

MEPB/VG/030360.00001/31361278.08

Final Draft Partnering Agreement¹

Dated

Hampshire County Council

and

Winchester City Council

Dentons UKMEA LLP
One Fleet Place
London EC4M 7WS
United Kingdom
DX 242

¹ Certain points detailed in an email from Mark Bassett (Dentons) to Eloise Appleby and Paula Crompton of 12 September have yet to be finally agreed.

Contents

1	Interpretation	1
2	Effect of this Agreement	4
3	Project Objective	4
4	Term	4
5	Project Costs	4
6	Partner contributions and balancing payments	5
7	Payments	6
8	Obligations of the Parties	6
9	Grant Funding and Management Agreements	7
10	Funders' Agreement	7
11	Related Agreements	7
12	Governance	7
13	Dispute Resolution Procedure	8
14	Clause not used	9
15	Indemnities and liabilities	9
16	Non-compliance with this Agreement	9
17	No fault determination of this Agreement	9
18	Intellectual property rights	10
19	Freedom of information	10
20	Data Protection	11
21	Prevention of bribery	12
22	Entire agreement	13
23	Amendment and variation	13
24	VAT	13
25	Restrictions on transfer	13
26	Notices	14

27	Third party rights	14
28	Execution of different copies	15
29	Governing law	15
Schedule 1 - Key Terms		16
Schedule 2 - The Trust Premises		20
Schedule 3 - the Project Board		21

Partnering Agreement

Dated

Between

- (1) Hampshire City Council (**HCC**) of The Castle, Winchester, Hampshire, SO23 8UJ; and
 - (2) Winchester City Council (**WCC**) of City Offices, Colebrook Street, Winchester SO23 9LJ;
- (each a **Party** and together the **Parties**).

Recitals

- A The Parties are HCC and WCC, local authorities with the responsibility for the provision of arts, museum and heritage services to their respective geographic areas.
- B The Parties intend to establish a newly formed legal entity known as the Hampshire Solent Cultural Trust (the **Trust**). The Parties will transfer their respective services to the Trust, which will then undertake these activities independently of the Parties.
- C The Parties intend to enter into separate funding and management agreements to enable the Trust to undertake the aforementioned activities.
- D The purpose of this agreement is to regulate the relationship of the Parties up to such execution of the grant funding and management agreements (or until such time as this agreement is otherwise terminated) on the terms and conditions specified herein.

This deed witnesses

1 Interpretation

- 1.1 In this Agreement the following words and expressions shall have the following meanings:

Business Case means the document dated [XYZ].

Bribery Act means the Bribery Act 2010.

Collections means the items owned by, held on trust or loaned to the respective Parties for the provision of the existing arts, museums and heritage services.

Data Processor shall have the same meaning as set out in the Data Protection Act 1998.

Deferred Project Costs shall mean any reasonable and proportionate costs incurred and properly payable (whether paid or not) by a Party from an external supplier procured for the sole purpose of the Project which were:

- (a) subject to a dispute between the Parties but the Project Board subsequently decides were properly incurred External Project Costs or Internal Project Costs;
- (b) excluded from a Expenditure List by a party due to an administrative oversight, provided that the Project Board has agreed to the late inclusion of the Project-related cost.

Environmental Information Regulations means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

External Project Costs means any reasonable and proportionate costs incurred and properly payable (whether paid or not) by a Party from an external supplier procured for the sole purpose of the Project.

FOIA means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Funders' Agreement means an agreement between HCC and WCC regulating the ongoing funding of the Trust that incorporates the Key Terms specified in Paragraph 2 of Schedule 1 to this Agreement.

GFM Agreement means each of the separate funding agreements that HCC and WCC shall enter into with the Trust, each of which shall incorporate the Key Terms specified in Paragraph 1 of Schedule 1 to this Agreement.

Hampshire Solent Cultural Partnership Group means an organisation to be established for the purposes of promoting dialogue between the Parties and other external stakeholders and interested parties.

Internal Project Costs means any reasonable and proportionate costs incurred and properly payable (whether paid or not) incurred by a Party from an in-house source procured for the sole purpose of the Project.

Key Terms means the terms identified in Schedule 1 which must be included within, respectively the Funders' Agreement, the GFM Agreements and the Related Agreements.

Partnership Contribution Percentage means:

- (a) in respect of HCC: 90%
- (b) in respect of WCC: 10%

Personal Data shall have the same meaning as set out in the Data Protection Act 1998.

Premises means the properties listed in Schedule 2.

Prohibited Act means one of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged either Party a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with either Party; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud either Party.

Project means the execution of the Project Objective, as set out in Clause 3 of this Agreement.

Project Board means the board representing the Parties and constituted in accordance with Schedule 3 that it is empowered to make various decisions in accordance with this Partnering Agreement.

Project Costs means the:

- (a) Internal Project Costs;
- (b) External Project Costs; and/or
- (c) Deferred Project Costs.

incurred by a Party until it enters the GFM Agreement. Project Costs shall not include any redundancy costs incurred by either Party during the Term.

Project Objective has the meaning as defined in Clause 3 of this Agreement.

Project Plan means the document dated [XYZ].

Related Agreements means the agreements (which may be combined with the GFM Agreement or separate) relating to:

- (a) the Collections;
- (b) the Premises;
- (c) staff transfer; and
- (d) pensions.

that HCC and WCC shall enter into with the Trust, each of which shall incorporate the Key Terms specified in Paragraph 3 of Schedule 1 to this Agreement.

Term means the period defined in Clause 4 of this agreement.

Working Day means any day except Saturday, Sunday and public holidays in England.

- 1.2 References in this Agreement to statutes shall include any statute in force at the date hereof whether before or after the date hereof modifying, re-enacting, extending or made pursuant to

the same or which is modified, re-enacted or extended by the same or pursuant to which the same is made.

- 1.3 Clause headings in this Agreement are for ease of reference only and shall not be taken into account in construing this Agreement.
- 1.4 References in this Agreement to schedules, clauses, sub-clauses and paragraphs are references to those contained in this Agreement.
- 1.5 The schedules to this Agreement are an integral part of this Agreement and reference to this Agreement includes reference thereto.

2 Effect of this Agreement

- 2.1 Nothing in this Agreement, and no action taken under this Agreement, shall create a partnership or establish a relationship of principal and agent between any of the Parties or otherwise authorise any Party to bind any other Party for any purpose.
- 2.2 Nothing in this Agreement shall be taken to fetter the ability of the Parties to carry out or otherwise restrict their statutory rights, duties or discretions.

3 Project Objective

HCC and WCC shall work together to establish the Trust to deliver the existing arts, museums and heritage services currently delivered by the Parties in accordance with the Business Case.

4 Term

This Agreement shall commence upon the date hereof and shall continue until the date that the final Party signs the GFM Agreements (save for where there is an on-going dispute concerning the obligations in this Agreement where the term shall be extended until such dispute is resolved) or until this Agreement is terminated pursuant to the provisions in this Agreement.

5 Project Costs

- 5.1 During the Term of the Agreement either Party may incur Project Costs, subject to the requirements in the remainder of this Clause.
- 5.2 Where a Party wishes to record an item of expenditure as a Project Cost it shall, in relation to:
 - (a) External Project Costs - keep records of the work undertaken by the third-party supplier and the invoices received from that supplier.
 - (b) Internal Project Costs - keep records of the work undertaken by the in-house support function, keep records showing the internal cost attributed to that work and (if requested) provide detail on how the costs were estimated and attributed to the Project.
- 5.3 Where a Party anticipates (or should reasonably have anticipated) that an item of expenditure that it wishes to record as Project Costs will or will be likely to exceed five thousand pounds (£5,000), the Party seeking to record the item of expenditure as Project Costs shall seek the

approval of the Project Board before commissioning such expenditure.

6 Partner contributions and balancing payments

- 6.1 The Parties shall on the first working day of the quarter that follows the commencement of this agreement, and on the same day of each quarter for the remainder of the term, provide each other with a list of all the items of expenditure that they incurred in connection with the project during that period and that they propose to record as Project Costs (the **Expenditure List**). Parties may, with the permission of the Project Board include Deferred Project Costs on the Expenditure List.
- 6.2 The Party receiving the Expenditure List may within 10 Working Days of receiving the Expenditure List request any additional information referred to Clause 5.2 (a) or (b) in relation to any item of expenditure that appears on the Expenditure List and where such a request is made the Party that receives the request for additional information shall provide the requested information within five Working Days of the receipt of such request.
- 6.3 The Party receiving the Expenditure List may within 15 Working Days of receiving the Expenditure List dispute any item of expenditure that appears on the Expenditure List on the following grounds:
- (a) that the expenditure does not solely relate to the Project;
 - (b) that the Party that has prepared the Expenditure List is unable to provide the information referred to Clause 5.2 (a) or (b) in relation to any item of expenditure that appears on the Expenditure List; and/or
 - (c) that the expenditure exceeds five thousand pounds (£5,000) and was not approved in advance by the Project Board.
- 6.4 Where no dispute is raised in relation to an Expenditure List within 15 Working Days of receipt of the Expenditure List, it shall be (or shall be deemed to be) an **Agreed Expenditure List**.
- 6.5 At the monthly Project Board the Parties shall calculate the aggregated Project Costs for the preceding calendar month by adding together the Agreed Expenditure List for each Party (the **Total Monthly Project Cost**). Where there is only one Agreed Expenditure List the sum of the items on that list shall be the Total Monthly Project Cost.
- 6.6 After the Total Monthly Project Costs have been determined in accordance with Clause 6.5 on three occasions, the total sum shall be the **Total Quarterly Project Cost**.
- 6.7 Subject to any balancing payment made in accordance with Clause 6.9, HCC shall pay 90% of the Total Quarterly Project Cost.
- 6.8 Subject to any balancing payment made in accordance with Clause 6.9, WCC shall pay 10% of the Total Quarterly Project Cost.
- 6.9 Balancing payments:
- (a) Where a Party's Project Costs incurred during the relevant quarter divided by the Total Quarterly Project Costs and multiplied by one hundred (with the resulting figure expressed as a percentage of the Total Quarterly Project Costs) exceed

that Party's Partnership Contribution Percentage a balancing payment will be payable by the other Party (the **Owing Party**).

- (b) The balancing payment payable by the Owing Party to the other Party in accordance with Clause 6.9(a) shall be calculated by multiplying the Total Quarterly Project Cost by either 0.1 (where WCC is the Owing Party) or 0.9 (where HCC is the Owing Party) and subtracting from the resulting figure the Owing Party's Project Costs incurred during the relevant quarter with the result being the balancing payment (the **Balancing Payment**).

6.10 Where an item or items on any Expenditure List are disputed (the **Disputed Item(s)**) they shall be excluded from the Expenditure List pending consideration by the Project Board at its earliest opportunity. Where the Project Board determines that the Disputed Item(s) were properly included in the Expenditure List, the Disputed Item(s) shall be included in the next Expenditure List as Deferred Project Costs. Where the Project Board determines that the Disputed Item(s) were not properly incurred (or properly evidenced) Project Costs for the one of the reasons set out Clause 6.3 (a)-(c) then the Disputed Item(s) shall not be Project Cost.

7 Payments

7.1 Where a Party is found to be an Owing Party in accordance with Clause 6.9(a) the other Party shall prepare an invoice in respect of the Balancing Payment and the Owing Party shall pay that invoice in full within a month of it being sent.

7.2 If any Party fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount:

- (a) daily;
- (b) from the due date until the date of payment (both before and after judgment);
- (c) at 3% per cent per annum above the base rate from time to time of Barclays Bank plc.

Any interest accruing under this Clause shall be compounded with the overdue amount on the last day of each month.

8 Obligations of the Parties

8.1 The Parties shall use their reasonable endeavours to work together to implement the Project Objective outlined at Clause 3 above.

8.2 The Parties shall use reasonable endeavours to work together to deliver the Project as outlined in the Business Case and the Project Plan. The obligations of the Parties in relation to the Project shall include but not be limited to the following:

- (a) To use reasonable endeavours to facilitate the establishment of the Trust as a charitable company limited by guarantee;
- (b) To agree to jointly nominate an individual to act as a chair of the shadow board and to the successive board of the Trust once established;
- (c) To use reasonable endeavours to deliver the Project Plan and to provide resources including but not limited to project management support, property advice and legal advice; and

- (d) To use reasonable endeavours to prepare and comply with any formalities required to establish the Trust punctually.

8.3 Without prejudice to the foregoing, the Parties agree to work together in good faith and in accordance with the Project Plan to promote, progress and deliver the Project.

9 GFM Agreements

The Parties shall each offer the offer the Trust the option to enter into a GFM Agreement which contains the Key Terms set out in Schedule 1.

10 Funders' Agreement

The Parties shall use their reasonable endeavours to agree to enter into a Funders' Agreement which contains the Key Terms set out in Schedule 1.

11 Related Agreements

The Parties shall each offer the offer the Trust the option to enter into Related Agreements which contain the Key Terms set out in Schedule 1.

12 Governance

12.1 The Parties shall constitute a Project Board in accordance with requirements set out in Schedule 3. The Parties shall use their reasonable endeavours to make available the attendees (or send suitable nominees) listed in Schedule 3 for every Project Board meeting held.

12.2 The Project Board shall take decisions on the basis of unanimity.

12.3 The decisions the Project Board can make include but are not limited to:

- (a) The identity of the chair of the Project Board;
- (b) Arrange the appointment of the interim chair and trustees;
- (c) Approve expenditure above the £5,000 threshold referred to in Clause 5.3;
- (d) Approve the inclusion of Deferred Project Costs as Project Costs;
- (e) Approve any increase in the total Project Costs;
- (f) Recommend approval to changes to the Key Terms required to be included in the GFM Agreements, the Funders' Agreement and/or the Related Agreements (with the final decision to be retained by the respective Parties);
- (g) Approve changes to the Project Plan;
- (h) Approve changes to the Business Case principles;
- (i) Determine any disputes between the Parties regarding the level of Project Costs incurred;
- (j) Approve any proposed amendments to this Agreement;

- (k) Agree the use of any Intellectual Property proposed by the Parties; and
- (l) Any decision necessary for the establishment of the Hampshire Solent Cultural Partnership Group and other groups as necessary;
- (m) Oversee staff and Trade union consultation and TUPE transfer arrangements
- (n) Support the financial and strategic planning for the Trust;
- (o) Oversee the Property and collections arrangements;
- (p) Oversee the implementation of the IT and accommodation provision for the Trust
- (q) Oversee the management and delivery of strategic grant funded partnership projects and the handover arrangements to the Trust;
- (r) Arrange for the appointment of the Interim Head of Trust;
- (s) Determine the value of the grant payable on date of transfer of services to the Trust according to the principles set out in the Business case; and
- (t) Any other decisions or approvals which are required during the Term related to the Project.

12.4 The Parties agree that they will not take any decisions expressed to be within the competence of the Project Board at paragraphs (a) to (s) unilaterally (excluding paragraph (f)), subject always to clause 2.2.

13 Dispute Resolution Procedure

- 13.1 This Partnering Agreement is based on collaborative working and any disagreement will normally be resolved through lead officers. Either Party may call an extraordinary meeting of the Project Board by service of not less than 5 Working Days' written notice and each Party agrees to procure that its nominated Project Board members shall attend all extraordinary meetings called in accordance with this Clause.
- 13.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either Party, by notice in writing to the other, may refer the dispute to the Chief Executives of the Parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 10 Working Days of service of such notice. If the Chief Executives fail to resolve the dispute in the allotted time, then the Parties shall, within that period, on the written request of either Party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the Parties or, in default of such agreement within five Working Days of receipt of such request, appointed, at the request of either Party, by the Centre for Dispute Resolution (or such other similar body as is agreed).
- 13.3 The Parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution (or such other similar body as is agreed) for the exchange of relevant information and for setting the date for negotiations to begin.
- 13.4 Recourse to this Dispute Resolution Procedure shall be binding on the Parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of

the Parties in any future legal proceedings. Except for any Party's right to seek interlocutory relief in the courts, no Party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 15 Working Days after the Parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).

- 13.5 If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representative of each of the Parties, shall remain binding on the Parties.
- 13.6 The Parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the Parties equally.
- 13.7 While the Dispute Resolution Procedure referred to in this Clause 13 is in progress and any Party has an obligation to make a payment to another Party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant Parties at a clearing bank and such payment shall be a good discharge of the Parties' payment obligations under this agreement (subject to such determination by the Dispute Resolution Procedure that a further payment is due from one Party to the other). Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the Parties pro rata according to the split of the principal sum as between the Parties.

14 Clause not used

15 Indemnities and liabilities

- 15.1 Each Party shall indemnify and keep indemnified the other against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, willful default or fraud of itself or of its employees save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the indemnified Party.
- 15.2 Liability is excluded for any indirect losses and other losses which can be excluded by law, including but not limited to any liability of one Party to the other for any anticipated savings not realised on or after the completion of the Project.

16 Non-compliance with this Agreement

- 16.1 This Agreement does not oblige Parties to enter the GFM Agreements, the Funders' Agreement or the Related Agreements.
- 16.2 Where a Party does not enter the GFM Agreements, the Funder Agreement or the Related Agreements, or otherwise breaches this Agreement, it shall remain liable to make its contribution to the Project Costs and make any Balancing Payment assessed in accordance with Clause 6.9(b) to the other Party for the remainder of the Term.
- 16.3 This remedy is without prejudice to any other remedy available to the Parties in law.

17 No fault determination of this Agreement

- 17.1 If, prior to the Parties entering the GFM Agreements:
- (a) a revised budgetary forecast for the Project results in an upward adjustment to set-up costs by 10% or more;
 - (b) there is a significant deviation from the original planned target for any financial benefits or savings to one of Parties; or
 - (c) the Parties are unable to resolve any matter or agree on any issue referred to the Project Board for decision following good-faith negotiation Parties; save for where the matter in dispute is an alleged breach of the Agreement;
 - (d) the Parties otherwise agree;

either Party may withdraw from the Agreement in accordance with clause 17.4.

- 17.2 Where a Party seeks to terminate the Agreement in accordance with Clause 17.1, it shall only be liable to make any Balancing Payment assessed in accordance with Clause 6.9(b) and shall cease to be liable to make its contribution to the Project Costs and make any Balancing Payment assessed in accordance with Clause 6.9(b).
- 17.3 For the avoidance of doubt, the termination of the Agreement pursuant to clause 17.1 shall not be treated as a breach of this Agreement.
- 17.4 The Party exercising its right to terminate shall provide the other Party with 20 Working Days notice after which, subject to the terminating Party's compliance with clause 17.2, the Agreement shall expire.

18 Intellectual property rights

- 18.1 All intellectual property rights created by or on behalf of any of the Parties for the purposes of the Project shall be owned by the creating Party. Intellectual property created for the purposes of the Project may be used by the other Party with the consent of the creating Party and the Project Board under a royalty free licence which shall continue for the term of this agreement.
- 18.2 Each Party shall indemnify the other against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any intellectual property right by the pursuit of the Project Objective, except to the extent that they have been caused by or contributed to by the indemnified Party's acts or omissions.

19 Freedom of information

- 19.1 The Parties acknowledge they are both subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate to enable compliance with these information disclosure requirements.
- 19.2 Each Party shall and shall procure that any sub-contractors shall:
- (a) transfer any request for information to the other Party as soon as practicable after receipt and in any event within two Working Days;

- (b) inform the other Party of the request for information as soon as practicable after receipt and in any event within two Working Days;
- (c) provide the requesting Party with a copy of all information in its possession or power in the form that the requesting Party requires within five Working Days (or such other period as the requesting Party may specify) of the request; and
- (d) provide all necessary assistance as reasonably requested by the requesting Party to enable the Party to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

19.3 The Party that receives the FOIA request shall be responsible for determining at its absolute discretion whether the any commercially sensitive information and/or any other information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
- (b) is to be disclosed in response to a request for information.

19.4 Each Party acknowledges that the other Party may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose information:

- (a) without consulting with the other Party; or
- (b) following consultation with the other Party and having taken its views into account,

provided always that where Clause 19.5(b) applies the first Party shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the second Party advanced notice, or failing that, to draw the disclosure to the second Party's attention after any such disclosure.

19.5 The Parties shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit each other to inspect such records as requested from time to time.

19.6 The Parties acknowledge that any lists or schedules provided by it outlining confidential information are of indicative value only and that the other Party may nevertheless be obliged to disclose confidential information in accordance with Clause 19.5.

20 Data Protection

20.1 The Parties shall (and shall procure that any of their staff involved in the provision of this Agreement shall) comply with any notification requirements under the Data Protection Act 1998 (the **DPA**) and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.

20.2 Notwithstanding the general obligation in Clause 20.1, where either Party is processing Personal Data as a Data Processor for the other Party, the first Party shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal

Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (a) provide the second Party with such information as the second Party may reasonably require to satisfy itself that the first Party is complying with its obligations under the DPA;
- (b) promptly notify the second Party of any breach of the security measures required to be put in place pursuant to Clause 20.2; and
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the other Party in breach of its obligations under the DPA.

20.3 The provisions of this Clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

20.4 Each Party shall indemnify and keep indemnified the other against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever arising due to the indemnifying Party's own breach of the DPA.

21 Prevention of bribery

21.1 Each Party:

- (a) shall not, and shall procure that its staff, agents and subcontractors shall not, in connection with this Agreement commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by either Party, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the other Party before execution of this Agreement.

21.2 Each Party shall:

- (a) if requested, provide the other Party with any reasonable assistance, at the requesting Party's reasonable cost, to enable the requesting Party to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act; and
- (b) within five Working Days of the date of this Agreement, and annually thereafter, certify to the other Party in writing (such certification to be signed by an officer) compliance with this Clause 21.2 by the Party and all persons associated with it. Each Party shall provide such supporting evidence of compliance as the other Party may reasonably request.

21.3 Each Party shall have an anti-bribery policy (which shall be disclosed to the other Party) to prevent any member of staff from committing a Prohibited Act and shall enforce it where appropriate.

21.4 If any breach of Clause 21.1 is suspected or known, the Party must notify the other Party immediately.

21.5 If a Party notifies the other Party that it suspects or knows that there may be a breach of

Clause 21.1, the notifying Party must respond promptly to the responding Party's enquiries, co-operate with any investigation, and allow the responding Party to audit books, records and any other relevant documentation.

21.6 Either Party may terminate this Agreement by written notice with immediate effect if the other Party, their staff or subcontractors (in all cases whether or not acting with the Party's knowledge) breaches Clause 21.1.

21.7 Any notice of termination under Clause 21.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the Party whom the terminating Party believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

22 Entire agreement

22.1 This Agreement sets out the entire agreement between the Parties. It supersedes all previous agreements between the Parties on the subject matter of this Agreement.

22.2 No other term, express or implied, forms part of this Agreement. No usage, custom or course of dealing forms part of or affects this Agreement.

22.3 This Clause does not exclude or restrict liability for fraudulent misrepresentation or fraudulent concealment.

23 Amendment and variation

This Agreement shall only be amended or varied, as expressly agreed by the Parties in writing.

24 VAT

All amounts stated in this Agreement to be payable by one Party (the **Payer**) to the other (the **Payee**) exclude VAT. If the Payee has to account for VAT on the supply for which the payment is the consideration:

- (a) when making the payment, the Payer must pay to the Payee, in addition to the amount stated, an amount equal to the VAT; and
- (b) the Payee must provide a VAT invoice for the payment and VAT to the Payer.

In this Clause, **VAT** means value added tax chargeable under the Value Added Tax Act 1994, and any similar or equivalent tax imposed in the United Kingdom or any other jurisdiction.

25 Restrictions on transfer

25.1 This Clause applies to all rights, interests and duties under this Agreement or arising from it. In this clause **Transfer** means any form of Transfer, including an assignment.

25.2 No Party may deal with a right or interest whether by:

- (a) Transfer;

- (b) charge or other encumbrance;
- (c) trust; or
- (d) in any other way.

26 Notices

26.1 This Clause applies to all notices and other communications (except formal notices in legal proceedings) between the Parties under this Agreement (**Notices**). Notices must be in writing.

26.2 Notices must be delivered by one of these methods:

- (a) by hand;
- (b) prepaid first class post; or
- (c) by email to the email addresses specified below

26.3 Notices must be addressed to the Party to be served at one of the following:

For HCC:

Karen Murray, Director - Culture, Communities & Business Services,

Address: Hampshire County Council, Three Minsters House, 76 High Street, Winchester, Hampshire. SO23 8UL

Email: karen.murray@hants.gov.uk

For WCC:

Stephen Whetnall, Statutory Monitoring Officer

Address: Winchester City Council, City Offices, Colebrook Street, Winchester. SO23 9LJ

Email: swhetnall@winchester.gov.uk

Or such other address/addresses as each Party may notify the other from time-to-time.

26.4 A Notice delivered by hand is effective at delivery. A Notice sent by email is effective on the next business day after the email was sent but only when receipt is expressly confirmed by the recipient. A Notice sent by post is effective on the second business day after posting.

27 Third party rights

The Parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement

28 Execution of different copies

The Parties may execute this Agreement in any number of copies and on separate copies. Each executed copy counts as an original of this Agreement and all the executed copies form one instrument.

29 Governing law

29.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

29.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

IN WITNESS whereof this Agreement has been duly executed [the day and year first before written

Schedule 1 - Key Terms

1. Key Terms GFM Agreements

The GFM Agreements shall contain the following Key Terms:

Financial provisions

- (a) In the year following the commencement of the Trust, HCC and WCC will by means of separate grant funding agreements concluded bilaterally with the Trust offer the Trust initial grant funding of an amount not less than
- (i) £2,670,696 in the case of HCC; and
 - (ii) £389,994 in the case of WCC.

which shall, respectively, in the case of HCC and WCC be the **Base Sum**. The Base Sum provided assumes a full financial year of operation by the Trust. Where the transfer occurs part-way through any financial year the base sum shall be adjusted downward on a pro-rata basis according to the number of days expired in the financial year 2014/2015. Further adjustments to the Base Sum may be agreed in accordance with clause 12.3(s) by the Project Board.

- (b) In years two to five of the operation of the Trust, HCC and WCC shall by means of separate GFM Agreements concluded bilaterally with the Trust offer the Trust grant funding being not less than:
- (i) In year two (2015/2016): 98% of the Base Sum payable by each party;
 - (ii) In year three (2016/2017): 98% of the sum provided by the relevant Party to the Trust in year two;
 - (iii) In year four (2017/2018): 90% of the sum provided by the relevant Party to the Trust in year three;
 - (iv) In year five (2018/2019): 98% of the sum provided by the relevant Party to the Trust in year four.
- (c) In year four of the GFM Agreements the Parties will, subject to any option to terminate the agreement being exercised by either Party, use their reasonable endeavours to agree the financing arrangements with the Trust for years six to ten;

Support in kind provisions

- (d) The Parties shall provide the central support services specified to in the Business Case for a minimum of five years (or for a shorter period with the Agreement of the Trust);

Term of GFM Agreements

- (e) The GFM Agreements shall be for a term of not less than 25 years.

- (f) The GFM Agreements shall include provisions that permit HCC and/or WCC may terminate their respective GFM Agreements with the Trust on the fifth anniversary of the GFM Agreement and on any day thereafter for the remainder of the term provided that the terminating Party provides three years' notice to the Trust of its intention to terminate;
- (g) The GFM Agreements shall provide that, in year seven, subject to any option to terminate the agreement being exercised by either Party, the Parties shall begin negotiations to review the GFM Agreements to agree funding and management arrangements for years 11 to 25;
- (h) The GFM Agreements shall make provision for the termination by HCC and/or WCC on or after the fifth anniversary of the Grant Funding Agreement. Such provisions shall include (but not be limited to) requirements for the:
 - (i) payment (on an indemnity basis) of reasonable compensation in relation to redundancy costs incurred by the Trust resulting from the termination; and
 - (ii) payment (on an indemnity basis) of reasonable compensation for other costs arising as a result of the termination.

Governance matters

- (i) The GFM Agreements shall include provisions that require the Parties and the Trust to hold:
 - (i) Bi-annual individual core member meetings between HCC or WCC (as the case may be) and the Trust to monitor outcomes;
 - (ii) Annual founders strategic meetings between the HCC and WCC and the Trust to review strategic matters and set strategic direction;
 - (iii) Annual trust advisory group meetings between the Trust, the Parties and other key stakeholders;

2. Key Terms of the Funders Agreement

The Funders' Agreements shall contain the following Key Terms:

- (j) A provision that one of the Parties, settled by negotiation between the Parties, shall lead strategic grant applications on behalf of the Trust for 2013/14 and 2014/15 financial years;
- (k) [A provision that provides for an indemnity given by a Party which exercises its right to terminate the GFM Agreement (as provided for in the Key Term in paragraph 1(f) above) to the other Party against all additional costs incurred as a result of the termination of the GFM Agreement;]

3. Key Terms of the Related Agreements

The Related Agreements shall contain the following provisions:

- (l) The Collection Loan Agreement:

- (i) Each Party shall agree to loan their collections to the Trust commencing from the Completion Date for the duration of not less than 25 years;
 - (ii) Each collection loan agreement will set out each Party's obligations for maintenance, third party loans, acquisitions, disposals, use, transportation, security, storage, insurance, cataloguing and exhibitions of their respective collections (collection management).
 - (iii) The Parties require the Arts Council England Accreditation Standards for Museums (or such other standard on which the Parties may agree) will be the expected standards for collection management.
 - (iv) HCC will continue to bear insurance risk for the collections where this falls under the corporate self-insurance regime.
 - (v) [Place holder for WCC provisions mirroring para (iv) above]
- (m) Premises
- (i) Each Party shall make available their respective Premises by way of leases, sub-leases and licences as appropriate, from the Completion Date for the benefit of the Trust for the provision of the arts and museum trust activities.
 - (ii) Where a Party transfers premises to the Trust shall it retain an obligation to repair and maintain the premises, in consultation with the Trust.
 - (iii) Where a Party transfers premises to the Trust it shall retain an obligation to insure the premises (either through self-insurance or by means of an externally procured policy) , in consultation with the Trust.
 - (iv) [Place holder for WCC provisions mirroring para (iii) above]
- (n) Staff
- (i) Each Party shall take all measures necessary (if any) to ensure that the staff currently engaged by each of the Parties shall be transferred to the Trust under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**).
 - (ii) The Parties acknowledge that any redundancies made after the GFM Agreement is entered (once the Trust is established and handover of service is completed) will be the responsibility of the Trust as employer, subject to paragraph (iii) below.
 - (iii) Any exit costs associated with the Project, up to a maximum of three full time equivalent posts and up to a value of £160k (including pension costs) will be reimbursed by the Parties to the Trust, such costs if required to be borne between the Parties in accordance with the agreed Partnership Contribution percentages. Costs associated with the process for making the reductions (eg tribunal expenses and awards) will not be recoverable.
- (o) Pensions

- (i) Each Party will enter a closed combined entity agreement with the Trust, setting out the terms of reimbursement of agreed pension costs for employees transferred under TUPE. These will include, but are not limited to, exclusions of salary increases exceeding the National Agreement on pay and condition of service for local government, redundancy, ill health retirement and early retirement. This agreement will be on the basis that new employees joining the trust would be offered the Trust's own pension scheme, rather than being able to join the Local Government Pension Scheme. Each of the Parties will act as a guarantor for the Trust in respect of pension liabilities. The Trust will become an admission body with the Local Government Pension Scheme and provide employees transferred under TUPE access to the Local Government Pension Scheme following transfer.

Schedule 2 - The Trust Premises

HCC:

Basing House

Willis Museum

Milestones

Museums HQ (Chilcomb House)

Allen Gallery

Curtis Museum

Red House

Aldershot Military

Andover Museum

Rockbourne Roman Villa

Eastleigh Museum

Westbury Manor

Bursledon Windmill

Forest Arts New Milton

West End Arts Aldershot

Ashcroft Arts Fareham

WCC:

City Museum

Westgate Musuem

WCC Collection Centre (F2), Bar End

Schedule 3 - the Project Board

1. The Project Board shall meet once every two months, or monthly where required. The quorum for any Project Board will be two attendees from HCC and two attendees from WCC.

2. The HCC Project Board members shall be:

- Head of Arts and Museums
- Assistant Director of Culture and Heritage
- Director of Culture, Communities and Business Services
- Executive Member for Culture, Recreation and Countryside

Any of the HCC Project Board members may send a nominated representative who shall be entitled to vote on their behalf.

3. The WCC Project Board members shall be:

- Assistant Director of Economic Prosperity
- Corporate Director of Service
- Chief Executive Officer
- Portfolio Holder for Economic Development

Any of the WCC Project Board members may send a nominated representative who shall be entitled to vote on their behalf.

4. In addition the following people may attend the Project Board by invitation of the Project Board:

- Interim Head of Trust
- Project Manager
- Project Admin Support
- Interim Chair

The Project Board would decide whether any such invited attendee would be entitled to speak on any issues. Such attendees would be not be entitled to vote.

5. The Project Board may invite other consultants or advisers to attend the Board from time to time eg. Arts Council England representatives, Internal(HCC or WCC) or external consultants. The Project Board would decide whether any such invited attendee would be entitled to speak on any issues. Such attendees would be not be entitled to vote.

[correct execution blocks TBC]

Executed as a Deed)

by the said **)

in the presence of:)