

ABERDEEN CITY COUNCIL

COMMITTEE	Special Education, Culture and Sport
DATE	28 March 2012
DIRECTOR	David Leng
TITLE OF REPORT	Community Centres
REPORT NUMBER:	

1. **PURPOSE OF REPORT**

At its meeting on 23 February 2012 the Education, Culture & Sport Committee instructed officers to “continue negotiations with the community centre representatives”, including inviting “a mutually agreed individual or organisation to act as independent chair/ mediator in those negotiations” in relation the development of a Management Agreement. This report provides the outcome of these negotiations.

2. **RECOMMENDATION(S)**

It is recommended that the Committee:

- a. Notes the Mediation Heads of Agreement, and considers the requests from the Community Centre representatives that (i) that the cost of personal and legal liability insurance cover is provided by the Council, (ii) that the provisions within the agreements for the Council taking legal action against the Management Committee be removed, (iii) that the requirement for a mutual indemnity in relation to breaches of data protection is removed, (iv) that the ability of the Council to terminate the Management Agreement in the event of late payment by a Community Centre is removed, and (v) that the leases and Management Agreements should be for a duration of twenty years. Decisions in respect to these issues need to consider the following:
 - i. The total cost to the Council would be in the region of £25,000. There is no budgetary provision within Education, Culture and Sport to meet this additional recurring cost, therefore if the Committee wished to agree to the principle of this additional funding, the request would require to be referred to the Full Council meeting on 4 April 2012.
 - ii. If these provisions are removed then it will limit the Council’s ability to fully recover any losses which it suffers as a result of certain breaches of the Agreement by a Community Centre. These cannot be quantified at this time as it will depend on the nature of the breach and the losses which flow from it. If the Committee wished to agree to the removal of this provision, due to the potential financial implications, the request would require to be referred to the Full Council meeting on 4 April 2012

- iii. If this provision is removed then it will prevent the Council from recovering a fine or damages awarded against the Council in respect of a data protection breach results from and act or omission on the part of a Community Centre. This cannot be quantified at this time, however the level of fine being imposed by the Information Commissioner is increasing and would be dependent upon the nature of the breach. If the Committee wished to agree to the removal of this provision, due to the potential financial implications, the request would require to be referred to the Full Council meeting on 4 April 2012.
 - iv. If this ability is removed then it would reduce the incentive for Community Centres to pay the Council promptly which will impact on the Council's cash flow and lead to increased administrative costs in terms of pursuing outstanding amounts. If the Committee wished to agree to the removal of this provision, due to the potential financial implications, the request would require to be referred to the Full Council meeting on 4 April 2012.
 - v. The financial implications of this are as yet unquantifiable, but would be expected to run into many millions of pounds, and therefore would require to be referred to the Full Council meeting on 4 April 2012. To ascertain the costs of this decision would require additional budget of approximately £100,000 (not within existing budgets) for full condition surveys to be carried out in respect of each building (this would also require to be referred to Full Council meeting on 4 April 2012). To offer a lease of 20 years duration could be considered as a disposal at less than market value (under "The Disposal of Land by Local Authorities (Scotland) Regulations 2010"), so such a decision would require to be referred to Full Council meeting on 4 April 2012.
- b. Agrees the proposed Management Agreement and Lease as set out in Appendices B & C, subject to delegating final refinements (including the schedules on janitorial arrangements and community schools) to the Head of Legal and Democratic Services, in consultation with the legal representative of the Community Centres, and the Convenor and Vice Convenor of Education, Culture and Sport.
 - c. Notes that the content of the Management Agreement assumes that the council will be able to meet its requirements for the provision for community-based learning through a future decision that the community wings within 3Rs venues will remain within the responsibility of the Council.
 - d. Agrees that until such time as the Management Agreement is signed, those Management Committees which continue to work towards becoming leased, will continue to receive a pro rata transition grant equal to the value of the Development Grant, paid on a monthly basis.
 - e. Agrees that the Council will not require Community Centres to offer residents a discount on charges as part of the Residents Discount Scheme.
 - f. Seeks further reports on the progress of signing Community Centres up to the Management Agreement.

3. FINANCIAL IMPLICATIONS

Negotiation of the Management Agreement involved the services of an independent mediator, accommodation costs for the mediation and the provision of funding for the Community Centre representatives involved in the mediation to procure independent legal advice.

The total costs for this process were:

Mediator: £4,680

Accommodation: £2,158

Legal Advice: £8,118 (to Wednesday 14 March 2012. Note that legal costs are still accruing in relation to finalisation work and these additional costs are expected to total approximately £4,680.) Please note that legal advice costs include VAT and this is not expected to be recoverable, as the contracting body, Powis Gateway Community Centre is not VAT registered.

The funding for these costs were not budgeted for within the Communities budget, however underspend in another budget within Communities, Culture and Sport was identified to cover these costs. As the total costs are currently below £20,000 this virement has been approved by the Head of Communities, Culture & Sport. If the total bill comes to more than £20,000, in line with the Council's Financial Regulations, this will be authorised by the Corporate Director and reported to the next Education, Culture and Sport Committee in the next Service Monitoring report.

If the Committee wished to support a request from the Management Committees that the Development Grant was increased to cover Personal Liability Insurance, the total amount of additional budget required would be approximately £25,000 per year. This has not been budgeted for within the Education, Culture and Sport Budget, so this matter would require to be referred to the Full Council meeting on 4 June 2012 and an alternative source of funding identified.

If the Committee support the wish of the Management Committees that the duration of the Lease and Management Agreement is for twenty years, this would commit the Council to a significant, continued expenditure. These costs include the annual revenue costs of around £3.3million per year, and also include additional non-fixed costs for repairs and maintenance (these were £240,000 in 2010/11). In addition to this, there would be capital costs, which are not budgeted for, and are not able to be quantified at the current time, but would be expected to run into many millions of pounds.

The work required to determine what these capital costs may be would be around £100,000. As there is no Education, Culture and Sport budget available to cover this, if the Committee wished for this work to be carried out, the request would require to be remitted to the Full Council meeting on 4 April 2012.

4. OTHER IMPLICATIONS

Full detail of the implications of the move towards leased centre status is included within the report that was considered at the 23 February 2012 (Appendix F). This report includes the implications relevant to the negotiation of the Management Agreement.

4.1 Legal Implications

- 4.1.1 Officers have negotiated a Management Agreement and Lease to meet the previous decisions of this committee and protect the interests of the Council as much as possible, while recognising the limitations of time, expertise, financial and other resources available to the volunteers on associations which will manage Community Centres in the future.
- 4.1.2 The legal issues which remain outstanding are detailed at 5.2 below. In addition to these, the main change to the terms of the Agreement which may impact upon the Council's legal rights going forward is the removal of "best endeavours" in certain clauses and its replacement with "reasonable endeavours". The judicial interpretation of these terms would indicate that although best endeavours is not an absolute obligation, the party concerned needs to take all reasonable courses it can and this may sometimes (but not always) require it to ignore its own commercial interests. On the other hand, reasonable endeavours only requires the party to take one, rather than all, reasonable course of action. It would not be expected to sacrifice its commercial interests, except perhaps where a particular course of action is specified by the contract. As such, members need to be aware that the revision of this term within the contract may have a detrimental impact on the Council in respect of the obligations set out with the Agreement.

5. BACKGROUND/MAIN ISSUES

5.1 Mediation Process

The mediation took place over approximately 30 hours between 12 and 14 March 2012, and was facilitated by a qualified and experienced mediator sourced by Solace Enterprises. The mediation was attended by the Head of Legal and Democratic Services, the Head of Communities, Culture and Sport, and the Service Manager Communities representing the Council. The following Community Centre representatives were present: Paul O'Connor, Inchgarth Community Centre; Phil D'Arcy, Dyce Community Centre; Alex Mess, Powis Gateway Community Centre; Andy Cowie, Powis Gateway Community Centre; Sylvia Davidson, Woodside Community Centre; Wilma Mackland, Sunnybank Community Centre; Brian Allen, Loirston Annexe Community Centre; and a legal advisor to the Community Centres. Most of these representatives had been involved with the earlier negotiations on the Management Agreement, and they confirmed that they considered themselves representative of all community centres. It is noted that there were no representatives from 3Rs schools present, although one of the participants did bring a 3Rs perspective to the discussions.

The Mediation Heads of Agreement is set out at Appendix A. This document provides a summary of the areas of agreement and areas that officers were unable to agree to over the course of the mediation. The document should be read in

conjunction with the Draft Management Agreement, the content of which was agreed by all representatives during the mediation process.

5.2 Items not agreed

While the mediation process was extremely positive, and led to agreement of most of the Management Agreement, there were five areas where items were not agreed (note that all the areas of disagreement are all key issues, however the representatives felt that the Personal Liability issue is of particular importance to the Centre volunteers):

5.2.1 Personal Liability

The Community Centre representatives highlighted their personal liability as a main area of concern, in relation to managing community centres. There was some discussion on governance structures that would limit that liability, including becoming a Limited Company and becoming a Scottish Incorporated Charitable Organisation (SCIO), and officers confirmed that appropriate support would be provided to any Management Committees wishing to go down that route.

The Management Committee representatives present felt that they would not wish to become incorporated, but instead, would wish the Council to provide additional funding to their Development Grant to allow them to purchase Personal Liability Insurance. The Community Centres legal advisor agreed to get quotes for such insurance cover.

The legal advisor has confirmed that the costs from one insurance provider for one of the existing community centres is £454.29 per annum, and this covers the personal liability of the office bearers including legal expenses and defence costs, but does exclude any incidents arising for the use of bouncy castles. It is noted that this insurance provider would require to see the business plan for each community centre with details of the office bearers and any employees.

The costs per centre are likely to be in the region of £450 - £500. Therefore if the Council wished to increase the Development Grant for each community centre, the total costs would be around £25,000 per year.

5.2.2 Potential Legal Action by the Council against Management Committees

The Management Agreement currently provides for two occasions when the Council would be able to seek legal redress against the Community Centres in specific circumstances: in the case where untrue or unfounded warranties are made when signing the agreement; and when a judgement of maladministration or injustice is made against the Council as a result of a fault on the part of the Management Committee.

These provisions relate to indemnification requirements and as currently worded would enable the Council to pursue an individual Community centre in the event that it breaches a specified warranty contained in the Agreement and the Council incurred a liability as a consequence. If they are removed then this will limit the Council's ability to recover all of its costs or other losses incurred as a direct result of an act or omission on the part of a Community Centre which is in breach of the

terms of the Agreement. The impact of this will depend on the circumstances and nature of the breach, but could be financially significant.

5.2.3 Data Protection Indemnification

This provision provides that both the Council and the Community Centres indemnify each other in respect of any breach of data protection. The indemnification would cover a situation where either party is fined or has to pay damages to a third party as a consequence of a data protection breach which occurred as a result of an act or omission by the other party to the Agreement. If this provision is removed then it will mean that the Council would be entirely liable for any financial and other consequences flowing from a breach of its data protection obligations, even where the breach is due to an act or omission on the part of a Community Centre. This could be significant, especially in the event that the Council were fined by the Information Commissioner. As this is a mutual indemnity, the Community Centre would also find itself in a similar position in the event that it was found to be in breach of data protection obligations as a consequence of an act or omission on the part of the Council.

5.2.4 Termination For Late Payment

The previous draft of the Agreement entitled the Council to terminate in the event of a late payment by the Community Centre, where payment was delayed for more than 20 working days. During the mediation, Council officers agreed to remove this provision of the agreement, as they could not identify a scenario where a Community Centre would be due to make a payment to the Council. However, since the mediation a number of instances have been identified e.g. in relation to out of hours use of Community Schools. Also, the Council regularly purchases commodities on behalf of Community Centres (e.g. telephone call costs) and then invoices the Community Centre thereafter. If the ability to terminate the Agreement in the event of late payment is removed then it would reduce the incentive for Community Centres to pay the Council promptly which will impact on the Council's cash flow and lead to increased administrative costs in terms of pursuing outstanding amounts. As such, it has been proposed that this be reinserted but that the time limit be extended to 60 days.

5.2.5 Duration of Lease/ Management Agreement

During the Mediation, the Management Committee representatives highlighted that they felt the duration of the lease should be for 20 years.

In line with the decision taken at the 23 February 2012 Education, Culture and Sport, "to allow community centres who wish a lease in excess of five years to have such a lease subject to committee agreement", officers have confirmed that they would provide assistance on a case by case basis for any request to change the length of the Lease/ Management Agreement to be taken to the appropriate committee for consideration. If the Council were to simply agree to 20 year lease and Management Agreement for all Community Centres without reference to individual circumstances and property condition etc then it would be open to the allegation that it has unnecessarily fettered its discretion by entering into an unjustifiably long term arrangement as there is no obligation on any Community

Centre to make capital or other investment in the provision of the services or property that would justify such a long duration.

In addition, a blanket decision for a longer term lease for all community centres at the current time would have the following implications:

- The Council may be unable to meet any changes in legislation and priorities which required the use of community centres. (The Scottish Government has confirmed that there are two pieces of forthcoming legislation that will impact on Community Learning and Development.)
- The Council may be committing itself to significant capital expenditure (expected to be many millions of pounds) that is not currently included in the capital plan or budget.
- To ascertain the council financial impact of a longer lease, would require the carrying out of full condition surveys for each building. It is estimated that the cost of this work would be around £100,000.
- Most of the transition Management Committees have not run community centres in the past, and while they are developing business plans and operating models, until operational, it is difficult to assess how robust these may be, and therefore longer term legal agreements may present a risk to the Council and communities in Aberdeen.
- The Education, Culture and Sport Committee of 2 June 2011 agreed that, “until the Service Asset Management Plan for Community Buildings is completed, Community Centres and Community Education Centres be granted a minimum one year rolling lease.” Carrying out a full Service Asset Management plan prior to entering into significant long term legal agreements is part of risk management and would be considered as best practice.
- To offer a lease of 20 years duration could be considered as a disposal at less than market value (under “The Disposal of Land by Local Authorities (Scotland) Regulations 2010”).

5.3 Protection of Children and Vulnerable Adults

The protection of children and vulnerable adults continues to be an issue of the highest priority. Over the last five months, there have been initial court proceedings in relation to serious child protection cases involving two community centres in Aberdeen.

While no legal agreement will absolutely prevent such incidents, the protection of children from significant harm or abuse is everyone’s responsibility. The Children (Scotland) Act 1995 places a duty on the local authority to safeguard and promote the welfare of children within their area who are in need. It also places a duty on the local authority to investigate if it believes that a child is suffering or is likely to suffer significant harm.

Advice from Grampian Police is such that the Council must attempt to put a suitably robust Management Agreement in place in order to minimise the risk to children and vulnerable adults.

Appendices D and E contain letters from Grampian Police Detective Superintendent responsible for the protection of children and adults, and the Chair of the Aberdeen Child Protection board to the Chief Executive of Aberdeen City Council.

- 5.3.1 One mechanism to help protect against any single member of the community having a position of power which may potentially increase the risks in this area, is through the governance structure of the Management Committee. In the report considered by this committee on 23 February 2012, within the Management Agreement, it was recommended that a clause preventing the roles of Management Committee office bearers and Centre Manager being held by the same individual be included within the Agreement.

However, in line with the decision taken at that committee, this clause has now been amended (and agreed by the representatives at the mediation) as follows:

“Whilst there is no prohibition on Association Committee Members or Office Bearers being employees of the community centre, the Association and the Council recognise that it is good practice that these roles are held by different persons. There shall be provision in each Association’s constitution for appropriate safeguards, which addresses the situation where this is not practicable.”

Another clause within the document requires a copy of the Constitution to be provided to the Council for approval. Therefore, while it will be up to each Management Committee to determine what provisions would be appropriate for their specific centre, the Council would require to satisfy themselves that the provisions were satisfactory. Such a provision may be, for example, a statement that the organisation would become Office of Scottish Charity Regulator OSCR registered, which would be considered as reasonable by the Council.

5.4 Lifelong Learning Provision

It is highlighted that the Management Agreement at Appendix B has been developed on the assumption that the Community Wings within 3Rs schools and within Torry Youth Centre will remain within the operation of the Council, for the provision of learning activities.

As per the decision of the Education, Culture and Sport Committee on 23 February 2012, officers are arranging to discuss the proposals with the Management Committees of these centres and will report back on these negotiations to the Education, Culture and Sport Committee in June.

6. IMPACT

This report relates to the Combined Community Plan and Single Outcome Agreement as follows:

- Protecting children and vulnerable adults
- People of all ages take an active part in their own learning to achieve their full potential Learning and training is appropriate and accessible to learner’s needs
- Children and young people access positive learning environments and develop their skills, confidence and self esteem to the fullest potential

- Children, young people and their families/carers are involved in decisions that affect them. Their voices heard and they play an active and responsible role in their communities
- Educational attainment in Aberdeen is continuously sustained and improved
- School leavers enter positive destination of employment, training or further and higher education with a focus on and support for young people who require More Choices and More Chances
- Children and young people actively participate in their communities and have optimum involvement in decision making
- All children, young people and their families have access to high quality services when required and services provide timely, proportionate and appropriate response that meeting the needs of children and young people within Getting it Right for Every Child, (GIRFEC) requirements
- Improve the quality of life in our most deprived areas
- Citizens are increasingly more active in their communities regardless of age, gender, sexual orientation, ethnic origin, where they live, disability or faith/religion/belief and contribute to 'active citizenship'
- Develop pathways to participation which enhance the diversity of local representation at and engagement with regional, national and international arts, heritage and sporting events
- Our public services are consistently high quality, continually improving, efficient and responsive to local people's needs

Public – This report will be of interest to the public, as the recommendations will impact on services delivered throughout the city.

An Equality and Human Rights Impact Assessment has been completed in respect of this budget decision.

7. **BACKGROUND PAPERS**

23/2/12 Education, Culture & Sport Committee, Community Centres

24/11/11 Education, Culture & Sport Committee, Community Development Fund – Childcare and Out of School Provision

24/11/11 Education, Culture & Sport Committee, Community Centres

15/9/11 Education, Culture & Sport Committee, Update on Implementation of Budget Decision - Reduce Communities Team

17/6/11 Finance & Resources Committee, Kaimhill Community Facilities – Update on Progress of Management Agreement

2/6/11 Education, Culture & Sport Committee, Update on Implementation of Budget Decision - Reduce Communities Team

24/3/11 Education, Culture & Sport Committee, Implementation of Budget Decision – Reduce Communities Team

8. **REPORT AUTHOR DETAILS**

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APPENDIX A: MEDIATION HEADS OF AGREEMENT
APPENDIX B: DRAFT MANAGEMENT AGREEMENT
*APPENDIX C: DRAFT LEASE
APPENDIX D: LETTER FROM DETECTIVE SUPERINTENDENT
APPENDIX E: LETTER FROM CHAIR OF ABERDEEN CHILD PROTECTION
BOARD
APPENDIX F: REPORT ON COMMUNITY CENTRES CONSIDERED AT
EDUCATION, CULTURE & SPORT COMMITTEE ON 23 FEBRUARY
2012

*TO FOLLOW IN A LATE PAPER

Heads of Agreement

This Agreement is made between:-

- (1) Aberdeen City Council, and
- (2) Aberdeen Community Centre representatives
through the mediation of
- (3) SOLACE Enterprises Ltd

This Agreement was made on:

- (4) the 14 March 2012
in the presence of
- (7) Ken Lloyd – SOLACE Enterprises Ltd Mediator

Agreement

The following settlement was produced as a result of the mediation held on 12, 13 & 14 March 2012 at the Doubletree Hilton Hotel, Aberdeen.

1. Settlement

- 1.1 The mediation addressed the Management Agreement, Schedules Part 1 & 2 and the Lease. Whilst all matters were discussed, it was not possible to complete the mediation of the lease document as the discussion needed the specialist input and consideration of Council officers who were not available. Full notes were taken by the Council representatives of any issues to be discussed and these will be pursued by the legal representatives of both parties without undue delay
- 1.2 With the exception of the items listed below (where agreement could not be reached) both parties agreed a revised Management Agreement and Schedules Part 2 & 3 (subject to a wording check following final revision).
- 1.3 The items not agreed were:

2. Personal Liability

- 2.1 The Management Agreement highlights the personal liability falling to Management Committee office holders and this is of concern to the Community centre representatives.
- 2.2 The Community Centre representatives consider that the cost of personal and legal liability insurance cover should be met by the Council.
- 2.3 The Council representatives were unable to agree to this. However, they agreed to bring to the attention of the Committee this issue, including indicative costs (to be provided by the legal advisor for the Community Centres), to allow the Committee to consider whether they would wish to provide additional funding to cover this additional insurance provision.

3. Potential Legal Action by the Council against Community Centres

- 3.1 There are two provisions in the Management Agreement that allow the Council to seek legal redress against the Community Centres in specified circumstances. These are:
- 3.2 Clause 2.2 provides for possible action against Management Committees where untrue or unfounded warranties are made when signing the agreement.
- 3.3 Clause 1.5 of Schedule 2 provides more generally for costs to be recovered from Management Committees, such as when a judgement of maladministration or injustice is made against the Council as a result of a fault on the part of the Management Committee.
- 3.4 The Community Centre representatives consider that these provisions should be removed.
- 3.5 The Council representatives were unable to agree to this.

4. Duration of the lease for Community Centres

- 4.1 The documentation provides for a lease of five years duration.
- 4.2 The Community Centre representatives consider that the leases should be for the duration of twenty years.
- 4.3 The Council representatives were unable to agree to this. However, they agreed that on a centre by centre basis they would provide assistance for Management Committees seeking to make a case to the Education

Committee to extend their lease from a standard five year period for a longer one, up to twenty years in duration.

The context for the Mediation

In the course of the mediation the parties gave undertakings that helped provide a positive environment for discussion. Some of these are now embodied in the revised Management Agreement and others of note included:

A. Working in the spirit of partnership

- Acceptance of an ethos that would engender two way partnership working
- Noting this could have benefits for access to lifelong learning.
- Recognition there is a burden of responsibility on voluntary associations and that there are limits to what can be reasonably expected of them.

B. Personal liability

- Seeking to reduce the amount of personal liability falling on Management Committees (as now built into the agreement and referred to in the non-agreed issues above).

C. Clarifying documentation

- Acceptance that the Management Handbook is a guidance document and not part of the mediation.
- Acceptance that the constitution is a model document which can be amended by Management Committees before submission to the Council for approval.
- Noting that the lease and management agreement would be considered together to provide consistency of wording.
- Noting that the legal representatives of both parties would need to jointly consider the documentation coming out of the mediation to consider the wording and any legal issues and make adjustments as necessary.
- Acceptance that the consultation draft of the committee report for the 28 March meeting would be seen by the legal representative of the Community Centres.
- Production of sample competitive tendering procedures to help Management Committees to meet the requirements of the Management Agreement.

D. Simplifying the move to a new organisational structure

- Provision of guidance, training and support to assist Management Committees take on the obligations in the management agreement.
- Provision of documentation and workshops to assist Management Committees who may wish to move to incorporated or charitable status.

E. Involvement in inspections.

- Acceptance that Community Centres would involve themselves in regulatory inspections if requested.

- Note the need to further explain how regulatory inspections work and what might be reasonably expected of Management Committees.

F. Other matters

- Accepting that where specific issues existed with Management Centres that would impact on the standard lease or management agreement then these variations would be included as an addendum to the standard document. For example this might cover lifts or provision of scaffolding for replacing lights in high hall ceilings.
- Accepting that spare space in Community Centres can be made available for lifelong learning opportunities.

Signed by

For and on behalf of

Signed by

For and on behalf of

MANAGEMENT AGREEMENT

BETWEEN

ABERDEEN CITY COUNCIL, the Local Authority for Aberdeen City in terms of the Local Government etc (Scotland) Act 1994 and having its principal office at the Town House, Broad Street, Aberdeen AB10 1AQ (hereinafter referred to as “the Council

and

[INSERT THE NAMES AND ADDRESSES OF OFFICE BEARERS] and their successors in office as Chairperson etc respectively of **THE MANAGEMENT COMMITTEE OF [INSERT NAME OF CENTRE] COMMUNITY CENTRE [INSERT ADDRESS OF CENTRE]** as Trustees ex officio for the said Management Committee (hereinafter referred to as “the Association”)

PURPOSE OF THE MANAGEMENT AGREEMENT

This Agreement outlines the terms and conditions under which the Association will operate the Premises for the benefit of the community in partnership with the council as detailed herein.

The Council recognises the burden of responsibilities it is requiring of the Associations in carrying out on its behalf the management and operation of the Council’s community centres. The Council recognises the limitations of time, expertise, financial and other resources available to the Association and will take cognisance of these matters in all their dealings with the Association.)

DURATION OF AGREEMENT

This Agreement will run for 5 years from date of signing.

CONTENTS

1. Core Elements of Agreement
2. Other requirements of Agreement
3. Break Out/ Step In Rights/ Termination of Agreement
4. Governing Law and Jurisdiction
5. Schedules

SCHEDULE PART 1– DEFINITIONS AND INTERPRETATIONS

SCHEDULE PART 2 - LEGISLATIVE REQUIREMENTS

SCHEDULE PART 3 – LEASE **[DELETE FOR NON-STAND ALONE CENTRES]**

SCHEDULE PART 4 - JANITORIAL ARRANGEMENTS **[DELETE FOR NON-COMMUNITY SCHOOLS]**

SCHEDULE PART 5 – COMMUNITY SCHOOLS REQUIREMENTS **[DELETE FOR NON-COMMUNITY SCHOOLS]**

SCHEDULE PART 6 – PLAN OF BUILDING

CORE ELEMENTS OF AGREEMENT

REQUIREMENTS OF COUNCIL

- 1.1 In return for operating the Premises for the benefit of the community and in compliance with the terms of this Agreement, the Council shall make payment of Development Grant funding to the Association. In respect of Financial Year 2012/13 the Council shall pay the sum of **[INSERT THE PRO RATA AMOUNT FOR YEAR 1]** POUNDS (£**[INSERT THE PRO RATA FIGURE FOR YEAR 1]**) STERLING. Thereafter, the Council shall make payment of annual Development Grant funding of TEN THOUSAND FIVE HUNDRED AND SIXTY FIVE POUNDS (£10,565.00) STERLING per annum. Payment shall be made quarterly in advance and shall be subject to the Association meeting the requirements of the Management Agreement.
- 1.2 The Council reserves the right to vary the amount of the Development Grant. In the event that the Council is required to exercise this right and as a consequence the Management Committee is unable to operate the Premises for the benefit of the community or otherwise comply with this Agreement then the Council and the Association shall agree any necessary amendment to this Agreement. In the event that amendments cannot be agreed, then the Association shall be entitled to terminate this Agreement subject to providing the Council with not less than 2 months' notice in writing.
- 1.3 The Council will pay directly the following bills and charges incurred in respect of the Premises i.e. all gas, electricity, water and sewerage bills, rental charges for the provision of a maximum of one broadband line, one telephone line and one alarm line, maintenance of all portable fire equipment, PAT testing, legionnaires testing, and refuse collection charges. Subject to clause 1.4, the Council will also arrange Public Liability and Employers Liability Insurance in respect of the Premises. All other bills and charges incurred by the Association will be payable by the Association. The Council will have a right of access to ensure that it is able to meet its requirements under this clause.
- 1.4 The level of insurance cover shall be no less than FIVE MILLION POUNDS (£5,000,000.00) STERLING for **Public Liability Insurance and TEN MILLION POUNDS (£10,000,000.00) STERLING for Employers Liability Insurance** and the Council shall arrange for the Association to be covered by this insurance and named on the policy. Payment for the insurance premium shall be deducted by the Council from the first instalment of the Development Grant in each Financial Year.
- 1.5 The Council's representative will meet with and receive updates from the Association on a regular basis in order to monitor this Agreement and any other requirements.
- 1.6 The Council will provide a range of relevant training opportunities, including the provision (for the purposes of guidance) of a Management Handbook together with additional support as reasonably requested by the Association. For the avoidance of doubt, the Management Handbook is for guidance only. The Council shall not be liable to the Association for the contents of the Management Handbook nor any guidance contained therein.
- 1.7 The Council may publicise or otherwise promote its workings with the Association as it considers appropriate, and the Association will make available to the Council reasonable access to information and documentation held by the Association which the Council may require to pursue this objective.

Comment [AA1]: ACC to confirm position re emergency lighting testing and rates. High lighting also to be confirmed

- 1.8 The Council will endeavour to notify the Association of the potential implications and impact of any new or changes to legislation which in the view of the Council may impact on the Association.

REQUIREMENTS OF THE ASSOCIATION

- 1.9 The Association will comply with all applicable law in operating the premises under the terms of this Agreement, including, but not limited to those set out in Schedule 2].
- 1.10 The Association will comply with all requirements preset out in the Council's Local Code of Practice, Funding External Bodies and Following the Public Pound policy. The Council will notify the Association of any material changes to this policy and will provide a copy of the amended policy to the Association on request.
- 1.11 In return for the provision of the insurance outlined at Clauses 1.3 and 1.4 above, the Association shall make payment of an insurance premium of **ONE HUNDRED AND TWENTY FIVE POUNDS (£125.00)** STERLING in respect of financial year 2012/13. The Council shall notify the Association of the amount of any premium payments for subsequent years. The Association shall not do nor omit to do anything which may or shall result in the said policy or policies of insurance being invalidated or the insurance thereunder prejudiced or which results in the Insurers refusing payment in whole or in part.
- 1.12 The cost of maintenance of all Moveable Equipment supplied to the Association by the Council, including any renewals required, shall be the responsibility of the Association, (except equipment as identified at **clause X**) all in accordance with the Property Maintenance Schedule, a copy of which is annexed to the lease (SCHEDULE 3 **AMEND FOR NON-STAND-ALONE CENTRES**).
- 1.13 The Association will organise a programme of activities in the Premises for the benefit of the Local Community, with or without levying an admission charge. The programme will be operated with due skill and care, and in accordance with the Law from time to time in force (including the law relating to employment and equalities). The management and funding of these activities shall be the responsibility of the Association. The Association may determine appropriate rates of hire for the Premises, and retain the monies accruing for the benefit of the running and operation of the Premises by the Association and for the benefit of the Local Community and in line with the aims and objectives of the Association. The programme and rates of hire must be submitted to the Community Centre Liaison Officer ("CCLO") on an annual basis (no later than 31st July in each year), and thereafter communicated via the Association Meeting Minutes/ Agendas submitted to the Council in the usual manner, and prior to any significant changes being implemented. In the event of the Council raising any reasonable concerns with regard to the rates of hire, the Association will act reasonably in addressing that concern.
- 1.14 The Association may also allow the Premises to be used by other groups and organisations upon such terms and conditions of letting as the Association may decide (subject to the provisions of the lease set out at SCHEDULE 3). **[TO BE AMENDED FOR COMMUNITY SCHOOLS]**

- 1.15 Where the Association does not utilise all of the available hours during which the Premises are open for delivery of the programme, then any unscheduled time shall in the first instance be offered to the Learning Partnership free of charge for an agreed duration. In the event that the Learning Partnership is not in a position to utilise the unscheduled time then the Association may make the Premises available for the use of other groups and organisations upon such terms and conditions of letting as the Association may decide, subject always to the terms of this Agreement.

Comment [AA2]: This clause is conditional upon the Committee agreeing to retain 3Rs community facilities for learning use.

- 1.16 The Association will permit the Council to hold meetings and conduct other activities in the Premises for all Council, Community Council and learning in the wider community purposes subject to any booking procedure as may be operated by the Association. The Association will make the Premises available for polling station and emergency response use, as required by the Council, subject to any pre-existing booking.
- 1.17 The Association may levy a membership fee and retain this income for the benefit of the running and operation of the Premises by the Association and for the benefit of the local community. Membership will be open to all sections of the community irrespective of their age, ethnic origin, religion, disability, sexual orientation or gender. The Association will demonstrate their commitment to anti-discrimination practices by publicising their fit for purpose Equal Opportunities policy.
- 1.18 Any staff including volunteers, appointed to work in the Premises will be directly accountable to the Association and the Association shall be responsible for ensuring that all staff and volunteers, as appropriate to their role, are sufficiently qualified, suitably trained and experienced, competent and capable, and be responsible for their welfare, health and safety, and for complying with all relevant legislation and good practice guidance, including having appropriate robust policies in place (these to include procedures relating to recruitment and selection, induction, supervision, training and appraisal equalities, disclosure checks and protection of vulnerable groups).
- 1.19 The Association and the Council acknowledge that performance of the Agreement may require some Association Personnel (which for the purposes of this Clause shall be deemed to include volunteers) to work with children, vulnerable adults or other members of the public to whom the Council owes a special duty of care ("Vulnerable Groups"). The Association must therefore ensure that it has appropriate policies in place in relation to Vulnerable Groups. The Association will ensure that staff including volunteers are appropriately trained and checked to enable the discharge of responsibilities for statutory requirements including the protection of children and vulnerable adult, health and safety and Inspection bodies.
- 1.20 The Association shall provide a means of identification for staff and individual members of the Association.
- 1.21 The Association will be responsible for ensuring that all necessary licences in connection with all activities and events in the Premises are in place, and that all the conditions contained in the said licences are complied with.
- 1.22 The Association may provide a catering service for the benefit of the users of the Premises, and may retain any profits for the benefit of the running and operation of the Premises. The Association will be responsible for ensuring that all relevant legal requirements and good practice guidelines are adhered to. Tobacco products are not permitted to be sold within the Premises.
- 1.23 The Association will provide the Council with a list of names, addresses and telephone numbers of all keyholders for the Premises and will notify the Council of any changes to the said list as soon as practical. There will be a minimum of two keyholders for the Premises at all times. In the event of the Association requiring to change the locks, then a set of new keys will be supplied to the Council in order to support emergency response. **[TO BE AMENDED FOR COMMUNITY SCHOOLS]**
- 1.24 The Association shall maintain proper accounts for the organisation and shall submit them annually to the Council for inspection by no later than 31st July in each year.

- 1.25 The Association shall adopt a Constitution in line with the model Constitution provided by the Council clearly stating, inter alia, the Associations aims and objectives; qualifications for membership; method of appointing officers; voting procedures; accounting arrangements and arrangements for annual meetings and dissolution of the Management Committee. A copy of the Constitution and any subsequent alterations must be provided to the Council for approval. The Council reserves the right to terminate this Agreement, if, in its opinion, the alterations would result in the organisation being run undemocratically or against the best interests of the community.
- 1.26 The Association will ensure that its meeting agendas and minutes are made publically available to all interested members of the community including the CLO in a timeous manner. The CLO will be notified of, provided papers for, and invited to attend all Association meetings. The Council may nominate a substitute to attend these meetings on behalf of the CLO.
- 1.27 Whilst there is no prohibition on Association Committee Members or Office Bearers being employees of the community centre, the Association and the Council recognise that it is good practice for these roles to be held by different persons. There shall be provision in the Association's Constitution for appropriate safeguards, which address a situation where this is not practicable. The local Councillors and youth members (under 16 year olds) are prohibited from holding Committee Office Bearer posts.
- 1.28 The Association shall be entitled to have a place on the local Learning Partnership.
- 1.29 The Association will allow the Council or its representatives reasonable access to carry out monitoring and audits as required. This shall include providing reasonable access to the Accounts Commission for Scotland, Audit Scotland, the Scottish Public Services Ombudsman and participating in learning inspections or equivalent by all inspection agencies.
- 1.30 The Association will manage themselves with due skill and care, and in line with recognised good practice and improvements as may be identified from time to time by the Council including internal or external auditors and other inspection agencies.
- 1.31 The Association shall not do anything, and shall inform the Council immediately it becomes aware of anything, connected with the performance of its obligations under this Agreement, which shall or is likely to bring the name of the Association or the Council into disrepute.
- 1.32 The Association will put in place a suitable complaints procedure.
- 1.33 The Association shall allow the Council to install and maintain at the Premises such signs, and commemorative material; and will include in promotional material an indication of the involvement of the Council as the Council may require. If any particular requirements of the Council cause additional expenditure which could not reasonably be anticipated by the Association or expected by the Council, then the Association shall provide a detailed breakdown of these costs to the Council and the Council shall pay to the Association such costs as it deems to be appropriate in the circumstances.
- 1.34 Where the Association actively seeks external funding including sponsorship and advertising then in doing so, the Association must not accept sponsorship or funding from any industry, individual or organisation that could potentially compromise this Agreement, or the ethos, principles, reputation and legal obligations of the Council. If there is any doubt as to whether the acceptance of sponsorship or advertising income could potentially compromise this Agreement or the ethos, principles and legal obligations of the Council, then the Association should seek formal agreement from the Council in

writing prior to finalising any arrangement.

- 1.35 If the Association wishes to close all or part of the Premises to the public for any period of time(s) then the Council will be notified at the earliest possible opportunity and at any event the Council will receive at least four weeks notice of any planned closure. In this event, the Council will have the right to provide an alternative programme of activities.
- 1.36 As far as practicable, the Association will comply with the Council's Out of School Care Policy in relation to the provision of childcare activities within the Centre.
- 1.37 The Association will ensure that all monies held by the Association are managed in a prudent manner in accordance with the terms of this Agreement, and solely for the purpose of or in connection with the Agreement and for no other purpose whatsoever.

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2. OTHER REQUIREMENTS OF AGREEMENT

2.1 Competitive Tendering/ State Aid

The Association will submit its competitive tendering procedure to the Council for approval and ensure that it follows the approved procedure in relation to all purchasing.

The Association will provide such information as is requested by the Council to enable the Council to meet its obligations in regards to State Aid Assessment and Notification as appropriate.

2.2 Warranties

The Association hereby further warrants to the Council that:-

- a. it has power to enter into this Agreement and has taken all necessary action to authorise its execution, completion and performance;
- b. this Agreement shall constitute legally binding obligations on the Association enforceable in accordance with its terms;
- c. it has entered into this Agreement in good faith
- d. the execution, delivery and performance of this Agreement does not or shall not contravene any of the provisions incorporated within the Association's Constitution, nor of any contract or other instrument to which the Association is a Party or which is binding upon its assets;
- e. it has accepted the condition all the Moveable Equipment supplied by the Council under this Agreement as is and satisfied itself that the equipment is suitable for the operation of the Programme of Activities for the duration of this Agreement and undertakes not to introduce any additional equipment into the Premises without the express consent of the Council; [TO BE DELETED FOR NON-3RS PREMISES]
- f. it shall comply as appropriate with all Council policies affecting the operation of the Programme of Activities, including but not limited to those on, Equal Opportunities, Child Protection, the Council's Lifelong Learning Strategy, and the Council's policies on sponsorship, all as the same may be amended or updated from time to time. The Council shall provide the Association on request with copies of any relevant policies;
- g. it shall exercise its business in good faith to enable the Association to have sufficient funds to meet its commitments when operating the Agreement at all times.

In the event of any of the matters included in any of the foregoing warranties being untrue or proving to be unfounded, the Council will be entitled to terminate the agreement forthwith and may take the appropriate legal action.

Comment [GW3]: Area of Disagreement with Community Centre representatives

2.3 Subject to the following provisions of this Clause, the Council hereby warrants to the Association that:-

- a. it has power to enter into this Agreement and has taken all necessary action to authorise its execution, completion and performance; and
- b. this Agreement shall constitute legally binding obligations on the Council enforceable in accordance with its terms.
- c. it has entered into this Agreement in good faith

- 2.4 In the event that the Association makes a claim (which must be received in writing by the council within six months) under any of the warranties which is admitted by the Council or otherwise determined in favour of the Association, the Association's exclusive remedy shall be the right to terminate this Agreement or be a payment by the Council to the Association of an amount equal to the loss or damage which the Association has suffered.

2.5 **Variation and Dispute Resolution**

The terms of this Agreement shall not be amended or altered except by mutual agreement in writing and signed by the duly authorised representatives of the Council and the Association. Any dispute or difference arising between the Parties in relation to the provisions of this Agreement will be determined by an expert to be agreed between the Parties. Failing agreement on an expert, either Party may apply to the Sheriff Principal of Grampian, Highlands and Islands for the appointment of such an expert.

Notwithstanding the method of appointment of the expert, it shall be an express condition of appointment that any decisions will be issued within 14 days of a joint statement by both Parties, such Parties being obliged to act reasonably and expeditiously in the preparation of such statement. Any decision issued by such an expert shall be binding on both Parties except in the event of a manifest error in fact or in law. The appointed expert shall determine the party liable for the costs of the appointment (including how those costs may be apportioned).

3. **BREAK OUT/ STEP IN RIGHTS/ TERMINATION OF AGREEMENT ARRANGEMENTS**

- 3.1 Termination: This Agreement may be terminated by the Council on the happening of any one or more of the following events:-

- a. In the event that the Association is in breach of any of the provisions of this Agreement
- b. if the Management Committee has failed to pay any sum due under the terms of this Agreement and any such sum remains unpaid for 60 Days from the date of service of a notice by the Council advising of non-payment and demanding payment of the sums due
- c. if an order is made or an effective resolution is passed for the dissolution of or winding-up of the Association or if an administration order is granted in respect of the Association;
- d. if, subsequent to any Court Action, any diligence, execution or sequestration or other process be issued upon or against any of the property of the Association and is not paid or discharged within seven days;
- e. if any security created by any heritable security or charge executed by the Association or any subsidiary of the Association shall become enforceable and the Holder shall take any steps to enforce the same.
- f. if the Association is deemed to have operated at any time outside the terms of its Constitution, Articles of Incorporation or other related document which defines the nature of and governance structures of the Association.
- g. If the Association fails to meet or there are insufficient members of the Association to constitute a quorum at meetings for a period of 6 months; or
- h. If any period of closure of the Premises to the public lasts for longer than one month (unless the closure has been approved by the Council).

Comment [GW4]: Area of Disagreement with Community Centre representatives

- 3.2 Provided that in the event that any of the foregoing breaches is or are remediable the Council shall not terminate this Agreement unless it has first given notice to the Association specifying the breach in question, and given the Association no more than 20 Working Days to remedy the same and the Association has failed to so remedy the breach. In these circumstances, the Council shall be entitled to thereafter immediately terminate by written notice.
- 3.3 In the event that the Lease of the Premises is terminated for whatever reason, then this Agreement shall immediately terminate as at the same date, without the need for any further action on the part of either party.
- 3.4 On termination of the agreement, the Council shall be entitled to put in place alternative arrangements for the delivery of activities within the Premises.
- 3.5 In addition, the Council may by giving not less than twelve months' notice in writing to the Association (or such shorter period of notice as is necessary in any case to ensure the Council's continuing compliance with the Law), terminate this Agreement where it determines that:-
- a. changes in Council policy; and/or
 - b. changes in budgetary considerations on the part of the Council; and/or
 - c. changes in Law; and/or
 - d. acts or omissions on the part of the Scottish Government may make this necessary or desirable.
- 3.6 The Association may terminate this Agreement immediately by written notice to the Council if the Council commits a material breach of this Agreement, and fails to remedy that breach within 20 Working Days of the Council's receipt of written notice from the Association specifying the breach, and asking the Council to remedy it.
- 3.7 The Association may terminate this Agreement by giving 3 months written notice to the Council.
- 3.8 In the case of termination, the Council and the Association shall take all action (so far as is possible) to put the Parties in the same position as they would have been in had they not entered into this Agreement. The Council undertakes to ensure as far as possible that the arrangements contemplated by this Agreement are brought to an end in such a way that the Association is not rendered insolvent at the date of termination of this Agreement, as a direct result of the termination of this Agreement pursuant to this Clause.
- 3.9 On termination of this Agreement for any reason whatsoever:-
- a. With effect from the date of termination of this Agreement by the Council the Moveable Equipment shall immediately transfer to such other charitable organisation with similar objects to those of the Association and operating for the benefit of the Local Community. If this cannot be achieved, the Moveable Equipment will be transferred to the Council for distribution for similar purposes elsewhere in the city;
 - b. the Association shall transfer to the Council the benefit, subject to the burden, of any event bookings as the Council may direct, and the Association shall use all reasonable endeavours to ensure that all necessary consents are obtained to the transfer to the Council of each of the event bookings requested by the Council

- c. the Association shall, as far as practicable, co-operate fully with the Council and any person who shall in future operate the Programme of Activities or provide services the same as or similar to those provided under this Agreement or any of them or any part of them in order to achieve a smooth transition from the then arrangements for the operation of the Premises to the new arrangements, and to avoid any inconvenience to, or any risk to the health and safety of, the Council, employees and agents, and members of the public;
- d. the Association shall on or prior to the date of termination of this Agreement vacate the Premises, leaving it in a clean and orderly condition and deliver to the Council any keys to the Premises and any computer programs, records and data relating to the Services and the Premises, and within twenty Working Days remove from the Premises all of its own property not required by the Council.

3.10 Step In Rights: Without prejudice to any other right or remedy of the Council under this Agreement, if the Council reasonably considers that a breach by the Association of an obligation under this Agreement may or will:

- a. create (or has already created) an immediate and serious threat to health, safety or the environment; or
- b. result (or has already resulted) in a interruption to or disruption of the operation of the Premises and/or the Services (including the Programme of Activity) to be provided under this Agreement or;
- c. cause (or has already caused) a material breach by the Council of its obligations under Law, or to other contractual parties or;
- d. cause (or has already caused) a serious nuisance: or
- e. that the circumstances constitute an emergency;

then, if the Council considers that there is sufficient time and that it is likely that the Association will be willing and able to provide assistance, the Council may serve a Notice on the Association requiring it forthwith to take such steps as the Council, acting reasonably, considers necessary or expedient to mitigate or preclude such state of affairs including any necessary deadlines within which such steps must be taken.

In this instance, the Association shall use all reasonable endeavours to comply with any Notice given. This shall include full co-operation and all reasonable assistance, including reimbursing the Council for all reasonable costs incurred by the Council in taking such action. Failure to comply will result in immediate suspension or termination of this Agreement. In the event of termination, the Association may be given not less than two working days notice to vacate the Premises.

Comment [GW5]: Area of disagreement with Community Centre representatives

- 3.11 The Council shall have no liability to the Association for any damage which has occurred prior to the exercise by the Council of its step-in rights under this Clause , or which results from breach by the Association of any of its obligations under this Agreement, but shall be liable for any damage or liability caused by or attributable to the negligent acts or omissions of it or its employees, agents or contractors during any period during which it exercises such step-in rights.
- 3.12 Where an "Emergency" arises, and that Emergency consists of an event or events which could not reasonably have been foreseen by the Association, if the Council has not served a Notice on the Association or exercised its step-in rights, and the Association has used all reasonable endeavours to deal with the Emergency (and demonstrated to the Council's reasonable satisfaction that it has done so) but

has nevertheless failed to satisfactorily bring the emergency to an end; or the Council has served a Notice on the Association and the Association has used all reasonable endeavours to comply with such Notice, but has nevertheless failed to so comply to the reasonable satisfaction of the Council; then the Association shall have the right to require the Council to exercise its step-in rights to deal with the emergency.

- 3.13 The Council shall be entitled to close down the Premises without notice, in the event of an Emergency or any other unforeseen circumstance. For the avoidance of doubt, this includes where the Council is directed to close the Premises on the advice or instruction of its contractor. In these circumstances, the Council shall not incur any liability to the Association.
- 3.14 In the event that the Premises are closed to the public through no act or omission on the part of the Association and remain closed for a period of time, the Council shall provide such support to the Association as is reasonable in the circumstances, in order to assist the Association in securing suitable alternative premises or otherwise making arrangements for the delivery of the Programme of Activity. In addition the Council shall assist the Association in identifying possible mechanisms or arrangements which mitigate the financial impact of any unforeseen closure of the Premises in accordance with this Clause.

4. GOVERNING LAW AND JURISDICTION

- 4.1 This Agreement shall be governed by, and interpreted in accordance with Scots Law. Aberdeen Sheriff Court shall have exclusive jurisdiction to settle any disputes (including claims for set-off and counter claims) which may arise in connection with the validity, effect, interpretation, or performance of the legal relationship established by this Agreement or otherwise arising in accordance with this Agreement. IN WITNESS WHEREOF these presents typewritten on this and the [insert number of pages] preceding pages, together with the Schedule annexed are executed as follows

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN ABERDEEN CITY
COUNCIL AND THE ASSOCIATION OF [INSERT NAME] COMMUNITY CENTRE**

SCHEDULE PART 1– DEFINITIONS AND INTERPRETATIONS [to be finalised]

- 1.1. In this Agreement the following words and expressions shall have the following meanings (unless a specific clause states otherwise):-
- 1.1.1 "Agreement" means this management agreement between the Council and the Management Committee;
- 1.1.2 "Community Centre Liaison Officer" means that member of the Council's staff with responsibility for monitoring the performance of and communicating or otherwise liaising with the Management Committee;
- 1.1.3 "Commencement Date" means [INSERT DATE] 2012 notwithstanding the date or dates of signature of this Agreement;
- 1.1.4 "Connected Person" means any legal person (including a company, individual or association, corporate or unincorporated, which has a substantial interest in the Management Committee or which is owned or controlled by the Management Committee;
- 1.1.5 "DPA" means the Data Protection Act 1998;
- 1.1.6 "EIR" means the Environmental Information (Scotland) Regulations 2004;
- 1.1.7 "Equalities Law" includes the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Rights Act 1996, the Employment Act 2002, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Work and Families Act 2006, the Equality Act 2006, the Equality Act (Sexual Orientation) Regulations 2007 and the Equalities Act 2010, whether now or hereafter in effect.
- 1.1.8 "Premises" means [DELETE AS APPROPRIATE]
{OPTION 1 (3Rs & Community Schools) the following rooms within [INSERT NAME OF 3Rs or Community SCHOOL] 3Rs School, [INSERT ADDRESS OF SCHOOL]:
[INSERT LIST OF ROOMS]}
OR
{OPTION 2 (leased Centres) the premises known as and comprising [INSERT NAME AND ADDRESS OF PREMISES] as detailed within the lease attached at Part 6 of the Schedule.
- 1.1.9 "Financial Year" means the term of twelve months commencing on 1st April and ending on 31st March;
- 1.1.10 "FOISA" means the Freedom of Information (Scotland) Act 2002 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation;

- 1.1.11 "Information" has the meaning given to that term under section 73 of FOISA and, for the avoidance of doubt, includes this Agreement and any information (including the Management Committee's Confidential Information) disclosed hereunder;
- 1.1.12 "Law" means any applicable law, enactment, statute, proclamation, bye-law, directive, decision, court decree, regulation, rule, order, notice, rule of court or delegated or subordinate legislation, whether now or hereafter in effect;
- 1.1.13 "Association Party" means the Association's sub-contractors, agents; contractors, or any other party for whom the Association is liable at law;
- 1.1.14 "Association Personnel" means all employees of the Association and/or any Association Party or Connected Person under the control or direction of the Management Committee.
- 1.1.15 "Parties to the Agreement" means the Council and the Association, with each individually being referred to as a "Party".
- 1.1.16 "Development Grant" means the funding to be provided by the Council to the Association in return for delivery of the Services.
- 1.1.17 "Personal Data" and "Process" bear the meaning given to them in the DPA;
- 1.1.18 "Programme of Activities" means the overall programme of activities delivered in the Premises in accordance with the terms of this Agreement;
- 1.1.19 "PVG" means the Protection of Vulnerable Groups (Scotland) Act 2007 and the Protection of Vulnerable Groups Scheme
- 1.1.20 "Request for Information" means a request for information or an apparent request under FOISA or EIR;
- 1.1.21 "Services" means all of the services to be provided from time to time by the Management Committee to the general public pursuant to this Agreement, including the Programme of Activity
- 1.1.22 "Termination Date" means [INSERT DATE ONE YEAR AFTER COMMENCEMENT DATE] or such earlier date in the event that either Party invokes its rights to terminate this Agreement.
- 1.1.23 "Vulnerable Groups" bears the meaning given to it in Clause X;
- 1.1.24 "Working Days" means Monday to Friday excluding bank holidays in the United Kingdom and public holidays in Aberdeen.
- 1.1.25 "Charges" means the agreed list of fees or charges which may be levied by the Management Committee to users of the Services in return for participation in defined activities.
- 1.1.26 "Lease" means the lease agreement to be entered into between the Council and the Management Committee which governs the Management Committee's occupation and use of the Facility and which comprises Part 6 of the Schedule.[TO BE DELETED FOR A NON-STAND ALONE FACILITY]
- 1.1.27 "Emergency " means any event unforeseen by the Council affecting the Programme of Activities or Premises, whether directly or indirectly, which causes or has the potential to cause an immediate and imminent threat to the long term integrity of any part of the Programme of Activities or Premises or to

land adjacent to, or likely to be affected by events on, any part of the Premises.

Potential definitions

Management Handbook – a range of information and sample policies provided for the purposes of guidance.

Moveable Equipment

Property Maintenance Schedule

Local Community

Out of School Care Policy

Lifelong Learning Strategy

Schedule

Representative

Scottish Ministers' Code of Practice

Services

1.2. In this Agreement:

- a. any reference to a provision of a statute includes references to that provision as amended, extended or applied by any other provision regardless of whether the other provision became law before or after this Agreement, any re-enactment of that provision (with or without change); and any regulation, order, code of practice or similar thing having the force of law made (before or after this Agreement) under that provision or any provision falling within Clause 1.2(a) above
- b. the singular shall include the plural and vice versa and reference to one gender shall include any other gender;
- c. "including" shall mean "including but not limited to"; and
- d. reference to a Clause or a Sub-Clause is to the relevant clause or sub-clause of this Agreement, unless otherwise stated.

1.3. In the event of any ambiguity or contradiction between the conditions of any documents forming part of this Agreement, then the documents shall be given precedence in the order listed below:

- a. This Agreement
- b. Any other documents forming part of the Schedule.

SCHEDULE PART 2 - LEGISLATIVE REQUIREMENTS

1.1 Corrupt/ Illegal Practices/ Bribery Act 2010

The Association is responsible for ensuring that the requirements of the Bribery Act 2010 are met. The Council shall be entitled to cancel this Agreement and to recover from the Association the amount of any loss or damage resulting from such cancellation if: -

- a. the Association shall have offered, or given, or received, or agreed to give to any person any gift, consideration, inducement or award of any kind for doing or not doing any action in relation to this Agreement or any other agreement with the Council; or
- b. like acts shall have been done by any Association Personnel, Association Party or Connected Person or acting on behalf of the Association (whether with or without the knowledge of the Management Committee); or
- c. in relation to any agreement with the Council, the Association or persons employed by the Association or acting on behalf of the Association shall have committed any offence under the

- Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 or have given any fee or reward, the receipt of which is an offence under any legislation pertaining to Local Authorities; or
- d. the Association or its representative (whether with or without the knowledge of the Association) shall have practised collusion in relation to this Agreement or any tendering for any other contract with the Council or shall have employed illegal practices either in obtaining or executing this Agreement or any other contract with the Council.

1.2 Data Protection/ Confidentiality

The Council and the Association hereby agree to ensure that they will at all times comply with the provisions and obligations imposed by DPA and the data protection principles contained in Schedule 1 of DPA in Processing Personal Data. In Processing Personal Data on behalf of the Council, the Association shall comply with the said data protection principles, act at all times in accordance with the instructions of the Council as data controller and generally do nothing to compromise the Council's compliance with its obligations as data controller.

Both parties agree to save, indemnify, defend and hold harmless each other in respect of any unauthorised disclosure or other Processing of Personal Data.

Comment [GW6]: Area of disagreement with Community Centre Representatives

The Association recognises that under this Agreement it may receive confidential or proprietary information of the Council. The Association agrees not to divulge such information to any person, except to Association Personnel and then only to those Association Personnel who need to know the same for the performance of the Services, without the Council's prior written consent. Further, the Association shall prevent disclosure or access by any third party other than in accordance with the provisions of the Agreement. The Association shall ensure that Association Personnel are aware of and are complying with the provisions of this Clause. This obligation will survive the termination of this Agreement.

1.3 Freedom of Information Scotland Act (FOISA) and Environmental Information Regulations (EIR)

The Association acknowledges that the Council is subject to the requirements of FOISA and EIR and shall assist and co-operate with the Council at no additional charge, in meeting any reasonable requests for information in relation to this Agreement, or the Services to be provided hereunder, which are made to the Council in connection with FOISA or EIR. The Council may, from time to time, serve on the Association an information notice requiring the Association within such time and in such form as specified in the information notice to furnish to the Council such information as the Council may reasonably require relating to such requests for information. The Association acknowledges that in responding to such requests for information, the Council shall be entitled to provide information relating to this Agreement or the Services to be provided hereunder.

The Association shall not respond directly to any requests for Information made under FOISA or EIR but shall instead pass these to the Council within two Working Days of receipt of the same or advise the applicant accordingly.

The Council shall be responsible for determining in its absolute discretion:- whether any Information is exempt from disclosure in accordance with the provisions of FOISA or EIR; and/or whether the disclosure of any of the Information is otherwise in the public interest (whether or not such information would otherwise be exempt from disclosure under FOISA or EIR);

The Association acknowledges that the Council may, acting in accordance with the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under FOISA, disclose, or publish

through its publication scheme, any Information without consulting or obtaining consent from the Association, or having taken the Association's views into account.

1.4 **Equal Opportunities**

The Association shall provide a copy of its Equal Opportunities Policy, which upon execution of this Agreement shall be deemed to be part hereof. The Association warrants that this policy complies with the statutory obligations set down in the Equality Act 2010 and that it shall not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin, gender, disability, religion or belief, age or sexual orientation in relation to the decisions to recruit, train or promote Association Personnel, volunteers nor in the provision of the Services.

The Association shall observe as far as possible the Commission for Racial Equality's Code of Practice for Employment as approved by Parliament in 2006, or any other guidance which supersedes the Code of Practice, which gives practical guidance to employers and other in the elimination of racial discrimination and the promotion of equality of opportunity in employment, including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities. If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Association, then the Association shall take all necessary steps to prevent recurrence of such unlawful discrimination.

1.5 **General**

The Association will co-operate fully with any legal proceedings, enquiry, arbitration or investigation (including an investigation by the Scottish Public Services Ombudsman) arising out of the operation of the Premises by the Association or the arrangements set out in this Agreement generally, and the Association shall give evidence in such enquiries, arbitrations, proceedings and hearings without cost to the Council. Notwithstanding the above, in the event that the Local Government Ombudsman makes a finding of maladministration or injustice against the Council as a result of fault on the part of the Association, the Council reserves the right to recover from the Association any payments made by the Council to the complainant.

Comment [GW7]: Area of disagreement with the Community Centre Representatives

In performing this Agreement, the Management Committee shall accept full responsibility for and shall save, indemnify, defend and hold harmless the Council and any of the Council's contractors and its and their staff from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities in respect of the Management Committee's and its Connected Persons, Management Committee Party and Management Committee Personnel's non-compliance with all applicable laws, statutes, rules and regulations; or which arise out of the personal injury to or the death of Management Committee Personnel; or which arise out loss of or damage to the Management Committee's property and the property of any Connected Person, Management Committee Party or Management Committee Personnel whether owned, hired, leased or otherwise provided by the Management Committee arising from or related to the purposes of this Agreement; or which may at any time be made arising as a result of the wilful or negligent acts of the Management Committee, any Connected Person, the Management Committee Personnel or any Management Committee Party in connection with the operation of the Programme of Activity; or in respect of personal injury to or death of any Third Party as a result of the operation of the Programme of Activities by the Management Committee; or any claims, losses, damages, costs (including legal costs), expenses and liabilities loss or damage caused to any land, structure, building moveable property (including the Moveable Assets) in the ownership, occupation or

possession of or partial occupation or possession of the Council by Management Committee Personnel (whether such damage was caused by negligence or in any other way whatsoever); and any payment made by the Council to a complainant following a finding of misadministration causing injustice by the Scottish Public Services Ombudsman where such finding results from any act or omission of the Management Committee or any Management Committee Party or Management Committee Personnel.

In performing this Agreement, the Council shall be responsible for and shall save, indemnify, defend and hold harmless the Management Committee from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of personal injury including death or disease to Management Committee Personnel which is caused by the wilful or negligent acts of the Council or its staff during the course of their employment but not in any other way whatsoever, or loss or damage to the Management Committee's property which is caused by the wilful or negligent acts of the Council or its staff during the course of their employment but not in any other way whatsoever.

Comment [GW8]: Discussions ongoing with legal advisors in relation to these clauses

Any information provided to the Association by the Council by way of guide quantities, plans, drawings, reports, databases, files or similar information at any time (including for the avoidance of doubt any guidance and the Management Handbook), is provided only as a guide. The Association agrees that it has ascertained for itself the accuracy of the information and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Management Committee's decision to enter into this Agreement. No claim against the Council shall be allowed whether in contract, in delict or otherwise on the grounds of any inaccuracy.

The Council accepts no liability or responsibility for any loss arising as a result of failure of the Management Committee to follow the requirements of this Agreement, or for any loss, damage, injury howsoever occasioned incurred as a result of the Association delivering the Services by way of the methods detailed in any documentation submitted by or to the Council as required or otherwise authorised by this Agreement. No liability will be held against the Council for any loss, damage, injury howsoever occasioned incurred as a result of the Council curtailing any activity in terms of Step In Rights or Termination of this Agreement.

Comment [GW9]: Discussions ongoing with legal advisors in relation to this clause

Where consent or approval is referred to this is taken to be prior written consent and no claim shall lie against the Council in respect of any delay in processing or refusal to grant such consent. The Council will respond to a request for consent within a reasonable timescale. Further no claims shall be against the Council in respect of any actions taken by the Association as a consequence of the grant of such consent or approval.

1.6 **Assignment/Sub-Contracting**

The Council shall at its own discretion, be entitled to assign this Agreement or any part of it or any benefit or interest in it to any of its statutory successors or shall be entitled to assign at its own discretion this Agreement or any part of it or any benefit or interest in it to any other legal body or organisation, whether or not wholly owned or partially owned by the Council, which the Council may come into an arrangement with pertaining to the management or otherwise the operation of this Agreement.

- a. Should the Council be affected by re-organisation by legislation resulting in a structural change or amendment to its functions the Parties hereto agree that this will result in a formal assignation of

this Agreement having taken place by operation of Law. In this event, the Association shall use all reasonable endeavours to assist in the smooth transfer of arrangements to facilitate this assignation.

- b. The Association shall in no circumstances assign, sub-let, or purport to assign this Agreement or any part of it or benefit to or interest in it to any person whomsoever without the prior written approval of the Council.
- c. The Association shall not sub-contract any part of this Agreement without the Council's prior written consent. Notwithstanding such consent, the Association shall not be relieved from any liabilities or obligations under this Agreement and shall be responsible for the acts, omissions and breaches of any of its sub-contractors as fully as if they were the Association's own and shall save, defend, indemnify and hold harmless the Council from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities in respect of such, acts, omissions and breaches of its sub-contractors.
- d. Where consent to sub-contracting is granted, the Association shall provide each of its sub-contractors with a copy of this Agreement. Prior to its sub-contractor commencing work, the Association shall obtain a written undertaking from its subcontractor that its sub-contractor is familiar with the documentation and will act fully in conformity with the terms and Conditions contained therein insofar as relevant to the Association.

1.6 Notices

Where any notice or other communication is to be made under this Agreement, it must be in writing to the chairperson/ secretary **[to be deleted as appropriate]** of the Association. Notices or communications will be sent by recorded or special delivery to, the address of the Party given at the start of this Agreement or any other address they may nominate in writing from time to time in accordance with this Clause.

Any notice or communication shall be treated as having been received by the person to whom it is addressed two Working Days following the date of dispatch of the notice by post. However, where in any case, these rules would result in a notice or communication being treated as having been received on a day that is not a Working Day, it shall be treated as having been received on the next Working Day afterwards. To prove the giving of the notice it shall be sufficient to show it was properly dispatched.

1.7 Force Majeure

In the event of an Act of God or Force Majeure (which shall include acts of government, fire, tempest, acts of war and related matters, which are both beyond the control of the Association and are such that the Association with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the performance of the Services, the duty of the Association to perform the Services shall be suspended until such circumstances have ceased. The Council shall not be liable to make any payment to the Association in respect of such suspension. Any development grant already paid to the Association will not be reclaimed by the Council in the event of Force Majeure or an Act of God.

For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties and failure to provide adequate premises, equipment, materials, consumables and/or staff or similar matters are not to be considered as events of Force Majeure or Acts of God.

SCHEDULE PART 3 – LEASE **[DELETE FOR NON-STAND ALONE CENTRES]**

SCHEDULE PART 4 - JANITORIAL ARRANGEMENTS **[DELETE FOR NON-COMMUNITY SCHOOLS]**

SCHEDULE PART 5 – COMMUNITY SCHOOLS REQUIREMENTS **[DELETE FOR NON-COMMUNITY SCHOOLS]**

- Core hours
- Out of core hours fee
- Childcare activities
- Reporting of Damage

SCHEDULE PART 6 – PLAN OF BUILDING

DRAFT



GRAMPIAN
P · O · L · I · C · E

Keeping our communities safe

Office of Chief Executive
Aberdeen City Council

14 NOV 2011

Crime Management
Police Headquarters
Queen Street
Aberdeen
AB10 1ZA

Our Ref: CMBA/BY
Your Ref:

Date: 11 November 2011

Tel: 01224 306075
Fax: 01224 306032
ServiceCentre@grampian.pnn.police.uk
www.grampian.police.uk

Mrs Valerie Watts
Chief Executive
Aberdeen City Council
Marischal College
Broad Street
ABERDEEN
AB10 1XJ

Dear Mrs Watts

In early October 2011, Grampian Police dealt with a case of intra familial sexual abuse. A male was subsequently charged with a number of offences and is shortly to appear in court. It transpires that the man concerned played a leading role in a Community Centre within Aberdeen City.

I took the decision that in order to protect the public, information should be disclosed to senior officials within the Council in order that appropriate steps could be taken to minimise the risk to the public and so that the Council could consider taking any action they deemed necessary, such as the temporary suspension of the individual involved.

After a great deal of effort on the part of Council staff, this was achieved, however, during the process, I was informed that the Community Centre receives funding from the City Council and is run by a Voluntary Management Committee through a leasing arrangement. As such, the individual is not employed by the Council but the Voluntary Management Committee. It became apparent that the Committee had little awareness of their ability or duty to suspend an individual in such circumstances. Perhaps more worryingly, it transpired that by the very nature of Community Management Groups, the members were on friendly terms with the individual concerned.

To my mind, this creates a number of difficulties.

Firstly, the lack of awareness of Management Committees as to their responsibilities in such a situation. However well intentioned members of such groups are in relation to enhancing facilities within their own communities, there remains a gap in their knowledge which needs to be addressed.

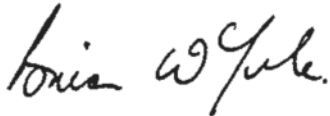
Secondly, because of the close knit nature of our communities, it is almost inevitable that those on Management Committees will have personal relationships with those who are employed by them. This has obvious confidentiality issues and may present difficulties for them in carrying out their duties.

Thirdly, it raises issues about how the Council ensures that Community Centres are safe places for children and vulnerable adults. Potentially, such incidents could be taking place without appropriate safeguards being put in place and without the Council being made aware of the associated risks. The current funding arrangements do not appear to have sufficient safeguards and reporting requirements to enable the City Council to discharge its duties to protect children and vulnerable adults. In this case, Council Officers were able only to advise and encourage members of the Management Committee to take the appropriate action to issue a precautionary suspension to their employee.

It is my understanding that the Council is currently negotiating a management agreement as all Community Centres transfer to the leased model. Recent events have demonstrated that the City Council should consider appropriate arrangements to ensure that these community facilities are safe for children and vulnerable adults.

I would be very happy to discuss this further and can brief Officers and elected members on the risks and their obligations to protect the community.

Yours sincerely

A handwritten signature in black ink that reads "Brian Yule". The signature is written in a cursive style with a large initial 'B' and a stylized 'Y'.

Brian Yule
Detective Superintendent

Our Ref. FM/DL
Your Ref.
Contact Fred McBride
Email frmcbride@aberdeencity.gov.uk
Direct Dial 01224 52 3797
Direct Fax 01224 52 3195



ABERDEEN
CITY COUNCIL

21 March 2012

Valerie Watts
Chief Executive
Aberdeen City Council
Town House
Aberdeen

Social Care and Wellbeing

Aberdeen City Council
Business Hub 12
Second Floor West
Marischal College
Broad Street
Aberdeen
AB10 1AB

Tel 08456 08 09 10
Minicom 01224 522381
DX 529451, Aberdeen 9
www.aberdeencity.gov.uk

Dear Valerie

Contractual Arrangements with Community Centres in Aberdeen

I am writing to you as the Chair of the Aberdeen City Child Protection Sub-Committee and as Chief Social Work Officer of Aberdeen City Council in relation to the proposed contractual arrangements with Community Centres.

The National Guidance for Child Protection in Scotland outlines the collective responsibility of all 'agencies, professional bodies and services that deliver adult and/or child services' to recognise and actively consider potential risks to a child.' The Children (Scotland) Act 1995 places a specific duty on the local authority to 'safeguard and promote' the welfare of children within their area, and places a duty on the local authority to investigate if it believes that a child is suffering, or is likely to suffer, significant harm.

Aberdeen City Council's Protecting Children Policy (2007) states that 'the Council must work with its partners to make the city a safer place for children and young people through prevention, protection and support.' The policy covers the services provided by the local authority; all services commissioned by the local authority; all services delivered in buildings owned by the local authority. It applies to all paid employees, volunteers and contractors.

The Protection Children Policy states that all external organisations, independent sports clubs and other organisations must have Child Protection policies in place, and must adhere to the Child Protection Guidelines issued by the North East of Scotland Child Protection Committee.

In addition to the responsibility to be actively involved in the protection children, all citizens have a responsibility to participate in the protection of adults at risk of harm (Grampian Adult Protection Procedures).

FRED McBRIDE
DIRECTOR



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The Adult Support and Protection (Scotland) Act 2007 places specific duties on the local authority to make enquiries and investigate the circumstances of adults who may be at risk of harm.

Public protection is a Scottish Government priority, with specific risks being dealt with by having effective Multi Agency Public Protection Arrangements (MAPPA) in place.

The protection of children, of adults at risk of harm, and of the public relies heavily on the co-operation of all agencies, organisations and bodies involved in the delivery of services to the public. As such, there is an expectation that these agencies, organisations and bodies will comply with the requirements of the North East of Scotland Child Protection Guidelines, the Grampian Adult Protection Procedures, and the MAPPA arrangements. In addition, we expect that agencies will individually take steps to ensure that they are not employing or contracting services people who may cause harm to adults or children. In order to provide assurance of this, it is therefore essential that the contractual agreement with the leased community centres contain the following clauses:

- 1 Each community centre management group must nominate a child protection lead who will be responsible for ensuring that the centre, staff and volunteers adhere to the North East of Scotland Child Protection Guidelines.
- 2 Each community centre must have a child protection policy which describes how they will ensure that children will be protected from harm and the actions that the staff and volunteers will take if harm is suspected. The child protection policy must be submitted to the local authority for approval prior to the centre operating and will be reviewed on an annual basis by the local authority. Each centre will be expected to demonstrate how it has applied the principles of the policy in practice and how it has responded to concerns.
- 3 Each community centre management group must have in place safe recruitment practices for staff and volunteers, including the management group, which clearly evidence the steps taken to ensure that everyone providing services on behalf of the management group have been recruited safely and that there is no information or evidence of previous or current risk to children or adults.
- 4 Each community centre management group must ensure that all staff and volunteers complete Level 1 training in child and adult protection so that they clearly understand their responsibilities to:
 - protect adults and children from harm
 - share concerns if they suspect that an adult or child may be at risk of harm
 - record and store information about adult or child protection concerns safely
- 5 Each community centre management group must ensure that staff adhere to the Grampian Adult Protection Procedures and that all concerns about adults at risk of harm are reported using the agreed process.

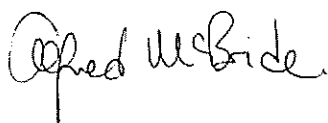
- 6 Each community centre must ensure that all staff and volunteers doing regulated work with children are members of the PVG Scheme (Protection of Vulnerable Groups). Centres will be expected to demonstrate that they have reviewed the need for PVG Scheme membership for each employee or volunteer on a regular basis.
- 7 Each community centre management group must ensure that all external organisations using the building to deliver services to adults, children or young people:-
- understand that the Aberdeen City Council Protection Children Policy applies to them
 - are given a copy of the centre's Child Protection Policy
 - understand that they have a responsibility to ensure that their staff and volunteers have sufficient knowledge and understanding about their responsibilities to protect adults and children from risk of harm
 - agree to abide by the North East of Scotland Child Protection Guidelines and the Grampian Adult Protection Procedures
 - External organisations refusing to comply with these conditions should not be permitted to use the centre.
- 8 The local authority reserves the right to suspend or terminate the lease of the community centre if it becomes evident that the community centre management group is unable or unwilling to abide by these conditions.

In the absence of these conditions within the contractual arrangements with the leased community centres, the centre's management group and the local authority would be highly culpable for any harm caused to vulnerable children and adults in the course of the centre's business.

The management groups for the leased centres can access support and guidance to comply with the conditions set out above, specifically in relation to the content of the child protection policy, access to free multi-agency Level 1 child and adult protection training and advice on how to respond to specific issues about child or adult protection which may come to their attention. This support and guidance will be provided by the local authority.

I trust that this detailed explanation will provide you with the necessary information to determine the contractual arrangements necessary to ensure the protection of vulnerable children and adults in Aberdeen. If you require additional information or clarification on any of the above, please contact me.

Yours sincerely



Fred McBride

Chief Social Work Officer

Chair of the Aberdeen City Child Protection Sub-Committee

ABERDEEN CITY COUNCIL

COMMITTEE	Education, Culture and Sport
DATE	23 February 2012
DIRECTOR	Annette Bruton
TITLE OF REPORT	Community Centres
REPORT NUMBER:	ECS/12/010

1. **PURPOSE OF REPORT**

The report provides feedback on decisions taken at the Education, Culture & Sport Committee on 23 November 2011 to consult with the Management Committee Subgroup on a range of issues and brings to the committee a final draft Management Agreement and Lease for approval, which will enable the 2011 budget decision to move all Community Centres to leased centre model to be realised.

2. **RECOMMENDATION(S)**

It is recommended that the Committee:

- a. Agrees the proposed Management Agreement and Lease as set out in Appendices B & C, subject to final refinements (including the schedules on janitorial arrangements, 3Rs and community schools) to the Heads of Communities, Culture and Sport and Legal and Democratic Services, in consultation with the Convenor and Vice Convenor of Education, Culture and Sport, with these refinements to be completed by 31 March 2012; and thereafter that the agreements to be rolled out to existing leased Community Centres, and those which are transitioning to a leased model.
- b. Agrees that the initial duration of the Management Agreement and Lease will be for three or five years.
- c. Agrees that until such time as the Management Agreement is signed, those Management Committees which continue to work towards becoming leased, will continue to receive a pro rata transition grant equal to the value of the Development Grant, paid on a monthly basis.
- d. Agrees that the Council will not require Community Centres to offer residents a discount on charges as part of the Residents Discount Scheme.
- e. Agrees that the community wings within 3Rs schools will remain within the responsibility of the Council, and the space within these learning centres will be available to the local Learning Partnership to help ensure that the lifelong

learning requirements of that community are met, and that the Council continues to be able to meet its statutory requirements.

- f. Seeks further reports on the progress of signing Community Centres up to the Management Agreement.

3. FINANCIAL IMPLICATIONS

3.1 Transition Grants and Development Grants

Currently, leased centres receive an annual Development Grant of £10,656 per year, to assist with the costs involved in running a community centre. This grant is processed on a quarterly basis and is conditional upon the terms of the legal documents being met.

The Education, Culture and Sport Committee of 2 June 2011, approved that Management Committees progressing towards becoming a leased centre would receive an equivalent, pro-rata amount on a monthly basis, conditional upon them continuing to work towards becoming a leased centre. This was approved through to 31 March 2012. In recognition, that the legal and administrative processes required to sign all transition centres to the new Management Agreement will take some time, officers recommend that the Transition Grant continues for each Management Committee until such time as the Management Agreement is signed for that Committee. This to be conditional upon the Management Committee continuing to make timely progress towards that model.

As the Development Grants for Community Centres have been built into the 2012/13 budget, and the value of the Transition Grant is equal to the value of the Development Grant, this decision will have no financial implications for the Council. (Management Committees will be entitled to receive either a Development Grant or Transition Grant, but not both for the same time period.)

3.2 Following the Public Pound

The provision of Community Centres by the Council represents a considerable value to the public purse (approximately £3.3million revenue funding per year). This includes the buildings costs such as repairs and energy costs that are covered by the Council, as well as the annual Development Grant. There are also capital funding implications.

The proposed Management Agreement requires Management Committees to comply with the Council's Local Code of Practice: Funding External Bodies and 'Following the Public Pound' as approved by Council on 6 October 2011.

4. OTHER IMPLICATIONS

4.1 Property Implications

The implementation of the recommendations of this report will result in all existing leased centres, for which their existing lease has expired (but is currently continuing

under tacit relocation), being required to sign up to the new Management Agreement and lease.

In addition, all current non-leased community centres with Management Committees will also require to sign up to this new Management Agreement.

There are a number of Centres with current leases that are not due to expire for a number of years. These Centres are listed later in this report. Colleagues in Legal Services are currently examining the provisions of these leases and there may be a need for Centre specific negotiations to take place. If these negotiations prove to be unsuccessful then a further report will be brought before the Committee detailing the options available in respect of each affected Centre.

4.2 Legal Implications

4.2.1 Management Committees require to have a constitution in place and Council officers have prepared a model constitution to assist in this process.

4.2.2 The relationship between the Management Committees and the Council will be managed via a Management Agreement setting out the responsibilities in relation to the services that are being delivered by the Management Committee in return for the use of the premises and the development grant (for all centres), and the Lease in relation to the responsibilities for the building (for stand-alone centres only).

4.2.3 The Management Agreement and Lease seek to clearly define the roles and responsibilities of the two contracted parties (the Council and the Management Committee), and seeks to be helpful in terms of setting out some of the legislative responsibilities of the Management Committee, which apply regardless of specific contractual terms e.g. in relation to data protection and employment law.

4.2.4 Counsel's opinion has been sought in relation to TUPE and will be brought to the attention of committee when available. Management Committees are advised that they should seek independent legal advice in respect of TUPE.

4.2.5 It is noted that some existing "leased" centres have no lease or other contractual arrangements in place with the Council and this has been the case for some time. This represents a significant risk to both the Council and the Management Committees and the implementation of a lease and management agreement will mitigate against the risk to both parties.

5. BACKGROUND/MAIN ISSUES

5.1 Background

5.1.1 There are currently 51 Community Centre type facilities throughout the city which are owned by the Council. The current routine costs for servicing these facilities amounts to some £2.6million per year (this figure includes £1.1million for 3Rs community centres), in addition to this approximately £500,000 per year is spent on development grants and a further £200,000 is spent on other costs including capital financing costs. Additional costs are incurred in relation to wind and watertight repairs. A large number of these buildings will require significant investment in

terms of repair and renewal over the next 10 years. This will require to be funded through the capital programme. There is work provisionally programmed at a number of buildings within next years Condition and Suitability programme as well as the following year. Due to their condition these are deemed a priority, however there is a significant risk that there will not be enough capital funding available to cover all the capital investment requirements of the community centre portfolio.

- 5.1.2 Twenty-four of these centres already operate under a “leased” type model. Some of the centres have no lease in place, one operates under a letter of comfort (which has expired), and the other existing leases are dated and varied, with many being beyond their initial lease term and therefore being renewed on an annual basis under tacit relocation. Once a standard lease and Management Agreement is agreed, these will replace the existing leases where they are ready for renewal.
- 5.1.3 Twenty-seven of these centres are currently classed as Community Learning Centres and many of these are now in transition towards becoming “leased” type centres.

5.2 Model Lease, Management Agreement and Constitution

- 5.2.1 There has been a significant piece of work over the last few years to develop a standard lease and management agreement for all leased centres that meets the requirements of the Council and is acceptable to Management Committees. A standard set of agreements is required in order to deal with the current situation whereby different types of arrangement have led to an inequitable situation between centres.

The legal agreements are required to:

- Clearly set out the rights and obligations of the Council
- Clearly set out the rights and obligations of Management Committee members
- Protect the interests of staff employed by the Management Committee
- Protect the interests of individuals within the community including children and vulnerable adults.
- Prevent possible infiltration by individuals with criminal intent
- Be clear about what is required to be delivered by the Management Committee in return for the significant public investment.

- 5.2.2 At the Education, Culture & Sport Committee on 24 November 2011, the Committee resolved:

- To instruct officers to complete the negotiations with community centre representatives to finalise the Management Agreement, lease and model constitution
- In respect of recommendation (g) [residents pass] in the report, to refer this matter to the negotiations with the community centre representatives to be reported back to the next meeting on 23 February 2012
- In relation to recommendation (h) [janitorial hours] in the report, to refer this matter to the negotiations with the community centre representatives to be reported back to the next meeting on 23 February 2012

- To instruct officer to report back to the Committee on the matters covered within the report [Community Development Fund – Childcare and Out of School Provision] following the negotiations with the community centre representatives.
- That the negotiations being undertaken with the community centre representatives continue to discuss the matter of indemnity insurance.

5.2.3 The issues listed above were considered by a working group of community representatives, established following an early consultation session on 22 September 2011. The working group is chaired by the Convenor of Education, Culture and Sport, and attended by Cllr Yuill, three representatives of leased centres, three representatives of Community Centres moving towards leased centre status, and officers. The working group met in October and again on 12 December 2011 and discussed the various points remitted to them by the Education, Culture and Sport Committee. A note of the December meeting is attached at Appendix A.

5.2.4 Following these meetings, officers took the key issues as discussed and agreed at that meeting, and developed them into a further draft Management Agreement. A further meeting took place with the subgroup to discuss this draft document on 1 February 2012. This meeting was chaired by the Convenor of Education, Culture and Sport and attended by Cllr McCaig, Cllr Malone, three representatives of leased centres, three representatives of Community Centres moving towards leased centre status, and officers. A minute of that meeting is attached at Appendix D. At the meeting, there was broad agreement on most of the clauses within the draft agreement, with the exception of the following:

- Clause 1.2 – there was some disagreement about the wording in relation to “Programme of Activities”. Officers have since reworded the clause, and which now allows agreed amendments to the Management Agreement in the event that the Council is required to vary the amount of the Development Grant.
- Clause 1.12 – there was disagreement about the use of the words “subject to the reasonable agreement of the Council.” These words have not been changed in the document as they were previously agreed by the subgroup at their meeting in October 2011.
- Clause 1.14 – this clause set out a requirement for a set number of hours to be dedicated to community learning and development activities, as determined by the Learning Partnership. There was wide disagreement about this. The clause was included within the agreement to ensure that there continued to be access to appropriate spaces for lifelong learning activities (including literacies, English as a second language (ESOL), drugs diversionary activities etc. and that the Council continues to be able to meet its statutory obligations in relation to community learning and development. However, at the subgroup meeting, the Management Committee representatives felt that this would be too restrictive. A revised clause has been developed at section 1.14 which allows Learning Partnerships to be offered first refusal of any free time within the centre (agreed by the subgroup), and it is felt that this clause, combined with retaining 3Rs Community Wings (as set out in section 5.5) will ensure that sufficient space

is available within the city to meet learning needs as identified by Learning Partnerships.

- Clause 1.26 – there was a difference in opinion about how practical this would be to implement. It was noted that some Management Committees consist of only a small number of volunteers which include paid employees. Available guidance is set out in section 5.6 below, and officers have included this clause within the attached Management Agreement as this is in line with best practice. Where Management Committees are small, officers will work with that committee to engage and encourage more of the community to get involved with their local centre. Where there is difficulty in attracting individuals to office bearer positions, officers will provide appropriate training and support.
- Clause 3.4 - regarding the Council's rights to terminate the agreement. Officers recommend that the Council should have an opportunity to terminate the agreement (with 6 months notice), in the case of a change in Council policy or budgetary considerations (as well as changes in the law). Without this clause, in the event that the Council's budgetary settlement from the Scottish Government was significantly reduced, the Council would still be legally bound to continue supporting all the Community Centres (total revenue cost of approx. £3.3million per year.) Also if there was a significant structural catastrophe to a Community Centre, the Council could be bound to find the capital funding required (even if a such a repair was not strategically a logical course of action.) It is noted that the Management Committee may terminate the agreement for any reason, giving the Council 3 months notice.

5.2.6 Further to the meeting on the 1st February, the Management Agreement has been pulled into a final draft version (attached at Appendix B). It was also agreed at the meeting on the 1st February that a questionnaire would be sent out to all Management Committees to allow all Management Committees to feed back on the agreement. The outcomes of this survey will be tabled at the Education, Culture and Sport Committee on 23 February 2012.

5.2.7 It is noted that there are still refinements and further consistency checking required of the document. At the meeting on the 1st February, it was agreed that the Management Committee representatives would collectively procure an independent legal advisor to go through the Management Agreement with the Council's legal advisor, after a final draft had been agreed at committee, to ensure that the legal aspects of the Management Agreement were appropriate for both parties. During and following this exercise, final refinements will be made.

5.2.6 The lease, where appropriate will be contained within a Schedule of the Management Agreement, and it is recommended that the lease as presented to the 2 June 2011 Committee (subject to any minor amendments required to ensure consistency between the lease and management agreement) be used for this purpose (Appendix C)

5.3 Residents Discount Scheme

The potential for offering residents a discount on charges at community centres as part of the Residents Discount Scheme was discussed at the working group. There was a general consensus of the group, that the majority of Community Centre users were likely to be local residents; that the implementation of such a scheme would be overly bureaucratic; and that it would not achieve many benefits. For these reasons it is recommended that the Council place no requirement for Community Centres to offer residents a discount on charges as part of the Residents Discount Scheme. (Note that this does not prevent centres implementing such a policy if they were to choose to do so.)

5.4 Janitorial Hours

There are 2 possible options for janitorial cover in community schools: (a) janitorial cover to be provided by the Council and paid for by the Management Committee out with core hours (financial implications for the Management Committee); (b) Janitorial cover to be provided by the Management Committee (implications re Health and Safety and responsibility for consumables).

For option (a) it was noted that when school facilities are already booked by the school, janitorial cover will already be provided, therefore there would be no requirement for MCs to pay an additional janitorial fee. Therefore, Management Committees should seek to maximise efficiency by programming around these times, in consultation with the school to ensure that the programme was appropriate for the other usage of the building.

The working group agreed that the detail of janitorial arrangements may require to be different for each affected community school, as each community school is different. It is intended that the detail of what is agreed with each relevant Management Committee will be included within a schedule of their Management Agreement.

5.5 3Rs Schools

In order to ensure that there are adequate spaces available throughout the city for the provision of lifelong learning activities, it is recommended that the Council should retain the community rooms within 3Rs facilities for this purpose.

This model would involve the £10,500 identified for the Development Fund being diverted to fund one receptionist per community unit. (No receptionist would be required at Beacon, as this service is provided by Sport Aberdeen.) The local Learning Partnership would determine the learning requirements (gaps) of that community, the delivery agents of these requirements (who may include Council Lifelong Learning team, Uniformed organisations, Management Committees etc.) would then be programmed into the community unit.

The Management Committees currently attached to these centres would become area Management Committees (a number of Management Committees are already exploring this model.) They would be completely independent to the Council and would not require to sign up to a Management Agreement (as they would not be managing the premises). As a provider of learning activities they would have access to deliver their programmes in the 3Rs school (if that provision was identified as a priority by the Learning Partnership.)

This model would ensure the continuance of professional Community Learning and Development services over a fairly even spread throughout the city. Officers are currently exploring options for the potential gaps in Torry, Dyce and Bridge of Don.

5.6 Guidance on Employees and Management Committee Members/ Charity Trustees

The following information has been sourced from the Office of Scottish Charity Register (OSCR) and Scottish Council for Voluntary Organisations (SCVO) in relation to the employees and management committee members:

5.6.1 SCVO: Best Practice for Voluntary Organisations

A voluntary organisation is by definition not established for personal gain. This means in practice that the members of its voluntary management committee are unpaid.

It is important that voluntary management committee members and the staff of a charity or other voluntary organisation are very clear about their respective roles and that these never become confused. In principle no paid member of staff can be part of the voluntary management committee although they are expected to attend meetings in order to advise and inform the committee. Conversely, no voluntary management committee member should receive a salary or payment from the organisation except expenses.

An exception to this rule is where a member of the management committee is the best person to do a specific piece of work for the organisation, which would in any event be purchased or contracted out. In this case the member may be paid a one-off fee. There should certainly not be any routine remuneration for the time or effort given to the organisation in the course of a person's duties as voluntary management committee member.

5.6.2 OSCR - Guidance for Charity Trustees: Charity trustee remuneration

Because charity trustees must act in the interests of the charity, any personal benefit to a charity trustee, whether direct or indirect, has to be treated with some caution.

Sections 67-68 of the Act deal with one particular aspect of this - the remuneration of charity trustees. Section 67 specifies that a charity trustee must not be remunerated from charity assets unless certain conditions set out in the Act are met.

What is remuneration?

Remuneration in this context would include payment or benefit in kind:

- for being a charity trustee.*
- under a contract of employment*
- for other services to or on behalf of the charity*

This may include payment made either to a charity trustee personally or to a person with whom the charity trustee is connected.

Section 68(2) defines the persons who are "connected" with the charity trustee. These include:

- immediate family and domestic partners.*
- a company in which the charity trustee or persons connected with them may have a substantial interest, or.*
- a Scottish partnership in which the charity trustee or a person with whom the trustee is connected is a partner*

5.6.3 In addition to this guidance, it is further recommended that to have an single individual in an office bearer and manager position, creates contractual employment issues and may lead to that individual having an unhealthy position of power within that community centre. While nothing can guarantee that illegal activities such as child protection issues will not take place in a community centre environment, measures that seek to ensure that there is no domination of power help to significantly reduce the risk in this important area.

5.7 Community Development Fund – Childcare and Out of School Provision

There are a range of benefits of continuing to facilitate the provision of affordable Childcare and Out of School Provision. These include to improve outcomes for children; to make the city an attractive place to live and work; to attract inward investment; and to meet the needs of existing working parents and those returning to employment and as part of the Council's policy commitment to fully integrated children's services.

The fundamental principle of investing in early years and in early identification and intervention services and support to parents is to improve the long term outcomes for all children and in particular, for those children who need additional support.

If Management Committees were to charge for childcare provision in community centres, the financial implication to existing childcare providers could be an increase of between approximately £100,000 and £700,000 per year. Current provision is delivered by the Council and other non-profit making bodies. Parents contribute to the service through childcare fees and fundraising. For the Council provided services, there is no available budget to cover hire charges within community centres.

This issue was discussed at the working group, and it was agreed that as far as reasonably practical, Management Committees would like to enable the Council's existing policy for affordable childcare to continue.

A form of words has been included within the Management Agreement to try to ensure the continuance of affordable childcare and out of school provision.

5.8 Insurance

There is an opportunity for Community Centres to join the Councils "Community Council Insurance Scheme" which provides the following levels of cover:

- All Risks cover for records, books and stationary £250 per Council
- Computer Cover £1,000 per Council
- Money Cover This section provides cover for loss of money in transit and in the premises etc.
- Public Liability Limit of indemnity £5M
- Employers Liability Limit of Indemnity £10M
- Libel & Slander Sum insured £100,000
- Fidelity Guarantee All employees covered £2,500
- Personal Accident Provides various cover in the event of accident or assault.

This cover is available for a reasonable cost (£125 in 2011/12 – figures not yet available for 2012/13.) As it is not possible to join the scheme part the way through the year, Management Committees have been invited to join the scheme from 1 April 2012, with the understanding that the cost of the insurance will be deducted from their first Development/ Transition grant for the new financial year. At the time of writing this report, 19 Management Committees have confirmed that they wish to sign up to this insurance.

The Management Committee working group noted their concern that this insurance would not cover them as individuals in the event of liquidation for example. The requirements of the Council's Following the Public Pound policy, coupled with ongoing support from officers will hopefully help mitigate against this situation arising. In addition, if Management Committees wished to limit their personal liability, this could be achieved through how their organisation is structured (for example as a limited company). Beyond that, this would be a matter on which individual Management Committee members would need to seek independent advice and/or insurance, which is similar to the position which Elected Members of the Council find themselves in where they act as Trustees.

It is noted that it would not be legal for the Council to procure insurance on behalf of a third party/individual.

5.9 Transition to new Management Agreement

For practical reasons, the roll out of the Management Agreement will be phased in line with the following criteria:

Phase A – Stand-alone centres with constituted Management Committees with all requirements of the Management Agreement in place (this to include the five centres currently operating under the leased centre model, but with no lease in place: Cairncry CC, Dyce Carnegie Hall, Henry Rae CC, Powis Gateway CC and Woodside CC*.)

*note that due to the different occupancy arrangements for the Woodside Fountain Centre, this Centre may require a slight variation on the standard Management Agreement and lease, however it is intended that the implications for the Woodside Management Committee would be equitable with other Management Committees.

Phase B – Transition Stand-alone centres with constituted Management Committees with most requirements of the Management Agreement in

place, and Community Schools with all requirements of the Management Agreement in place.

Phase C – Existing leased centres with expired leases continuing under tacit relocation.

Phase D – Transition centres with non-constituted Steering Groups

Phase E – Existing leased centres with continuing existing leases and Community Centres without steering groups or Management Committees in place.

It should be noted, that it may be that Community Centres move between phases as the process roles out, for example if a steering group becomes constituted.

At the moment there are 6 Centres which have an ongoing lease with some years yet to run. These are:

Airyhall Community Centre	– lease end date March 2019
Danestone Community Centre	– lease end date July 2040
Ferryhill Community Centre	– lease end date November 2019
Hanover Community Centre	– lease end date March 2018
Kingswells Community Centre	– lease end date March 2018
Hilton Community Centre	– lease end date November 2019

If any Management Committee is unwilling to sign up to the new agreements, officers will report this to a future committee with a recommendation that the Centre is either declared surplus to requirements, or that processes take place to find a new volunteers who are willing to form a new Management Committee with the willingness and capability to run the Community Centre within the requirements of the Council.

It is noted that the Transitional grant is only payable if the Management Committee continues to work towards the leased centre type model.

5.10 Duration of Agreement

For the following reasons it is recommended that the duration of the Management Agreement and Lease is for an initial three or five year period (determined by the condition of the building and the requirements of the Management Committee) and has appropriate termination clauses:

- It is understood that the Scottish Government intends to develop new legislation including providing a statutory requirement for the delivery of Community Learning and Development. It is expected that this legislation may be concluded in around two to three years, and until the detail of the legislation is known, there is a risk that entering into a legal agreement in relation to Community Centres for a longer duration, may hinder the Council's ability to meet that statutory requirement.
- Most of the transition Management Committees have not run community centres in the past, and while they are developing business plans and

operating models, until operational, it is difficult to assess how robust these may be.

- Many of the centres will require significant capital repairs over the next 5 – 10 years. Given that the agreements require the Council to be responsible for all external repairs, a longer term lease would potentially commit the Council for significant, unbudgeted capital expenditure.
- The Education, Culture and Sport Committee of 2 June 2011 agreed that, “until the Service Asset Management Plan for Community Buildings is completed, Community Centres and Community Education Centres be granted a minimum one year rolling lease.”

It is understood that some Management Committees would wish to have a longer duration of legal agreement, in case they are awarded external funding which requires a lengthy tenure. It is the intention, that if this situation arises, officers will bring the specific situation to the attention of the Committee to allow the opportunity for specific variations to take place.

6. **IMPACT**

This report relates to the Combined Community Plan and Single Outcome Agreement as follows:

- People of all ages take an active part in their own learning to achieve their full potential Learning and training is appropriate and accessible to learner’s needs
- Children and young people access positive learning environments and develop their skills, confidence and self esteem to the fullest potential
- Children, young people and their families/carers are involved in decisions that affect them. Their voices heard and they play an active and responsible role in their communities
- Educational attainment in Aberdeen is continuously sustained and improved
- School leavers enter positive destination of employment, training or further and higher education with a focus on and support for young people who require More Choices and More Chances
- Children and young people actively participate in their communities and have optimum involvement in decision making
- All children, young people and their families have access to high quality services when required and services provide timely, proportionate and appropriate response that meeting the needs of children and young people within Getting it Right for Every Child, (GIRFEC) requirements
- Improve the quality of life in our most deprived areas
- Citizens are increasingly more active in their communities regardless of age, gender, sexual orientation, ethnic origin, where they live, disability or faith/religion/belief and contribute to ‘active citizenship’
- Develop pathways to participation which enhance the diversity of local representation at and engagement with regional, national and international arts, heritage and sporting events
- Our public services are consistently high quality, continually improving, efficient and responsive to local people’s needs

Public – This report will be of interest to the public, as the recommendations will impact on services delivered throughout the city.

An Equality and Human Rights Impact Assessment has been completed in respect of this budget decision.

7. BACKGROUND PAPERS

24/11/11 Education, Culture & Sport Committee, Community Development Fund –
Childcare and Out of School Provision
24/11/11 Education, Culture & Sport Committee, Community Centres
15/9/11 Education, Culture & Sport Committee, Update on Implementation of
Budget Decision - Reduce Communities Team
17/6/11 Finance & Resources Committee, Kaimhill Community Facilities – Update
on Progress of Management Agreement
2/6/11 Education, Culture & Sport Committee, Update on Implementation of Budget
Decision - Reduce Communities Team
24/3/11 Education, Culture & Sport Committee, Implementation of Budget Decision
– Reduce Communities Team

8. REPORT AUTHOR DETAILS

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ABERDEEN CITY COUNCIL

MEETING TITLE:	Management Agreement Meeting	MEETING DATE:	12 December 2011
PARTICIPANTS:	Cllr John West (Chair), Cllr Ian Yuill, Annette Bruton, Patricia Cassidy, Gail Woodcock, Phil D'Arcy, Wilma Mackland, Brian Allan		
APOLOGIES:	Cllr West noted that Paul O'Connor, Andy Cowie and Sylvia Davidson had intimated that they would not be attending the meeting.		

NO.	AGENDA ITEM	NOTES OF DISCUSSION	ACTION/DECISIONS	BY WHOM	WHEN
1	Feedback from previous meeting	<p>Feedback was received from Community Centre representatives on their consultation with other Transition Centres representatives on what would be required within the legal documents with the Council to safeguard the interests of Management Committees, volunteers and the wider community.</p> <p>BA noted that he felt that the paperwork was adequate, but could be extended to cover specific issues and that safeguards need to be in place.</p> <p>PD noted that he wasn't at the previous meeting, but referred to a note of meeting of community centre representatives at which the issues were discussed. PD noted that the financial position of centres will be a determinant of what learning activities can take place. The forum agreed that Management Committees should be prepared to participate in authority or HMIE inspections.</p> <p>In the absence of representatives from existing leased centres, BA noted that he understood that at a meeting of leased centre representatives, there had been general agreement with the content of the previously circulated paperwork. It was felt that in a local community, the people using the centre would usually be known to the Management Committee and other users.</p> <p>PD noted that he understood that it was only relatively recently that some of the existing leased centres Management Committees have become aware of the legal implications, risks etc. of operating a centre and employing staff. PD noted</p>	To note the feedback.	All	

		that he felt that they would require to appoint full time staff to run the centre at Dyce.			
2	Policy Requirements	<p>Cllr West noted that there are certain requirements that need to be included within the Management Agreement. These include reflecting Council budget and Committee decisions, Following the Public Pound Policy, Internal Audit Recent Advice, Standing Orders and Legal Requirements.</p> <p>AB noted that it would be helpful for officers to receive feedback from representatives on how these requirements are reflected in the documents.</p> <p>GW referred to the Following the Public Pound documentation and offered to pull out the specific requirements for each level of funding, if that would be helpful.</p>	<p>It was agreed that the language in the Management Agreement will be plain and easy to understand.</p> <p>Management Committee representatives are to feedback on how policy requirements are reflected in the documents.</p> <p>It was agreed that the document would include opt out clauses for the Council and the Management Committees to cover unforeseen circumstances, such as changes in legislation, that would make it impractical to continue with the agreement.</p> <p>Management Committees to confirm whether they would find it helpful to have a checklist of requirements for each level of funding (as per the Following the Public Pound document) to be pulled together separately to the larger policy document.</p>	ACC MC reps ACC MC Reps	Ongoing Next meeting By Feb 2012 Next meeting
3	Key Issues	<p>In light of recent issues, the Council's duty to protect children and vulnerable adults, governance issues regarding small fixed committees and their resultant risks, and the Council's responsibility to support volunteers on Management Committees and the communities who use Community Centres was discussed.</p> <p>AB recommended that MCs take up independent legal advice on the position of employees being the same individuals as office bearers. AB reminded the representatives of the funding available for</p>	<p>It was agreed that there was a need for clarity and accountability and that governance models should follow recognised best practice, if at all possible.</p> <p>PD agreed to seek advice from ACVO on this matter and investigate the potential of securing independent legal advice.</p>	All PD	Ongoing By next meeting

		independent legal advice.			
4	Other items for discussion: Indemnity Insurance	<p>GW took the group through the cover which is available through the Community Council insurance scheme. GW noted that there is not an opportunity to join this scheme part the way through the year. Therefore if Management Committees wishes to purchase this insurance, they require to let officers know by the beginning of February. No charge will be levied until the start of the next financial year in April, and the fee for insurance would be a suitable use for their development or transition grant.</p> <p>PD outlined a possible scenario, such as liquidation, that the proposed policy would not cover, and Management Committee representatives would potentially be individually liable. GW outlined the support that could be offered to help prevent such potential difficulties. It was noted that the requirements of the Following the Public Pound Policy, would hopefully also give a greater financial awareness that would help identify any potential financial issues as early as possible. JW and AB noted why the Council could not include an open ended indemnity. It was noted that it would be highly unusual for any insurance company to offer an insurance against negligence. AB noted that it would be illegal for the Council to procure insurance on behalf of a third party.</p> <p>It was noted that there is an option for Management Committees to become a limited company or incorporated Charity, which would provide protections for individual Management Committee Members.</p> <p>PD suggested that the required financial detail should be placed in the appendix/ schedule of the legal agreement. AB noted that in order to protect the interests of the Management Committee and the Council, the appendix/ schedules would also require to be signed. PC noted the importance of centres</p>			

	<p>Childcare and Out of School provision</p>	<p>taking independent legal advice.</p> <p>GW provided an outline of the context for this issue, which is about whether the Council's current policy for affordable childcare should continue in community centres. The implications of this affect the income generation potential of Management Committees and also affect the opportunities that parents have to work and contribute to the economic position of the city, and the benefits that participating in such activities can bring to children and families.</p> <p>There was a discussion about the principles and potential for utilising trust in relation to this issue. The possibility of using a clause such as "as far as practicable, Management Committees would seek to comply with the Council's existing policy" was discussed, and it was agreed that this would require discussion with other Management Committees.</p> <p>JW noted that the Council needs to have confidence that Management Committees will seek to determine and deliver what is required by the Community.</p> <p>The wider benefits of supporting the provision of childcare within centres were discussed, including cross-marketing opportunities from children, parents and families having regular interaction with the centre.</p>	<p>It was agreed that a form of words for inclusion within the agreement would be developed for further discussion with the representatives.</p> <p>It was agreed that there would continue to be opportunities provided for training and support to Management Committees.</p> <p>If Management Committees feel that they have specific training requirements not already covered by the existing training programme, they should make their Capacity Building Officer, Alan Mulvie or Gail Woodcock aware.</p>	<p>ACC</p> <p>ACC</p> <p>MCs</p>	<p>By next meeting</p> <p>Ongoing</p> <p>Ongoing</p>
	<p>"Residents Pass"</p>	<p>JW noted that it was his personal view that implementing this policy for Community Centres would be overly bureaucratic and would not achieve many benefits.</p>	<p>It was agreed that, subject to Committee agreement, the requirement to include differential pricing would not be included within the Management Agreement.</p> <p>If Management Committees wished to utilise the system to assist in the achievement of their objectives, then this could be explored on a case by</p>	<p>ACC</p> <p>MCs</p>	<p>February committee</p> <p>ongoing</p>

Janitorial Cover	<p>GW outlined 2 possible options for janitorial cover in community schools and the implications for each: janitorial cover to be provided by the Council and paid for by the Management Committee out with core hours (financial implications for the Management Committee); Janitorial cover to be provided by the Management Committee (implications re Health and Safety and responsibility for consumables).</p> <p>For the second option it was noted that when school facilities are already booked by the school, janitorial cover will already be provided, therefore there would be no requirement for MCs to pay an additional janitorial fee. Therefore, MCs should seek to maximise efficiency by programming around these times, as long as the programme was appropriate for the other usage of the building. AB encouraged MCs to start a dialogue with Head Teachers regarding working together in planning bookings.</p>	<p>case basis.</p> <p>MCs in community schools to start dialogue with Head Teachers.</p> <p>MCs to make Council officers aware if there are bookings within schools that are not being used.</p> <p>It was agreed that janitorial cover arrangements would not be included within the standard Model Management Agreement, but would be developed and negotiated as an additional element within the agreements for community schools.</p>	<p>MCs</p> <p>MCs</p> <p>ACC</p>	<p>Ongoing</p> <p>Ongoing</p> <p>By February committee</p>
Learning Partnerships	<p>GW outlined the composition and purpose of Learning Partnerships, and the fact that all Management Committees are entitled to attend Learning Partnership Meetings.</p> <p>With a requirement of ensuring that centres meet local needs, the local Learning Partnership will be a key driver to identify what learning needs are and the potential gaps and potential areas of over provision.</p>	<p>It was agreed that a key purpose of Management Committees will be to work together (with other community stakeholders) to determine and address the needs of the local community.</p>		
Access to centres for learning activities	<p>AB noted that the Council is tasked to provide lifelong learning. Without having something in the Management Agreement, centres could refuse to permit access to difficult/ complex groups or learning requirements as identified through the local Learning Partnership.</p> <p>IY noted that it may be an option to have a clause that gives the Council a right to pre-empt a certain</p>			

	HMIE Inspections	<p>amount of Centre time. BA noted that it may be appropriate to contain a clause along the lines of confirming that the Management Committee understands that the Council has certain responsibilities and committing Management Committees to look favourably on requests to meet these objectives. In the event of no agreement, it could be expressed that the Council would have a right to insist.</p> <p>There was a discussion about the Development Grant, and a view that one size does not necessarily fit all.</p> <p>There was a discussion and general agreement about the benefits of being involved in HMIE inspections.</p> <p>MCs noted that it may be helpful to volunteers who had no experience of what was involved in an HMIE inspection to receive this information, potentially as part of the rescheduled network day.</p>	<p>Agreed that it would be reasonable to expect funded partners, including Management Committees to co-operate in HMIE inspections.</p> <p>Agreed that officers would explore the possibility of asking link inspectors to meet with Management Committees, potentially as part of network day.</p>	<p>ACC</p> <p>GW</p>	<p>By February Committee</p> <p>Jan 2012</p>
5	AOCB	There was no other business.			
6	Date of next meeting	JW will circulate dates for future meetings.		JW	Asap

MANAGEMENT AGREEMENT

BETWEEN

ABERDEEN CITY COUNCIL, the Local Authority for Aberdeen City in terms of the Local Government etc (Scotland) Act 1994 and having its principal office at the Town House, Broad Street, Aberdeen AB10 1AQ (hereinafter referred to as “the Council

and

[INSERT THE NAMES AND ADDRESSES OF OFFICE BEARERS] and their successors in office as Chairperson etc respectively of **THE MANAGEMENT COMMITTEE OF [INSERT NAME OF CENTRE] COMMUNITY CENTRE [INSERT ADDRESS OF CENTRE]** as Trustees ex officio for the said Management Committee (hereinafter referred to as “the Management Committee”)

PURPOSE OF THE MANAGEMENT AGREEMENT

This Agreement outlines the terms and conditions under which the Management Committee will operate the Premises for the benefit of the community in partnership with the council as detailed herein.

DURATION OF AGREEMENT

This Agreement will run for 3/5 years from date of signing.

CONTENTS

1. Core Elements of Agreement
2. Other requirements of Agreement
3. Break Out/ Step In Rights/ Termination of Agreement
4. Governing Law and Jurisdiction
5. Schedules

SCHEDULE PART 1– DEFINITIONS AND INTERPRETATIONS

SCHEDULE PART 2 - LEGISLATIVE REQUIREMENTS

SCHEDULE PART 3 – LEASE **[DELETE FOR NON-STAND ALONE CENTRES]**

SCHEDULE PART 4 - JANITORIAL ARRANGEMENTS **[DELETE FOR NON-COMMUNITY SCHOOLS]**

SCHEDULE PART 5 – COMMUNITY SCHOOLS REQUIREMENTS **[DELETE FOR NON-COMMUNITY SCHOOLS]**

SCHEDULE PART 6 – PLAN OF BUILDING

1 CORE ELEMENTS OF AGREEMENT

REQUIREMENTS OF COUNCIL

- 1.1 In return for operating the Premises for the benefit of the community and in compliance with the terms of this Agreement, the Council shall make payment of Development Grant funding to the Management Committee. In respect of Financial Year 2012/13 the Council shall pay the sum of **[INSERT THE PRO RATA AMOUNT FOR YEAR 1]** POUNDS (£**[INSERT THE PRO RATA FIGURE FOR YEAR 1]**) STERLING. Thereafter, the Council shall make payment of annual Development Grant funding of TEN THOUSAND FIVE HUNDRED AND SIXTY FIVE POUNDS (£10,565.00) STERLING per annum. Payment shall be made quarterly in advance and shall be subject to Management Committee meeting the requirements of the Management Agreement.
- 1.2 The Council reserves the right to vary the amount of the Development Grant. In the event that the Council is required to exercise this right and as a consequence the Management Committee is unable to operate the Premises for the benefit of the community or otherwise comply with this Agreement then the Council and the Management Committee shall agree any necessary amendment to this Agreement. In the event that amendments cannot be agreed, then the Management Committee shall be entitled to terminate this Agreement subject to providing the Council with not less than 2 months' notice in writing.
- 1.3 The Council will pay directly the following bills and charges incurred in respect of the Premises i.e. all gas, electricity, water and sewerage bills, rental charges for the provision of a maximum of one broadband line, one telephone line and one alarm line, maintenance of all portable fire equipment, PAT testing, legionnaires testing, and refuse collection charges. The Council will also arrange and pay for Public Liability and Employers Liability Insurance in respect of the Premises. All other bills and charges will be payable by the Management Committee. The Council will have a right of access to ensure that it is able to meet its requirements under this clause.
- 1.4 The level of insurance cover shall be no less than **£5M for Public Liability Insurance and £10M for Employers Liability Insurance** and the Council shall arrange for the Management Committee to be covered by this insurance and named on the policy (subject to **clause X**). Payment of the insurance premium payment shall be deducted by the Council from the first instalment of the Development Grant in each Financial Year.
- 1.5 The Council's representative will meet with and receive updates from the Management Committee on a regular basis in order to monitor this Agreement and any other requirements.
- 1.6 The Council will provide a range of relevant training opportunities for the Management Committee.
- 1.7 The Council may publicise or otherwise promote its association with the Management Committee as it considers appropriate, and the Council shall be provided with access to information and documentation held by the Management Committee which the Council may require to pursue this objective.

REQUIREMENTS OF MANAGEMENT COMMITTEE

- 1.8 The Management Committee will comply with all applicable legislative requirements, including, but not limited to those as set out in Schedule 2.
- 1.9 The Management Committee will comply with all requirements preset out in the Council's Local Code of Practice, Funding External Bodies and Following the Public Pound policy. The Council will notify the

Management Committee of any material changes to this policy and will provide a copy of the amended policy to the Management Committee on request.

- 1.10 In return for the provision of the insurance outlined at clause X, the Management Committee shall make payment of an insurance premium of ONE HUNDRED AND TWENTY FIVE POUNDS (£125.00) STERLING in respect of financial year 2011/12. In the event that the duration of the Agreement exceeds one year then the Council shall notify the Management Committee of any subsequent premium payments. The Management Committee shall not do nor omit to do anything which may or shall result in the said policy or policies of insurance being vitiated or the insurance thereunder prejudiced or which result in the Insurers refusing payment in whole or in part.
- 1.11 The cost of maintenance of all operational equipment supplied to the Management Committee by the Council, including any renewals required, shall be the responsibility of the Management Committee, (except equipment as identified at clause X) all in accordance with the Property Maintenance Schedule, a copy of which is annexed to the lease (SCHEDULE 3 AMEND FOR NON-STAND-ALONE CENTRES).
- 1.12 The Management Committee will organise a programme of activities in the Premises for the benefit of the whole community, with or without levying an admission charge. The programme will be operated with due skill and care, and in accordance with the Law from time to time in force (including the law relating to employment and equalities). The management and funding of these activities shall be the responsibility of the Management Committee. The Management Committee may determine appropriate rates of hire for the Premises subject to the reasonable agreement of the Council, and retain the monies accruing for the benefit of the running and operation of the Premises by the tenants and for the benefit of the (local) community as a whole and in line with the aims and objectives of the community centre organisation. The programme must be submitted to the Community Centre Liaison Officer on an annual basis (no later than 31st July in each year), and prior to any significant changes being implemented.
- 1.13 The Management Committee may also allow the Premises to be used by other groups and organisations upon such terms and conditions of letting as the Management Committee may decide (subject to the provisions of the lease set out at SCHEDULE 3).
- 1.14 Where the Management Committee does not utilise all of the available hours during which the Premises are open for delivery of the programme, then any unscheduled time shall in the first instance be offered too the Learning Partnership free of charge. In the event that the Learning Partnership is not in a position to utilise the unscheduled time then the Management Committee may make the Premises available for the use of other groups and organisations upon such terms and conditions of letting as the Management Committee may decide, subject always to the terms of this Agreement.
- 1.15 The Management Committee will permit the Council to hold meetings and conduct other activities in the Premises for all Council, Community Council and learning in the wider community purposes subject any booking procedure as may be operated by the Management Committee. The Management Committee will make the Premises available for polling station and emergency response use, as required by the Council.
- 1.16 The Management Committee may levy a membership fee and retain this income for the benefit of the running and operation of the Premises by the Management Committee and for the benefit of the local community. Membership will be open to all sections of the community irrespective of their age, ethnic origin, religion, disability, sexual orientation or gender. The Management Committee will demonstrate their commitment to anti-discrimination practices by publicising their fit for purpose Equal Opportunities policy.

- 1.17 Any staff including volunteers, appointed to work in the Premises will be directly accountable to the Management Committee and the Management Committee shall be responsible for ensuring that all staff are sufficiently qualified, suitably trained and experienced, competent and capable, and be responsible for their welfare, health and safety, and for complying with all relevant legislation and good practice guidance, including having appropriate robust policies in place (these to include procedures relating to recruitment and selection, induction, supervision, training and appraisal equalities, disclosure checks and protection of vulnerable groups).
- 1.18 The Management Committee and the Council acknowledge that performance of the Agreement may require some Management Committee Personnel (which for the purposes of this Clause shall be deemed to include volunteers) to work with children, vulnerable adults or other members of the public to whom the Council owes a special duty of care ("Vulnerable Groups"). The Management Committee must therefore ensure that it has appropriate policies in place in relation to Vulnerable Groups. The Management Committee will ensure that staff including volunteers are appropriately trained and checked to enable the discharge of responsibilities for statutory requirements including the protection of children and vulnerable adult, health and safety and Inspection bodies.
- 1.19 The Management Committee shall provide a means of identification for staff and individual members of the Management Committee.
- 1.20 The Management Committee will be responsible for ensuring that all necessary licences in connection with all activities and events in the Premises are in place, and that all the conditions contained in the said licences are complied with.
- 1.21 The Management Committee may provide a catering service for the benefit of the users of the Premises, and may retain any profits for the benefit of the running and operation of the Premises. The Management Committee will be responsible for ensuring that all relevant legal requirements and best practice guidelines are adhered to. Tobacco products are not permitted to be sold within the Premises.
- 1.22 The Management Committee will provide the Council with a list of names, addresses and telephone numbers of all keyholders for the Premises and will notify the Council of any changes to the said list as soon as practical. There will be a minimum of two keyholders for the Premises at all times. In the event of the tenants requiring to change the locks, then a set of new keys will be supplied to the Council in order to support emergency response. **[TO BE AMENDED FOR COMMUNITY SCHOOLS]**
- 1.23 The Management Committee shall maintain proper accounts for the organisation and shall submit them annually to the Council for inspection by no later than 31st July in each year.
- 1.24 The Management Committee shall adopt a Constitution in line with the model Constitution provided by the Council clearly stating, inter alia, the Management Committees aims and objectives; qualifications for membership; method of appointing officers; voting procedures; accounting arrangements and arrangements for annual meetings and dissolution of the Management Committee. A copy of the Constitution must be provided to the Council and any subsequent alterations to the Constitution must be notified to the Council. The Council reserves the right to terminate this Agreement, if, in its opinion, the alterations would result in the organisation being run undemocratically or against the best interests of the community.
- 1.25 The Management Committee will ensure that its meeting agendas and minutes are made publically available to all interested members of the community including the Community Centre Liason Officer in a timeous manner. The Community Centre Liason Officer (CCLO) will be notified of, provided papers for,

and invited to attend all Management Committee meetings. The Council may nominate a substitute to attend these meetings on behalf of the CLO.

- 1.26 The Management Committee will ensure that the roles of Management Committee Office Bearers and Centre Manager are held by different persons and that the local Councillor and youth members (under 16 year olds) are prohibited from holding committee office bearer posts.
- 1.27 The Management Committee shall be entitled to have a place on the local Learning Partnership.
- 1.28 The Management Committee will allow the Council or its representatives access to carry out monitoring and audits as required. This shall include providing access to the Accounts Commission for Scotland, Audit Scotland, the Scottish Public Services Ombudsman and participating in learning inspections or equivalent by all inspection agencies.
- 1.29 The Management Committee will manage themselves with due skill and care, and in line with recognised best practice and improvements as may be identified from time to time by the Council including internal or external auditors and other inspection agencies.
- 1.30 The Management Committee shall not do anything, and shall inform the Council immediately it becomes aware of anything, connected with the performance of its obligations under this Agreement, which shall or is likely to bring the name of the Management Committee or the Council into disrepute.
- 1.31 The Management Committee will put in place a suitable complaints procedure.
- 1.32 The Management Committee shall install and maintain at the Premises such signs, commemorative material and other promotional material indicating the involvement of the Council as the Council may require. If any particular requirements of the Council cause additional expenditure which could not reasonably be anticipated by the Management Committee or expected by the Council, then the Management Committee shall provide a detailed breakdown of these costs to the Council and the Council shall pay to the Management Committee such costs as it deems to be appropriate in the circumstances.
- 1.33 Where the Management Committee actively seeks external funding including sponsorship and advertising then in doing so, the Management Committee must not accept sponsorship or funding from any industry, individual or organisation that could potentially compromise this Agreement, or the ethos, principles, reputation and legal obligations of the Council. If there is any doubt as to whether the acceptance of sponsorship or advertising income could potentially compromise this Agreement or the ethos, principles and legal obligations of the Council, then the Management Committee should seek formal agreement from the Council in writing prior to finalising any arrangement.
- 1.34 If the Management Committee wishes to close all or part of the Premises to the public for any period of time(s) then the Council must be consulted at the earliest possible opportunity and at any event the Council must receive at least four weeks notice of any planned closure. In this event, the Council will have the right to provide an alternative programme of activities.
- 1.35 As far as practicable, the Management Committee will comply with the Council's Out of School Care Policy in relation to the provision of childcare activities within the Centre.
- 1.36 The Management Committee will ensure that all monies held by the Management Committee are managed in a prudent manner in accordance with the terms of this Agreement, and solely for the purpose of or in connection with the Agreement and for no other purpose whatsoever.

2 OTHER REQUIREMENTS OF AGREEMENT

2.1 Competitive Tendering/ State Aid

The Management Committee will submit its competitive tendering procedure to the Council for approval and ensure that it follows the approved procedure in relation to all purchasing.

The Management Committee will provide such information as is requested by the Council to enable the Council to meet its obligations in regards to State Aid Assessment and Notification as appropriate and warrant that any aid provided is in accordance with the Council's State Aid Policy.

2.2 Warranties

The Management Committee hereby further warrants to the Council that:-

- a. it has power to enter into this Agreement and has taken all necessary action to authorise its execution, completion and performance;
- b. this Agreement shall constitute legally binding obligations on the Management Committee enforceable in accordance with its terms;
- c. it has entered into this Agreement in good faith and has made full disclosure to the Council of all material facts relating to this Agreement;
- d. the execution, delivery and performance of this Agreement does not or shall not contravene any of the provisions incorporated within the Management Committee's Constitution, nor of any charge, trust deed, contract or other instrument to which the Management Committee is a Party or which is binding upon its assets;
- e. it has accepted the condition all the equipment supplied by the Council under this Agreement as is and satisfied itself that the equipment is suitable for the operation of the Programme of Activities for the duration of this Agreement and undertakes not to introduce any additional equipment into the Premises without the express consent of the Council; [TO BE DELETED FOR NON-3RS PREMISES]
- f. it shall comply with all Council policies affecting the operation of the Programme of Activities, including but not limited to those on, Equal Opportunities, Child Protection, the Council's Lifelong Learning Strategy, and the Council's policies on sponsorship, all as the same may be amended or updated from time to time. The Council shall provide the Management Committee on request with copies of any relevant policies;
- g. it shall exercise its business in such a way that enables the Management Committee to have sufficient funds to meet its commitments when operating the Agreement at all times.

The Management Committee agrees and acknowledges that in the event of the Council incurring any loss, damage or expense as a result of a breach of any of the obligations or warranties contained in this Agreement, or in the event of any of the matters included in any of the foregoing warranties being untrue or proving to be unfounded, the Management Committee shall be liable to make good all such loss, damage and expense incurred by the Council, on a full indemnity basis.

2.3 Subject to the following provisions of this Clause, the Council hereby warrants to the Management Committee that:-

- a. it has power to enter into this Agreement and has taken all necessary action to authorise its

execution, completion and performance; and

- b. this Agreement shall constitute legally binding obligations on the Council enforceable in accordance with its terms.

2.4 In the event that the Management Committee makes a claim (which must be received in writing by the council within three months) under any of the warranties which is admitted by the Council or otherwise determined in favour of the Management Committee, the Management Committee's exclusive remedy shall be the right to terminate this Agreement or be a payment by the Council to the Management Committee of an amount equal to the loss or damage which the Management Committee has suffered.

2.5 **Variation and Dispute Resolution**

The terms of this Agreement shall not be amended or altered except by mutual agreement in writing and signed by the duly authorised representatives of the Council and the Management Committee. Any dispute or difference arising between the Parties in relation to the provisions of this Agreement will be determined by an expert to be agreed between the Parties. Failing agreement on an expert, either Party may apply to the Sheriff Principal of Grampian, Highlands and Islands for the appointment of such an expert.

Notwithstanding the method of appointment of the expert, it shall be an express condition of appointment that any decisions will be issued within 14 days of a joint statement by both Parties, such Parties being obliged to act reasonably and expeditiously in the preparation of such statement. Any decision issued by such an expert shall be binding on both Parties except in the event of a manifest error in fact or in law. Both Parties shall bear the costs of appointing the expert equally or, alternatively, the expert may, in certain circumstances, determine that one or other Party bears a higher proportion of the costs.

3. **BREAK OUT/ STEP IN RIGHTS/ TERMINATION OF AGREEMENT ARRANGEMENTS**

3.1 Termination: This Agreement may be terminated by the Council on the happening of any one or more of the following events:-

- a. In the event that the Management Committee is in breach of any of the provisions of this Agreement
- b. if the Management Committee has failed to pay any sum due under the terms of this Agreement and any such sum remains unpaid for 20 Working Days from the date of service of a notice by the Council advising of non-payment and demanding payment of the sums due,
- c. if an order is made or an effective resolution is passed for the dissolution of or winding-up of the Management Committee or if an administration order is granted in respect of the Management Committee;
- d. if any distress, diligence, execution or sequestration or other process be issued upon or against any of the property of the Management Committee and is not paid or discharged within seven days;
- e. if any security created by any heritable security or charge executed by the Management Committee or any subsidiary of the Management Committee shall become enforceable and the Holder shall take any steps to enforce the same.
- f. if the Management Committee is deemed to have operated at any time outside the terms of its Constitution, Articles of Incorporation or other related document which defines the nature of and

governance structures of the Management Committee.

- g. If the Management Committee fails to meet or there are insufficient members of the Management Committee to constitute a quorum at meetings for a period of 6 months; or
- h. If any period of closure of the Premises to the public lasts for longer than one month (unless the closure has been approved by the council).

In the event of any of the above, the Management Committee must notify the Council within two working days.

- 3.2 Provided that in the event that any of the foregoing breaches is or are remediable the Council shall not terminate this Agreement unless it has first given notice to the Management Committee specifying the breach in question, and given the Management Committee no more than 20 Working Days to remedy the same and the Management Committee has failed to so remedy the breach. In these circumstances, the Council shall be entitled to thereafter immediately terminate by written notice.
- 3.3 On termination of the agreement, the Council shall be entitled to put in place alternative arrangements for the delivery of activities within the Premises.
- 3.4 In addition, the Council may by giving not less than six months' notice in writing to the Management Committee (or such shorter period of notice as is necessary in any case to ensure the Council's continuing compliance with the Law), terminate this Agreement where it determines that:-
 - a. changes in Council policy; and/or
 - b. changes in budgetary considerations on the part of the Council; and/or
 - c. changes in Law; and/or
 - d. acts or omissions on the part of the Scottish Government may make this necessary or desirable.
- 3.5 The Management Committee may terminate this Agreement immediately by written notice to the Council if the Council commits a material breach of this Agreement, and fails to remedy that breach within 20 Working Days of the Council's receipt of written notice from the Management Committee specifying the breach, and asking the Council to remedy it.
- 3.6 The Management Committee may terminate this Agreement by giving 3 months written notice to the Council.
- 3.7 In the case of termination, the Council and the Management Committee shall take all action (so far as is possible) to put the Parties in the same position as they would have been in had they not entered into this Agreement. The Council undertakes to ensure as far as possible that the arrangements contemplated by this Agreement are brought to an end in such a way that the Management Committee is not rendered insolvent at the date of termination of this Agreement, as a direct result of the termination of this Agreement pursuant to this Clause.
- 3.8 On termination of this Agreement for any reason whatsoever:-
 - a. With effect from the date of termination of this Agreement by the Council the Moveable Assets shall immediately transfer to the ownership of the Council and no payment in compensation or otherwise shall be due to the Management Committee in respect therefore;
 - b. the Management Committee shall transfer to the Council the benefit, subject to the burden, of

any event bookings as the Council may direct, and the Management Committee shall use its best endeavours to ensure that all necessary consents are obtained to the transfer to the Council of each of the event bookings requested by the Council

- c. the Management Committee shall co-operate fully with the Council and any person who shall in future operate the Programme of Activities or provide services the same as or similar to those provided under this Agreement or any of them or any part of them in order to achieve a smooth transition from the then arrangements for the operation of the Premises to the new arrangements for the future operation of the Premises, and to avoid any inconvenience to, or any risk to the health and safety of, the Council, employees and agents, and members of the public;
- d. the Management Committee shall on or prior to the date of termination of this Agreement vacate the Premises, leaving it in a clean and orderly condition and deliver to the Council any keys to the Premises and any computer programs, records and data relating to the Services and the Premises, and within twenty Working Days remove from the Premises all of its own property not required by the Council.

3.9 **Step In Rights:** Without prejudice to any other right or remedy of the Council under this Agreement, if the Council reasonably considers that a breach by the Management Committee of an obligation under this Agreement may or will:

- a. create (or has already created) an immediate and serious threat to health, safety or the environment; or
- b. result (or has already resulted) in a interruption to or disruption of the operation of the Premises and/or the Services (including the Programme of Activity) to be provided under this Agreement or;
- c. cause (or has already caused) a material breach by the Council of its obligations under Law, or to other contractual parties or;
- d. cause (or has already caused) a serious nuisance: or
- e. that the circumstances constitute an emergency;

then, if the Council considers that there is sufficient time and that it is likely that the Management Committee will be willing and able to provide assistance, the Council may serve a Notice on the Management Committee requiring it forthwith to take such steps as the Council, acting reasonably, considers necessary or expedient to mitigate or preclude such state of affairs including any necessary deadlines within which such steps must be taken.

In this instance, the Management Committee shall use all reasonable endeavours to comply with any Notice given. This shall include full co-operation and all reasonable assistance, including reimbursing the Council for all reasonable costs incurred by the Council in taking such action. Failure to comply will result in immediate suspension or termination of this Agreement. In the event of termination, the Management Committee may be given not less than two working days notice to vacate the Premises.

3.10 The Council shall have no liability to the Management Committee for any damage which has occurred prior to the exercise by the Council of its step-in rights under this Clause , or which results from breach by the Management Committee of any of its obligations under this Agreement, but shall be liable for any damage or liability caused by or attributable to the negligent acts or omissions of it or its employees, agents or contractors during any period during which it exercises such step-in rights.

3.11 Where an "emergency" arises, and that emergency consists of an event or events which could not reasonably have been foreseen by the Management Committee, if the Council has not served a Notice

on the Management Committee or exercised its step-in rights, and the Management Committee has used all reasonable endeavours to deal with the emergency (and demonstrated to the Council's reasonable satisfaction that it has done so) but has nevertheless failed to satisfactorily bring the emergency to an end; or the Council has served a Notice on the Management Committee and the Management Committee has used all reasonable endeavours to comply with such Notice, but has nevertheless failed to so comply to the reasonable satisfaction of the Council; then the Management Committee shall have the right to require the Council to exercise its step-in rights to deal with the emergency.

3.12 The Council shall be entitled to close down the Premises without notice, in the event of an emergency or any other unforeseen circumstance. For the avoidance of doubt, this includes where the Council is directed to close the Premises on the advice or instruction of its contractor. In these circumstances, the Council shall not incur any liability to the Management Committee.

3.13 In the event that the Premises are closed to the public through no act or omission on the part of the Management Committee and remain closed for a period of time exceeding ##, the Council shall provide such support to the Management Committee as is reasonable in the circumstances, in order to assist the Management Committee in securing suitable alternative premises or otherwise making arrangements for the delivery of the Programme of Activity. In addition the Council shall assist the Management Committee in identifying possible mechanisms or arrangements which mitigate the financial impact of any unforeseen closure of the Premises in accordance with this Clause.

4. GOVERNING LAW AND JURISDICTION

4.1 This Agreement shall be governed by, and interpreted in accordance with Scots Law. Aberdeen Sheriff Court shall have exclusive jurisdiction to settle any disputes (including claims for set-off and counter claims) which may arise in connection with the validity, effect, interpretation, or performance of the legal relationship established by this Agreement or otherwise arising in accordance with this Agreement. IN WITNESS WHEREOF these presents typewritten on this and the [insert number of pages] preceding pages, together with the Schedule annexed are executed as follows

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN ABERDEEN CITY COUNCIL AND THE MANAGEMENT COMMITTEE OF [INSERT NAME] COMMUNITY CENTRE

SCHEDULE PART 1– DEFINITIONS AND INTERPRETATIONS

- 1.1. In this Agreement the following words and expressions shall have the following meanings (unless a specific clause states otherwise):-
- 1.1.1 TO BE COMPLETED
- "emergency" means any event unforeseen by the Council affecting the Programme of Activities or Premises, whether directly or indirectly, which causes or has the potential to cause an immediate and imminent threat to the long term integrity of any part of the Programme of Activities or Premises or to land adjacent to, or likely to be affected by events on, any part of the Premises.
- 1.2. In this Agreement:
- a. any reference to a provision of a statute includes references to that provision as amended, extended or applied by any other provision regardless of whether the other provision became law before or after this Agreement, any re-enactment of that provision (with or without change); and any regulation, order, code of practice or similar thing having the force of law made (before or after this Agreement) under that provision or any provision falling within Clause 1.2(a) above
 - b. the singular shall include the plural and vice versa and reference to one gender shall include any other gender;
 - c. "including" shall mean "including but not limited to"; and
 - d. reference to a Clause or a Sub-Clause is to the relevant clause or sub-clause of this Agreement, unless otherwise stated.
- 1.3. In the event of any ambiguity or contradiction between the conditions of any documents forming part of this Agreement, then the documents shall be given precedence in the order listed below:
- a. This Agreement
 - b. Any other documents forming part of the Schedule.

SCHEDULE PART 2 - LEGISLATIVE REQUIREMENTS

1.1 Corrupt/ Illegal Practices/ Bribery Act 2010

The Management Committee is responsible for ensuring that the requirements of the Bribery Act 2010 are met. The Council shall be entitled to cancel this Agreement and to recover from the Management Committee the amount of any loss or damage resulting from such cancellation if: -

- a. the Management Committee shall have offered, or given, or received, or agreed to give to any person any gift, consideration, inducement or award of any kind for doing or not doing any action in relation to this Agreement or any other agreement with the Council; or
- b. like acts shall have been done by any Management Committee Personnel, Management Committee Party or Connected Person or acting on behalf of the Management Committee (whether with or without the knowledge of the Management Committee); or
- c. in relation to any agreement with the Council, the Management Committee or persons employed by the Management Committee or acting on behalf of the Management Committee shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 or have given any fee or reward, the receipt of which is an offence under any legislation pertaining to Local Authorities; or

- d. the Management Committee or its representative (whether with or without the knowledge of the Management Committee) shall have practised collusion in relation to this Agreement or any tendering for any other contract with the Council or shall have employed illegal practices either in obtaining or executing this Agreement or any other contract with the Council.

1.2 Data Protection/ Confidentiality

The Council and the Management Committee hereby agree to ensure that they will at all times comply with the provisions and obligations imposed by DPA and the data protection principles contained in Schedule 1 of DPA in Processing Personal Data. In Processing Personal Data on behalf of the Council, the Management Committee shall comply with the said data protection principles, act at all times in accordance with the instructions of the Council as data controller and generally do nothing to compromise the Council's compliance with its obligations as data controller. Both parties agree to save, indemnify, defend and hold harmless each other in respect of any unauthorised disclosure or other Processing of Personal Data.

The Management Committee recognises that under this Agreement it may receive confidential or proprietary information of the Council. The Management Committee agrees not to divulge such information to any person, except to Management Committee Personnel and then only to those Management Committee Personnel who need to know the same for the performance of the Services, without the Council's prior written consent. Further, the Management Committee shall prevent disclosure or access by any third party other than in accordance with the provisions of the Agreement. The Management Committee shall ensure that Management Committee Personnel are aware of and are complying with the provisions of this Clause. This obligation will survive the termination of this Agreement.

1.3 Freedom of Information Scotland Act (FOISA) and Environmental Information Regulations (EIR)

The Management Committee acknowledges that the Council is subject to the requirements of FOISA and EIR and shall assist and co-operate with the Council at no additional charge, in meeting any reasonable requests for information in relation to this Agreement, or the Services to be provided hereunder, which are made to the Council in connection with FOISA or EIR. The Council may, from time to time, serve on the Management Committee an information notice requiring the Management Committee within such time and in such form as specified in the information notice to furnish to the Council such information as the Council may reasonably require relating to such requests for information. The Management Committee acknowledges that in responding to such requests for information, the Council shall be entitled to provide information relating to this Agreement or the Services to be provided hereunder.

The Management Committee shall not respond directly to any requests for Information made under FOISA or EIR but shall instead pass these to the Council within two Working Days of receipt of the same or advise the applicant accordingly.

The Council shall be responsible for determining in its absolute discretion:- whether any Information is exempt from disclosure in accordance with the provisions of FOISA or EIR; and/or whether the disclosure of any of the Information is otherwise in the public interest (whether or not such information would otherwise be exempt from disclosure under FOISA or EIR);

The Management Committee acknowledges that the Council may, acting in accordance with the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under FOISA, disclose, or publish through its publication scheme, any Information without consulting or obtaining consent from

the Management Committee, or having taken the Management Committee's views into account.

1.4 **Equal Opportunities**

The Management Committee shall provide a copy of its Equal Opportunities Policy, which upon execution of this Agreement shall be deemed to be part hereof. The Management Committee warrants that this policy complies with the statutory obligations set down in the Equality Act 2010 and that it shall not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin, gender, disability, region or belief, age or sexual orientation in relation to the decisions to recruit, train or promote Management Committee Personnel, volunteers nor in the provision of the Services.

The Management Committee shall observe as far as possible the Commission for Racial Equality's Code of Practice for Employment as approved by Parliament in 2006, or any other guidance which supersedes the Code of Practice, which gives practical guidance to employers and other in the elimination of racial discrimination and the promotion of equality of opportunity in employment, including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities. If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Management Committee, then the Management Committee shall take all necessary steps to prevent recurrence of such unlawful discrimination.

1.5 **General**

The Management Committee will co-operate fully with any legal proceedings, enquiry, arbitration or investigation (including an investigation by the Scottish Public Services Ombudsman) arising out of the operation of the Premises by the Management Committee or the arrangements set out in this Agreement generally, and the Management Committee shall give evidence in such enquiries, arbitrations, proceedings and hearings without cost to the Council. Notwithstanding the above, in the event that the Local Government Ombudsman makes a finding of maladministration or injustice against the Council as a result of fault on the part of the Management Committee, the Council reserves the right to recover from the Management Committee any payments made by the Council to the complainant.

In performing this Agreement, the Management Committee shall accept full responsibility for and shall save, indemnify, defend and hold harmless the Council and any of the Council's contractors and its and their staff from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities in respect of the Management Committee's and its Connected Persons, Management Committee Party and Management Committee Personnel's non-compliance with all applicable laws, statutes, rules and regulations; or which arise out of the personal injury to or the death of Management Committee Personnel; or which arise out loss of or damage to the Management Committee's property and the property of any Connected Person, Management Committee Party or Management Committee Personnel whether owned, hired, leased or otherwise provided by the Management Committee arising from or related to the purposes of this Agreement; or which may at any time be made arising as a result of the wilful or negligent acts of the Management Committee, any Connected Person, the Management Committee Personnel or any Management Committee Party in connection with the operation of the Programme of Activity; or in respect of personal injury to or death of any Third Party as a result of the operation of the Programme of Activities by the Management Committee; or any claims, losses, damages, costs (including legal costs), expenses and liabilities loss or damage caused to any land, structure, building moveable property (including the Moveable Assets) in the ownership, occupation or possession of or partial occupation or possession of the Council by Management Committee Personnel

(whether such damage was caused by negligence or in any other way whatsoever); and any payment made by the Council to a complainant following a finding of misadministration causing injustice by the Scottish Public Services Ombudsman where such finding results from any act or omission of the Management Committee or any Management Committee Party or Management Committee Personnel.

In performing this Agreement, the Council shall be responsible for and shall save, indemnify, defend and hold harmless the Management Committee from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of personal injury including death or disease to Management Committee Personnel which is caused by the wilful or negligent acts of the Council or its staff during the course of their employment but not in any other way whatsoever, or loss or damage to the Management Committee's property which is caused by the wilful or negligent acts of the Council or its staff during the course of their employment but not in any other way whatsoever.

Any information provided to the Management Committee by the Council by way of guide quantities, plans, drawings, reports, databases, files or similar information at any time (including for the avoidance of doubt any guidance and the Management Agreement Handbook), is provided only as a guide. The Management Committee agrees that it has ascertained for itself the accuracy of the information and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Management Committee's decision to enter into this Agreement. No claim against the Council shall be allowed whether in contract, in delict or otherwise on the grounds of any inaccuracy.

The Council accepts no liability or responsibility for any loss arising as a result of failure of the Management Committee to follow the requirements of this Agreement, or for any loss, damage, injury howsoever occasioned incurred as a result of the Management Committee delivering the Services by way of the methods detailed in any documentation submitted by or to the Council as required or otherwise authorised by this Agreement. No liability will be held against the Council for any loss, damage, injury howsoever occasioned incurred as a result of the Council curtailing any activity in terms of Step In Rights or Termination of this Agreement.

Where consent or approval is referred to this is taken to be prior written consent and no claim shall lie against the Council in respect of any delay in processing or refusal to grant such consent. Further no claims shall be against the Council in respect of any actions taken by the Management Committee following upon the grant of such consent or approval.

1.6 **Assignment/Sub-Contracting**

The Council shall at its own discretion, be entitled to assign this Agreement or any part of it or any benefit or interest in it to any of its statutory successors or shall be entitled to assign at its own discretion this Agreement or any part of it or any benefit or interest in it to any other legal body or organisation, whether or not wholly owned or partially owned by the Council, which the Council may come into an arrangement with pertaining to the management or otherwise the operation of this Agreement.

- a. Should the Council be affected by re-organisation by legislation resulting in a structural change or amendment to its functions the Parties hereto agree that this will result in a formal assignment of this Agreement having taken place by operation of Law. In this event, the Management Committee shall use its best endeavours to assist in the smooth transfer of arrangements to facilitate this assignment.

- b. The Management Committee shall in no circumstances assign, sub-let, or purport to assign this Agreement or any part of it or benefit to or interest in it to any person whomsoever without the prior written approval of the Council.
- c. The Management Committee shall not sub-contract any part of the operation of the Programme of Activities without the Council's prior written consent. Notwithstanding such consent, the Management Committee shall not be relieved from any liabilities or obligations under this Agreement and shall be responsible for the acts, omissions and breaches of any of its sub-contractors as fully as if they were the Management Committee's own and shall save, defend, indemnify and hold harmless the Council from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities in respect of such, acts, omissions and breaches of its sub-contractors.
- d. Where consent to sub-contracting is granted, the Management Committee shall provide each of its sub-contractors with a copy of this Agreement. Prior to its sub-contractor commencing work, the Management Committee shall obtain a written undertaking from its subcontractor that its sub-contractor is familiar with the documentation and will act fully in conformity with the terms and Conditions contained therein insofar as relevant to the Management Committee.

1.6 Notices

Where any notice or other communication is to be made under this Agreement, it must be in writing. Notices or communications may be left at, or sent by first class post or recorded or special delivery to, the address of the Party given at the start of this Agreement or any other address they may nominate in writing from time to time in accordance with this Clause 19.4.

Any notice or communication left at an address of a Party in accordance with this Clause will be deemed to be received at the time of delivery. In other cases, any notice or communication shall be treated as having been received by the person to whom it is addressed two Working Days following the date of dispatch of the notice by post, or where the notice is given by fax, simultaneously on completion of transmission. However, where in any case, these rules would result in a notice or communication being treated as having been received on a day that is not a Working Day, it shall be treated as having been received on the next Working Day afterwards. To prove the giving of the notice it shall be sufficient to show it was properly dispatched.

1.7 Force Majeure

In the event of an Act of God or Force Majeure (which shall include acts of government, fire, tempest, acts of war and related matters, which are both beyond the control of the Management Committee and are such that the Management Committee with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the performance of the Services, the duty of the Management Committee to perform the Services shall be suspended until such circumstances have ceased. The Council shall not be liable to make any payment to the Management Committee in respect of such suspension and any such sum already paid in respect of any part of the Services not yet performed shall be held to the credit of the Council and returned to the Council within 5 Working Days of a request for repayment.

For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties and failure to provide adequate premises, equipment, materials, consumables and/or staff or similar matters are not to be considered as events of Force Majeure or Acts of God.

SCHEDULE PART 3 – LEASE [DELETE FOR NON-STAND ALONE CENTRES]

SCHEDULE PART 4 - JANITORIAL ARRANGEMENTS [DELETE FOR NON-COMMUNITY SCHOOLS]

SCHEDULE PART 5 – COMMUNITY SCHOOLS REQUIREMENTS [DELETE FOR NON-COMMUNITY SCHOOLS]

- Core hours
- Out of core hours fee
- Childcare activities
- Reporting of Damage

SCHEDULE PART 6 – PLAN OF BUILDING

DRAFT

LEASE

between

ABERDEEN CITY COUNCIL, incorporated by and acting under the Local Government etc (Scotland) Act 1994 (who and whose successors as owners of the premises aftermentioned are hereinafter referred to as "the Council") OF THE ONE PART

and

(Names & addresses of Office Bearers) and their successors in office as Chairperson etc respectively of the Management Committee of [.....]
Community Centre [Address:.....
.....
.....]
as Trustees ex officio for the said Management Committee (hereinafter referred to as "the Tenants") OF THE OTHER PART

CONSIDERING that the Council have agreed to lease and the tenants have agreed to take on lease ALL and WHOLE [*insert description with reference to an annexed plan*] (hereinafter referred to as "the premises"); NOW THEREFORE the Council and the tenants HAVE AGREED and DO HEREBY AGREE as follows:-

(ONE) The Council hereby lease the premises to the tenants for the period from theday of Two Thousand and(which is hereby agreed to be the date of entry

notwithstanding the date or dates hereof) until [*insert here a date () years and 1 day after the date of entry*].

(TWO) The tenants bind and oblige themselves to pay punctually to the Council during the whole term of the lease in the name of rent the sum of ONE POUND (£1) STERLING per annum exclusive of rates and Value Added Tax and that yearly in advance on [*insert date*] in each year.

(THREE) The tenants bind and oblige themselves to pay punctually to the Council during the whole term of the lease all rates (if asked), taxes, assessments and any other charges which may be levied in respect of the occupation of the premises. In the event of the tenants being unable to pay for any of the charges for which they are responsible in terms of this clause then either party shall be entitled to bring this lease to an end by giving the other party no less than six months prior written notice.

(FOUR) The tenants will not assign this Lease or formally sublet the whole or any part of the premises.

(FIVE) The tenants will not create any security over or dispose of the tenants' interest in or part with the possession of the premises or any part thereof.

(SIX) The tenants shall use the premises as a community centre solely for the conduct of social, educational, religious, cultural, leisure and

recreational activities for the benefit of the community as a whole and for no other use whatsoever.

(SEVEN) The Council will insure the premises in their name and at their expense with an insurance company of repute in respect of the following risks:- fire, lightning, explosion, aircraft, riot and civil commotion, malicious damage, earthquake, storm, flood, escape of water, impact by road vehicles, theft, accidental damage, breakage of fixed glass and such other insurable risks as the Council may from time to time reasonably require. The terms and conditions of the policy of insurance (subject to such exclusions and limitations as are imposed by the Insurers) may be varied from time to time by the Council and/or the Insurers. The premises shall be insured as aforesaid in a sum which in the opinion of the Council represents the full reinstatement value thereof together with such allowance as they think fit for inflation during the period of insurance and the replanning and reinstatement period (including Architects' and Surveyors' fees on such full value at the current scales for the time being of the Royal Institute of British Architects and the Royal Institution of Chartered Surveyors and also Engineers' and other Consultants' fees) and following damage or destruction of the premises or any part by a peril against which the premises are insured pursuant to the provisions of this Clause, will repair, rebuild or reinstate the premises.

(EIGHT) The Council shall not be responsible for insuring the tenants' goods, equipment, stock and other contents in or on the premises.

(NINE) The tenants will accept the premises as being in the condition as stated in the Schedule of Condition annexed and signed as relative hereto as at the date of entry. The Council will be responsible for and carry out all internal and external repairs and maintenance in order to keep the premises in a wind and watertight condition. The tenants will be responsible for and carry out all other internal and external repairs and maintenance necessary in order to keep the premises in the same condition as stated in the said Schedule of Condition. In the event of **either party** being unable to pay for any of the repairs for which they are responsible in terms of this clause then either party shall be entitled to bring this lease to an end by giving the other party no less than six months prior written notice.

(TEN) The tenants will not in any way alter or add to the premises without first having obtained the written consent of the Council. Any modifications, alterations, additions, fittings or fixtures which the tenants in accordance with these presents may make or instruct or install shall remain their property during the currency of the lease. On the expiry or sooner termination of the lease, unless otherwise required by the Council by notice sent in accordance with Clause (TWENTY-THREE) below, the tenants shall remove any unauthorised modifications, alterations, additions, fittings or fixtures and restore the premises to their condition prior to such modifications, alterations, additions or installation of any fitting or fixture. Failing such restoration, the Council may carry out any necessary work and recover the cost from the tenants. All damage caused by any removal shall be made good by the tenants at their expense to the Council's satisfaction. In the event of the

Council agreeing to the retention of any modification, alteration, addition, fixture or fitting, no compensation of any kind shall be payable by the Council to the tenants.

(ELEVEN) The tenants will maintain the premises in a neat and tidy condition at their expense to the Council's satisfaction during the currency of the lease.

(TWELVE) The Council shall not be liable for any loss, damage or injury whatever, however sustained, attributable directly or indirectly to any buildings or other structures, fixtures, fittings or other property belonging to the tenants or to third parties in or upon the premises or to any activities carried on, in or upon it by the tenants or third parties.

(THIRTEEN) The Council shall not be responsible or liable to make reparation or in any way to compensate the tenants for any loss, injury, damage or temporary deprivation of occupancy of the premises which the tenants may sustain through the failure or insufficiency of services, or any defect or insufficiency in any part of the premises, the tenants being held to have satisfied themselves as to the suitability of the premises and hereby renouncing all such claims and freeing and relieving the Council therefrom.

(FOURTEEN) The tenants will comply in all respects with all statutory requirements (already in place or to be passed in the future) and all requirements of any government department, local authority or other public or competent authority relating to the tenants and to the occupation of the

premises by the tenants. Without prejudice to the foregoing generality this will include compliance with all relevant equal opportunities and child and adult protection guidance and legislation.

(FIFTEEN) The tenants will permit the Council and their agents or representatives to obtain access to the premises or any part thereof during the currency of the lease upon receiving reasonable notice thereof (or forthwith in the case of emergency). Furthermore and without prejudice to the conditions contained within Clause 5 of The Management Agreement, annexed and executed as relative hereto, the tenants will permit the Council and the emergency services to use the premises without notice being given in the event of the premises being required as a result of a civil emergency.

(SIXTEEN) The tenants will not store or permit to be stored dangerous or noxious substances or materials on the premises nor will the tenants allow to pass into the sewers or drains serving the premises any noxious or deleterious effluent or any other substance which might cause any obstruction in or injury to such sewers or drains.

(SEVENTEEN) The Council will keep the premises sufficiently supplied and equipped with security and fire-fighting and extinguishing apparatus and appliances and related emergency signage which shall include all fire alarms, intruder alarms, all detectors, smoke detection systems, emergency lighting (including a central battery) and all controls. The tenants will immediately notify the Council of any defects in or damage to any of the said apparatus

and appliances for which the Council will retain the responsibility for maintenance.

(EIGHTEEN) The tenants will not erect any sign, poster, notice, advertisement or display on the exterior of the premises without the prior written consent of the Council, which consent will not be unreasonably withheld or delayed.

(NINETEEN) The Council reserves the right to install on the premises at any time during the term of the lease a communications aerial as part of the Council's wide area network (WAN) for the benefit of the Council's Education, Culture and Sport Service. The Council will be responsible for all maintenance, repair and, where necessary, replacement of the said aerial.

(TWENTY) (i) if the tenants allow the premises to go unused and/or unoccupied for a period of more than 2 months (except in any case where the premises are either beyond economical repair or are rendered unsafe and/or unfit for beneficial occupation and/or use by any cause) or the tenants are at any time in breach of any of the non-monetary obligations undertaken by them under this lease then and in either of such events the Council at their option may, subject to Clause (TWENTY) (ii) by notice served on the tenants bring this Lease to an end forthwith and treat this Lease and all transmissions thereof with all that has followed or can competently follow thereon as void and null and that without the necessity of any declarator, process of removal, or other procedure at law and the premises shall thereupon revert to the

Council and it shall be lawful for the Council or any person or persons duly authorised by the Council to enter upon possession of the premises and thereafter use, possess and enjoy the same free of all claims by the tenants as if this Lease had never been granted, but without prejudice to any other right of action or remedy available to the Council arising out of or in connection with any antecedent failure to pay any sum due by the tenants or any antecedent breach of any non-monetary obligation of the tenants under this Lease.

(ii) In the case of a failure or contravention by the tenants which is capable of being remedied, albeit late, the Council shall not exercise the foregoing option of irritancy unless and until they shall first have given written notice to the tenants requiring the same to be remedied and the tenants shall have failed to remedy the same within such reasonable period, having due regard to the nature and extent of the failure or contravention complained of as shall be prescribed in the notice which in the case of non-payment of any monetary amounts will be 14 days only.

(TWENTY-ONE) All moveable property belonging to the tenants will be removed by the tenants within seven days of the expiry of the lease or earlier termination thereof subject to restoration by the tenants at their expense to the Council's satisfaction of any damage caused by them to the premises, otherwise any moveable property remaining after the expiry of the seven days shall be deemed to have been abandoned by the tenants and will thereupon without payment become the property of the Council.

(TWENTY-TWO) The tenants will flit and remove from the premises at the expiry of the lease or earlier termination thereof without any process of removal, and shall repair at their expense all damage done by the removal of any unauthorised modifications, alterations, additions, fixtures or fittings belonging to them. Failing such repair the Council may carry out any necessary works themselves and shall recover the expense thereof from the tenants.

(TWENTY-THREE) Any notice, request, demand, consent or approval under the Lease shall be in writing and shall be deemed to be sufficiently served at the expiry of forty-eight hours after posting if sent by Recorded Delivery post. Any notice to the tenants shall be sent to the premises. Any notice to the Council shall be sent to the Corporate Director – Corporate Governance or his equivalent for the time being at Town House, Aberdeen, all as the case may be. In proving service it shall be sufficient to prove that the envelope containing the notice was duly addressed and posted in accordance with the provisions of this Clause.

(TWENTY-FOUR) In the event of any question arising as to the interpretation of the provisions of the lease, the same shall be referred to an arbiter to be mutually chosen by the parties or in the event of failure to agree, by an arbiter to be appointed by the Sheriff Principal of Grampian Highland and Islands. Any fee chargeable for the appointment of an arbiter shall be deemed to be an expense of the arbitration.

(TWENTY-FIVE) The tenants will be bound by the terms of the Management Agreement annexed and executed as relative hereto throughout the period of this lease. The Council will be entitled to amend or vary the said Management Agreement in a reasonable manner at any time, but only after full consultation with the tenants.

(TWENTY-SIX) The Council and the tenants consent to the registration of this lease for preservation and execution: IN WITNESS WHEREOF

Version 4.3

-11-
July 2011

LEASE

between

ABERDEEN CITY COUNCIL

and

*

2010
*

Subjects: *

City Solicitor
Town House
ABERDEEN

AW/LEASE/IAN/COMMUNITY CENTRE – [2]

ABERDEEN CITY COUNCIL

MEETING TITLE:	Management Agreement Meeting	MEETING DATE:	1 February 2012
PARTICIPANTS:	Cllr John West (Chair), Cllr Callum McCaig, Cllr Aileen Malone, Annette Bruton, Patricia Cassidy, Gail Woodcock, Phil D'Arcy, Wilma Mackland, Mike Stokeld, Paul O'Connor, Sylvia Davidson, Alex Mess		
APOLOGIES:	Brian Allan		

NO.	AGENDA ITEM	NOTES OF DISCUSSION	ACTION/DECISIONS	BY WHOM	WHEN
1	Update on feedback from Community Centres	<p>PD had identified a number of solicitors who may be used to provide community centres with independent legal advice on constitutions, management agreements and leases. AM mentioned another solicitor that he had previously used.</p> <p>AB reminded those present that the budget available for the centres to seek independent legal advice was based on the commissioning of one solicitor to represent all the Management Committees.</p> <p>There was a general discussion about the use of legal advice including at what point in the process independent legal advice would be most helpful and the methods for the negotiation between the two solicitors to take place. It was recommended that the Management Committees sought advice on a fixed fee basis if possible.</p>	<p>Management Committees to procure a single legal advisor.</p> <p>It was agreed that the independent legal advisor would be asked to review the document after it had been agreed by the Education, Culture and Sport Committee.</p> <p>It was agreed that legal discussions and negotiation via meetings would be preferential to that by written correspondence.</p>	Management Committees	By 23/2/12
2	Updated Management Agreement	Cllr West introduced the new draft Management Agreement that has been pulled together based on the discussions and decisions on the key principles which formed the basis of what the expectations were in relation to the running of community centres, as per meetings in October and December.	The attached document shows the amendments that were agreed and where specific further legal advice is required. There were 4 clauses which were subject to significantly differing view-points and these are highlighted in		

		<p>Cllr West noted that work had been done to reduce the size of the document as much as possible, and stressed that the document would form a legal contract, and therefore required to be clear and unambiguous. This has required some legal terminology.</p> <p>Cllr McCaig noted how important it was that things were done in partnership and with negotiation and dialogue. He stressed that the final document will set out the minimum expectations of the Council, however this would not stop additional partnership work.</p> <p>PD noted he felt that the document imposes too many conditions and does not present a light enough touch.</p> <p>MS agreed that the document required to be clear and unambiguous.</p> <p>AM noted that he felt that we need to start from a position of trust. He felt that it would be unreasonable to have to tell the Council when the programme in the centre would and would not operate. AM highlighted difficulties he had previously had to get volunteers to undertake training.</p> <p>Cllr Malone noted that it would be helpful to have an accompanying summary document. AB confirmed that it was the intention to have such a document, and this would be prepared when the legal document was agreed.</p> <p>AB explained that having legal documents in place for these types of scenarios is not unusual.</p> <p>PO noted that the documentation that was discussed at the October meeting was agreed but he felt it was changed by December.</p>	<p>green.</p> <p>Information session to be arranged for Management Committee representatives on Education Scotland Inspections.</p> <p>Guidance on best practice in relation to roles of employee and office bearer for voluntary bodies and charitable organisations to be circulated.</p>	<p>Gail Woodcock</p> <p>Gail Woodcock</p>	<p>March 2012</p> <p>asap</p>
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	<p>PC reminded everyone, that there was a requirement to incorporate within the document Council policy and legislative requirements. There was a discussion about the legislative requirements in relation to the use of public funding (Following the Public Pound.) It was noted that the Draft Management Agreement refers to this policy, rather than replicating it within the document in an effort to reduce the length of the document.</p> <p>AB noted that the draft document is a work in progress and will be further refined and edited. AB reiterated the advice that Management Committees seek independent legal advice on the document and that the document is there to protect Management Committees and their volunteers as much as the Council.</p> <p>There was a discussion about the economic value of the volunteers that work in centres and this was acknowledged as significant and valued.</p> <p>Liability issues were discussed and Cllr West confirmed that the Council could not underwrite every potential liability that volunteers may incur. Management Committees could limit their liability through the purchase of additional insurance and/or through the type of legal entity that they were.</p> <p>Management Agreement Detail</p> <p>Cllr West then took the group through the agreement on a clause by clause basis.</p> <p>General Points</p> <p>There was a discussion about the term “Management Committee” being used throughout the document. It was confirmed that this was a general term, and could be substituted by alternative preferred terminology depending on the name of the constituted group that would be</p>			
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		<p>entering into the agreement with the Council.</p> <p>There was a discussion about the duration of the agreement, with Cllr West noting that his preference would be that it would be for a five year duration. This was linked to a further discussion about termination rights in relation to the document.</p> <p>There was a discussion about whether the Council would continue to provide scaffolding for the replacement of high lights in affected centres. The implications of this would be checked, and if agreed this would be included within the lease rather than the Management Agreement.</p> <p>There was a discussion about inspections by external bodies, including Education Scotland. It was agreed that the Management Committees would find it helpful to attend an information session attended by an Education Scotland representative in order to receive reassurance about the process.</p> <p>There was a discussion about whether Employees of Management Committees should have office bearer positions on the Management Committee. It was agreed that officers would share evidence of best practice guidance on this subject. It was agreed that if this clause was in the Management Agreement then it would apply to all centres.</p> <p>There was a detailed discussion about how the Council would ensure that it fulfilled its obligations to ensure that Community Learning and Development was provided. The MC reps felt that they would be unwilling to have a requirement within the Management Agreement for a set number of hours to be identified for this use. Cllr McCaig suggested that a clause could be incorporated within the document that required MCs to give first refusal for any free time within their programme to the Council and/or Learning Partnership. There was general agreement on this suggestion. PD suggested that</p>			
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		the Council retain a number of centres under their management to ensure that the Council's requirement in relation to these activities was still deliverable.			
3	Next Steps	It was agreed that changes as discussed today would be made to the document. The document would then go to committee for approval. Subject to that approval, the document would be suitable for review by the Management Committee's legal advisor.	Document to be amended as per discussion. Officers to provide a supported opportunity for other Management Committee representatives to feedback on key elements of the agreement.	Gail Woodcock Gail Woodcock	Asap Before 23/2/12
4	AOCB	There was no other business.			