

Agency Agreement between

Shropshire Council

And

Whitchurch Town Council

**DELEGATION OF POWERS TO PROVIDE AND MAINTAIN MUSEUMS AND ART GALLERIES WITHIN THE WHITCHURCH TOWN COUNCIL ADMINISTRATIVE AREA**

DRAFT

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## 1. Delegation

This agreement made on the            day of            20            B E T W E E N  
SHROPSHIRE COUNCIL of The Shirehall, Abbey Foregate, Shrewsbury,  
Shropshire, SY2 6ND (“the Council”) of the one part and WHITCHURCH TOWN  
COUNCIL (“the Town Council”) of the Civic Centre, High Street, Whitchurch,  
Shropshire SY13 1AX

WHERE:

1. The Town Council and the Council are local authorities constituted by the Local Government Act 1972 (“the 1972 Act”)
2. By virtue of Section 101 of the 1972 Act and Section 19 of the Local Government Act 2000 and subject as herein provided a local authority may arrange for the discharge of any of its functions by any other local authority.
3. The Council and the Town Council (“the Parties”) wish to enable to continue to improve through the provision and maintenance of Museum services by the Town Council in Whitchurch the quality of life of all those who live in work in or visit Shropshire
4. The Town Council have requested that the Council delegate it’s powers under Section 12 of the Public Libraries and Museums Act 1964 to provide and maintain museums and art galleries in Whitchurch to the Town Council

**NOW IT IS HEREBY AGREED** as follows:

### 1.1 Delegation

In exercise of the powers contained in Section 101 of the 1972 Act and Section 19 of the Local Government Act 2000 the Council agrees with the Town Council and so arranges that the Town Council shall discharge on behalf of the Council such functions as specified in Clause 3 below being the provision and maintenance of museum service at Whitchurch Heritage Centre

## **2. Interpretation and Definitions**

2.1 The following expressions shall bear the meanings indicated below:

“Accreditation Scheme” means

“Year” means financial year from 1 April to 31 March

References to “the Council” and “the Town Council” shall where the context so admits include their employees and agents and volunteers

“FOIA” means the Freedom of Information Act 2000 and all regulations made thereunder from time to time or any superseding or amending enactment and regulations

“EIR” means the Environmental Information Regulations 2004 (as may be amended from time to time)

“Exempt Information” means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this agreement or otherwise relating to the Parties to this agreement which potentially falls within an exemption to FOIA (as set out herein)

“FOIA notice” means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner

“Museum” means the Whitchurch Heritage Centre, 12 St Mary’s Street, Whitchurch, Shropshire SY13 1QY

“Public Body” as defined in the FOIA 2000

“Receiving Party” means a party to this Agreement to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response

“Request for Information” means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA

“Governing Body” means

“Best Endeavours” means all reasonable steps within the Party’s powers to achieve the desired contractual obligation

## **3. The Service**

3.1 Subject to Clause 3.4 the Town Council shall be responsible for exercising throughout the Town Council administrative area all those powers given to the Council pursuant to Section 12 of the Public Libraries and Museums Act 1964 to provide and maintain museum and art galleries

- 3.2 The Town Council will ensure that the Museum maintains Accreditation Status with Arts Council England (ACE) or any subsequent accreditation status
- 3.3 In relation to the operation of the Service:
- Any changes to the policies or design of the service shall be made in consultation with

#### **4. Financial Provisions**

- 4.1 The Parties confirm that there will be no financial input to the provision of the operation of the Service by the Council
- 4.2 *Three months prior to the commencement of the financial year the Town Council will agree with the Council a budget with all income and expenditures for the service supplied to the Council under this agreement. The Council will act reasonably and will consult with the Town Council prior to its agreement being given*
- 4.3 The actual costs and income of providing the service will be reported annually to ACE under the terms of the Accreditation Scheme and all such reports shall be copied to the Council
- 4.4 *The costs of operating the Service are as follows:*
- *The costs of all administrative, accounting, legal, professional costs and staff time in respect of discharging the obligations of this agreement*
  - *Costs associated with the provision of premises namely, rent, fuel, costs, repairs and maintenance, cleaning, water rates and business rates*
  - *Insurances*
- 4.5 *The Town Council will measure and report on their performance to the Council against the agreed KPI targets on a monthly basis. Where KPIs are not met the Borough Council must demonstrate that all best endeavours have been made and they have fulfilled their requirements as set out in Clauses 3.2, 3.4 and 5.5. In the event of dispute the provisions specified in Section 11 (Disputes) of this agreement shall apply.*
- 4.6 The Town Council shall maintain current, accurate financial and management records of all work carried out, income received and expenditure incurred, in the provision and management of the Service. These records shall be made available to the Council by way of a copy of the annual return to ACE required under the abovementioned Accreditation Scheme
- 4.7 *The Accounts for the Museum shall be prepared annually by the Town Council not later than 30<sup>th</sup> April and signed by a duly authorised person on behalf of the Council*

*and the Borough Council. Within 28 days of completion a copy of the accounts shall be submitted to the Council for information and the Council shall be entitled on giving not less than 5 days' notice to the Borough Council to attend the appropriate premises to inspect relevant records and supporting documentation used to prepare the accounts.*

## **5. Legislation**

5.1 The Parties at all times comply with the following statutory requirements and allow for the monitoring of such compliance

## **5.2 CONFIDENTIALITY AND DATA PROTECTION**

Each Party will keep confidential any information it becomes aware of by reason of the operation of this agreement and shall not use divulge or communicate the same to any third party without the consent of the other Parties in writing. Each Party shall implement appropriate organisational and technical measures to ensure the integrity of the Data Protection Act 1998 and shall provide evidence of such measures to the Council upon request. Each Party shall use its reasonable endeavours to prevent the unauthorised publication or disclosure of any such information or documents. Each Party shall ensure that its employees and agents are aware of and comply with this clause and shall indemnify the other Parties against any loss or damage sustained or incurred as a result of any breach of confidence by such persons mentioned above

The provisions of this Clause shall survive the expiration or termination of this Agreement

## **5.3 PUBLIC INTEREST DISCLOSURE (“WHISTLE BLOWING”)**

The Town Council will supply Museum employees and volunteers with a copy of the Council's policy “Speaking Up About Wrongdoing” and that the details of this policy are fully explained to them and shall provide the Council with evidence of doing so upon request.

## **5.4 ANTI-BRIBERY AND CORRUPTION**

The Council may cancel this Agreement by way of a written notice with immediate effect and recover from the Town Council for the amount of any loss resulting from the cancellation if at any time it becomes known to the Council that any person employed by the Town Council or acting on its behalf whether with or without the knowledge of the offending Party has:

- (i) offered, paid or given or agreed to give directly or indirectly any gift in money or any other form to any member employee or agent of the Council as an inducement or reward in relation to the obtaining or execution of the Agreement or any other contract with the Council; or
- (ii) favoured or discriminated against any person in relation to this or any other Agreement with the Council; or
- (iii) in all reasonable opinion of the Council appears to have committed an offence in relation to this Agreement with the Council under the Prevention of Corruption Acts 1889 to 1916 Section 117(2) Local Government Act 1972 (as amended).

## **5.5 EQUAL OPPORTUNITIES**

The Town Council and anyone acting on its behalf undertakes to comply with the law for the time being in force and in particular to comply with all Equal Opportunities legislation and adopt and maintain anti-discriminatory practices in the supply and provision of services under this Agreement and provide a copy of its policies to the Council at any time upon request and in any event at least once in each year whether or not requested by the Council.

## **5.6 EQUALITIES**

5.6.1 The Town Council and any Sub-Contractor employed by them shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age.

5.6.2 Without prejudice to the generality of the Town Council and any Sub-Contractor employed by them shall now unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1963, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality

(Religion or Belief) Regulations 2003, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.

5.6.2 The Town Council and any Sub-Contractor employed by them will take all reasonable steps to secure the observance of this clause 6.6 by all servants, employees or agents *or volunteers*

The Town Council and any Sub-Contractor employed by them shall adopt a policy to comply with its statutory obligations under the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and accordingly will not discriminate directly or indirectly against any person because of their colour, race, nationality or ethnic origin in relation to decisions to recruit, train, promote, discipline or dismiss employees. The Town Council and any Sub-Contractor employed by them shall observe as far as possible the Commission for Racial Equalities' Code of Practice for Employment as approved by Parliament in 1983, which gives practical guidance to employers and others on 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 black and minority ethnic communities to apply for jobs or take up training opportunities

In the event of any finding of unlawful racial discrimination being made against the Town Council or any Sub-Contractor employed by them during the Agreement period, by any court employment tribunal, or any adverse finding or formal investigation by the Commission for Racial Equality over the same period, the Town Council shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination. The Town Council in providing the service will comply with the general duty imposed on local authorities by Section 71 of the Race Relations Act 1976 and shall provide such information as the Council may reasonably request from time to time for the purpose of assessing the Town Council's compliance with the above conditions, including if requested examples of any instructions or other documents, recruitment advertisements or other literature, and details of monitoring or recruiting employees and or volunteers

## 5.7 HUMAN RIGHTS

The Town Council where appropriate will take account of the Human Rights Act 1998 and shall not do anything in breach of it and provide evidence of doing so to the



Council at any time upon request and in any event at least once in each year whether or not requested by the Council

#### **5.8 HEALTH AND SAFETY AT WORK**

The Town Council will at all times in providing Museum services under powers delegated to it by the Council comply with the provisions of the Health and Safety at Work Act 1974 and provide evidence of doing so to the Council at any time upon request and in any event at least once in each year whether or not requested by the Council

#### **5.9 FREEDOM OF INFORMATION ACT 2000**

The Council will have regard to the relevant provisions of the FOIA and EIR in considering Freedom of Information requests.

Each Party is a Public Body and acknowledges that such obligations and duties of the Council are reciprocal to each Party. The Council and Town Council acknowledge and agree that:

- As Public Bodies they are subject to legal duties under the FOIA and EIR which may require either party to disclose on request information relating to the Agreement or otherwise relating to the other party.
- They are required by law to consider each and every Request for Information made under the FOIA
- That all decisions made by the other pursuant to a request under the FOIA are solely a matter for the Receiving Party and at the discretion of the Receiving Party.

Notwithstanding anything in this Agreement to the contrary (including but without limitation any obligations or confidentiality), the Receiving Party shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the Receiving Party shall consult the other party before making any such decision to disclose and shall not

(a) Confirm or deny that information is held by the other party,

Or

(b) Disclose information required to the extent that in the Receiving Party's opinion the information is eligible in the circumstances for an exemption and therefore the

Receiving Party may lawfully refrain from doing either of the things described in part (a) or (b) of this clause.

Each party shall bear its own costs of:

- (a) assessing the application of any exemption under FOIA and/or
- (b) responding to any FOIA notice and/or
- (c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure

The Receiving Party shall in no circumstances be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA or any Exempt Information or other information whether relating to this Agreement or otherwise relating to the other party.

The other party shall assist the party receiving the request as reasonably necessary to enable the party receiving the request to comply with its obligations under FOIA.

## **6. Observance of Statutory Requirements**

- 6.1 *The Town Council will use its best endeavours to agree any Service Level Agreement with the County and respective District Council.*

## **7. Gratuities**

- 7.1 The Town Council will take all reasonable steps to ensure that their agents, or any person employed or acting on behalf of the Town Council in relation to the Service in whatever capacity, shall not solicit or accept any gratuity, tip or any other form of reward, collection or charge in relation to the provision of the Museum services other than bona fide charges.

## **8. Performance**

*Reference to ACE Accreditation scheme*

## **9. Indemnity and Insurances**

- 9.1 The Town Council (to the extent that it exercises any powers under the Public Libraries and Museums Act 1964 as are delegated to it by the Council) shall indemnify and keep indemnified the Council for the sum of *FIVE MILLION POUNDS (£5,000,000)* cover for any one claim against their legal liability for actions, claims, demands, proceedings, damage, costs, charges and expenses whatsoever made

*against the Council in respect of, or in relation to, any injury to or death of any persons, or loss of or damage to any property, arising out of the negligent act or default of the Town Council provided that the Town Council shall not be liable for, nor be required to indemnify the Council against any compensation or damages for or in respect of injuries loss or damage resulting wholly from any negligent act or default on the part of the Council or covered by any policy of insurance entered into pursuant to clause 9.3 hereof that has not been repudiated by the insurers in consequence of any failure by the Town Council to comply with the terms of that policy.*

9.2 *The Council shall indemnify and keep indemnified the Town Council (to the extent that it acts as agent for the Town Council under this Agreement) for the sum of FIVE MILLION POUNDS (£5,000,000) cover for any one claim against all actions , claims demands, proceedings, damages, costs, charges, and expenses whatsoever made against the Town Council in respect of, or in relation to, any injury to or death of any persons, or loss of or damage to any property, arising out of the negligent act or default of the Council provided that the Council shall not be liable for, nor be required to indemnify the Town Council against any compensation or damages for or in respect of injuries loss or damage resulting wholly from any negligent act or default on the part of the Town Council or covered by a policy of insurance entered into pursuant to clause 10.3 hereof that has not been repudiated by the insurers in consequences of any failure by the Council to comply with the terms of that policy.*

9.3 *Without prejudice to the Town Council's responsibilities under clauses 10.1 – 10.2, the Town Council shall maintain a comprehensive policy of Public Liability and Employers Liability insurance cover in respect of its liability (unless existing insurance is satisfactory or can be extended) with a reputable insurance company, against all loss of and damage to property and injury to, or death of any, persons arising out of or in consequence of their obligations under this Agreement and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.*

## **10. Disputes**

10.1 If any dispute or difference shall arise between the Parties as to the construction of this Agreement or any matter or thing of whatever nature arising under this Agreement or in connection with it then the same shall be dealt with as follows:-

10.1.1 In the first instance a special meeting of both the Parties shall be arranged on 14 days written notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute

10.1.2 If the dispute cannot be resolved in accordance with the preceding sub-clause then the matter shall be referred to the Parties' respective Directors who shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice.

10.2 If the dispute cannot be resolved in accordance with the preceding sub-clause then it shall be referred to a single arbitrator to be agreed between the parties and failing such agreement within 14 days of the request of one party to the others in writing that the matter be referred to arbitration such reference shall be to a single arbitrator appointed for that purpose on the written request of either party by the President for the time being of the Law Society of England and Wales and any reference to arbitration under this clause shall be deemed to be a reference to arbitration within the meaning of the relevant Arbitration Acts and it is further agreed that if any matter is referred to arbitration then each party will bear its own costs of such referral.

## **11. Duration and Termination**

11.1 This Agreement shall operate from the day of \_\_\_\_\_ and shall continue for a period of \_\_\_\_\_ unless ended due to effluxion of time and until determined under clause 11.3 or clause 11.4 or extended under clause 11.2 herein.

11.2 *This Agreement will be capable of being extended by further periods of twelve months duration up to a maximum of two years commencing at the end of the term.*

11.2.1 *Any such extension(s) may be offered by the Council who will inform the Town Council in writing of its intention to offer an extension at least six months before end of the term.*

11.3 *Either Party may terminate this Agreement for whatever reason by notice in accordance with Clause 15 herein such notice being for a period of not less than*

*twelve complete calendar months and the date of termination shall immediately follow the period of notice.*

11.4 *Without prejudice to Clause 11.3 above this Agreement can be terminated by either party in writing in accordance with Clause 15 herein such notice being for a period of not less than six complete calendar months if:*

11.4.1 *Either Party is in material breach or default of its obligations under this Agreement. The Parties agree that a material breach will be one that significantly changes the very nature of the Agreement and allows the innocent party to repudiate the Agreement and pursue appropriate legal remedies from the contravening party.*

11.4.2 *If one party is of the reasonable opinion that the other party is in default in the performance or observance of any term or condition of this Agreement which is capable of being remedied and if has not been remedied within 28 days of a written request to that party to remedy the same.*

11.5 *If clause 11.4.1 is operative the Town Council agrees that the Council will be at liberty to undertake any action under the Service to rectify the situation and the Town Council further agrees to reimburse the Council any reasonable costs incurred in so doing provided that the Town Council first be given a reasonable opportunity of remedying it.*

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### **13. Variation**

13.1 This Agreement may be varied at any time by written agreement under seal between the Parties and endorsed on or attached to this Agreement.

### **14. Force Majeure**

14.1 If either Party to this Agreement is unable to comply with its obligations under this Agreement because of:

14.1.1 Any strike, lock out or work to rule of that Party's employees or contractors

14.1.2 War or civil commotion

14.1.3 Cessation or material interruption of traffic by air or rail

14.1.4 Exceptionally inclement weather

14.1.5 Act of God

Then such Party shall use its reasonable endeavours to comply with the terms of this Agreement but shall not be bound during such disability in the event that such compliance is impractical.

## **15. Notices**

15.1 Any demand, notice, or other communication required to be given hereunder shall be sufficiently served if delivered personally to the addressee, or if sent by prepaid first class post to the address in this Agreement of the Party to be served therewith and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting.

## **16. Waiver**

16.1 Failure by any Party at any time to enforce the provisions of this Agreement shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any Party to enforce any provision in accordance with its terms.

## **17. Severance**

17.1 If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any of the other provisions of this Agreement which shall remain in full force and effect but the Parties will endeavour to include a provision in the Agreement which replaces the severed term without infringing the court's ruling unless such severance shall in the reasonable opinion of any Party affect the business efficiency of this Agreement or the Service.

## **18. Headings**

- 18.1 Condition headings and notes are for ease of reference only and shall not affect construction of the Agreement.

## **19. Meanings of Words**

- 19.1 Words importing the masculine gender include the feminine gender; words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.

## **20. Contracts (Rights of Third Parties) Act 1999**

- 20.1 Unless expressly provided in this Agreement the Parties do not intend any provision hereof to be enforceable by any third party under the provisions of The Contract (Rights of Third Parties) Act 1999 and as such no person other than the Parties shall have rights under this Contract nor shall it be enforceable by them.

### **20.2 SUB CONTRACT**

The Town Council shall not *delegate* any of its rights or obligations under this Agreement without the written consent of the other Party such consent not to be unreasonably withheld.

### **20.3 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and constructed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English and Welsh courts.

### **20.4 SUSTAINABILITY**

Where appropriate each Party will at all times use its endeavours to source all material from sustainable and renewable sources.

IN WITNESS whereof the Council and the Town Council have caused this Deed to be executed by their respective Common Seals hereunto affixed the day and year first before written.

The COMMON SEAL of SHROPSHIRE COUNCIL was hereunto affixed in the presence of:

The COMMON SEAL of WHITCHURCH TOWN COUNCIL was hereunto affixed in the presence of:



## **Schedules**

Schedule A –

Schedule B –

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