice of termination of this Agreement being served pursuant to this Agreement the parties will draw up an exit plan covering the performance of the obligations of both parties during the exit and handover period including an exit meeting at least 28 days prior to the Agreement terminating on effluxion of time. In any event, the Trust will, at no cost to the Council, provide such co-operation, information and assistance to the Council and/or proposed replacement service provider of the Services as may be reasonably required by the Council and/or the proposed replacement supplier to transfer and to enable a smooth migration of the Services being supplied by the Trust including enabling the Council and/or its replacement supplier to perform all of the Trust's obligations in this Agreement provided the Trust shall not be required to disclose any information which is either confidential and commercially sensitive to the Trust or a breach of existing confidentiality obligations;

33.1.2 the Trust and the Council shall use all reasonable endeavours to ensure all appropriate arrangements are put in place to give effect to the said termination and the Trust shall consult with the Council on all aspects and will comply with any reasonable requirements of the Council in relation to the same;

the Trust agrees that if it is requested by the Council it shall use all reasonable endeavours to assign or novate any then existing Agreements which the Trust has entered into with third parties in connection with the operation and management of the Facilities including the leasing of any Equipment to the Council or to any nominee of the Council;

33.1.4 in the event of a total or partial termination of the Services by the Council, the Trust shall not in the six month period or in the case of inclusive in the 12 month period leading to expiry or during any period of notice of termination of this Agreement in relation to any Services or Facilities for which this Agreement is being terminated take on any new commitments except with the prior written consent of the Council, such consent not to be unreasonably withheld or delayed;

- incur any expenditure or enter into any commitments other than in the ordinary course of trading;
- dispose of or agree to dispose of grant any option in respect of any part of its assets other than stock in the ordinary course of trading;
- vary the terms of any Agreement with any provider of goods and/or services already entered into;
- enter into any long term-term, unusual or abnormal Agreement or commitment;
- enter into any leasing, hire purchase, Agreement hire or other Agreements to arrangements for payment on deferred terms;

- grant or issue or agree to grant or issue any mortgages, charges, debentures or other securities for money or redeem or agree any such securities or give or agree to give any guarantees or indemnities or, without prejudice to the foregoing generality, create or permit to subsist any other encumbrance over all or any of its present or future revenues or assets;
- permit any of its insurances to lapse or do anything which would make any policy of insurance void or voidable;
- in any way depart from the ordinary course of its day to day business whether as regards the nature or scope or the manner of conducting the same;
- pay any fees or commission to any persons other than fees payable on arm's length terms to third parties who have rendered bona fide service or advice required in the ordinary course of business;
- release, waive or modify any warranty or guarantee given by any supplier of goods or services;
- cause or permit any item in the records to be removed or destroyed or any programs or data held on the computer systems of the Trust and relating to the Services to be removed or deleted except for the deletion of Personal Data where required to ensure compliance with the GDPR or for the efficient running of the computer system in question after satisfactory back-up copies have been made and securely stored off-site;
- take any action if the reasonably foreseeable consequence would be to materially and adversely affect the value of the Facilities or any of them;
- terminate the employment of any of the Employees for any reason whatsoever without first notifying the Council of such termination save where, in the reasonable opinion of the Trust, termination is justified for cause due to the actions of any such of the Employees;
- alter or change in any way of the terms and conditions of employment of any of the Employees whether with or without the consent of the Employees other than for wage or salary awards which are in line with those offered generally for similar stated individuals within the Trust's workforce or as provided for in an Agreement of employment or as is required by law;
- relocate or assign to new duties any of the Employees without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed; or
- make any other alterations to the structure or composition of the Employees which are intended to or which may preclude the application of the Regulations upon the resumption of service by the Council or another service provider.

- 33.1.5 Upon cessation of service by the Trust and at any time during the preceding six months, the Trust shall, subject to the GDPR and the Human Rights Act 1998 and all legislation relating to the confidentiality of personal information provide the Council with the following:
- full details of all the existing Employees including, but not limited to, details of terms and conditions of employment (including but not limited to full details of the remuneration of the Employees in whatever form and detail the Council may reasonably require) and benefits (including but not limited to any bonus, incentive, Employee share scheme and life, accident and health insurance), working arrangements, outstanding obligations to increase remuneration, recognition Agreements, redundancy schemes, disciplinary records and attendance records (including all those Employees temporarily absent from work for any reason, for example, maternity leave, sick leave or holiday) and list of agency workers;
 - all existing, anticipated or threatened claims and disputes so far as it is aware (including but not limited to industrial injury claim or claims in an employment tribunal); and
 - details of all existing Users, customers of the Facilities, suppliers of goods and services and any third party arrangements;
 - any other information which may reasonably be required by the Council.
- 33.1.6 The Trust shall warrant the accuracy of the information provided pursuant to this Clause and authorise the Council to use any and all the information it may consider necessary for the purposes of its business or for informing any new service provider for any services which are substantially the same as the Services (or any part thereof).
- 33.1.7 The Trust shall indemnify the Council and any new service provider appointed by the Council to deliver all or any of the Services in full form and against all direct, indirect and consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) which the Council and any new service provider may incur in connection with the employment or termination of employment of any Employee of the Trust during any period prior to the expiry or termination of this Agreement.
- 33.1.8 It is expressly acknowledged that, unless otherwise required by the GDPR or any other legislation relating to the confidentiality of personal information, the Council can make available such information provided pursuant to this Agreement a new service provider or a prospective service provider, together with copies of all personnel and employment records (including without limitation National Insurance, PAYE records and pension details), employment Agreements and statements of terms and conditions of employment and disciplinary and attendance records relating to the Employees.
- 33.1.9 The parties shall jointly undertake (and shall jointly share the costs of) a stocktake, Equipment Inventory Audit and Condition Survey on or before termination of this Agreement.

34 INDEPENDENCE OF THE TRUST

- 34.1 The Trust is not and shall in no circumstances hold itself out as being the servant or agent of the Council.
- 34.2 The Trust is not and shall in no circumstances hold itself out as being authorised to enter into any Agreement on behalf of the Council or in any way to bind the Council to the performance variation release or discharge of any obligation under any Agreement entered into by the Trust whether for the purposes of performing the Services or otherwise.
- 34.3 The Employees (and if appropriate the sub-Agreement unless the facts support such holding out) of the Trust are not and shall not hold themselves out to be and shall not be held out by the Trust as being servants or agents of the Council for any purposes whatsoever.
- 34.4 Nothing herein contained shall be construed as creating a legal partnership between the Council and the Trust and the Services are to be performed by the Trust in its own right and on its own behalf.
- 34.5 The payment under this Agreement by the Council to the Trust is a payment for the supply of Services as defined in the VAT Acts and is therefore income of the Trust and the Trust is responsible to account for all VAT on income where applicable.

35 BRIBERY AND CORRUPTION

- 35.1 The Council shall be entitled to cancel the Agreement and to recover from the Trust the amount of any loss resulting from such cancellation if:
- a) the Trust shall have offered or given or agreed to give any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the Agreement or any other Agreement with the Council; or
 - b) the like acts shall have been done by any person employed by the Trust or acting on his behalf (whether with or without the knowledge of the Trust); or
 - c) in relation to any Agreement with the Council the Trust or person employed by him acting on his behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916, or have offered any fee or reward referred to in section 68(2) of the Local Government (Scotland) Act 1973 or any amendment to or re-enactment thereof.

36 GRATUITIES

- 36.1 The Trust shall not, whether by itself or by any person employed by it to perform the supply of the Services, solicit any gratuity or tip or any other form of money-taking or reward, collection or charge for any part of the Service other than bona fide charges properly approved in accordance with the provisions of the Agreement.

37 BRITISH STANDARDS

- 37.1 Where an appropriate British or European Community Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current, all Goods used supplied and all workmanship shall be in accordance with that Standard.

38 AMENDMENTS AND VARIATIONS

38.1 This Agreement may only be amended or varied if it is agreed in writing and executed as a deed by duly authorised representatives of both parties.

39 DATA PROTECTION

39.1 The Council shall assign to the Trust such Personal Data as it presently holds with regard to existing and prospective Users under the ActiveLife Membership Scheme Agreement, between the Council and the Trust, dated 1 April 2019 and shall comply with information sharing obligations thereunder.

39.2 Neither the Council nor the Trust shall knowingly do anything which places the other in breach of its obligations under the GDPR.

40 CHANGE IN LAW

40.1 The Trust shall, in the provision of the Services, comply with all applicable law and legislation whether made by statute, enactment, order, regulation or other similar instrument notwithstanding any change of law whether through legislation or jurisprudence after the Commencement Date.

40.2 If the Trust or Council considers that a change in the law has occurred that may have a material effect on the provision of the Services it shall notify the other party and the parties will meet within 14 days to decide upon an action plan to deal with the effects of the changes in the law.

41 CLOSURE OF CENTRE

41.1 The Centre, or part thereof, may be closed from time to time for planning maintenance. Should this occur the Trust will display a notice to this effect at the Centre reception for at least two weeks before the closure date.

41.2 There are a number of reasons why the Centre, or parts thereof, may have to be closed. The reasons which are seen to be the most likely are listed below. Other closures will be considered in similar fashion with Payment for services being adjusted to take into account responsibility for the closure. Should only part of the Centre have to be closed, payment for the remainder of the Centre will continue on a pro-rata basis which will be determined by the Council at its own discretion acting reasonably.

42 CLOSURE DUE TO FAILURE TO COMPLY WITH THE CONDITIONS OF AGREEMENT

42.1 The Centre will be closed if the Trust fails to carry out the requirements of the Agreement and this results in, for example:

- water or environmental conditions reaching a condition representing a hazard;
- there being inadequate staff to provide sufficient safety cover as well as to carry out all the other requirements of the Agreement.

42.2 In cases such as these, payment to the Centre will be reduced in proportion to the number of core hours when the Centre was not open in relation to service provision.

42.3 Closure due to Planned Maintenance

42.3.1 The Trust shall allow for the closing of the Centre during the periods detailed in this Agreement all the financial implications of these planned closures shall be taken into account in making the submission for determination of the Payment for services. Anticipated closures will be detailed in the Annual Maintenance Plan which will be submitted by the Executive Director of Development and Infrastructure to the Trust or their designated representative.

42.3.2 All periods of closure for planned maintenance shall be advertised by the Trust in the local press and prominently at the Centre reception for at least two weeks before the closure date. Where private hire, or club bookings have been made during the period when the Centre is to be closed, the Trust shall inform each hirer separately in writing of the changes and meet all costs incurred inclusive of the reimbursement of any fees and charges made in advance.

42.4 Closure Outwith the Trust's Control

Should there be a significant closure of the facility or services not covered by business continuity then the terms of this Agreement will be reviewed by mutual consent.

42.5 Requisition During National Emergency

In the case of a local or national emergency, the Council may require to use one or more major locations as emergency centres. In such cases, the Trust shall make the facilities fully available. The Agreement shall be suspended during the time when the facility is required for emergency use and the Trust's staff shall co-operate with any reasonable duties required of them during this time. Payment for this shall be negotiated between the Council and the Trust.

42.6 Closure Following Fire or Specified Perils

42.6.1 No payment whatsoever will be made to the Trust following its closure due to fire or Specified Perils and the Trust is strongly advised to obtain insurance for any losses which might be incurred as a result of such closure.

42.6.2 Specified Perils for this Clause are lightning, explosions, aircraft, earthquake, riot, civil commotion, strikes, labour disturbance or malicious persons acting on behalf or in connection with any political organisations, storm or flood, burst pipes or impact by vehicles.

43 TRUST'S EMPLOYEES

43.1 Windup of Trust

On a windup of the Trust, the Trust will be under an obligation to pay any redundancy payments as required by legislation.

43.2 Superannuation

The Trust will honour its commitment as an Admitted Body to the Orkney Islands Council the Local Authorities Superannuation Fund.

43.3 Payment of Employment Levies

The Trust shall at all times be fully responsible for the payment of all Income Taxes, Superannuation, National Insurance contributions or levies of any kind relating to or arising out of the employment of any members of Staff employed by the Trust and shall fully and promptly indemnify the Council in respect of any liability of the Council in respect thereof.

43.4 Stable Workforce

Subject to the normal constraints of labour turnover, the Trust shall ensure that a stable workforce is employed to carry out the work covered by the Agreement.

43.5 Discrimination

The Trust shall, in respect of all persons employed or seeking to be employed by them, comply with each and every provision of law which prohibits discrimination in relation to employment.

43.6 Employee Identification

The Trust shall ensure that all employees are provided with name badges which they shall wear at all times, where operationally appropriate. The name badge shall show the Trust's name and logo.

43.7 Rehabilitation of Offenders Act 1974/Criminal Convictions Pre-Employment Checks

43.7.1 Members of the Trust's staff who fall under the excepted professions, offices, employments and occupations or are undertaking regulated work with children or adults are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975. The Trust shall ensure that all applicants for such posts shall be requested to disclose all spent and unspent criminal convictions in line with the requirements of said Act.

43.7.2 Successful application for employment in posts that fall under the excepted professions, offices, employments and occupations of the Rehabilitation of Offenders Act 1974 or are undertaking regulated work with children or adults shall, prior to being permitted to commence employment be subject to a criminal convictions check through Disclosure Scotland at the relevant level of Standard Disclosure Check, Enhanced Disclosure Check or Protection of Vulnerable Groups (PVG) Scheme Membership.

43.7.3 The Trust should produce and review on a regular basis a list of all posts within the Trust and identify whether these posts are subject to the Rehabilitation of Offenders Act 1974 and/or The Protection of Vulnerable Groups (Scotland) Act 2007 and identify the appropriate level of Criminal Convictions check required in respect of this post.

43.7.4 If a conviction is disclosed or an offence under investigation comes to the attention of the Trust, then the Trust shall, carry out a risk assessment to ensure the protection of all children and vulnerable adults using facilities operated by the Trust and interacting with the Trust's staff.

43.8 Protection of Vulnerable Groups (Scotland) Act 2007

The Trust shall also comply with the requirement of the Protection of Vulnerable Groups (Scotland) Act 2007.

43.9 Trade Unions

The Trust shall recognise the freedom of its staff to be members of trade unions in accordance with the provisions contained in Section 23 of the Employment Protection (Consolidation) Act 1978 or any amendment or re-enactment thereof.

43.10 Managing Director

43.10.1 The Trust shall appoint an appropriately experienced and qualified Managing Director empowered at all times to act on behalf of the Trust and for all purposes connected with this Agreement. Any notice, information, or other communication given or made to the Managing Director shall be deemed to have been given to the Trust.

43.10.2 The Trust shall ensure that the Managing Director or competent deputy is authorised by the Trust to act on its behalf, is available to the Council Supervising Officer, in person at reasonable times during the Service Period.

43.11 Management and Staffing Issues

The Trust shall ensure that a suitably qualified manager shall be present at the Centre during opening hours. When the Centre is closed to the public, the Managing Director shall arrange for a suitably qualified manager to be on call and available to deal with emergencies. The Managing Director will provide these details to the Council Officer.

44 PLANT AND EQUIPMENT MAINTENANCE RESPONSIBILITIES

44.1 At the commencement date of this Agreement, the equipment (whether owned, leased or borrowed) provided shall be listed on inventories which shall be supplied to the Council. Both parties shall adhere to the responsibilities outlined in Appendix F in respect of the purchase, maintenance and repair of plant and equipment.

44.2 The Council has provided the Council's plant and Council's equipment for use by the Trust in performance of the Services at the Pickaquoy Centre and the Trust shall throughout the Agreement period keep the Council's plant and Council's equipment safe and free from loss or damage. The Trust shall have been deemed to have satisfied itself that any or all of the items are suitable for the due performance of the service.

44.3 Equipment shall be maintained by the Trust and stored indoors, to the requisite manufacturer s standard or standards.

44.4 Repairs and Maintenance

44.4.1 The Trust will ensure that regular routine inspections and maintenance are carried out of the plant and equipment and documented and adequate training is provided for all staff required to carry out these checks. When not in use the Trust shall ensure that the equipment is kept securely.

44.4.2 For the swimming pool and squash courts extension to the Centre, the Trust will ensure that regular inspections and maintenance as per the schedule in Appendix F is carried out and recorded as a matter of routine. The Council will appoint a monitoring officer to ensure that this is undertaken in accordance with the schedule. The Trust is responsible for reporting all defects and damages (even of a minor nature) to the Gallifordtry Help Desk until 2025 and the Council's helpdesk thereafter. as soon as practicable but no later than within two business days.

44.5 The Trust may throughout the Agreement Period provide plant and equipment, outwith the leasing arrangements which shall be approved by the Council Officer before use in the performance of the Services, in addition to the Council's plant and equipment. Upon termination of this Agreement the Trust shall provide an up to date inventory of the equipment in place at that time. The Trust shall ensure that all necessary equipment is available for use in a safe and operational condition whenever it is needed. Payment of rental or for maintenance Agreements for all coin operated equipment shall be paid by the Trust. The Trust shall take effective measures to ensure that its staff do not unlawfully remove any equipment or anything else whether property of the Council, its Employees, the public or any other person The Council and the Trusts obligations in connection with the replacement renewal and maintenance of the structure of the facility including all external facilities such as the synthetic pitch and the fixtures and fittings is dealt with separately in the lease between the parties.

44.6 If at an event in the future the Trust no longer runs or manages the facility then all plant and equipment must be left at the location in a secure, safe, working, serviceable and clean condition including all the Council's plant and equipment and the Council must be notified within a reasonable period of any plant and equipment that needs repair or replacement.

44.7 The Trust shall ensure that all plant and equipment is suitable for the particular purpose for which it is to be used and accords and conforms to good industry standard and conforms to any applicable relevant legislation. The Council Officer shall be empowered to require the Trust to withdraw any unsuitable plant and equipment from use at any time during the Agreement Period for any reason, without thereby becoming liable to the Trust for any loss thereby occasioned.

44.8 The Trust shall be responsible for replacing plant and equipment that is no longer fit for purpose. Any new or replaced plant and equipment purchased by the Trust will be transferred to the Council on expiry or termination of the lease, for a nominal sum of £1.

44.9 The Trust shall adhere at all times to the requirements of The Control of Substances Hazardous to Health Regulations 1988 (COSHH) and any subsequent regulations and provide assessments of any substance prior to its use.

45 UTILITY SERVICES

45.1 The Trust shall be responsible for the integrity and the payment of the supply of any electricity, water, heating kerosene and telephones to the Centre throughout the Agreement Period.

45.2 Electricity

At the end of the Agreement Period, the Client Officer will take readings of all electric meters covered by the Agreement and the Trust shall be responsible for the payment of any and all fees and charges due.

45.3 Telephones

At the end of the Agreement Period all costs relating to the telephones unless otherwise stated shall be the responsibility of the Trust.

45.4 Water and Wastewater

The Trust shall pay all water and wastewater charges as required by the water authority throughout the Agreement Period.

45.5 Disposal of Waste & Refuse

The Trust shall operate an effective system for the disposal of waste at all times and shall bear all the costs of so doing.

46 DEVELOPMENTS AND CHANGES TO THE BUILDING

46.1 Changes to the Building

No material changes should be made to the building or grounds without the written consent of the Council Officer. This includes any work to the structure, such as walls, doors, windows, corridors, exits, floors, ceilings and grounds.

46.2 Developments

If the Trust or, any organisation, wishes to consider a development to the building or any area of land leased by the Council to the Trust, a written request should be submitted to the Council Officer. The process will be as follows:

46.2.1 The request should be confirmed in writing to the Council Officer.

46.2.2 The Council Officer will acknowledge the request and liaise with the Executive Director of Development and Infrastructure Services.

46.2.3 If the proposal is considered realistic by the Council the Pickaquoy Centre Trust Board of Trustees should consider the request (if it is an external organisation) to establish whether it wishes to support the proposal.

46.2.4 Consideration can then be given in respect of the Centre's master plan, capital and revenue funding, whether a Capital Project Appraisal is required and the relevant Council's committee process.

47 DISPUTE RESOLUTION

In the event of any dispute or difference arising between the Council and the Trust as to the intent, meaning or application of this Agreement, whether during the currency hereof or after termination of the same, then except as provided herein the matter of difference shall be determined by:-

- a) a meeting of the Trust and Council and Chief Executive of the Council and by relevant officials on an information basis to seek a resolution and if after a reasonable time no resolution is acceptable to both parties can be found then
- b) a single arbiter to be agreed between the Trust and the Council or, failing Agreement by a single arbiter to be appointed by the Sheriff or the Sherifffdom of Grampian and Highlands or Kirkwall. The award or awards, interim and final of an Arbiter so appointed shall be binding on the parties in accordance with the Law of Scotland and the costs of any such arbitration shall be met by the parties as the Arbiter may determine.

The Trust shall continue to provide the service in accordance with the terms of the contract throughout the period of any reference to Arbitration. IN WITNESS WHEREOF

APPENDIX A

PRIOR AGREEMENTS

- 1 The Management Agreement between the Council and the Board of The Trust Trustees dated 6 April 2009.
- 2 Grant Agreement between the Millennium Commission and the Council dated 27 September and 22 October 1996.
- 3 Supplemental Agreement between the Millennium Commission and the Council dated 27 September and 22 October 1996.
- 4 Additional Supplemental Agreement between the Millennium Commission, the Council and the Trustees dated of even date herewith.
- 5 Agreement between the Scottish Sports Council and the Council comprising offer of grant by the Scottish Sports Council dated 12 September 1996 and acceptance by the Council dated 18 and 25 November 1996.
- 6 Agreement between the European Regional Development Fund and the Council comprising offer of grant assistance by the European Regional Development Fund dated 12 February 1997 and acceptance by the Council dated 13 March 1997.
- 7 Agreement between the Scottish Arts Council and the Council comprising offer of grant by the Scottish Arts Council dated 21 January 1997 and acceptance by the Council dated 28 February 1997.
- 8 The Lease between the Council and the Trustees dated 15 and 16 April 1999.
- 9 Squash Club Agreement 2012.
- 10 Sub lease of Pickaquoy Club Rooms between the Pickaquoy Centre Trust and Orkney Rugby Football Club.
- 11 Management Agreement between the Pickaquoy Centre Trust and Orkney Islands Council regarding the Lifestyle Centre.

APPENDIX B

4 DEFINITIONS AND INTERPRETATIONS

In this Agreement, unless the context requires otherwise, the following expressions shall have the following meanings:

Admissions Agreement	means an admissions Agreement entered into by the Trust pursuant to the Local Government Pension Scheme (Scotland) Regulations 1998 (as amended) to provide access to Orkney Islands Council superannuation fund
Agreement	means this Agreement
Best Value Duty	means the duty of local authorities to make arrangements to secure continuous improvement in the delivery of services as required by the Local Government (Scotland) Act 2003
Business Day	means a day (excluding Saturday and Sunday and bank holidays)
Business Information	shall mean the materials, books, data, records and costing documents of the Trust relating to the Activities which exist at the date of this Agreement including, without prejudice to the generality of the foregoing, employee files, marketing and promotional materials, accounting information, details of third part suppliers, customers, users, coaches, casuals and other information relating to the Activity
Change in Law	means the coming into effect after the date of this Agreement of any legislation, or any applicable judgment of a relevant court of law which changes a binding precedent
Code of Practice	means the relevant Code of Practice issued by the appropriate body
Commencement Date	means 2 July 2019 or such other date as may be agreed between the parties in writing as being the date on which the provision of the some or all of the Services shall begin
Completion Date	means the date or dates of the execution of this Agreement
Council Officer	means the Chief Executive from time to time of the Council or such other person or persons notified to the Trust by the Council appointed in his place for all purposes connected with this Agreement

Cyclical	<p>Cyclical maintenance can be defined as those works that are carried out on a regular basis to prolong the life of the building, avoid costly repairs or a breakdown. These tasks include painting, timber floor treatments etc.</p> <p>Ensuring that a building lasts for many years is essential in avoiding expensive repairs and replacements. Cyclical maintenance is the best way to ensure that a building is in good condition as well as to avoid costly repairs. Such maintenance programs help to reduce the number of daily repairs required to ensure that the property is in a better condition. Improvement programs also help to prevent a gradual deterioration of components or finishes. Landlords can take advantage of cyclical maintenance programs to ensure compliance with statutory requirements relating to systems, or equipment, installed in their buildings. It also enables them to provide services to tenants for which they paid a service charge.</p>
Dispute Procedure	means the procedure for the resolution of dispute set out in clause 46 hereof
Existing Third Party User	means the existing arrangements with third parties agreed Agreements between the third party and the Trust prior to the Commencement Date
Employees	means the employees of the Trust
Equipment	means the items of equipment located within the Facilities and owned or leased by the Council and made available to the Trust for their sole use in delivering the Services (including any replacement equipment) or Equipment procured by the Trust
Expenditure	means the aggregate of expenditure incurred in any month during the Service Period by the Trust in relation to the proper performance of this Agreement in accordance with the Business Plan
Annual Period of Service	means, in the case of the first Year of the Service Agreement is the period from the Commencement Date to 2 July 2019 and, in respect of subsequent periods, a period commencing on 1 April in any year and ending on 31 March in the following year and, in respect of the last year preceding termination of this Agreement, the period from 1 April in that year to the actual date of termination
Good Industry Standard	means the exercise of that degree of skill, diligence and prudence which would reasonably be expected from an experienced operator engaged in the same type of undertaking and under the same or similar circumstances and conditions as that in which the relevant matters arise

Income	means the aggregate of all sums received or receivable by the Trust net of VAT within each month during the Service Period from whatever source including the Users of the Facilities in relation to the proper performance of this Agreement in accordance with the Business Plan (which for the avoidance of doubt shall exclude the Services payment)
Key Performance Indicators	means the performance indicators set out in the Business Plan
Lease	means the lease between the parties dated 15 and 16 April 1999 and any amendment thereto;
Local Government Pension Scheme	means the Orkney Islands Council superannuation fund
Losses	means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, Agreement or at common law or in connection with judgments, proceedings, internal costs or demands
Managing Director	means the head of the paid service appointed by the board of the Trust
Market Value	means the value likely to be achieved at an open market sale between a willing vendor and a willing purchaser
New Employees	shall mean those new employees employed during the Service Period by the Trust to provide the Services
Non Statutory Testing	<p>Legislation makes employers responsible for ensuring that certain work equipment exposed to conditions causing deterioration which is liable to result in dangerous conditions, is inspected at suitable intervals. These tests are non statutory, but demonstrate that the employer has ensured as far as is reasonably practicable the health and safety and welfare of all their employees.</p> <p>Inspection is 'good practice' and taken by qualified engineers. They visit the location of the plant, undertake an inspection and provide an inspection certificate. Frequency of inspection depends on the type of plant.</p>
Opening Hours	means the opening hours for the Facility as specified in this Agreement.
Personal Data	means personal data as referred in the DPA which is supplied to the Trust by the Council or obtained by the Trust in the course of performing its obligations under this Agreement.

Planned	The British Standard for maintenance terms defines planned maintenance as: 'The maintenance organised and carried out with forethought, control and the use of records to a predetermined plan. NOTE: Preventive maintenance is always part of planned maintenance; corrective maintenance may or may not be.' (BS 3811:1993 definition 4114)
Premises	As defined in Appendix C - 5.1.
Prescribed Rate	means an interest rate of two per cent above the base lending rate of the Bank of England (or any successor bank) from time to time.
Prohibited Act	Offering giving or agreeing to give to any servant or employee of the Council any gift or consideration of any kind as an inducement or reward: for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other Agreement with the Council; or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other Agreement with the Council; or entering into this Agreement or any other Agreement with the Council in connection with which commission has been paid or has been agreed to be paid by the Trust or on its behalf or to its knowledge unless before the relevant Agreement is entered into particulars of any such commission and of the terms and conditions of any such Agreement for the payment thereof have been disclosed in writing to the Council; committing any offence: under the Prevention of Corruption Acts 1889-1916; under law creating offences in respect of fraudulent acts; or at common law in respect of fraudulent acts in relation to this Agreement or any other Agreement with the Council; or defrauding or attempting to defraud or conspiring to defraud the Council;
Reactive / corrective	Corrective maintenance involves intervention after performance has fallen below a given standard. Corrective maintenance may also be known as 'responsive maintenance', 'day-to-day maintenance' or 'emergency maintenance'.
Review Meetings	means the regular review meetings between the parties pursuant to this Agreement.
Services	means the indoor and outdoor sport, leisure and arts services and provision of healthy living activities being provided by the Trust and any such sport and leisure services as the parties may agree from time to time pursuant to the provisions of this Agreement.

Payment for Services	means the consideration payable for services by the Council to the Trust for the period specified in the Business Plan or such longer period as may be agreed between the parties under the provisions of this Agreement.
Service Period	means the period commencing on the Commencement Date and continuing for a period of three years (subject to the provisions set out in this Agreement for early termination).
Users	means customers who use the Facilities or Services of the Trust.
VAT	means value added tax as provided for in the Value Added Tax Act 1994 of the United Kingdom and legislation (whether delegated or otherwise) supplemental thereto or in any primary or subordinate legislation promulgated by the European union or any body or agency thereof and any tax similar or equivalent to such taxes imposed by any country other than the United Kingdom.
2003 Act	means the Local Government (Scotland) Act 2003.
Managing	means delivering an effective, efficient and economic Service which without prejudice to the generality of the term 'managing' includes arranging:- <ul style="list-style-type: none"> • for instruction in sport or other physical recreational activity, leisure and arts provided; • for supervision of sport or activity; • catering; • the hiring out of equipment for use at the facility; • the marketing and promotion of the facilities; • the taking of bookings; • the collection of, and accounting for, fees and charges; • the physical security of the premises; • the cleaning and proper maintenance of the premises other than those areas of responsibility retained by the Council; and also includes assuming responsibility for heating, lighting and other service charges in relation to the facility.
Month	means calendar month.
Plant	means all electrical, mechanical, heating, ventilation, fire prevention, alarm or fighting, protection, filtration and water supply and treatment plant, and other plant, machinery and apparatus of a like nature provided by the Council or the Trust in, on over or under the facility including (without prejudice to the generality of the foregoing): <ul style="list-style-type: none"> • installations for the supply of electricity, water, telecommunications and information technology, sanitation and waste treatment and disposal, and appliances for making use of the same, and • pipes, wires, cables and other services therein, thereon, thereover or thereunder;

Staff	shall be construed as including all employees engaged by the Trust.
Statutory Testing	<p>Legislation makes employers responsible for ensuring that certain work equipment exposed to conditions causing deterioration which is liable to result in dangerous conditions, is inspected at suitable intervals.</p> <p>Inspection is a legal requirement and taken by qualified engineers. They visit the location of the plant, undertake an inspection and provide an inspection certificate. Frequency of inspection depends on the type of plant.</p>
Supervisory Staff	shall be construed as including all staff performing a supervisory or management function.
Service Variation	means a variation to the Service made by the notice given in writing by the Council Officer to the Trust in accordance with this Agreement, or by the Monitoring Sub Committee of the Trust or their designated representative.
Week	Means a period of seven consecutive days starting on a Monday and ending the following Sunday.

- In this Agreement unless the contrary is specified:
- the table of contents and headings in this Agreement are for convenience only and shall
- not affect its construction;
- words denoting the singular shall include the plural and vice versa. Words denoting any gender include both genders;
- references to Clauses, sub-Clauses and appendices are to Clauses, sub-Clauses and appendices to this Agreement and references to paragraphs are to paragraphs to this Agreement unless otherwise stated;
- any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of such statute for the time being in force and all instruments orders notices regulations directions bye-laws permissions and plans for the time being made issued or given thereunder or deriving validity there from and any reference to all statutory instruments, orders, regulations or other subordinate legislation made pursuant to that statutory provision;
- an Agreement or other document is a reference to that Agreement or document as from time to time supplemented or amended;
- "writing" shall be construed so as to include any communications effected by email or any comparable means ordinarily legible and not-transitory but excluding writing appearing only on the screen of a visual display unit or other similar device; provided that this shall not exclude the use of email for normal communication;
- any references to a "day" shall mean a period of 24 hours running from midnight to midnight;

APPENDIX C

5 SPECIFICATION OF SERVICES

PART A - GENERAL

5.1 Throughout the period of the Agreement, the Trust is obliged to open and operate all associated services, including:

1. Arena
2. Fitness Suite and Strength and Conditioning
3. Health Suite
4. Wellness & Beauty
5. Cafeteria and Vending
6. Meeting Rooms/Ancillary Halls
7. Swimming Pools
8. Squash Courts
9. Synthetic Pitch
10. Playing Fields
11. Athletics Track
12. Caravan and Camping Park

The primary purpose of these facilities is as follows:

5.1.1 The Arena

The Arena is an 8-badminton court sized hall with capacity for 1600 to attend an event. Audience seating is available for use if required.

Sports

The Trust will provide facilities to meet the needs of sports clubs, schools and individuals.

Leisure

Group exercise classes, circuit training, children's parties, etc.

Arts

Concerts, drama, dance and other arts and cultural activities events etc.

Events

Exhibitions, lifestyle and hobby shows, seminars/presentations, weddings, dances and other social gatherings.

5.1.2 Fitness Suite & Strength and Conditioning

The Fitness Room will have at least 32 stations made up of a combination of cardiovascular and resistance equipment, with a dedicated area for dumbbells, stretching/floor exercises, along with a consultation room for client appointments.

The facility will be staffed by qualified Fitness Advisors. Staff offer a range of services, including inductions, personal programmes, fitness profiles and general advice for customers.

5.1.3 Wellness and Beauty

Wellness and Beauty comprises of a sunbed and lounge area. This also includes three treatment rooms which are let to independent, qualified practitioners.

5.1.4 Swimming Pool and Health Suite

The main swimming pool is a 25 metre, six lane, level deck swimming pool with a moveable floor. Adjacent to the main pool is the leisure waters with various water features. A boom separates the main pool from the leisure waters. Both facilities must allow for a balance of public, school, club and swimming lesson instruction. The Health Suite comprises of one steam room, one Sauna and a Spa.

5.1.5 Squash Courts

The squash courts comprise of three glass backed courts with retractable walls. Spectator seating is provided at ground level and first floor level. An Agreement between the Trust and the Squash Club is in place as detailed in 5.9.6.

5.1.6 Quayside Suite

The Quayside Suite is used primarily for a range of exercise classes which are provided by qualified instructors, but is also available for functions, meetings etc.

5.1.7 Meetings/conferences

A number of multi-functional rooms are available, primarily for meetings, conferences and holiday programmes.

5.1.8 Cafeteria

A fully equipped catering facility is provided for the Centre's customers including those attending meetings, functions and conferences. Catering is provided daily with hours varying according to demand. The level of service offered and the minimum level of service should be approved by the Council Officer.

5.1.9 If this service is operated by a third party, the Council Officer must approve the terms of the Agreement between the Trust and the third party operator.

Any material changes to the building or decor must be approved by the Council in terms of the Lease between the parties for the facility as amended.

All catering staff must have completed a Food Hygiene Certificate and meet all legislative requirements in relation to catering.

5.1.10 Playing Fields

There are three playing fields, including the infield, suitable for rugby and football and training pitches available for the appropriate playing season.

The pitches must be maintained according to the grounds maintenance specification referred to in Clause 6.6 of this Agreement.

5.1.10 Synthetic Grass Pitch

The facility is marked out for hockey and football. It is available for football training and training matches and hockey training and competitive matches. The pitch will be maintained by Orkney Islands Council under SIP.

5.1.11 Floodlit Track

The floodlit track and equipment are available for teams and individuals to train and compete. The track shall be maintained according to the manufacturer's requirements.

5.1.12 Caravan and Camping Park (80 units)

The site is open for the season, as a minimum, from 1st April to 30th September. Camping outside of the season is by arrangement with the Trust. The Trust shall ensure that the site is licensed by the Council (under the Caravan Sites and Control of Development Act 1960: Schedule of Standard Conditions for Touring Caravan Sites). The Trust must comply with this Schedule.

The Trust must maintain the VisitScotland's Quality Assurance Scheme for Parks, and the results shall be made available to the Council within a reasonable period.

5.1.13 Challenge Play Park

The Centre has one external play area. The Challenge Park is located adjacent to the car park area to the North of the Centre. Signage identifies the age ranges that the equipment is suitable for.

The Trust shall carry out weekly inspections of the play equipment. Annual inspections will be arranged by the Council and carried out by a registered external organisation. The Council is responsible for carrying out the maintenance of all equipment in the play area, grounds and surrounding fence.

APPENDIX D

ORKNEY ISLANDS COUNCIL AND THE PICKAQUOY CENTRE TRUST SERVICE AGREEMENT

SERVICE VARIATION NO:

Date	Clause	Description	Variation

Signed on behalf of Orkney Islands Council

Name

Signed

Date

Signed on behalf of Pickaquoy Centre

Name

Signed

Date

APPENDIX E

PERFORMANCE MONITORING

The Trust will be required to contribute to the achievement of Orkney Islands Council's aims and objectives as set out in the following strategic documents:

- Orkney Islands Council Plan 2018 – 23
- Pitch and Facilities Strategy
- Physical Activity and Sport Strategy
- Community Planning Partnerships
- Living Well
- Strong Communities

AGENDA FOR MONTHLY MEETING

1. Monthly financial performance
2. Programme developments
3. Repairs and maintenance - any issues
 - a) Existing Building
 - b) Swimming Pool and Squash Courts Extension
4. Grounds maintenance - any issues
 - a) Existing Grounds
 - b) New Grounds
 - c) Synthetic Pitch
5. Variation request to Agreement
6. Usage monitoring (quarterly)
7. AOCB

PERFORMANCE INDICATORS

Description of Indicator	
Number of Participants	
1 Fitness including Strength and Conditioning	61,819
2 Group Exercise	40,594
3 Health	21,566
4 Junior Activities	31,230
5 Arena Sports	41,133
7 Other Indoor Leisure	22,471
9 Campsite	7,814
10 Track and Infield	13,498
11 Playing Fields	3,402
12 Synthetic Grass Pitch	6,689
13 Swimming	98,596
14 Squash	6,023

APPENDIX F

SCHEDULE OF REPAIRS AND MAINTENANCE RESPONSIBILITY AND OBLIGATIONS PURSUANT TO THE LEASE BETWEEN THE ORKNEY ISLANDS COUNCIL AND THE PICKAQUOY CENTRE TRUST.

To be read in conjunction with the current lease and service level Agreement.
Orkney Islands Council as landlord (OIC).
The Trust; as tenant (PCT).

Other bodies such as electricity and water providers are not part of this Agreement.

Assets covered include The Pickaquoy Centre buildings (including new swimming pool and squash courts extension), synthetic pitch, running track, car-park and grounds. The Pickaquoy Campsite and associated buildings (excluding two children's play areas), The Pickaquoy Clubrooms, Groundsman workshop and surrounding area, All associated out-field pitches and recreational areas. All as listed in the lease.

Principles:

The PCT is responsible for the day to day upkeep of the building fabric, plant and equipment, grounds and associated facilities. Any works that are of less than eight hours per works item or failures that are caused by neglect or misuse will be the responsibility of the PCT.

The OIC are responsible for the statutory testing of fixed plant and equipment, major plant and equipment servicing and testing, major refurbishment and replacement of major elements and ensuring the building is kept wind and watertight.

Repairs and maintenance responsibility and obligations are as follows:

Orkney Islands Council are responsible for the repair and maintenance of the new swimming pool, squash courts and synthetic pitch - both planned and reactive maintenance.

Maintenance Works

Annual maintenance works and statutory works to the Pickaquoy Centre Trust property portfolio shall be agreed between the Council and the Pickaquoy Centre Trust prior to the commencement of each financial year.

The approach taken by the Council in relation to property maintenance includes the priority used in determining the order in which individual requests in respect of maintenance works are addressed and the response times take into consideration:

- The Council's strategic maintenance plan; and
- The budget constraints to which the Council is subject to at the time.
- In the event of a requirement for unplanned Works arising, the Council and the Pickaquoy Centre Trust shall agree on an appropriate project plan for the carrying out of such work taking the following in to consideration:
- Any penalties, Increased insurance premiums or other risks or liabilities likely to be incurred by The Pickaquoy Centre Trust as a result of any non-compliance with the relevant statutory requirements.
- The nature and extent of the works (and taking account of any restrictions on the availability of contractors and/or materials) and

- The budget constraints to which the Council is subject to at the time.

Development and Infrastructure Professional Fees

Development and Infrastructure staff provide a professional service to the Pickaquooy Centre in the form of reactive repairs and planned works and the costs associated with these works will be recharged to the Pickaquooy Centre.

Any planned works agreed between the Pickaquooy Centre and the Councils Development and Infrastructure Service will be recharged plus 20% professional fee.

Capital Works

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 process) to peruse and contribute to the Capital Programme so as to improve the quality of accommodation for activities taken forward by the Pickaquooy Centre Trust.

For the avoidance of doubt the Pickaquooy Centre Trust will require, in common with Council services, to submit a bid for any Capital Works to be considered by the Council's Capital Project Appraisal process.

Capital Works funded By Grants to The Pickaquooy Centre Trust

In the event that, the Pickaquooy Centre Trust consider (acting reasonably) that funding from some source other than that the Council is likely to be available in respect of a proposed Capital Works Project, the Pickaquooy Centre Trust shall engage in discussions with the Council with a view to that Capital Works Project being taken forward by The Pickaquooy Centre Trust and in those circumstances:

Item	Responsibility
External Site Elements	
All Weather Pitch; surface maintenance and minor repair of synthetic	OIC
All Weather Pitch; major replacement of base or synthetic surface	OIC
Camp site lighting and surface maintenance; minor repairs and lamp replacement	PCT
Campsite lighting and surface maintenance; major replacement	OIC
Drainage system replacement	OIC
New facility drainage system replacement	OIC
Drainage system cleaning and clearing of blockages	PCT
External sports and other equipment; maintenance and replacement	PCT
Fencing including handrails; decoration, minor repair 3 rd inspection	PCT
Fencing including handrails refurbish and replace	OIC
Footpath, road and parking surface; repair and maintenance	OIC
Grounds maintenance including grass cutting; weeding shrubs, vermin	PCT
Treatment	
Kerb or path replacement	OIC
Running track; minor surface maintenance, protection and maintenance	PCT
Running track; surface painting and replacement.	OIC
Signage; replace	OIC
Signage; repair and maintain	OIC
Sports lighting; minor repairs and replacement of lamps	PCT/OIC

Sports lighting; major refurbishment, replacement of columns and	OIC
Street light maintain and replace	OIC
External Building Elements	
External doors and windows; minor maintenance and repair cleaning	PCT
External doors and windows; major refurbishment and replacement	OIC
External walls; cleaning	PCT/OIC
External walls; repair and maintenance	OIC
Roof including cladding and gutters; general maintenance, cleaning and replacement	OIC
Internal Building Elements	
Arena floor; decoration and replacement	OIC
Ceiling's; cleaning and minor replacement of tiles and insulation	PCT/OIC
Ceiling's; full replacement of ceiling tiles at end of usable life	OIC
Floor coverings; cleaning and minor repairs	PCT/OIC
Floor coverings; major repairs or replacement	OIC
Internal walls; cleaning, minor repair and decoration	PCT/OIC
Internal walls; major repairs and replacement	OIC
Plant and Fixed Machinery	
Cinema Projector, screen and associated equipment; minor repairs and maintenance	PCT
Cinema Projector, screen and associated equipment; major repairs and replacement	OIC
Electrical system and fittings; all minor repairs and maintenance	PCT/OIC
Electrical system and fittings; major replacement	OIC
Fixed furniture and equipment; regular maintenance and repairs	OIC
Fixed furniture and equipment; replacement	PCT/OIC
Health suite plant and equipment; minor repairs and maintenance	OIC
Heating, plumbing, ventilation systems; routine maintenance and repairs	PCT/OIC
Heating, plumbing, ventilation systems; refurbishment and replacement	OIC
Statutory testing; implementation of minor repairs such as replacement back up batteries and lamps, all PAT test failures	PCT/OIC
Statutory testing and implementation including major replacement and upgrading works	OIC
Swimming Pool Plant	OIC
Loose, Portable Equipment and Furniture	
All crockery, cutlery, trolleys and the like; repairs and replacement	PCT
Loose furniture; chairs, tables, desks and equipment; repairs and replacement	
Sports and fitness equipment; minor repairs and maintenance	PCT
Sports and fitness equipment; major repairs and replacement	PCT

Fixed and Large Equipment	
Bleacher seating in Arena; minor repairs and maintenance	PCT
Bleacher seating in Arena; major repairs, inspection and replacement	OIC
Catering Equipment and large appliances (non portable); replacement	OIC
Internal doors, door furniture and finishing's; major repairs and replacement.	OIC
Internal doors, door furniture and finishing's; minor repairs and replacement.	PCT/OIC
IT Network hard wiring and outlets.	OIC
IT networking system; loose equipment, servers, computers, phone system and all software.	PCT/OIC
Lifts; day to day repairs and maintenance.	OIC
Engineers inspection and consequent report including making good faults.	OIC
Sound systems and video recording equipment	PCT
Swimming Pool equipment (eg lifeguard equipment floats etc)	PCT
Squash Courts – moving walls	OIC
Climbing Wall	PCT

APPENDIX G

6 ENVIRONMENTAL CONDITIONS AND GROUNDS MAINTENANCE

The Trust shall operate within industry recognised environmental conditions. See IMPSA guidelines

The following could be summarized in the table above.

The Trust shall maintain its facilities in a clean, safe and hygienic condition at all times in accordance with the Trust's Operational Procedures (which will be approved by the Council). The Trust should consider the environmental implications of the way it operates as far as possible within the design constraints of the building.

6.1 Recording of Environmental Conditions

The Trust shall carry out all applicable tests, in order to ensure that the environmental conditions, including water and air temperatures, air changes and spa pool water conditions are achieved and maintained in accordance with the requirements of the applicable Good industry standard, more particularly IMPSA

6.2 Air and Water Quality

The Trust shall at all times maintain its spa pool and swimming pool water in a condition which is completely safe for users. The Trust shall maintain the spa pool and swimming pool water in such a condition that it is at all times clear and of good colour, quality, appearance and safe and pleasant to use with the proper chlorine levels and water balance, backwashing, bacteriological quality all in accordance with the requirements of the applicable Good industry standard more particularly IMPSA.

6.3 The Prevention or Control of Legionellosis

The Trust shall fully comply with the approved code of practice for the prevention or control of Legionellosis (including Legionnaires' Disease) all in accordance with the requirements of the applicable Good industry standard more particularly IMPSA.

6.4 Heating and Ventilation

The Trust shall maintain the proper suitable applicable temperatures for wet facilities and rooms, corridors activity areas and others of the centre as a whole all in accordance with the requirements of the applicable Good industry standard more particularly IMPSA.

6.5 Lighting

- 6.5.1 The Trust shall maintain the standards of lighting and levels of illumination all in accordance with the requirements of the applicable good industry standard more particularly IMPSA.
- 6.5.2 The Trust shall, when carrying out any alterations, improvements or maintenance of lighting have full regard to the recommendations of the Sports Councils, Sportscotland, Technical Unit for Sport and such alterations, improvements or maintenance shall not be carried out unless with the prior written approval of the Council.

6.6 Ground Maintenance

The Trust shall be responsible for grounds maintenance. The standard of service required in this connection is good industry standard more particularly the standards applicable to the Fields in Trust (FIT) and Sports Turf Research Institute (STRI). The Trust will be responsible for maintaining all external areas, including the running track, Infield, grass pitches, campsite and the outdoor play area equipment. Grassed areas will be required to be cut and marked appropriately and kept free from litter and any tarmac areas including car parks kept in a clean and tidy condition. The synthetic grass pitch will be maintained by Orkney Islands Council.

APPENDIX H

Appendix H as referred to in the ActiveLife Agreement between Orkney Islands Council and the Pickaquoy Leisure Centre Trust of even date herewith.

ActiveLife Membership Scheme Information Sharing Protocol

This Information Sharing Protocol is between Orkney Islands Council (the Council) and the Pickaquoy Centre Trust (the Trust).

1. Introduction and Purpose

The purpose of this Information Sharing Protocol (the Protocol) is to ensure the effective and secure sharing between the Council and the Trust of the information required to deliver the ActiveLife membership scheme Management Agreement. The ActiveLife membership scheme will allow those who purchase a Card to access to specified leisure services provided by the Council and the Trust without any additional cost. These services will be known in this Protocol as the ActiveLife services.

Information will be shared about the services the card owner uses and when in order to help plan the provision of those services.

2. Legislation

Disclosure of information will be conducted within the legal framework of the Data Protection Act 2018 (DPA), the Human Rights Act 1998 and in compliance with the common law duty of confidence.

3. Process

Individuals and families can apply to either the Council or the Trust for a ActiveLife card using an application form (Appendix A). This form may either be a paper format or an electronic format located on either the Council or the Trust's website. The information set out in the form will be shared by the Council and the Trust in order that the ActiveLife services can be provided.

The information will be held by Orkney Islands Council and both organisations will have access to this information.

4. Consent

The following Privacy Statement will be included in the application form:

The information we have about you will be held on computer or manual files Orkney Islands Council (OIC) and the Pickaquoy Centre Trust (PCT) for the purpose of providing the services you are entitled to as a holder of a ActiveLife Card (AC). Only those with a need to know will access this information.

We also use the information you provide to help us understand what services are needed by residents and what OIC and the PCT can do to improve those services. We do share some information with the Scottish Government and other partners for the same reasons. If we share information for these reasons with anyone, other than the Scottish Government, we make sure that individuals cannot be identified from the information we provide.

Otherwise, we will only share your information if required to by law or if you give us your permission to do so.

If you want to know more about how we use your information or wish to request access to it, please contact Orkney Islands Council's Information Governance Officer.

Apart from sharing information between the two Partners, information about the cardholders will only be shared with others if the cardholders give their written consent or if the two Partners are legally obliged to share the information with others.

5. Currency and Retention of Information

It should be noted that, in general, information is only accurate and current as on the day on which it is shared.

Information will be retained for time the ActiveLife card is active and will not be retained beyond each Partner's Retention and Disposal Policy.

6. Management of Information

The signatories to this Agreement agree to abide by the terms of the Data Protection Act 1998, in that:

- All data shall be securely transmitted and stored.
- All information provided shall be used for no other purposes than those contained within this protocol.
- Reasonable steps will be taken to ensure that all information disclosed is accurate.
- All reasonable steps must be taken to ensure that anyone who has received information is notified of any relevant changes and if any inaccuracies are found the necessary amendments will be made.
- Decisions about individuals should never be made by referring to inaccurate, incomplete or out-of-date information.
- All information shall be updated as required.

7. Breaches of Security

All known or suspected breaches of security in relation to information shared or created under this Agreement - such as misuse or abuse of the system, misuse or abuse of information, loss of data, unauthorised processing of data, unauthorised disclosure of information, malicious software attack, denial of service attack - are to be reported to the relevant member of staff in the partner organisation. For the Council, this is the Information Governance Officer and for the Trust this is the Finance and Administration Manager.

Partners should be provided with a full report of the circumstances and, if relevant, the data affected. They should also be provided with sufficient details to enable them to retain assurance in the confidentiality, integrity and availability of the information and the processes supporting information exchange, and to undertake their own risk assessments.

Where any breach of security may amount to criminal activity, this must be reported to Police Scotland.

Where the breach meets the relevant conditions for reporting, the Information Commissioner's Office will also be notified and the partners will consider on a case by case basis whether to notify the affected individuals of that breach. No notification of a breach will take place until both partners to this Agreement have been consulted.

8. Legal Rights of Access to Information

Access to information held by the partner organisation may be available either under subject access rights, as described in the Data Protection Act 2018 (Section 7), or the Freedom of Information (Scotland) Act 2002 (FOI). Where access to such information is requested, advice must be sought from the originating organisation (i.e. Freedom of Information or Data).

Complaints from data subjects, or their representatives, about information held by the partner organisations will be investigated by the organisation receiving the complaint; although the other partner will be notified as soon as possible and preferably within one working day. Action that affects any of the signatories will not be taken without first consulting the partner that provided the information.

9. Management and Review of the Agreement

Each partner should identify a point of contact who will have the responsibility for compliance with this Agreement within their organisation. This should be the person who will take part in the annual review of the Agreement and act as a contact if there are any issues with it.

The Agreement, and the process to which it refers, will be reviewed annually by the points of contact. However, where there is change of law, or practice, the review should take place as soon as possible. Where necessary the changes will be reflected in a revision of the Information Sharing Agreement.

This Agreement may be varied only by the written Agreement of the partners. If either Partner decides to end their participation in the ActiveLife membership scheme, all information shared under this Protocol must be securely destroyed in accordance to each Partners' Retention and Disposal Policies.

The names of the individuals who are the points of contact for the Agreement are given in Appendix B.

10. Signatories

The responsible managers detailed below have overall responsibility for this Protocol within their own organisations and must therefore ensure the Protocol is disseminated, understood and acted upon by relevant staff.

Signatories must also ensure that their organisation comply with all relevant legislation.

Staff of these partner organisations who work directly with individuals in order to carry out the functions described in this Protocol, are bound by this document and by their professional regulating bodies. The term 'staff' encompasses paid workers, volunteers, students and other temporary workers approved by the employing/hosting organisation, whose duties include those relating to the functions outlined in this Protocol. Partner organisations will ensure that all current and newly-appointed staff receive appropriate training in the application of this Protocol.

[Insert Name]

[Job Title]

On behalf of _____(insert organisation) Date: [Insert date]

[Insert Name]

[Job Title]

On behalf of _____(insert organisation) Date: [Insert date]