

SERVICE LEVEL AGREEMENT – COMPANY SECRETARY SUPPORT

Report by Company Secretary

Summary

This report invites the Board to consider the key elements of the Service Level Agreement for Company Secretary Support to High Life Highland.

It is recommended that Directors agree the Service Level Agreement with Highland Council for the provision of Company Secretary support, as detailed in Appendix A, at an annual cost of £8,000 covering the period from 1 April 2013 to 31 March 2015.

1. Business Plan Contribution

- 1.1 This report contributes directly towards the following outcomes of the High Life Highland (HLH) Business Plan 2012-15:-
- i. delivery of the contract with The Highland Council; and
 - ii. a positive company image.

2. Background

- 2.1 The Highland Council has in place a number of Service Level Agreements for the provision of Company Secretary duties for its other companies, such as Highland Opportunity Limited and Inverness Leisure.
- 2.2 Also, the Board of High Life Highland has various Service Level Agreements in operation with the Highland Council ranging from the provision of vehicles to Finance and Payroll.
- 2.3 Miss Michelle Morris was appointed Company Secretary to High Life Highland on 8 September 2011, an appointment confirmed by the Board at its first meeting on 22 September 2011.

3. Service Provided

- 3.1 Since the inception of High Life Highland in 2011, the Company Secretary's office has provided gratis support to the Board in terms of the functions set out in **Appendix A**.
- 3.2 This has included specific elements critical in developing and maintaining an effective and robust governance framework in which High Life Highland, and its Board, can operate responsibly. The provision of this support is independent to ensure a clear distinction between the Board and the Company when it is the Board's role to scrutinise the performance of the Company and its officers. This is an on-going process which will continue as High Life Highland evolves.

3.3 To enable this support to continue a Service Level Agreement has been drawn up to formalise arrangements. In particular, Directors attention is drawn to the provision for an annual review, for both parties. Furthermore, the proposed fee does not include any element of time provided by Miss Morris in her specific role as Company Secretary duties but reflects the work and responsibility involved of the staff in the Company Secretary's office.

4. Risk Implications

There are no additional risks associated with the recommendation of this report.

Recommendation

It is recommended that the Board agree the Service Level Agreement with Highland Council for the provision of Company Secretary support, as detailed in Appendix A, at an annual cost of £8,000 covering the period from 1 April 2013 to 31 March 2015.

Signature:

Designation: Company Secretary

Date: 4 June 2013

Appendix A

HIGH LIFE HIGHLAND

and

THE HIGHLAND COUNCIL

SERVICE LEVEL AGREEMENT

COMPANY SECRETARIAL SERVICES

SERVICE LEVEL AGREEMENT

between

- (1) **HIGH LIFE HIGHLAND** a company which is a charity (Scottish Charity number SCO42593) incorporated under the Companies Act 2006 with registered number SC407011 and having its registered office at 12-13 Ardross Street, Inverness, IV3 5NS (“**the Purchaser**”); and
- (2) **THE HIGHLAND COUNCIL** established under the Local Government etc (Scotland) Act 1994 and having its principal offices at Council Buildings, Glenurquhart Road, Inverness IV3 5NX (“**the Service Provider**”); and

WHEREAS:-

- (A) The Purchaser has agreed to purchase services from the Service Provider;
- (B) The parties wish to record in writing the arrangements which have been agreed between them in relation to the consideration which the Purchaser will pay to the Service Provider in respect of the provision of the services referred to in preamble (A) and other terms and conditions which are to apply with regard to the provision of the services.

IT IS AGREED as follows:

1 DEFINITIONS

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

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

“**Assigned Employee**” means any employee who is wholly or mainly assigned to the provision of the Services to the Purchaser;

“**Business Day**” means a day (other than a Saturday or Sunday or a day which is a public holiday in Scotland) on which banks in Scotland are open for business;

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

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

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

“Employment Losses” means actions, proceedings, liabilities, costs, losses, damages, claims, demands and expenses (including, without limitation, all legal and professional fees and expenses, on a full indemnity basis);

“Equal Pay Legislation” means the Treaty of Rome, the Equal Pay Directive, the Equal Pay Act 1970 or the Sex Discrimination Act 1975 (or any statutory modification or re-enactment thereof).

“Financial Year” means the period from 1st April to 31 March during the Prescribed Period but such that the First Financial Year shall run from the Commencement Date until 31st March 2012; “Financial Years” shall be construed accordingly;

“Individual” shall have the meaning ascribed to it in clause 9.7;

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

“New Supplier” means any entity which is awarded a contract to provide services equivalent or similar to the Services, or any part of the Services, in place of the Service Provider (including the Purchaser in the case of the provision of the Services, or any part of the Services, by the Purchaser);

“Purchaser Representative” means the representative of the Purchaser appointed pursuant to clause 7.1;

“the Service Fees” means the payments to be made by the Purchaser to the Service Provider under the Agreement in consideration for the Services;

“Service Fee” shall be construed accordingly;

“the Service Operations” means the operations associated with delivery of the Services;

“the Services” means the services to be provided by the Service Provider, as specified in clause 2 (as read with Part 1 of the Schedule);

“Parties” means the Purchaser and the Service Provider: **“Party”** shall be construed accordingly;

“the Prescribed Performance Standards” means (subject to clause 5):

- (a) during the first Financial Year, the performance standards set out in Part 2 of the Schedule
- (b) in respect of every subsequent Financial Year, the performance standards agreed between the Purchaser and the Service Provider in pursuance of paragraph 5.3 as being applicable to that Financial Year;

“the Prescribed Period” means the period commencing on the Commencement Date and expiring on * or (if earlier) the date of termination of the Agreement;

“Quarter” means a period of three consecutive calendar months commencing on the first day of each Financial Year and every subsequent period of three consecutive calendar months thereafter during the Prescribed Period;

“Service Provider Representative” means the representative of the Service Provider appointed pursuant to clause ~~7.17.17.1~~;

“Service Transfer” shall have the meaning ascribed to it in clause 9.1;

“Service Transfer Time” shall have the meaning ascribed to it in clause 9.1;

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

“the Services Specification” means, at any given time, the specification defining the Services to be provided under the Agreement, as applying at that time under clauses 2 and 4;

“Statement” means a half-yearly financial statement, in such form as the Purchaser may reasonably prescribe from time to time;

“the Transfer Assistance Period” means the period (a) of six months prior to the expiry of the Prescribed Period or, (b) if shorter, the period beginning on the day on which the Service Provider becomes aware of the earlier termination of this Agreement, until the Service Transfer Time;

“the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the purposes of implementing the Acquired Rights Directive (2001/23/EC) into UK law;

- 1.2 Any reference to the first Financial Year shall be construed as a reference to the first Financial Year to occur within the Prescribed Period; and any reference to the second, or a subsequent, Financial Year shall be construed accordingly.
- 1.3 Clause headings are included in the Agreement for ease of reference only and shall not affect the interpretation of the Agreement.
- 1.4 References to clauses and paragraphs and to the Schedule are (unless otherwise stated) references to the clauses and paragraphs of, and the schedule to, the Agreement.
- 1.5 Where the context so admits or requires, words denoting the singular include the plural and vice versa.
- 1.6 References to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time (whether before or after the date of the Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification) and any subordinate legislation made under such provisions.

2 SERVICES

- 2.1 The Service Provider undertakes to provide the Services to the Purchaser throughout the Prescribed Period, all in accordance with the Services Specification.

3 PAYMENTS ETC BY THE PURCHASER

- 3.1 The Purchaser agrees, subject to the terms and conditions set out in the Agreement, to pay the Service Fees (together with all VAT payable on such fees) to the Service Provider in consideration for the provision by the Service Provider of the Services.
- 3.2 The Service Fee due in respect of each * period, together with VAT, shall be payable by the Purchaser to the Service Provider on or before *, subject to receipt by the Purchaser of a valid VAT invoice issued by the Service Provider relating to that element of the Service Fee.

4 SERVICE FEES – AMOUNTS

- 4.1 The Service Fee payable by the Purchaser to the Service Provider in respect of the first Financial Year shall be £● (plus VAT if any).
- 4.2 At least three months prior to the start of the second, and each subsequent, Financial Year, the Purchaser and the Service Provider shall negotiate in good faith with regard to (a) any change to the Services Specification which either the Purchaser or the Service Provider may acting reasonably deem appropriate for that Financial Year; and (b) the level of the Service Fees to be payable in respect of that Financial Year (and taking account of any Services Specification Change which the parties may agree should be applicable in respect of that Financial Year and the Prescribed Performance Standards which are anticipated to be applicable during that Financial Year); the process for agreeing the level of the Service Fees any Service Specification Change in pursuance of the preceding provisions of this clause shall be as set out in Part 3 of the Schedule.
- 4.3 In the event that agreement has not been reached in terms of clause 4.3 on the level of the Service Fees and any Service Specification Change in respect of that Financial Year prior to the start of that Financial Year the Service Fees for that Financial Year shall be deemed to be the same as that which applied in the immediately preceding Financial Year and instalments paid accordingly until (a) such time as agreement has been reached (in which case any additional sums payable by the Purchaser or any reimbursement due by the Service Provider shall be paid within 14 days of agreement being reached) or (b) if no such agreement is reached the date of termination of the Agreement with either party being entitled to terminate the Agreement at any time after the commencement of that Financial Year by giving to the other party 3 months' notice in writing to that effect.

5 PERFORMANCE STANDARDS

- 5.1 The Service Provider shall, in providing the Services, meet the Prescribed Performance Standards applicable from time to time.
- 5.2 The performance standards applicable in respect of the first Financial Year shall correspond with those set out in Part 2 of the Schedule.
- 5.3 At least three months prior to the start of the second, and each subsequent, Financial Year, the Purchaser and the Service Provider shall negotiate in good faith with regard to the prescribed performance standards and performance reporting requirements to be applicable in respect of that Financial Year (and taking account of any Services Specification Change which the parties may agree should be applicable in respect of that Financial Year); the process for agreeing the performance standards in pursuance of the preceding provisions of this clause shall be as set out in Part 3 of the Schedule.
- 5.4 The Service Provider shall not be liable for any failure to meet the Prescribed Performance Standards if and to the extent that such failure is directly attributable to any breach by the Purchaser of its obligations under the Agreement.

6 PURCHASER'S OBLIGATIONS

- 6.1 The Purchasers shall provide to the Service Provider with the information detailed in Part 5 of the Schedule in accordance with the timescales set out in Part 5 of the Schedule to enable the Service Provider to provide the Services.
- 6.2 The Purchaser shall provide to the Service Provider with such further information as the Service Provider may reasonably require from time to time to enable the Service Provider to provide the Services.

7 MONITORING & REVIEW

- 7.1 The Purchaser will appoint a Purchaser Representative and the Service Provider will appoint a Service Provider Representative to oversee the overall performance of this Agreement. Neither Party shall change such appointee without prior consultation with the other Party.
- 7.2 The Purchaser Representative and the Service Provider Representative shall meet at least once every Quarter, or as otherwise agreed, to review the performance of the Service Provider in providing the Services.
- 7.3 The review meetings referred to in clause 7.2 shall, in addition to addressing any perceived shortcomings in the provision of the Services, afford an opportunity for the Purchaser and the Service Provider to exchange views in relation to how the delivery of the Services might be improved or rendered more efficient (whether in the light of new technology or otherwise); any such proposals may, if the parties agree be reflected in a change to the Services Specification and the agreed change and any change to the Service

Fees shall be documented in an agreement signed by the authorised signatories of each of the parties;

- | 7.4 The review meetings referred to in clause ~~7.27.27.2~~ shall be convened on not less than 3 Business Days' notice, except in an emergency (in which case as much notice as is reasonably practicable shall be given); and shall (except in the case of an emergency) be accompanied by an agenda of items to be discussed at the meeting.
- 7.5 The Purchaser Representative shall be responsible for preparing minutes of all meetings.
- 7.6 A copy of the minutes prepared by the Purchaser Representative in pursuance of clause 7.5 shall be forwarded to the Service Provider Representative by the Purchaser Representative within 5 Business Days of the date of the meeting.
- 7.7 The Service Provider Representative shall advise the Purchaser Representative of any comments which he/she has in respect of the minutes prepared in pursuance of clause 7.5 within 5 Business Days of receipt of a copy of the minutes in accordance with clause 7.5; and the Purchaser Representative will make such revisals to the minutes as are agreed between the Service Provider Representative and the Purchaser Representative.

8 FURTHER CONDITIONS/OBLIGATIONS

- | 8.1 The Service Provider shall (subject to clause ~~8.28.28.2~~) indemnify the Purchaser against any loss or liability which the Purchaser may sustain or incur, or any claim by a third party against the Purchaser (including the expenses associated with contesting any such claim, and any costs awarded against the Purchaser in respect of any such claim), where such loss, liability or claim arises out of, or in connection with, any breach by the Service Provider of any warranty, obligation or undertaking contained in this Agreement, or otherwise arising in relation to the Service Operations.
- | 8.2 The indemnity contained in clause ~~8.18.18.1~~ shall not extend to any loss, liability or claim which arises directly out of any breach by the Purchaser of its obligations under this Agreement.
- | 8.3 The provisions of clause ~~8.18.18.1~~ shall not displace the obligation of the Purchaser to take reasonable steps to mitigate its loss.
- 8.4 The Service Provider shall:-
 - 8.4.1 provide to the Purchaser such financial and other information as the Purchaser may reasonably request from time to time to enable the Purchaser to monitor, verify and audit the Service Operations;
 - 8.4.2 ensure that it is not in breach of any other agreements or any Law in connection with the Service Operations and that the Service Operations conform with all requirements of Law;

- 8.4.3 provide the Purchaser with such information as the Purchaser may reasonably require to enable the Purchaser to ascertain that the terms and conditions of this Agreement are being observed;
- 8.4.4 comply with all EU and Scots law procurement requirements on the basis that it is a contracting authority for the purposes of such requirements;
- 8.4.5 ensure that all consultants, contractors and sub-contractors employed on or in connection with the Service Operations are paid timeously;
- 8.4.6 ensure that the Service Operations are carried out to the reasonable satisfaction of the Purchaser;
- 8.5 The Service Provider shall be responsible for maintaining insurances, throughout the Prescribed Period, in accordance with the particulars set out in Part 6 of the Schedule, subject to such variations as the Parties may agree from time to time (each being bound to act reasonably in this respect).
- 8.6 For the avoidance of doubt, the Service Provider shall be responsible for payment of any excess under any of the insurance policies referred to in clause 8.5.

9 TUPE

- 9.1 The Service Provider undertakes that during the Transfer Assistance Period, it shall, within 15 Business Days of receiving a request by the Purchaser, supply in writing to Purchaser such information and documentation relating to the Assigned Employees in its possession or control as may be reasonably requested by the Purchaser and subject to the Service Provider's obligations under the Data Protection Act 1998.
- 9.2 In the event of a Cessation of Service resulting in a transfer of the Services in whole or in part (a "**Service Transfer**"), the Assigned Employees shall transfer to the employment of the New Supplier in accordance with the provisions of the TUPE Regulations immediately upon the occurrence of the Service Transfer (the "**Service Transfer Time**").
- 9.3 The Service Provider shall be responsible for all amounts payable to or in relation to the Assigned Employees (including but not limited to wages and salaries, expenses, overtime, bonus or commission (earned but unpaid or not yet payable), accrued holiday pay, income tax, national insurance contributions, pension contributions and insurance premiums) in respect of the period up to the Service Transfer Time and the Service Provider shall indemnify the New Supplier against any Employment Losses arising out of or in connection with such amounts. All necessary apportionments shall be made to give effect to this clause.
- 9.4 The Purchaser shall use all reasonable endeavours to procure that the New Supplier is responsible for all amounts payable to or in relation to the Assigned Employees (including but not limited to wages and salaries,

expenses, overtime, bonus or commission (earned but unpaid or not yet payable), accrued holiday pay, income tax, national insurance contributions, pension contributions and insurance premiums) in respect of the period after the Service Transfer Time and the Purchaser shall use all reasonable endeavours to procure that the New Supplier indemnifies the Service Provider against any Employment Losses arising out of or in connection with such amounts. All necessary apportionments shall be made to give effect to this clause.

- 9.5 The Purchaser shall use all reasonable endeavours to procure that the New Supplier indemnifies and keeps the Service Provider indemnified from and against all and any Employment Losses suffered or incurred by the Service Provider in respect of any (and each) of the Assigned Employees arising from or as a result of:-
- 9.5.1 any act, fault or omission or alleged act, fault or omission of the New Supplier relating to an Assigned Employee occurring after the Service Transfer Time including, without limitation, any claim for breach of contract, unfair dismissal, discrimination, personal injury or any other claim within the jurisdiction of an employment tribunal, or arising in common law, in delict or otherwise; and
- 9.5.2 any act, fault or omission or alleged act, fault or omission of the New Supplier in relation to its obligations under Regulation 13(4) of the TUPE Regulations.
- 9.6 The Service Provider shall indemnify and keep indemnified the New Supplier from and against all Employment Losses suffered or incurred by the New Supplier arising from or as a result of any act, fault or omission or alleged act, fault or omission of the Service Provider prior to the Service Transfer Time including, without limitation: -
- 9.6.1 any claim for breach of contract, unfair dismissal, discrimination, personal injury or any other claim within the jurisdiction of an employment tribunal, or arising in common law, in delict or otherwise; and
- 9.6.2 any claim or demand by any Assigned Employee or by any trade union, employee representative or body of employees or their representatives (whether or not recognised by the New Supplier) on behalf of any Assigned Employee arising out of or in connection with any failure by the Service Provider to comply with its obligations under Regulation 13 and 14 of the TUPE Regulations save to the extent that such failure by the Service Provider was as a result of any act or omission by the Purchaser in relation to its obligations under Regulation 13(4) of the TUPE Regulations.
- 9.7 If, by operation of the TUPE Regulations, the contract of employment of any individual who was employed by the Service Provider immediately prior to the Service Transfer Time and who is not an Assigned Employee ("the

Individual") takes effect or is alleged to take effect as if originally made with the New Supplier as a consequence of the Service Transfer:-

- 9.7.1 the New Supplier shall notify the Service Provider in writing as soon as it becomes aware of this fact and shall consult with the Service Provider as to the appropriate course of action;
- 9.7.2 the Service Provider shall, within 14 days of receiving notice in terms of clause ~~9.7.19.7.1~~9.7.1, offer employment to the Individual or notify the New Supplier that it does not wish to make such an offer;
- 9.7.3 if the Individual does not accept any offer of re-employment made by the Service Provider within 14 days of such offer being made (or if no such offer is made within the 14-day time limit referred to in clause ~~9.7.29.7.2~~9.7.2) the New Supplier shall be entitled to terminate the employment of the Individual; and
- 9.7.4 provided that the date of such termination of employment is within 14 days of the expiry of the 14-day time limit referred to in clause ~~9.7.39.7.3~~9.7.3 (where an offer of re-employment is made by the Service Provider) or within 14 days of the expiry of the 14-day time limit referred to in clause ~~9.7.29.7.2~~9.7.2 (where no offer of employment is made by the Service Provider), the Service Provider shall indemnify and keep indemnified the New Supplier from and against any Employment Losses: -
 - 9.7.4.1 arising from or in connection with the termination of employment of the Individual; and
 - 9.7.4.2 arising from any claim or demand against the New Supplier by such Individual arising out of or in connection with any act, fault or omission or alleged act, fault or omission of the Service Provider prior to the date of termination or commencement of employment of the Individual by the Service Provider including, without limitation: -
 - (a) any claim for wages and salaries expenses, overtime, bonus or commission (earned but unpaid or not yet payable), accrued holiday pay, income tax, national insurance contributions, pension contributions and insurance premiums;
 - (b) any claim for breach of contract, unfair dismissal, discrimination, personal injury or any other claim within the jurisdiction of an employment tribunal, or arising in common law, in delict or otherwise; and
 - (c) any claim or demand by any such Individual or by any trade union, employee representative or body of employees or their representatives (whether or not recognised by the New Supplier) on behalf of any such

Individual arising out of or in connection with any failure by the Service Provider to comply with its obligations under Regulation 13 and 14 of the TUPE Regulations.

10 FORCE MAJEURE

10.1 Subject to clause Error! Reference source not found.~~Error! Reference source not found.~~^{10.2}, if either Party is prevented from performing, or hindered or delayed in performing, any obligations under this Agreement by reason of any circumstances beyond its reasonable control (including, without prejudice to that generality, strikes or lockout), it shall be excused performance to the extent affected by the circumstances concerned, so long as

10.1.1 it gives notice to the other Party of those circumstances promptly after they first affected performance; and

10.1.2 it uses all reasonable commercial endeavours to remove or avoid their cause or minimise their effect.

Such performance shall be excused for the period during which the inability of the Party to perform subsists but for no longer period, and shall be remedied as soon as possible.

11 DEFAULT

11.1 Either Party to this Agreement may (subject to clause Error! Reference source not found.~~Error! Reference source not found.~~^{11.3}) at any time by notice in writing to the other terminate this Agreement with immediate effect if:-

11.1.1 the other Party fails to observe or perform any of its material obligations contained in this Agreement where such failure is not remediable;

11.1.2 the other Party fails to observe or perform any of its material obligations contained in this Agreement where such failure was capable of being remedied but was not remedied within 15 Business Days of being requested to do so by the Party making that request;

11.1.3 the Service Provider exercises any right to terminate the Service Delivery Contract;

11.1.4 the other Party ceases to carry on its activities, becomes unable to pay its debts when they fall due, becomes insolvent or apparently insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or

undertaking, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, an order is made or resolution passed for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or enters into liquidation whether compulsorily or voluntarily or shall suffer any analogous event.

- 11.2 Termination or expiry of the Agreement, however arising, shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party, including (without prejudice to that generality), the right to recover any sums of money which are due to be paid under this Agreement.

12 INTEREST

- 12.1 Except to the extent that the parties otherwise agree, interest will accrue and be payable by each Party to the other on any sum due to the other Party in terms of the Agreement which remains unpaid for 15 Business Days after the due date, such interest to run at the rate of 2 % per annum above the base rate of the Clydesdale Bank PLC from time to time from the due date until payment.

13 ASSIGNATION & SUBCONTRACTING

- 13.1 Neither Party shall assign or otherwise dispose of its interest under the Agreement to any other party.
- 13.2 For the avoidance of doubt, the Service Provider shall be entitled to enter into sub-contracts for the delivery of the Services, but on the basis that the Service Provider shall remain liable for the performance of all obligations incumbent upon it under the Agreement.

14 WAIVER

- 14.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled under this Agreement, shall not constitute a waiver of that provision, right or remedy; and shall not prejudice the ability of that Party to enforce that provision in accordance with its terms, or to exercise that right or remedy, on any future occasion.
- 14.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver, identifies the specific provision(s) to which it relates, and is communicated to the other Party in writing, signed by a duly authorised representative of the Party which is waiving the relevant provision(s).

15 NOTICES

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

15.2 A notice or notification under the Agreement shall (subject to clauses 15.3 and ~~15.4~~~~15.4~~) be deemed to be duly given:-

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

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

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

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

15.4 A notice sent by first class recorded delivery post (or equivalent postal service) shall be deemed to have been delivered during business hours on the Business Day following the date of posting; in proving that a notice was given, it shall be sufficient to prove that an envelope containing the notice was duly addressed and posted in accordance with clause ~~15.2~~~~15.2~~.

15.5 For the purposes of clauses ~~15.3~~~~15.3~~ and ~~15.4~~~~15.4~~, "business hours" shall mean the period between 9.00 a.m. and 5.00 p.m. on a Business Day.

16 PARTNERSHIP

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

17 SEVERANCE

17.1 All of the provisions of the Agreement are severable and distinct from one another; if at any time one or more of such provisions becomes or is declared by a court to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

18 DURATION

18.1 The Agreement shall commence on the Commencement Date and shall, (subject to clause ~~11.1~~~~11.1~~), continue in full force and effect until the expiry of the Prescribed Period.

19 WARRANTIES

- 19.1 The Purchaser warrants, represents and undertakes to the Service Provider that the Purchaser has full capacity and authority to enter into the Agreement;
- 19.2 The Service Provider warrants, represents and undertakes to the Purchaser that the Service Provider has full capacity and authority to enter into the Agreement.
- 19.3 The Parties hereby exclude from the Agreement all implied warranties, implied conditions, implied licences and implied terms to the fullest extent permitted by law.

20 PERSONAL DATA & FREEDOM OF INFORMATION

20.1 Each Party shall comply with its obligations under the provisions of the Data Protection Act 1998.

20.2 Where the Service Provider or any of its sub-contractors, as part of the provision of the Services under this Agreement, processes personal data on behalf of the Authority, then in relation to such personal data the Service Provider shall, and shall take all such steps as are reasonably available to it to procure that its sub-contractors shall:-

20.2.1 act only on instructions from the Purchaser; and

20.2.2 comply with the Purchaser’s instructions in relation to the processing of such personal data, as such instructions are given and varied from time to time by the Authority; and

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

| 20.3 For the purposes of clause ~~20.220.220.2~~, the terms “personal data” and “processing” shall have the meanings ascribed to them in the Data Protection Act 1998.

20.4 All information (including, without limitation, any Confidential Information) submitted to either Party by the other may be disclosed and/or published by either Party; without prejudice to that generality, either Party may disclose information in compliance with

20.4.1 the Freedom of Information (Scotland) Act 2002 (the decisions of either Party in the interpretation of that Act being final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms); or

20.4.2 any other law, or as a consequence of any judicial order or any order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner).

- 20.5 If either Party receives a request under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, which relates to any Confidential Information,
- 20.5.1 the Party in receipt of the request may seek the consent of the other Party to release some or all of the Confidential Information in response to that request and shall do so if the Party in receipt of the request is minded to disclose such items, whether in terms of the public interest or otherwise;
 - 20.5.2 if the other Party shall fail to respond to a request for consent of the nature referred to in paragraph ~~20.5.1~~~~20.5.1~~~~20.5.1~~ within 5 Business Days of the request being made, it shall be deemed to have consented to the release of information;
 - 20.5.3 in all cases, the Party in receipt of the request may, without the consent of the other Party, disclose any of the Confidential Information, if the Party in receipt of the request (acting reasonably) is satisfied that it is in the public interest for it to do so; and on the basis that in reaching that conclusion, the Party in receipt of the request shall take into account any representations made in connection with this by the other Party but the decisions of the Party in receipt of the request as to what constitutes public interest shall be final and conclusive in any dispute, difference or question arising in respect of disclosure of the relevant Confidential Information.

21 DISPUTE RESOLUTION

- 21.1 All disputes between the parties arising out of or relating to this Agreement may be escalated, by either Party, to the Board of Directors of the Purchaser and the Chief Executive of the Service Provider for resolution.
- 21.2 If a dispute cannot be resolved by the individuals to which the dispute has been escalated in pursuance of clause ~~21.1~~~~21.1~~~~21.1~~ within 14 days, the dispute may, within 28 days thereafter, be referred for final determination to an expert (the "Expert") who shall be deemed to act as expert and not as arbiter; and
- 21.3 The Expert shall be selected by mutual agreement or, failing agreement, within 14 days after a request by one Party to the other, shall be chosen at the request of either Party by the President for the time being of the Law Society of Scotland who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.
- 21.4 Within 14 days after the Expert has accepted the appointment, the parties shall submit to the Expert a written report on the dispute.

- 21.5 Both parties will then afford the Expert all necessary assistance which the Expert requires to consider the dispute.
- 21.6 The Expert shall be instructed to deliver his/her determination to the parties within 14 days after the submission of the written reports pursuant to clause 21.421.421.4.
- 21.7 Save in the case of manifest error, decisions of the Expert shall be final and binding not subject to appeal.
- 21.8 The Expert shall have the same powers to require any Party to produce any documents or information to him and the other Party as an arbiter and each Party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.
- 21.9 The fees of the Expert shall be borne by the parties in such proportion as shall be determined by the Expert having regard (amongst other things) to the conduct of the parties.

22 PUBLICITY

- 22.1 Except as otherwise agreed in writing by the parties, the parties shall not communicate with the media or any other third person nor publish the results of any operational or financial review of, or report or article about, the Service Operations without the prior written consent of each other (such consent not to be unreasonably withheld or unreasonably delayed) except and to the extent that such disclosure may be necessary to:
- 22.1.1 comply with the law or the requirements of auditors;
 - 22.1.2 provide information to HM Revenue & Customs and its professional advisers;
 - 22.1.3 provide information to a Party's professional advisers;
or
 - 22.1.4 provide information to any potential New Supplier.

23 VARIATION

- 23.1 Save as otherwise expressly provided, no amendment or supplement of any of the provisions of the Agreement shall be effective unless made in writing specifically referring to the Agreement and duly executed by the parties to the Agreement.

24 COSTS

- 24.1 Each of the Parties shall meet its own costs in connection with the preparation, adjustment and completion of this Agreement.

25 GOVERNING LAW AND JURISDICTION

25.1 The Agreement shall be governed by and construed in accordance with the laws of Scotland.

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

SEALED with the COMMON SEAL of the said THE HIGHLAND COUNCIL and SUBSCRIBED for and on its behalf

at

on

by

Proper Officer

SUBSCRIBED for and on behalf of the said

at

on

by

Print Full Name

Director

before this witness

Print Full Name

Witness

Address

PART 2 - PERFORMANCE STANDARDS APPLYING TO FIRST FINANCIAL YEAR

1. Issue of meeting papers 7 days in advance of meeting;
2. Issue of draft minutes of meetings to the Purchaser or HLHT officials within 21 days of the meeting;
3. Compliance with Companies House deadlines;

PART 3 – PROCESS FOR AGREEING SERVICES SPECIFICATION, PERFORMANCE STANDARDS & SERVICE FEES FOR EACH FINANCIAL YEAR

At least 3 months prior to the start of the second, and each subsequent, Financial Year, HLH and the Council shall negotiate with regard to any change to the Services Specification which either HLH or the Council may acting reasonably deem appropriate for that Financial Year in accordance with the following:-

1. all discussions shall be carried out in a timely fashion, constructively and in the utmost good faith by the representatives for each party;
2. both parties shall use all reasonable endeavours to conclude negotiations prior to the commencement of the relevant financial year;
3. the party proposing a change shall provide to the other party (a) details of the proposed change; (b) the reason for the proposed change; and (c) the assessment of the likely impact of the change.
4. where agreement is reached, the agreed change(s) shall be documented in an agreement signed by the authorised signatories of each of the parties.

PART 5-INFORMATION TO BE SUPPLIED BY PURCHASER

1. Reports to be provided to the Company Secretary 10 Working Days in advance of the relevant meeting.

PART 6– REQUIREMENTS IN RELATION TO INSURANCES

The requirements related to insurance are set out in part ten of the schedule attached to the Service delivery Contact between The Highland Council and High Life Highland