

COLLECTIONS AGREEMENT  
between  
EAST AYRSHIRE COUNCIL  
and  
EAST AYRSHIRE LEISURE TRUST

East Ayrshire Council  
London Road  
Kilmarnock  
KA3 7BU

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SCHEDULE

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### **Agreement among**

- 1) EAST AYRSHIRE COUNCIL, a local authority constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its principal office at Council Headquarters, London Road, Kilmarnock KA3 7BU (the “Council”); and
- 2) EAST AYRSHIRE LEISURE TRUST, a Scottish Charitable Incorporated Organisation Registered Number SC043987 and having its principal office at The Dick Institute, 14 Elmbank Avenue, Kilmarnock, KA1 3BU (the “Trust”);

### **Whereas**

- A) The Council is leasing to the Trust various assets and undertakings as detailed in the Asset Transfer Agreement while retaining ownership of the Trust’s Premises, the Collections, the Libraries’ Collection and the Collections’ Intellectual Property;
- B) The Council wishes to grant to the Trust certain rights in relation to the Collections and the Libraries’ Collection, subject to the Trust carrying out activities and meeting its obligations in relation to the Collections and the Libraries’ Collection, in accordance with the terms of this Agreement;

### **Now it is hereby agreed:**

## **1 DEFINITIONS AND INTERPRETATION**

In the Agreement, unless the context requires otherwise the following terms shall have the following meaning:

“**Agreement**” means this agreement and the Schedule;

“**Archival Deposits**” mean Archives which remain in the legal ownership of a third party and which are accessioned and added to the Archives collections for a long-term, indefinite period. These include records which are inalienable such as records of the Church of Scotland, and records whose legal title is now indeterminate, such as records of deceased clients of firms of solicitors;

“**Archives**” means records of any age and any format, (including electronic records, manuscripts, sound recordings, maps, plans, photographs, moving images and printed records) which are identified by the archivist acting reasonably as having long-term historical, evidential or legal value. (In the event of dispute over the definition of Archives or the determination of the archivist, the determination of the Keeper of the Records of Scotland may be sought and shall be final and binding);

**“Asset Transfer Agreement”** means the agreement entered into on the date of the Agreement between the Council and the Trust relating to the transfer of the Business and certain assets of the Council;

**“Business”** means the business of operating the Properties (as defined in the Asset Transfer Agreement) and providing cultural, recreational, sports and library services in the East Ayrshire Council area;

**“Business Day”** means a day other than Saturday or Sunday or a day which constitutes a holiday for the majority of the Council staff;

**“Change and Control Procedures”** means the Council’s control procedure set out in Part 6 of the Schedule;

**“Charge & Superintendence Agreement”** refers to any Charge & Superintendence Agreement between the Council and the Keeper of the Records of Scotland;

**“Code of Ethics”** means the codes of ethics for museums, Archives and/or libraries listed in Part 6 of the Schedule, as the same may be amended or supplemented from time to time, and any other code of ethics relating to the Collections or the Libraries’ Collection (or part of them) (a) as may be notified by the Council, to the Trust from time to time, and/ or (b) which may become the *de facto* standard for the code of ethics in the UK relating to the Collections (or part of them);

**“Collections”** means the accessioned items, objects, artefacts, works of art, Archives and photos (for the avoidance of doubt all of these items being accessioned items):

- (a) on display or stored in the Trust’s Premises as at the Commencement Date,
- (b) on loan by the Council to a Third Party as at the Commencement Date,
- (c) in transit to or from the Trust’s Premises or otherwise in temporary location outside the Trust’s Premises as at the Commencement Date for any purpose including without prejudice to that generality for the purpose of maintenance and repair, observation or research,
- (d) acquired through the formal acquisition process (referred to in clause 2) after the Commencement Date,
- (e) subject of a loan agreement,
- (f) placed on deposit, or
- (g) subject of a Charge & Superintendence agreement,

for the avoidance of doubt, the term “Collections” does not include any book or item forming part of the Libraries’ Collection;

**“Collections’ Intellectual Property”** means Intellectual Property Rights (as defined below) relating to the Collections and the Libraries’ Collection:

- (a) owned by the Council; or
- (b) which the Council has the right to exploit,

as at the Commencement Date, but subject always to any restrictions and/ or prohibitions imposed upon the Council or to which the Council has agreed in relation to such intellectual property rights;

**“Collections Development Policy”** means the policy of the Council, relating to the acquisition, disposal and lending to third parties of items forming part of the Collections, as the same may be altered, supplemented or replaced by the Council from time to time until such time as the policy is altered, supplemented or replaced by the Council, the policy shall be deemed to be amended in so far

as necessary to reflect the transfer of the undertaking of the Council to the Trust in terms of the Asset Transfer Agreement;

**“Commencement Date”** means 1<sup>st</sup> July 2013 notwithstanding the date of this Agreement;

**“Contract Year”** means (a) the period from 1 July 2013 to 31 March 2014 and (b) thereafter each period from 1 April to 31 March during the term of the Agreement provided that the last Contract Year shall run from the immediately preceding April 1 until (a) the date of expiry of the Agreement in accordance with the terms of clause 9 and/or (b) the date of termination of the Agreement in accordance with the terms of clause 18;

**“Council Data”** means all information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium, and which: (a) are supplied by the Council to the Trust under the Agreement or (b) are held by the Council but accessed by the Trust under the Agreement. For the avoidance of doubt, the foregoing items for these purposes do not include any accessioned Archives;

**“Council Collections Documentation”** means the documentation supplied and/or made available by the Council to the Trust pursuant to the Agreement (but excluding any item which forms part of the Collections or the Libraries' Collection) including, without prejudice to that generality, records relating to the donations, bequests, agreements, the Trust deeds and other documentation in so far as relating to the Collections or the Libraries' Collection;

**“Council Representative”** means the representative of the Council, appointed pursuant to clause 23.2;

**“Council's Responsibilities”** shall have the mean given to it in Clause 11.

**“Intellectual Property Rights”** means all patents, trademarks, registered designs (and any applications for any of the foregoing) copyright (including rights to software-object code and source code), semi-conductor topography rights, database rights, unregistered design rights, rights in and to trade names, business names, domain names, product names, logos, databases, inventions, know-how and any other intellectual or industrial property rights in each and every part of the world together with all applications, referrals, revisals and extensions;

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

**“Libraries”** means the libraries from time to time which form part of the Trust's Premises;

**“Libraries' Collection”** means all local history books, local history newspapers, local history published and local history unpublished items such as maps and photographs and other local history items from time to time within the Libraries (excluding items comprising the Libraries' lending and reference stocks available for lending to and/or reference by members of the public);

**“Loan Agreement”** means the terms and conditions of any agreement entered into by the Council and a Third Party relating to the lending by the Council to the Third Party for a defined period of any item;

**“Loan In Agreement”** means the terms and conditions of any agreement entered into by the Council

with a Third Party relating to the lending by the Third Party to the Council, for a defined period of any item;

**“Policies”** means the policies of the Council, in relation to the Collections and the Libraries’ Collection, as at the Commencement Date (including, without prejudice to that generality, the policies listed in Part 3 of the Schedule), as the same may reasonably be amended, supplemented or replaced by the Council in consultation with the Trust from time to time, and notified by the Council to the Trust from time to time; and any other reasonable policies relating to the Collections and the Libraries’ collection (or part of them) as may be notified by the Council, to the Trust from time to time; until such times as each policy is altered, supplemented or replaced by the Council; that policy shall be deemed to be amended in so far as necessary to reflect the transfer of the undertaking of the Council to the Trust;

**“Property Agreement”** means leases, licences to occupy and/or sub-leases of the Trust’s Premises entered into or about to be entered into between the Council and the Trust on the Commencement Date or subsequently in respect of any other premises intended to form part of the Trust’s Premises;

**“Retransmission”** means the temporary return of one or more items in an Archival Deposit to the owners of that Archival Deposit, for legal, administrative or evidential purposes or for display or other private purposes;

**“Schedule”** means the schedule annexed and executed as relative hereto;

**“Service Level Agreement”** means any service level agreement entered into or intended to be entered into in respect of the Trust’s Premises between the Council and the Trust on the Commencement Date of or subsequently in respect of other premises intended to form part of the Trust’s Premises;

**“Services and Finance Agreement”** means the agreement between the Council and Trust in terms of which the Trust is to provide specified services to the Council in return for payment of an agreed charge dated on or about the date of this Agreement.

**“Standards”** – means the standards listed in Part 5 of the Schedule as the same may be amended or supplemented from time to time, and any other standards relating to the Collections (or any part of them) (a) as may be notified by the Council following consultation with the Trust to the Trust from time to time and/ or (b) which are or may become *de facto* UK standards.

**“Term”** – has the definition ascribed in clause 9.

**“Third Party”** means any person other than the Trust or the Council;

**“Treaties”** means bi-lateral, multi-lateral or pluri-lateral European and /or International Treaties, to which the UK is a signatory, relating to the Collections (or any part of them) as the same may be amended or supplemented from time to time;

**“Trust Audit Records”** has the meaning assigned to it in clause 28;

**“Trust’s Obligations”** has the meaning ascribed to it in clause 10;

**“Trust’s Premises”** means (a) the premises holding part of the Collections listed in Part 2 of the Schedule and (b) those premises holding part of the Libraries’ Collection;

**“Trust’s Representative”** means the representative of the Trust appointed pursuant to clause 23.2;

- 1.2 Any reference to a clause, paragraph or schedule shall be to, respectively, a clause, paragraph, or schedule to the Agreement.
- 1.3 Clause headings are for the ease of reference only and shall not affect the construction and interpretation of any clause.
- 1.4 Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.5 References to any statute, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation, or order as amended or re-enacted from time to time.
- 1.6 In the Agreement, except where the context otherwise requires, any reference to:
  - 1.6.1 another agreement or any deed or instrument or document shall be construed as a reference to that other agreement, deed, or other instrument or document as the same may have been, or may from time to time be amended, varied, supplemented or novated.
  - 1.6.2 a “day” means a period of 24 hours (or such other number of hours as may be relevant in the case of changes for daylight savings) ending at 12:00 midnight.
  - 1.6.3 the words “include” or “including” are to be construed as meaning without limitation.
  - 1.6.4 a “month” means a calendar month; and
  - 1.6.5 a “person” includes any individual, partnership, firm, Trust, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having a separate legal personality.

## **2 GRANT OF LICENCE/RIGHT TO USE THE COLLECTIONS**

- 2.1 Subject to clause 2.2 to 2.10 and to the Trust’s compliance with the provisions of this Agreement and in consideration of the sum of One Pound Sterling (£1) the Council hereby grants to the Trust a licence to use the Collections and the Libraries’ Collection in the manner set out in Part 1 of the Schedule. For the avoidance of any doubt, no right of ownership in the Collections and the Libraries’ Collection, or any part of them, shall transfer to the Trust under this Agreement.
- 2.2 The licence granted under clause 2.1 is subject to the terms and conditions of this Agreement and/or any licence, bequest, the company deed, gift, donation or other instrument pertaining to any particular item or forming part of the Collections and the Libraries’ Collection. The Trust shall comply with the requirements of any such terms and conditions in relation to the relevant item or items forming part of the Collections and the Libraries’ Collection, as if it were directly bound by such terms and conditions (excluding from this any requirements which may only be exercised by the Council as owner of the item or items).
- 2.3 If, in relation to any item forming part of the Collections and the Libraries’ Collection, the Council has insufficient rights to grant to the Trust the licence referred to in clause 2.1, that item shall be excluded from the licence, but shall remain part of the Collections or the Libraries’ Collection as appropriate and the Trust shall, to the extent permitted by the rights held by the Council, perform the Trust’s Obligations in relation to that item; the Council and the Trust shall enter into discussions as



regards the best means of the Trust performing the Trust 's Obligations in relation to any such item.

- 2.4 If any item forming part of the Collections or the Libraries' Collection is unusable or unavailable for use in accordance with the terms of this Agreement (excluding items on loan to a Third Party), the Council and the Trust shall enter into discussions as regards the best means of the Trust performing the Trust's Obligations in relation to any such item.
- 2.5 The Trust shall ensure (in so far as possible) that any agreement relating to the acquisition of any item into the Collections and the Libraries' Collection shall be entered in the name of the Council and that item shall become the property of the Council and not the Trust with the exception of Archival Deposits which remain the property of a Third Party. Any such item by its execution hereof shall be acquired in accordance with the Acquisitions and Disposal Policies.
- 2.6 Where, in relation to the acquisition of an item into the Collections or the Libraries' Collection, the Trust is unable to ensure that the item becomes the property of the Council and where the only alternative would not be to acquire the item into the Collections or the Libraries' Collection, the Trust shall be entitled to take ownership of that item with the exception of Archival Deposits which shall remain the property of a Third Party. The Trust shall by its execution hereof transfer, in so far as it is competent to do so, to the Council all rights of ownership in any such items or any item required by the Trust in terms of Clause 2.5 or expiry or termination of the Agreement.
- 2.7 For the avoidance of doubt, nothing in clause 2.5 or 2.6 shall oblige the Trust to accession or otherwise acquire any item into the Collections or the Libraries' Collection. The Trust shall have delegated authority to accession or acquire items into the Collections provided such delegated authority is exercised in accordance with the Acquisitions and Disposal Policies in force from time to time.
- 2.8 Save as expressly set out in the Agreement, the Trust is not permitted to assign, transfer, sell, lease, sub-license, charge, lend or otherwise deal in or encumber the Collections or the Libraries' Collection (under explanation that items forming part of the Libraries' Collection can be acquired, sold, lent or disposed of provided any such dealing is carried out in accordance with the Libraries' Collection Policy), or any part of them.
- 2.9 The Trust shall not dispose of any item forming part of the Collections (otherwise than in accordance with the Acquisitions and Disposal Policies or any Charge & Superintendence Agreement or deposit agreement), without the prior written consent of the Council, except in circumstances of immediate and substantial health and safety risk, when the Trust shall notify the Council of the circumstances as promptly as possible. Items subject to a Charge & Superintendence Agreement or deposit agreement, where the Council is not entitled to withhold consent shall nevertheless be notified to the Council prior to any disposal under these agreements.

### **3 ARCHIVAL DEPOSITS**

- 3.1 In relation to any items forming part of the Collections which, as at the Commencement Date, are on deposit to the Council from a Third Party, the Council shall remain as the borrower in any deposit agreement or Charge & Superintendence Agreement with each such Third Party.
- 3.2 Any agreement relating to the deposit by a Third Party after the Commencement Date of any Archives shall be entered into between the Council and the Third Party, and shall acknowledge that the Council will delegate authority to the Trust to manage the Archival Deposit.
- 3.3 The Trust shall have delegated authority to accept small Archival Deposits on behalf of the Council

on the advice of the archivist acting reasonably (where an entry form is sufficient and a deposit agreement is not required).

- 3.4 Proposals to place significant collections of Archives on deposit shall be referred to the Council by the Trust for approval, such approval not to be unreasonably withheld or delayed, and be subject to a deposit agreement or a Charge and Superintendence Agreement.
- 3.5 The Trust shall have delegated authority to accept additions to the collections of Archives which are subject to a deposit agreement or a Charge and Superintendence Agreement.

#### **4 LENDING OF THE COLLECTIONS (OUTWARDS LENDING)**

- 4.1 The Trust shall have delegated authority to lend items from the Collections and the Libraries' Collection to a Third Party or internally within the Trust, in accordance with the Collections Management Policy, the Trust being satisfied and having due regard to insurance, environmental conditions, security and other considerations and being mindful of the appropriateness of the proposed loan. Wherever possible the borrower shall be responsible for insuring the loan items for full value on an all risks of loss or damage basis. The borrower shall provide evidence of such insurance cover being in force prior to the commencement of the loan period.
- 4.2 In relation to any items forming part of the Collections and the Libraries' Collection which, as at the Commencement Date, are on loan to a Third party from the Council; the Council shall remain as the lender to any Loan Agreement with each such Third Party. Nevertheless, the Trust shall, at the expiry of any such Loan Agreement, have delegated authority to and may, acting reasonably, enter into a new Loan Agreement, to ensure appropriate preservation of and access to items in the Collections and the Libraries' Collection.
- 4.3 Without prejudice to the provisions of clause 4.1, the Trust shall provide to the Council, on a half-yearly basis, details of all items forming part of the Collections and the Libraries' Collection which the Trust has loaned to a Third Party.
- 4.4 For the avoidance of doubt, the Trust shall not (without the prior written consent of the Council) be entitled to lend, or agree to lend, to a Third Party any item forming part of the Collections or the Libraries' Collection where to do so would be in breach of the terms and conditions of any agreement, licence, bequest, the company deed, gift, donation or other instrument pertaining to that particular item or items.
- 4.5 For the avoidance of doubt, the Council shall not be entitled to oblige the Trust to lend any item to a Third Party. The Trust shall nevertheless give full and reasonable consideration to any Council request to make a loan to a Third Party.

#### **5 ARCHIVAL RETRANSMISSIONS**

- 5.1 The Trust shall have delegated authority to return individual items on temporary retransmission to the owners of Archival Deposits on such terms as agreed in the relevant deposit agreement or the relevant Charge and Superintendence Agreement.
- 5.2 The Trust shall have delegated authority to return individual archive items on temporary retransmission to the Council or its staff where they are required for valid Council purposes. The Trust shall maintain a record of such temporary retransmissions.

- 5.3 In the event of retransmissions taking place in accordance with clause 5.1 or 5.2, the owner or the Council as appropriate shall be responsible for the item or items while in their possession and control.

## **6 INWARD LENDING**

- 6.1 In relation to any items which, as at the Commencement Date, are on loan to the Council from a Third Party, the Council shall remain as the borrower to any Loan In Agreement with each such Third Party. The Trust shall be the custodians of such items for the duration of such Loan in agreements
- 6.2 Any agreement relating to the lending by a Third Party after the Commencement Date of any item for the purpose of display, or any other purpose, in the Trust's Premises (or any of them) shall be entered into between the Trust and the Third Party.
- 6.3 Each of the items referred to in clause 6.1 and 6.2 shall (subject to clause 6.4) throughout that period be subject to the Trust's Obligations
- 6.4 The rights granted and obligations referred to in clause 6.3 are, in respect of each of the relevant items, subject to the terms and conditions of any Loan In Agreement pertaining to that item. The Trust shall comply with the requirements of any such terms and conditions in relation to the relevant item, as if it were directly bound by such terms and conditions (excluding from this any requirements which may only be exercised by the Council as the party to each such agreement).
- 6.5 For the avoidance of doubt, the Trust shall not be obliged to accept any loan in but shall give full and reasonable consideration to any such request from the Council.

## **7 LICENCE OF COLLECTIONS' INTELLECTUAL PROPERTY**

- 7.1 The Council hereby grants to the Trust (in so far as it has the right to do so in respect of each item forming part of the Collections and the Libraries' Collection) a royalty-free, worldwide, non-exclusive licence (or, where appropriate, sub-licences) to use, copy, reproduce and exploit (including the right to grant sub-licence) the Collections' Intellectual Property, being a defined term at Clause 1 hereof for educational purposes, for the purpose of promoting the Trust, the Trust's Premises and East Ayrshire.
- 7.2 The Council agrees that, with effect from the Commencement Date to the termination, howsoever determined, of the Agreement, it shall not use the Collections' Intellectual Property for commercial exploitation. For the avoidance of doubt, the granting of the licence in clause 7.1 and the restriction in the preceding part of this clause 7.2 will not preclude or restrict the Council (and/or anybody associated with and authorised by the Council) from utilising the Collections' Intellectual Property for the purpose of promoting East Ayrshire and/or events within East Ayrshire, the Council and its services, and any other body associated with the Council.
- 7.3 The Trust shall provide the Council with all such reasonable assistance and will follow all reasonable instructions and demands which the Council may require of the Trust from time to time in order to protect the Collections' Intellectual Property.
- 7.4 The Council and the Trust agree that all applications to protect the Collections' Intellectual Property and subsequent registrations will be in the name of the Council.
- 7.5 The Trust undertakes throughout the term of the Agreement that:

- 7.5.1 it will not dispute or challenge the validity of the Collections' Intellectual Property, or the Council's rights in it;
  - 7.5.2 it will not knowingly do or authorise to be done any act, which in any jurisdiction might jeopardise or invalidate the Council's right or title to the Collections' Intellectual Property or the Council's ability to register to protect the Collections' Intellectual Property in the future; and
  - 7.5.3 it will give the Council any information as to its use of the Collections' Intellectual Property which the Council may reasonably require.
- 7.6 For the purpose of clause 7.6.2 (but without prejudice to the ordinary meaning of "knowingly") the Trust shall be deemed to have knowledge of a particular matter to the extent that:
- 7.6.1 it is referred to in records held by the Trust or to which the Trust has access in terms of the Agreement; and
  - 7.6.2 it is referred to in records held by the Council to which the Trust does not have access in terms of the Agreement, and the Council provides such records (or the relevant parts of them) to the Trust.
- 7.7 Where the Trust issues to the Council a request for records (to which the Trust does not have access to in terms of the Agreement) relating to the Collections' Intellectual Property, the Council, shall use reasonable endeavours to provide the Trust with all such relevant records, or copies of them.
- 7.8 The Trust shall not be liable to the Council for any breach of the provisions of clause 7.6.2 to the extent that such breach arises as a result of the unreasonable delay or failure of the Council to meet its obligations under clause 7.7.
- 7.9 In the event that the Trust or the Council becomes aware of:
- 7.9.1 any infringement or possible infringement by a Third Party of the Collections' Intellectual Property: or
  - 7.9.2 any Third Party alleging that the Collections' Intellectual Property infringes any rights of the Third Party,
- it shall notify the other party by written notice within 20 Business Days of the same.
- 7.10 Following notification from the Trust in accordance with clause 7.9 or otherwise, the Council, as proprietor of the Collections' Intellectual Property, may (at its own expense) take any action in any jurisdiction (including but not limited to raising legal proceedings) as it deems appropriate to enforce and /or protect the Collections Intellectual Property against any Third Party. The Trust agrees to co-operate fully with the Council and to give the Council all reasonable information and assistance as the Council may require (at the Council's expense) to enforce and /or protect the Collections' Intellectual Property against a Third Party.
- 7.11 If the Council decides not to take any action of the nature referred to in clause 7.10 in relation to a particular infringement or alleged infringement, the Council, may, at its discretion allow the Trust (subject to clause 7.13 and at the Trust's expense) conduct of any claim and /or negotiations in respect of that infringement or alleged infringement. The Council shall make such decision promptly and in a manner which is mindful to any conduct or other procedural deadline.
- 7.12 Where the Council decides not to allow the Trust to conduct any claim and /or negotiations in respect

of an infringement or alleged infringement in terms of clause 7.11, the Council and the Trust shall enter into discussions as regards the best means of dealing with such infringement or alleged infringement. For the avoidance of doubt, failing agreement as to the best means of dealing with such infringement or alleged infringement the Trust shall comply with the directions of the Council.

7.13 Where the Trust takes a course of action of the nature referred to in clause 7.11 it shall:

7.13.1 indemnify the Council in respect of any liability (including reasonable legal expenses on a solicitor/ client basis and any award of expenses which the Council may thereby incur);

7.13.2 keep the Council closely apprised of all developments relating to the relevant claim; and

7.13.3 not without the prior written consent of the Council make any compromise in respect of any infringement or alleged infringement of the Collections' Intellectual Property.

## **8 POLICIES**

8.1 The Trust shall prepare a definitive list of all of the policies relating to the Collections and the Libraries' Collection and shall submit such list along with the policies to the Council on or before the date falling 6 months after the Commencement Date.

8.2 The Trust and the Council shall enter into discussions as regard the list of policies referred to in clause 8.1, such discussions to include the addition of any policies which the Council considers to be relevant to the Collections and the Libraries' Collection, and both the Trust and the Council, shall use reasonable endeavours to agree a definitive list of policies relating to the Collections and the Libraries' Collection on or before the second anniversary of the Commencement Date

8.3 Following the agreement between the Council and the Trust of the definitive list of policies referred to in clause 8.2 the definition of "Policies" in clause 1.1 shall be deemed to substituted with the following.

8.3.1 "Policies" means the policies relating to the Collections and the Libraries' Collection referred to in the list agreed between the Council and the Trust in terms of the clauses 8.1 and 8.2 as the same may reasonably be amended, supplemented or replaced by the Council in consultation with the Trust from time to time and notified by the Council to the Trust from time to time. Until such times as each policy is altered, supplemented or replaced by the Council that policy shall be deemed to be amended in so far as necessary to reflect the transfer of the undertaking of the Council to the Trust in terms of the Asset Transfer Agreement.

8.4. Where any of the Policies are amended , supplemented or replaced the Council will notify the Trust of such amendment , supplement or replacement as soon as is reasonably practicable.

## **9 THE TERM**

The agreement shall commence on the Commencement Date and unless otherwise terminated shall continue until the thirtieth day of June Two Thousand and Thirty Eight.

## **10 OBLIGATIONS OF THE TRUST**

10.1 The Trust will perform the Trust's Obligations as set out in this clause 10 with effect from the Commencement Date in accordance with the terms and conditions of this agreement.

10.2 The Trust will perform the Trust's Obligations:

- 10.2.1 with all reasonable skill and care;
  - 10.2.2 in a proper, diligent, expeditious and professional manner;
  - 10.2.3 dutifully, timeously and in good faith;
  - 10.2.4 to no less standard than that achieved by the Council in the period of 12 months immediately prior to the Commencement Date; and
  - 10.2.6 in accordance with any policies and guidelines supplied by the Council to the Trust that are directly related to the Trust's Obligations or the Collection.
- 10.3 Subject to clauses 10.4 to 10.6 the Trust shall;
- 10.3.1 ensure that it complies with the law, policies, treaties and the Code of Ethics in relation to the Collections and the Libraries' Collection, including the Trust's Obligations;
  - 10.3.2 ensure that each of the museums which is accredited under the Arts Council of England as at the Commencement Date retains that accreditation, as the same may be amended or supplemented from time to time, including any accreditation scheme which may replace the Arts Council of England's Accreditation Scheme; and use all reasonable endeavours to ensure that any museum (including any new museums) not so accredited attains that accreditation;
  - 10.3.3 use all reasonable endeavours to meet the standards in so far as they relate to the Collections and the Libraries' Collection (or any part or parts of them) and /or to the Trust's Obligations;
  - 10.3.4 where funding and resources permit, seek to achieve standards of best practice in relations to the Trust's Obligations;
  - 10.3.5 during the Term ensure that only personnel who possess the appropriate experience, skills and qualifications necessary for the performance of the Trust's Obligations in accordance with the Agreement shall perform the Trust's Obligations in relations to the Collections;
  - 10.3.6 procure that its employees, sub-contractors and representatives;
    - 10.3.6.1 make themselves available at reasonable times and on reasonable notice to the Council, for the purpose of consultation and advice relating to the performance of the Trust's Obligations; and
    - 10.3.6.2 attend meetings with representatives of the Council and such other parties as may be necessary for the performance of the Trust's Obligations;
  - 10.3.7 provide to the Council, such information as the Council may reasonably request from time to time to enable the Council to monitor, verify and audit the performance of the Trust's Obligations;
  - 10.3.8 ensure that it is not in breach of any agreements or any law in connection with the performance of the Trust's Obligations;
  - 10.3.9 provide the Council with such information as the Council may reasonably require to enable the Council to ascertain that terms and conditions of the Agreement are being observed;
  - 10.3.10 ensure that the Trust's obligations are carried out to the reasonable satisfaction of the

Council; and

- 10.3.11 provide the Council and any person duly authorised by it with reasonable facilities to inspect and review all records, accounts, invoices and other material retained in connection with the performance of the Trust's Obligations upon the Council giving reasonable notice.
- 10.4 The Trust shall not be required to perform the Trust's Obligations in relation to any items forming part of the Collections and the Libraries' Collection which is in the custody of the Council.
- 10.5 The Trust shall not be liable for any failure to perform the Trust's obligations where any such failure arises as a direct result of:
- 10.5.1 the unreasonable delay of failure by the Council to perform or otherwise fulfil the Council's Responsibilities; or
- 10.5.2 the failure by the Council to meet its obligations under the Service Level Agreement, the Transfer Agreement and/or any Property Agreement.
- 10.6 The Trust shall not be in breach of clause 10.3.2 in relation to any museum losing its accreditation under The Accreditation Scheme referred to in this clause where;
- 10.6.1 the reason for the museum losing its accreditation related directly to the Trust's Premises in which that museum is located failing to meet the standards required by the accreditation scheme: and
- 10.6.2 the reason for the Trust's Premises failing to meet the standards referred to in clause 10.6.1 is beyond the reasonable control of the Trust.
- 10.7 The Trust and the Council shall, to the fullest extent permitted by law co-operate with each other and comply with the requirements of their own internal and external auditors with any criminal investigations.
- 10.8 The Trust and the Council will ensure that the Agreement and those related arrangements comply with the requirements of the law, in particular in relation to European Procurement Rules and Best Value ("Best Value" being the Council's policies, procedures and guidelines in obtaining value for the public purse).

## **11 THE COUNCIL'S RESPONSIBILITIES**

- 11.1 The Council shall:
- 11.1.1 co-operate with the Trust and provide it with such information and assistance as it shall reasonably require to enable it to perform the Trust's Obligations;
- 11.1.2 ensure that key personnel are available to assist the Trust when reasonable notice is given by the Trust of this requirement;
- 11.1.3 ensure that it has in place all necessary and appropriate internal Council consents and approvals, in order to enable the Trust to perform the Trust's Obligations (but such that, for the avoidance of doubt, nothing in the Agreement shall oblige the Council to obtain a Third Party approval in relation to the rights granted under the Agreement) subject to the Council requiring to secure the consent of the Keeper of the Records of Scotland under the Local Government etc (Scotland) Act 1994 section 53 which the Council is required to do and

exhibit to the Trust.

11.1.4 consult with the Trust and have due regard to its professional advice prior to altering, supplementing or replacing any of the Policies, Codes of Ethics or Standards which the Council has the right to alter in relation to the Agreement.

11.1.5 The Council shall not acquire items for inclusion in the Collections and the Libraries' Collection or dispose of items in the Collections and the Libraries' Collection without the agreement of the Trust, not to be unreasonably withheld; and

11.1.6 The Council acknowledges that the main source of advice on the Collections and the Libraries' Collection and on heritage matters will be the Trust and its professional staff, and will not act on these matters without prior consultation with the Trust.

(together the "Council's Responsibilities")

## **12 INSURANCE OF THE COLLECTIONS AND LIBRARIES' COLLECTION**

12.1 The Council shall effect, maintain and renew the insurance policy or policies relating to the Collections and the Libraries' Collection in force immediately prior to the Commencement Date (or policies reasonably equivalent to such policies, including without prejudice to that generality, the level and scope of cover) in so far as such policy or policies continue to be available to the Council at reasonable cost (the determination as to what constitutes "reasonable costs" being at the entire discretion of the Council).

12.2 The Trust acknowledges that the insurance policy or policies referred to in clause 12.1 is/are subject to an excess of £250 (Two Hundred and Fifty Pounds) Sterling in respect of each claim in relation to all items forming part of the Collections and the Libraries' Collection. The Council shall notify the Trust of any alterations to the amount of excess.

12.3 For the avoidance of doubt, the Council shall be responsible for payment of any excess under any of the insurance policies referred to in clause 12.1.

12.4 The Council shall use reasonable endeavours to procure that the insurance policy or policies referred to in clause 12.1 is/are effected in joint names of the Council and the Trust.

12.5 The Council undertakes:

12.5.1 to provide to the Trust on request a summary of the insurance cover applicable to the collection; and

12.5.2 to advise the Trust as soon as reasonably practicable, in writing if any of the insurances maintained by the Council in pursuance of clause 12.1 are no longer to be maintained or if there is any significant change in the terms of the relevant insurance policies or the identity of the insurer.

12.6 The Council and its agents and advisers shall, on giving reasonable prior notice to the Trust, be given reasonable access to the Collections and the Libraries' Collection for the purpose of inspecting the Collections and the Libraries' Collection and carrying out risk control surveys. Following any such inspection or survey the Council (or its agents or advisers) shall, if necessary, make recommendations to the Trust on any issues identified by the inspection and/ or survey, including, without prejudice to that generality recommended measures to control risk.



- 12.7 The Council and the Trust shall each consider the recommendations referred to in clause 12.6 and shall enter into discussions in respect of the implementation of such recommendations and the time frame for doing so. The Council and the Trust each recognise that implementations of the recommendations referred to above may have significant financial implications and these shall be taken into account in such discussions and in implementing any measures in relation to the Collections.
- 12.8 The Trust undertakes to implement such measures to control risk as the Council and/or its insurers may reasonably require. It will take all reasonable precautions to protect the collection against loss or damage. As part of the process both parties will ensure that where contractors are employed to undertake any repairs to the premises all reasonable precautions will be taken to protect the collection and the premises from loss or damage. Where Hot Works are required to be undertaken the parties shall ensure that a “Hot Works” permit system is in place and is rigidly enforced throughout the period of the works.

### **13 ARRANGEMENTS FOR INSURANCE CLAIMS**

- 13.1 In the event of loss, damage, theft or destruction of any item forming part of the Collections and the Libraries’ Collection, or otherwise subject to the Trust’s Obligations, the Trust shall:
- 13.1.1 give immediate verbal and written notice to the Council, giving details of the loss, damage, theft or destruction;
- 13.1.2 take immediate steps to secure the affected area, taking all appropriate temporary measures to limit further damage and address whatever issues may arise including, but not limited to health and safety; and
- 13.1.3 allow the Council (and any surveyor or other consultant engaged by the Council) all such assistance as the Council may reasonably request to facilitate investigations of the damage and /or the pursuit of any insurance claims.
- 13.2 In addition to notifying the Council under clause 13.1, the Trust shall also notify in writing the Council’s insurance section immediately upon becoming aware of such loss, damage, theft, or destruction of any items forming part of the Collections, or otherwise subject to the Trust’s Obligations, where:
- 13.2.1 that item is on loan to the Council from a Third Party.
- 13.2.2 that item/s has been lost, stolen or destroyed and has a value higher than the highest amount of the insurance policy excess referred to in clause 12.2; or
- 13.2.3 that item has been damaged and:
- 13.2.3.1 the cost of conservation and/or repair in accordance with good industry practice;
- 13.2.3.2 the reduction in value of the item as a result of the damage; and
- 13.2.3.3 the aggregate of the sum referred to in clauses 13.2.3.1 and 13.2.3.2.
- 13.3 Where the item has been lost, damaged, stolen or destroyed is on loan to the Council, the Council shall be responsible for the making and pursuing the claim with the insurers and will meet the cost of

pursuing such claim. The Trust shall ensure that its staff are available as required by the insurer and provide all information and documentation and any other assistance required by the insurer in relation to any such claim (the cost of the Trust in doing so to be borne by the Trust).

- 13.4 Where the item which has been lost, damaged, stolen or destroyed is the property of the Council the Council shall at its absolute discretion (but following consultation with the Trust) determine whether to make an insurance claim and, if it does so, shall be responsible for pursuing the claim with the insurers and will meet the cost of doing so. Where the Council makes a claim against the insurance policy, the Trust shall ensure that its staff are available as required by the insurer and provide all information and documentation and any other assistance required by the insurer in relation to such claim (the cost of the Trust in doing so to be borne by the Trust).
- 13.5 If the claim against the insurance policy referred to in the proceeding clauses is successful, the Council shall decide (following consultation with the Trust) whether to conserve an item, or where feasible to purchase a replacement item. If the Council decides to purchase a replacement item, it shall consult with the Trust as regards the item to be purchased. Notwithstanding the foregoing, for the avoidance of doubt, the decision as to whether a replacement item shall be purchased shall lie solely with the Council.
- 13.6 When an insurance claim is unsuccessful or is not pursued, the Council shall determine following consultation with the Trust whether a damaged item shall be conserved. If the Council decided that an item is to be conserved, it shall be conserved by recommended accredited conservators.

#### **14 INTELLECTUAL PROPERTY**

- 14.1 All right, title and interest in and to Intellectual Property Rights arising or created by or on behalf of the Trust as a result of the performance by the Trust's Obligations shall be the property of and vest in the Trust, subject to the terms of the licence granted pursuant to clause 2.1.
- 14.2 The Trust hereby grants to the Council a royalty free, non-exclusive licence in and to such Intellectual Property Rights including (with effect from it's creation) all future rights, for the purposes of promoting the Council and its services (and services funded by the Council) and for the purposes of promoting East Ayrshire and the Trust's Premises. The Council shall be entitled to grant royalty free sub licences to Third Parties of the Intellectual Property Rights solely for the purpose specified in this clause.
- 14.3 The Trust shall provide the Council with details of Intellectual Property Rights arising or created by or on behalf of the Trust and shall provide the Council with information and reports on the Trust's use of the Intellectual Property Rights at such intervals and in such form or the Council may reasonably require from time to time.
- 14.4 The Trust acknowledges that it shall acquire no rights to any Intellectual Property Rights owned by the Council, other than which it acquires as licences pursuant to the Agreement.

#### **15 WARRANTIES**

- 15.1 The Trust warrants, represents and undertakes to the Council that:
- 15.1.1 the Trust has full capacity and authority to enter into the Agreement;
- 15.1.2 the Trust's Obligations will be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments;

15.1.3 the performance of the Trust Obligations shall not infringe any Intellectual Property Rights of any Third Party; and

15.1.4 as at the date of execution of the Agreement by the Trust, there is no material outstanding litigation, arbitration or other disputed matters to which the Trust is a party, which may have material adverse effects upon the fulfilment of the Trust's liabilities, responsibilities or obligations pursuant to the Agreement.

15.2 The Council warrants, represents and undertakes to the Trust that the Council has full capacity and authority to enter into the Agreement.

## **16 LIABILITY AND INDEMNITY**

16.1 The Trust shall indemnify the Council against any liabilities, losses, charges, costs and expenses and assist with contesting any claim by a Third Party against the Council and any cost ordered against the Council arising from or in connection with:

16.1.1 a breach of any of the warranties given by the Trust in the Agreement;

16.1.2 the negligence, recklessness or wilful misconduct of the Trust, or its employees, agents, contractors or otherwise in the course of performing the Trust's Obligations; and

16.1.3 any breach by the Trust of any obligations or undertaking contained in the Agreement, or otherwise in the case of the Trust arising in relation to the Trust's Obligations,

provided always that the Council shall use all reasonable endeavours to minimise any such liabilities, losses, charges, costs or expenses and that the Council shall not take any step which may increase any such liability (without having first obtained the written approval of the Trust to such steps).

16.2 The Council shall indemnify the Trust against any liability, losses, charges, costs and expenses (including but not limited to all reasonably incurred legal expenses) suffered or incurred by the Trust, arising from:

16.2.1 a breach of any of the warranties given by the Council in the Agreement; and

16.2.2 the negligence, recklessness or wilful misconduct of the Council, its employees, agents, contractors or otherwise in the course of performing the Council's Responsibilities,

provided always that the Trust shall use all reasonable endeavours to minimise any such liabilities, losses, changes, costs or expenses and that the Trust shall not take any steps which may increase any such liability (without having first obtained the written approval of the Council to such steps).

16.3 Each party which incurs a loss or liability or receives a claim of a nature which may fall within the indemnity contained in clauses 16.1 and 16.2:

16.3.1 shall intimate in writing the loss or liability or the relevant claim to the other relevant party as soon as reasonably practicable after the loss, liability or claim becomes identified providing to that party such information and evidence in respect of the loss, liability or claim as is reasonably available to it;

16.3.2 shall (in the case of a claim) take such steps to resist or defend the claim as the other party may reasonably request or (if the other party so elects) allow the other party to conduct of any defence and /or negotiations in respect of the claim (subject in either case to the other party it in respect of any liability (including reasonable legal expenses on a solicitor/ client

basis and award of expenses which it may thereby incur));

- 16.3.3 shall keep the other party closely apprised of any developments relating to the relevant loss, liability or claim (including any insurance claim that may be perused in connection with the relevant occurrence);
  - 16.3.4 shall not (in the case of the claim) compromise any such claim, or take any step which would prejudice the defence of such claim, without (in each such case) the prior written consent of the other party (such consent not to be unreasonably withheld and/or delayed);
  - 16.3.5 take all reasonable steps available to it to mitigate such loss or liability; and
  - 16.3.6 shall not admit nor imply any acceptance of liability, but shall fully co-operate with the insurers in the investigation and defence of any such loss.
- 16.4 No party to the Agreement excludes or limits liability for the death or personal injury arising as a result of its negligence.
- 16.5 Subject always to clause 16.4 no party shall be liable to any other party in respect of any of the following losses or damages (whether such losses or damages were foreseen, foreseeable, known or otherwise):
- 16.5.1 any indirect, incidental, special or consequential loss or damage (whether or not such loss or damage is of the type specified in clause 16.5.2 to 16.5.7 below);
  - 16.5.2 loss of actual or anticipated profits;
  - 16.5.3 loss of goodwill;
  - 16.5.4 loss of business;
  - 16.5.5 loss of revenue or of the use of money;
  - 16.5.6 loss of contracts; and
  - 16.5.7 loss of anticipated savings.

## **17 DATA PROTECTION AND FREEDOM OF INFORMATION**

- 17.1 Each Party shall comply with its obligations under the provisions of the Data Protection Act 1998.
- 17.2 Where the Council, as part of the provision of Services under this Agreement, processes personal data on behalf of the Trust, then in relation to such personal data the Council shall:-
  - 17.2.1 act only on instructions from the Trust; and
  - 17.2.2 comply with the Trust's instructions in relation to the processing of such personal data, as such instructions are given and varied from time to time by the Trust; and
  - 17.2.3 take all appropriate technical and organisational measures against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, such personal data.

- 17.3 The provisions of clause 20.2 shall apply in relation to any personal data processed by the Trust on behalf of the Council under this Agreement as if each reference in that clause to the Council were a reference to the Trust and vice versa.
- 17.4 For the purposes of clause 20.2, the terms “personal data” and “processing” shall have the meanings ascribed to them in the Data Protection Act 1998.
- 17.5 The Trust acknowledges the Council’s obligations under the Freedom of Information (Scotland) Act 2002 (“the Act”) and the Environmental Information (Scotland) Regulations 2004 (“the Regulations”) and acknowledges in particular that the Council may be required to provide information relating to this Agreement or the Trust to any person on request in order to comply with the Act or the Regulations.
- 17.6 Where the Council seeks to consult the Trust in connection with a request for information made under the Act or the Regulations the Trust will facilitate the Council’s compliance with the Act or the Regulations by responding timeously to the Council.
- 17.7 In the event that the Trust is or becomes a designated Scottish public authority by Order of the Scottish Ministers under Section 5 of the Act the Trust shall comply with the said Act and the Regulations.
- 17.8 Where the Trust receives a request for information, pursuant to Clause 20.7 or otherwise, which relates to or is likely to have an effect on the interests of the Council, the Trust shall consult with the Council before responding to such request.

## **18. TERMINATION**

- 18.1 The Council may at any time by notice in writing terminate the Agreement with immediate effect if:
- 18.1.1 the Trust fails to observe or perform any of its material obligations contained in the Agreement where such failure is not capable of being remedied;
- 18.1.2 the Trust fails to observe or perform any of its material obligations contained in the Agreement where such failure was capable of being remedied but was not remedied within 15 Business Days of being requested to do so by the Council;
- 18.1.3 the Trust ceases to carry on its activities, becomes unable to pay its debts when they fall due, becomes insolvent or apparently insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, make any composition or arrangement with its creditors takes or suffers any similar action in consequence of debt an order or resolution is made for its dissolution (other than for the purpose of solvent amalgamation or reconstruction) or shall suffer any analogous events under any jurisdiction which it is subject to;
- 18.1.4 the Trust fails to comply with remedial plan of the nature referred to in clause 18.2 within the period reasonably prescribed within the remedial plan; or
- 18.1.5 the Council exercises any right to terminate the Services and Finance Agreement and/or the Support Services Agreement.
- 18.2 In the event the Trust commits any breach or breaches in respect of its obligations under the Agreement, the Council may (without prejudice to any right to terminate the Agreement under clause

18.1)

18.2.1 enter into discussions with the Trust with a view to determining how that the breach or series of breaches may be remedied or the incidence of any breaches of that nature might be reduced, or eliminated; or;

18.2.2 prescribe (acting reasonably and taking account of any discussions held in pursuance of clause 18.2.1) a remedial plan (including a reasonable period for implication) which it shall issue in writing to the Trust and the Trust shall be under an obligation to comply with the remedial plan within the period stated in such remedial plan.

18.3 Termination or expiry of the Agreement, however arising, shall not prejudice or affect any right of action or remedy which shall have occurred or shall there after occur to the Council including without prejudice to the generality of this clause, the right to recover any sum of money which is to be paid hereunder.

18.4 Notwithstanding the provisions of clause 18.1 the provisions of clauses 1, 16, 17, 20, 22, 26 and 35 shall survive termination or expiry of the Agreement of any case.

## **19 CONSEQUENCES OF TERMINATION**

19.1 In the event of termination or expiry of the Agreement for any reason:

19.1.1 the licences granted by the Council to the Trust under clauses 2.1 and 7.1 shall terminate with immediate effect;

19.1.2 the Trust hereby assigns to the Council its whole right, title and interest in and all Intellectual Property Rights owned by them or to which they have rights;

19.1.3 the Trust shall transfer to the Council all rights of ownership in any items forming part of the Collections and the Libraries' Collection which it has acquired under clause 2;

19.1.4 the Trust shall immediately pay the Council all sums due to the Council under the Agreement not already paid;

19.1.5 the Trust shall secure use of Council Data and Documentation shall return to the Council all Council Data and Documentation; and

19.1.6 the Trust agree fully to co-operate with the Council to ensure an orderly migration of the Trust's Obligations to the Council or, at the Councils request to a Third Party.

19.2 In the event of termination or expiry of the Agreement, where either the Trust has granted to a Third Party licence or sub-licence of Intellectual Property Right, the Council shall at its discretion, acting reasonably, have the right to terminate each such sub-licence, or to enter directly into a licence with such Third Party.

## **20 COUNCIL COLLECTIONS DOCUMENTATION**

20.1 The Council has supplied and/or made available for inspection at the Council's premises the Council Collections Documentation to the Trust before the Commencement Date.

20.2 The Trust shall be obliged to handle and (where it has custody of any part of the Documentation)

store the Council Collections Documentation in accordance with best practice and appropriate policies and guidelines having regard to the nature of the documentation its age and condition.

## **21 AMENDMENTS TO THE AGREEMENT**

- 21.1 Save as otherwise provided, the Agreement shall not be altered or supplemented unless such alterations or supplement is recorded in a written document signed by a duly authorised representative of the Trust on behalf of the Trust and by a duly authorised representative of the Council on behalf of the Council all in accordance with the Requirements of Writing (Scotland) Act 1995 or subsequent legislation.
- 21.2 The Schedule to the Agreement may be amended in accordance with the Change Control Procedures.

## **22 NOTICES**

- 22.1 All notices and notifications under the Agreement shall be given or issued by letter or by other written documentation, or by way of facsimile transmission or other visible electronic means.
- 22.2 A notice or notification under the Agreement shall (subject to clause 22.3 and 22.4) be deemed to be duly given.
- 22.2.1 in the case of a letter or other written document when delivered or deemed to have been delivered; or
- 22.2.2 in the case of a facsimile transmission or other visible electronic means when dispatched, to the party to which it is given, addressed to that party (mentioning the contact name last intimated in writing to the party giving notice) at the address last intimated in writing giving the notice or (as the case may be) at the facsimile number then current of the party to which it is given.
- 22.3 A notice or notification which is delivered, or (in the case of facsimile transmissions or other electronic means) despatched, out with business shall be deemed to be duly given during business hours on the business day which next follows.
- 22.4 A notice sent by 1<sup>st</sup> Class recorded delivery shall be deemed to have been delivered during business hours on the Business Day which next follows.
- 22.5 Unless and until some other address or fax number or contact number is supplied in pursuance of clause 22.2 all notices are to be served (1) in the case of the Council to its Chief Executive at London Road, Kilmarnock KA3 7BU and (b) in the case of the other party to their Principal or Registered Offices.

## **23 MONITORING AND REVIEW**

- 23.1 The Council, acting reasonably, shall be entitled to have access to the Collections and the Libraries' Collection at any time subject to reasonable notice (save in the case of an emergency when no notice shall be required).
- 23.2 The Council will appoint a Council representative and the Trust will appoint a representative to observe performance of the Agreement.
- 23.3 The Council representative and the Trust's representative shall meet once per quarter or as otherwise

agreed to review the performance by the Trust of the Trust's obligations in relation to the Collections' Intellectual Property Rights.

- 23.4 The review meeting referred to in clause 23.3 shall in addition to addressing any perceived shortening in the performance of the Trust's Obligations, afford an opportunity for the Council and the Trust to exchange views in relation to how performance may be improved.
- 23.5 The Trust's representative shall be responsible for minuting and providing copies of the minutes at all review meetings.
- 23.6 A copy of the minutes shall be forwarded to the Council representatives by the Trust's representative as referred to in clause 23.5 within 5 Business Days of the review meeting.
- 23.7 The Council's representative shall advise the Trust of any comments which he/she has in respect of the minutes prepared in pursuance of clause 23.5 and the Trust's representative will make such revisions to the minutes as are agreed between the Council's representative and the Trust's representative.

## **24 REPORTS**

- 24.1 The Trust shall keep the Council informed of progress on the performance of the Trust's Obligations and shall provide the Council with such reports at such intervals and in such form as the council may reasonably require from time to time.

## **25 DISPUTE RESOLUTION**

- 25.1. If a dispute arises out of or in connection with this Agreement (a "Dispute") then, except as expressly otherwise provided in this Agreement, the Parties shall follow the procedure set out in this Clause 25.
- 25.2. Either Party shall give to the other notice in writing of the dispute (the "Dispute Notice"), setting out its nature and reasonable particulars with the relevant supporting documentation. On service of the Dispute Notice, the Council Officer and the Services Provider Representative shall seek in good faith to resolve the dispute.
- 25.3. If the Council Officer and the Services Provider Representative are unable to resolve the dispute within twenty Business Days of service of the Dispute Notice then the dispute shall be referred to the Chief Executive of the Services Provider and the Chief Executive of the Council who shall attempt in good faith to resolve the dispute.
- 25.4. If the Chief Executive of the Services Provider and the Chief Executive of the Council are unable to resolve the dispute within twenty Business Days of it being referred to them, then the matter may, if agreed by the Parties, be referred to a mediator for mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ("ADR notice") to the other Party requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 60 days after the date of the ADR notice. Unless otherwise agreed by the Parties, the place of mediation shall be nominated by the mediator. If any matter arising out of or in connection with this Agreement is referred to mediation the Services Provider shall remain responsible for the provision of the Services throughout the period of mediation.
- 25.5. The fees of the mediator and the cost of mediation shall be borne equally by the Parties.



- 25.6. No party may commence any court proceedings in relation to any dispute arising out of this agreement until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

## **26 PUBLICITY**

- 26.1 No party (including respective agents, employees or representatives) will, without the prior written consent of each of the other parties, disclose or permit to be disclosed any part or parts of the Agreement except and to the extent that such disclosure may be necessary to:
- 26.1.1 comply with the law (including but not limited to Data Protection and Freedom of Information as provided for in clause 17) or the requirements of auditors;
- 26.1.2 provide information to HM Revenue and Customs and its professional advisors;
- 26.1.3 provide information to any of the parties' professional advisors; or
- 26.1.4 Provide information to a party to which the Trust's Obligations may be transferred.
- 26.2 No Party will unreasonably withhold or delay its consent to a request by any party to disclose the contents of the Agreement to a Third Party which has a bona fide interest therein.

## **27 FORCE MAJEURE**

- 27.1 If any party is prevented from or hindered or delayed in performing any obligations under the Agreement by reason of any circumstances beyond its reasonable control (including without prejudice to that generality, strikes or lockout):
- 27.1.1 it shall be excused performance to the extent affected by the circumstances concerned, so long as it shall both have given notice to each of the other parties of those circumstances promptly after they first affected performance and use all reasonable commercial endeavours to eliminate or mitigate their cause or effect;
- 27.1.2 performance by that party shall be excused for the period during which the inability of the party to perform by reason of the circumstances concerned subsists (or, if a shorter period, the period for which it would have been unable to perform for that reason had it complied with its obligation under clause 27.1.1 to seek to eliminate or mitigate their cause or effect) but for no longer period, and shall be remedied as soon as possible; and
- 27.1.3 any time period for performance by that party shall be extended by a period equal in duration to any period for which performance is excused under clause 27.1.2.
- 27.2 If the Trust is prevented or impeded from performing any or all of the Trust's obligations or any other obligation under the Agreement by reason of any of the circumstances falling within the provisions of clause 27.1, for a period of excess of three months, then the Council may terminate the Agreement, with immediate effect, by written notice to the Trust.

## **28 AUDIT**

- 28.1 The Trust shall keep or cause to be kept full and accurate records ("the Trust Audit Records") of all work and activities carried out and obligations performed in connection with the Agreement and that all in accordance with the Retention & Disposal Schedules of the Council.

- 28.2 On receiving no less than five Business Days' notice from the Council, the Trust shall grant to the Council, the Council's internal auditors and any statutory auditors of the Council and their respective authorised agents, reasonable access during the Trust's normal working hours to the Trust Audit Records and /or premises and /or materials used in performance of the Trust's Obligations or otherwise in connection with the Agreement.

## **29 ASSIGNATION AND SUB-CONTRACTING**

- 29.1 The Trust shall not be entitled to assign or otherwise dispose of its rights or obligations under the Agreement or any part thereof.
- 29.2 The Council shall be entitled (without any requirement for the Trust's consent) to assign or otherwise dispose of its rights and obligations under the Agreement or any part of them to any successor body to the Council.

## **30 SEVERABILITY**

- 30.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

- 30.2 If:

30.2.1 circumstances arise of the nature referred to in clause 30.1: or

30.2.2 any of the parties (having regard to the developments or anticipated developments in the law or, or other relevant factors) believes (acting reasonably) that a provision of the agreement might be held invalid, illegal or unenforceable if challenged,

the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision which is found invalid, illegal or unenforceable or is considered to be vulnerable to challenge.

## **31 WAIVER**

The failure of any party to insist upon strict performance of any provision of the Agreement, or failure of any party to exercise any right or remedy to which it is entitled under the Agreement, shall not constitute a waiver of that provision, right or remedy and shall not prejudice the ability of the party to enforce that provision in accordance with its terms, or to exercise that right or remedy, on any future occasion.

## **32 RIGHTS OF THIRD PARTIES**

Save to the extent expressly set out in the Agreement, the Agreement is not intended to create nor shall it create, any rights, entitlement, claims or benefits enforceable by any person that is not a party to it.

## **33 INDEPENDENT CONTRACTORS**

The parties are independent contractors and nothing in the Agreement and no action taken by the parties pursuant to the Agreement, shall constitute, or be deemed to constitute, between the parties, a partnership, association, joint venture, or other cooperative entity.

**34 COSTS**

Except as otherwise provided in the Agreement, each party shall pay its own costs in connection with negotiation, preparation, execution and performance of the Agreement and all ancillary documents to it.

**35 LAW AND JURISDICTION**

The Agreement is governed by and shall be construed in accordance with Scots law and, subject to clause 25, the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF this Agreement typewritten on this and the preceding 29 pages together with the Schedule in six parts has been executed by the Parties hereto as follows:

SEALED with the common seal of EAST AYRSHIRE COUNCIL and SUBSCRIBED

for and on its behalf by a proper officer at KILMARNOCK on the                      day of  
2013

..... Authorised Signatory

SUBSCRIBED for and on behalf of  
EAST AYRSHIRE LEISURE TRUST

by  
and  
at  
on the    day of  
in the presence of:-

.....  
Charity Trustee

.....  
Charity Trustee

Witness: .....

Full Name: .....

Address: .....

.....

.....

**This is the Schedule referred to in the preceding Collections Agreement between  
East Ayrshire Council and East Ayrshire Leisure Trust**

**PART 1 RIGHT GRANTED**

The rights granted under clauses 2 and 7 of the Agreement in relation to the Collections and the Libraries' Collection are subject to the terms and conditions of clauses 2.2 to 2.10 and clauses 4.1 to 4.5 of the Agreement. Subject to the preceding sentence, the rights granted to the Collections and the Libraries' Collection are as follows:

The right to:

- select, appraise and acquire items for the Collections and the Libraries' Collection;
- create and manage appropriate documentation, including cataloguing within an electronic collections management system;
- preserve, conserve and store items in appropriate facilities;
- use items for the purposes of research, including third party research;
- make items available for public access;
- display and exhibit items in appropriate facilities and conditions;
- use items for public programmes;
- lend items to a Third Party;
- borrow items from a Third Party;
- photograph and /or digitise items;
- make reproductions, replicas and facsimiles of items;
  - use an image of items for the purpose of marketing the TRUST and /or the Collections and the Libraries' Collection; and
- dispose of items in consultation with and following approval of the Council.
  - subject, in each case, to compliance with the law and relevant standards, policies, treaties and codes of ethics and in accordance with the terms of the Agreement.

## **PART 2 THE TRUST'S PREMISES**

Dick Institute  
 Dean Castle  
 Burns Monument Centre  
 Burns House Museum  
 Doon Valley Museum  
 Baird Institute  
 Darvel Library  
 Stewarton Library  
 Auchinleck Library  
 Crosshouse Area Centre  
 Galston Library  
 Dick Institute Library  
 New Cumnock Library  
 Mauchline Library  
 Rothesay House Library  
 AM Brown Institute Library Catrine  
 Muirkirk Library  
 Dalmellington Library  
 Patna Library  
 Drongan Library  
 Newmilns Library  
 Bellfield Library  
 Kilmaurs Library  
 Ochiltree Library  
 Dalrymple Library  
 Hurlford Library  
 Burns Monument Centre

all as the above premises are more particularly described in the Asset Transfer Agreement and any other premises of the Trust from time to time within which the Collections and the Libraries' Collection are held.

## **PART 3 POLICIES/ PROCEDURES**

Collections Development Policy  
 Documentation Policy Statement  
 Care and Conservation Policy Statement  
 Documentation Plan  
 Care and Conservation Plan  
 Documentation Procedural Manual  
 Emergency Plan.

## PART 4 ACCREDITATIONS

- Museums, Libraries and Archives Council's Accreditation Scheme
- Libraries Accreditation – The Public Quality Improvement Matrix

The Public Library Quality Improvement Matrix (PLQIM) is a specially developed quality assurance tool by the Scottish Library and Information Council (SLIC) for public libraries in Scotland and approved and adopted by the Scottish March 2007.

It follows two sets of Public Library Standards which were developed with COSLA and published in 1986 and 1995.

The main Standards are:-

1. Authorities must adopt and publish a vision and policy objectives for the public library service.
2. Public library services in a local authority area must be planned and provided in consultation with other services, consistent with the strategy priorities agreed as part of the Community Planning process.
3. Public library services must prepare, approve and publish a resource management and collection policy. This policy should be implemented and reviewed using evidence based stock management processes.
4. Public library services should ensure that stock is relevant and in good condition. This should be monitored and reported through the Public Library Quality Improvement Matrix.
5. Public library services should ensure their library management system is fully compliant with standards and the National Entitlement Card Scheme.
6. All library resources must be accessible via a web-enabled catalogue and local networks for use by individuals and communities. Catalogues should be standards compliant and be available for cross searching with those of other services.
7. Public library services must prepare and approve an Acceptable Use Policy for internet and PC use.
8. Libraries should purchase and promote Scottish Material in its widest sense.
9. Public library services should be encouraged to co-operate with other library and information services, working towards greater sharing of resources at local, regional and national level.
10. Libraries should undertake regular market research, review customer feedback and develop marketing strategies for their services using robust and quality mechanisms.
11. Local authorities should carry out a review of public library services, using the Public Library Quality Improvement Matrix to demonstrate Best Value and the delivery, in due course, of cultural entitlements.
12. Local authorities should make the report of the Public Library Quality Improvement Matrix process available to the public.

Entitlements for the public, standards are:-

1. Free access to books for lending and study and the internet through broadband networks.
2. Access to the local authority's policy objectives and vision for the public library service.
3. Access to the public library service's policies on resource and collections management.
4. Access to stock which is in good condition.
5. Public library services offered through the National Entitlement Card, which is issued locally.
6. Access to the local authority's library resources and online request and renewal service via a web-enabled catalogue.
7. Access to the public library service's policies on Acceptable Use for internet and computers.
8. Access to a range of material by Scottish authors or published by Scottish publishers.
9. Opportunity to express views about the public library service through consultations.
10. Access to the resources of other library and information services via inter-lending agreements, resource sharing co-operatives or using the services of the National Library of Scotland and the British Library.

## **PART 5 – LAWS, STANDARDS, GUIDELINES AND CODES OF ETHICS**

### **ARCHIVES**

#### **Standards for Archives**

- The British Standard BS5454:2000 specifies a set of recommended conditions and this is used as the benchmark when assessing the environment of archival documents.
- Data Protection Act, 1998
- Human Rights Act 1998
- International Standard on Records Management, ISO 15489
- Society of Archivists and Records Management Society Code of Practice for Archivists and Records Managers
- 1995 – COSLA Public Library Standards
- 2006 – SLIC (Scottish Library and Information Council) Public Library Improvement Matrix
- The National Archives – Standards for Record Repositories

#### *Primary legislation for public records*

- Public Records (Scotland) Act, 1937
- National Heritage (Scotland) Act 1985
- Public Registers and Records (Scotland) Act 1948
- Public Records Act 1958
- Public Records Act 1967

#### *Local government records legislation*

- Local Government (Scotland) Act 1973
- Local Government (Access to Information) Act 1985

- Local Government etc. (Scotland) Act 1994
- Freedom of Information (Scotland) Act (2002) (FOISA)

## **Standards and Guidelines for Museums, Libraries and Archives in the UK**

### *Statutory Regulations*

#### **World Regulations**

- UNESCO (1954) convention and protocol for the protection of cultural property in the event of armed conflict (Hague convention) and the second protocol (1999).
- UNESCO (1970) convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property.
- UNESCO (1972) convention concerning the protection of the world cultural and natural heritage.
- UNESCO (1997) human rights commission principles and guidelines for the protection of the heritage of indigenous peoples.
- UNESCO (2003) Charter on the Preservation of the Digital Heritage.
- UNIDROIT (1995) convention on stolen and illegally exported cultural objects.
- United Nations (1993) declaration on the rights of indigenous peoples (Maatutua declaration).
- United Nation Convention on Biological Diversity – Rio de Janeiro, 1992 and the Cartagena protocol – Montreal, (2000).
- World Archaeological Congress, (1989) the Vermilion accord on human remains.
- Inter-Allied Declaration Against Acts of Dispossession Committed In Territories Under Enemy Occupation of Control (1943).
- Washington Conference on Holocaust-Era Assets (1998).

#### **EU Legislation**

- European convention (1973) on the protection of the archaeological heritage.
- EC council directive no. 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a member state.
- EU regulations (EEC no 3911/92) on export of cultural goods out of the European community.
- Council regulation (EC) no. 338/97: protection of species of wild fauna and flora by regulating the trade in these species.
- European commission regulation 939/97 corrigendum to commission regulation (EC) no 939/97 26<sup>th</sup> May, 1997 laying down detailed rules concerning the implementation of council regulation (EC) no 338/97 on the protection of species of wild fauna and flora by regulating trade therein.
- EC directive 2003/4/EC on public access to environmental information.
- Commission regulation (EC) no 349/2003 of 25<sup>th</sup> February, 2003. Suspend the introduction into the community of specimens certain species of wild fauna and flora.
- Commission regulation (EC) no 1497/2003 of 18<sup>th</sup> August, 2003 on the protection of species of wild fauna and flora by regulating trade therein.

#### **UK Legislation**

- Endangered Species (Import and Export) Act (1976)
- Ancient Monuments and Archaeological Areas Act (1979)
- Wildlife and Countryside Act (1981) and subsequent amendments
- The Environmental Information Regulations 2004, Statutory Instrument 2004 No. 3391.
- Return of Cultural Objects regulations (1994)



- Law relating to treasure trove.
- Data Protection Act (1998)
- Freedom of Information (Scotland) Act (2002).
- Copyright and Related Rights regulations (2003).
- Dealing in Cultural Objects (Offences) Act (2003).
- Human Tissue Act (2004).
- The Return of Cultural Objects Regulations 1994.
- The Return of Cultural Objects (Amendment) Regulations 1997
- Copyright, Design and Patents Act 1988
- Disability Discrimination Act 2005.
- Control of Substances Hazardous to Health (COSH).
  
- **National Archives**
  - Planning a New Record Repository
  - Standards for Record Repositories
  - A Code of Practice on **Archives** for Museums and Galleries in the UK (2002)
- **National Occupational Standards In Publishing**  
<http://www.train4publishing.co.uk/ocstd/what>
- **RNIB: Good Design Standards and Clear Print Guidelines**  
<http://www.rnib.org.uk/xpedio/groups/public/documents/publicwebstie/public/printdesign/hcsp>
- **Scottish Government:How Good is our Culture and Sport?**
- **Guild of Taxidermy Accreditation Standards**  
[www.taxidermy.org.uk](http://www.taxidermy.org.uk)
- **Arts Council of England**
  - Accreditation Standards (2011)
  - Benchmarks in Collections Care (2011)
- **Arts Council of England Accreditation Scheme 2011**

This scheme sets nationally agreed standards for UK museums. To qualify, museums must meet clear basic requirements on how they care for and document their collections, how they are governed and managed, and on the information and services they offer to their users.
- **Responding To Cultural Diversity : Guidance For Museums And Galleries (2000)**

The paper focuses on ethnically based cultural diversity. The guidance 'deals with areas that contribute towards creating an 'accessible culture' for ethnic minority communities'.

- **Government Indemnity Scheme : National Heritage Act 1980 Indemnity Arrangements for Local Museums, Galleries and Other Non-Governmental Bodies (2000)**

This note gives guidance on the indemnity arrangements for loans to museums, galleries or libraries maintained by local authorities, university or library authorities, the National Trust, and private bodies or individuals approved by the Secretary of State for Culture, Media and Sport under the National Heritage Act, 1980. It contains information on

- the statutory requirements which must be satisfied (public access and security)
- the procedure for application
- factors to be considered before an indemnity is granted
- conditions of indemnity cover

- **Restitution and Repatriation : Guidelines For Good Practice (2000)**

These guidelines aim to encourage those museums holding material in their collections which might form the subject of a repatriation request to be proactive in considering how to respond. The guidelines cover:

- reasons for, sources and forms of requests
- context for responding to a request for return
- considering a request
- reaching a decision
- relevant case studies

- **Guidelines For Good Practice Series : Insurance For Museums (2000)**

The guidance offers practical advice on why museums should take out insurance over and describes the range of cover available. It offers background information on how the insurance industry is organized and operates, and how specialist brokers and underwriters can provide highly customized cover for museums and similar heritage bodies

The guidelines have chapters on the following issues:

- The insurance market
- Risk management
- Insurance and risk management
- Different ways of insuring
- Understanding the cover
- Areas of risk and risk solutions

- **Environmental Management : Guidelines For Museums And Galleries (1995)**

This guidance presents a strategic approach to environmental management, outlining the theory and practice of achieving an appropriate museum environment for both collections and people.

- **Museum Learning Online : Guidelines for Good Practice (2001)**

Museum Learning Online aims to provide guidance for projects that intend to use museum and gallery collections for educational projects via the web

- **Standards in the Museum Care of Archaeological Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Biological Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Geological Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Musical Instruments Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Textile Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Larger And Working Objects Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards in the Museum Care of Photographic Collections (1992)**

This publication aims to identify and to promote best practice in caring for archaeological museum collections. Guidance is broken into three main sections: managing collections, protecting collections and health and safety.

- **Standards and Guidelines for Museums, Libraries and Archives in the UK :**

- Archive Standards and Guidelines
- Cross-Domain Standards and Guidelines
- Library Standards and Guidelines

- **Spectrum : The UK Documentation Standard (1997)**

This standard represents a common understanding of good practice for museum documentation. It contains procedures for documenting objects and the processes they undergo, as well as identifying and describing the information which needs to be recorded to support the procedures.

- **MDA Guidelines On Disposing of Objects You May Not Own**

Guidelines developed to allow museums to undertake disposal of objects that they may not own to insure that legal, ethical and public relations management issues are fully recovered; it defines the types of objects that are covered under this method of disposal and highlights how this type of disposals is different from disposal in general. It then lays down a series of basic principles to apply in each case and a set of procedures to deal with difficult situations.

- **MDA Procedures for Collections Management**

- **American Institute For The Conservation Of Historic And Artistic Works (AIC)**

Code of Ethics and Guidelines for Practice  
<http://aic.stanford.edu/pubs/ethics.html>

- **Australian Natural Heritage**

Charter for the conservation of places of natural heritage significance (2002)

- **Angus Council Conservation Charter**

Development Control

- ***Corpus Vitrearum Medii Aevi (CVMA)***

Guidelines for the Conservation and Restoration of Stained Glass, Second Edition, Nuremburg 2004

- **ECCO (European Confederation Of Conservator-Restorers' Organisations AISBL/Confederation Europeenne Des Organisations De Conservateurs-Restaurateurs AISBL)**

ECCO Professional Guidelines I, II and III Statutes  
[http://www.ecco-eu.info/index.php?container\\_id=163&doc\\_id=170](http://www.ecco-eu.info/index.php?container_id=163&doc_id=170)  
[http://www.ecco-eu.info/index.php?container\\_id=163](http://www.ecco-eu.info/index.php?container_id=163)

- **International Scientific Committee For Analysis And Restoration Of Architectural Heritage (ISCARSAH)**

Recommendations for the Analysis, Conservation and Structural Restoration of Architectural Heritage

- **Institute of Conservation**

Professional Accreditation of Conservator Restorers  
[http://www.pacr.org.uk/docs/pacr\\_ac\\_guide\\_2006.doc](http://www.pacr.org.uk/docs/pacr_ac_guide_2006.doc)  
<http://www.pacr.org.uk/>

- **The Institute of Paper Conservation**

Statutes

- **London Metropolitan Archives**

Preservation and Conservation Policy April 2001

- **Royal Armouries Museum, Conservation Department Policies And Procedures**  
Intervention Conservation  
<http://www.royalarmouries.org/extsite/view.jsp?sectionId=1652>
- **Society For The Preservation of Natural History Collections (SPNHC)**  
Guidelines for the Care of Natural History Collections  
<http://palimpsest.stanford.edu/byorg/spnhc/spnhc1.html>
- **United Kingdom Institute For Conservation of Historic and Artistic Works (UKIC)**  
Code of Ethics and Rules of Practice  
<http://www.icon.org.uk/>
- **United Nations Educational, Scientific And Cultural Organisation**  
Charter on the Preservation of the Digital Heritage  
[http://portal.unesco.org/ci/en/files/13367/10700115911Charter\\_en.pdf/Charter\\_en.pdf](http://portal.unesco.org/ci/en/files/13367/10700115911Charter_en.pdf/Charter_en.pdf)
- **Museum Galleries Scotland**
  - A National Collections Development Strategy for Scotland's Museums (2006)  
Offers guidance on how to better manage museum collections and use them to greater effect
  - A National Workforce Development Strategy for Scotland's Museums (2006)  
This strategy lays out clear priorities for the development of staff and volunteers in museums and galleries in Scotland
  - A National Learning and Access Strategy for Museums and Galleries in Scotland (2005)  
Offers guidance on how to make learning and access integral to service delivery. Its recommendations help museums and galleries contribute to the development of democratic, confident and creative Scotland by playing an invaluable role in advancing equality of access and cultural engagement opportunities for all.
  - A National ICT Strategy for Scotland's Museums (2004)  
Provides guidelines on the use of ICT in museums
  - Collections Care and Conservation Fact Sheets - various  
[http://194.200.63.26/information\\_services/factsheets.asp](http://194.200.63.26/information_services/factsheets.asp)
- **Museum Ethnographers Group**
  - Guidance Notes On Ethical Approaches In Museum Ethnography (2003)  
These guidance notes are intended to inform workers in museums who have responsibility for ethnographic collections and to create an awareness of areas of concern particular to ethnographic material. They will also be helpful to others with general or particular responsibility for such collections.
  - Guidelines On The Management Of Human Remains (1994)  
Professional guidelines concerning the storage, display, interpretation and return of human remains in ethnographical collections in the UK.

- **The Standing Conference on Archives and Museums (SCAM) (2002)**

Code of Practice on Archives for Museums and Galleries in the UK. The code is offered to museums to give them guidance in administering their archives in accordance with professional standards and to suggest sources of advice and help. The main body of the code is a Working Practice for Archives and archival material, covering:

- Acquisition (including joint acquisition with a museum and a record office)
- Conservation, storage and archive management
- Public access to the archives under supervision
- Archives controlled by legislation
- Relationship with the Historic Monuments Commission (HMC) or the Scottish Record Office (SRO)

- **Museums Copyright Group**

- A Guide to Copyright For Museums And Galleries (2000)  
A guide to copyright for museums and galleries, covering:

- Definition of copyright
- Ownership of copyright
- Exploitation of copyright
- Merchandising and publishing
- Internet and electronic licensing

- **CILIP (Formerly The Library Association)**

- Guidelines For References and Information Services In Public Libraries (2004)  
The Guidelines are structured as a toolkit for managers responsible for providing reference and information services in public libraries.

- **National Preservation Office**

- Good Handling Principles and Practice for Library and Archive Materials (2000)

The purpose of this leaflet is to emphasise the importance of good handling practices in libraries and archives; to encourage the application of these methods; and to offer guidance to all users on the handling and care of manuscripts, printed documents and books.

- Guidance for Exhibiting Archive and Library Materials (2000)

The exhibition of archive and library materials has the potential to damage documents and can even lead to loss if security measures are inadequate. This publication is intended to give guidance in providing for the safe exhibition of library and archive materials. It is accompanied by a full bibliography.

- Photocopying of library and archive materials (2000)

Offers advice on best practice for photocopying in terms of conservation and public services.

- **Historical Manuscripts Commission**

- Historical Manuscripts Commission Standard for Record Repositories (2001)

The Standard's recommendations are addressed to archivists and governing bodies of record offices, libraries, museums and other institutions holding records which are available to the public for research. Its primary concern is with the well being of records. The Standard makes recommendations for the creation or maintenance of record repositories within five key areas:

- Constitution and finance
- Staff
- Acquisition
- Access
- Storage and preservation

- **BSI British Standards**

- BS 5454:2000 Recommendations on the Storage and Exhibition of Archival Documents (2000)

This standard provides recommendations for the storage and exhibition of archival documents.

- BS ISO 15489-1:2001 Information and documentation. Records management. Provides guidance on managing records of originating organisations, public or private for internal and external clients.

- **Archaeological Archives Forum**

- Archaeological Archives: creation, preparation, transfer and curation (2006)

This document sets out recommended standards for the creation, preparation, transfer and curation of archaeological archives. It summarises existing best practice for archaeological archives, including written documents, drawings, photographs, digital material and objects.

- **Arts Humanities Data Service AND –ADS/HDS/VADS**

- Digital Archives from Excavation and Fieldwork: Guide to Good Practice (2002)

This is a guide to digital archiving of records produced in the course of assessment, exaction, and post-excavation phases of archaeological projects. It aims to provide information o the best way to create and document digital material produced in the course of excavation and fieldwork, and to deposit it safely in a digital archive facility for future use.

- Digesting history; a guide to creating electronic resources from historical documents.

This guide is intended as a reference work for individuals and organisations involved with, or planning, the computerisation of historical source documents.

- Creating digital resources for the Visual Arts: standards and good practice

This Guide both highlights examples of current practice in the creation of digital information in the visual arts domains, and makes recommendations for best practice in data creation, collection, description, delivery and preservation. It covers the use of domain specific resource description standards and the issues involved in the creation and use of resource discovery metadata for this domain. It also covers explicitly technical issues such as choice of data format and hardware and software platforms for a given resource. This has been written by the Visual Arts Data Service & Technical Advisory Service for Images.

- **Visit Scotland Visitor Attraction Quality Assurance Scheme**  
[http://www.scotexchange.net/businessdevelopment/qa\\_home/business\\_growth-va-va.htm](http://www.scotexchange.net/businessdevelopment/qa_home/business_growth-va-va.htm)
- **Website Accessibility Guidelines**
  - RNIB  
<http://www.rnib.org.uk/xpedio/groups/public/documents/code/public.rnib008789.hcsp>
  - World Wide Web Consortium  
[www.w3.org](http://www.w3.org)  
 e-government  
[www.e-envoy.gov.uk](http://www.e-envoy.gov.uk) and [www.govtalk.gov.uk](http://www.govtalk.gov.uk)
- **Website Accessibility Guidelines**  
 Standards based on general good practice and experience – standards to be based on what is produced by high-end 39 mega pixel cameras.
- **Picture Library**  
 Adhere to best practice and keep updated through membership of BAPLA (British Association of Picture Libraries and Agencies)
- **Marketing**  
 No external standards as such, other than ensuring all materials adhere to the industry standard of ‘hones, decent, legal and truthful’.

## World Standards & Guidelines and Codes of Ethics

- International Council of Museums (ICOM)
  - **ICOM Code of Ethics for Museums, 2006**  
 The *Code of Ethics for Museums* sets minimum standards of conduct and performance of which museum professional staff throughout the worlds may reasonably aspire as well as a providing a statement of reasonable public expectation from the museum profession.  
[http://icom.museum/code2006\\_eng.pdf](http://icom.museum/code2006_eng.pdf)  
<http://icom-cc.icom.museum/> and <http://icom-cc.icom.museum/Links/>



- **Ethnics of Acquisition (revised 2004)**

Whatever the subject matter or discipline of the museum and wherever it may be situated in the world, certain principles of ethics and professional integrity in relation to acquisition can be presumed to be applicable. Briefly, this means there must be a full, clear and satisfactory documentation in relation to the origin of any object to be acquired. This is quite as important for an object generally classified in the category of art as for an object of archaeology, of ethnology, or of national and natural history.

- **Ename Charter for the Interpretation of Cultural Heritage Sites** (for consideration Jan. 2007)

The aim of this Charter is to define the basic objectives and principles of site interpretation in relation to authenticity, intellectual integrity, social responsibility, and respect for cultural significance and context. It recognises that the interpretation of cultural heritage sites can be contentious and should acknowledge conflicting perspectives. The Charter is now in a final review stages and is likely to be adopted by the ICOMOS committee for interpretation and presentation (ICIP) in January, 2007.

Statutes

<http://icom.museum/statutes.html>

- **International Council of Museums Committee for Conservation (ICOM-CC)**

The Conservator-Restorer: a Definition of the Profession

<http://icom-cc.icom.museum/About/DefinitionOfProfession/>

International Council of Museums (ICOM) Statutes

- **International Council on Monuments and Sites (ICOMOS)**

- **The Venice Charter**

[http://www.icomos.org/docs/venice\\_charter.html](http://www.icomos.org/docs/venice_charter.html)

- **The Athens Charter for the Restoration of Historic Monuments**, Adopted at the First International Congress of Architects and Technicians of Historic Monuments, Athens 1931.

<http://www.icomos.org/docs/athens-charter.html>

- **Burra Charter**, The Australia ICOMOS charter for the conservation of places of cultural significance

<http://www.icomos.org/australia/burra.html>

- **Principles for the Preservation of Historic Timber Structures (1999)**

- **Ename Charter for the Interpretation of Cultural Heritage Sites (5<sup>th</sup> July, 2005)**

- **International Charter For The Conservation And Restoration Of Monuments And Sites (ICOMOS)**

- **Principles for the Analysis, Conservation and Structural Restoration of Architectural Heritage (2003)**  
<http://www.international.icomos.org/charters/structures-e.htm>
- **Principles for the Preservation of Historic Timber Structures (1999)**  
<http://www.international.icomos.org/charters/wood-e-htm>
- **International Council on Archives**
  - **ICA Code of Ethics (1996)**  

The ICA Code of Ethics for archivists aims to establish high standards of conduct for the archival profession by providing an ethical framework for the guidance of the profession. Employing institutions and archive services are encouraged to adopt policies and practices that facilitate the implementation of the code.
- **Europeans Confederation of Conservator-Restorers' Organisation (ECCO)**
  - **Ecco Professional Guidelines: Code Of Ethics (2002 – 2003)**  

The Code of Ethics embodies the principles, obligations and behaviour which every Conservator-Restorer belonging to a member Organisation of ECCO should strive for in the practice of the profession. The code is divided into four sections:

    - General Principles for the Application of the Code
    - Obligations towards Cultural Property
    - Obligations to the Owner or Legal Custodian
    - Obligations to Colleagues and the Profession
    - Statutes.

<http://www.ecco-eu.info/index.php?container-id=163&doc-id=170>  
<http://www.ecco-eu.info/index.php?container-id=163>
- **Society for the Preservation of Natural History Collections**
  - **Guidelines for the Care on Natural History Collections (2004)**  

Outlines guidance and ethical approaches to the care of natural history collections, including, preservation, documentation, research and sampling.
- **International Federation of Library Associations and Institutions**
  - **Guidelines For Digitisation Projects For Collections And Holdings In The Public Domain (2002)**  

These Guidelines were produced by a working group representing IFLA and the ICA and commissioned by UNESCO to establish guidelines for digitisation programmes for collections and holdings in the public domain. The contract specified that the guidelines should so far as possible be particularly applicable to the institutions in the countries of the developing world.

The aim was to produce a synthesis of available information, drawing upon both published sources and on the operations of specific projects, illuminated by the personal experience. It is a summary of the best existing knowledge and practice drawn from around the world. These guidelines therefore identify and discuss the key issues involved in the conceptualisation, planning and implementation of a digitalisation project, with recommendations for 'best practice' to be followed at each stage of the process. Coverage is concerned only with the paper-based documentary heritage, that is with manuscripts, printed books and photographs.

- **World Wide Web Consortium**

- **Web Content Accessibility Guidelines (1999)**

These guidelines explain how to make Web content accessible to people with disabilities.

The guidelines are intended for all Web content developers (page authors and site designers) and for developers of authoring tools. While their primary goal is to promote accessibility, following them will also make Web content more available to *all* users, whatever user agent they are using (e.g. desktop browser, voice browser, mobile phone, automobile-based personal computer, etc) or constraints they may be operating under (e.g. noisy surroundings, under or over illuminated rooms, in a hands-free environment, etc.)

- **World Federation of Friends and Museums**

- **Code of Ethics for Museum Friends and Volunteers (1996)**

This code outlines the principles and obligations in the working partnerships between museum institutions and friends and volunteers.

## **Non-Statutory Ethical Standards & Guidelines**

### *UK Standards and Guidelines*

#### MUSEUMS OF ASSOCIATION

- Code of Ethics for Museums : Ethical Principles For All Who Work or Govern Museums In The UK 2002

The code defines ten core museum values. Society can expect museums to:-

- Hold collections in trust on behalf of society
  - Focus on public service
  - *Encourage people to explore collections*
  - Consult and involve communities, users and supporters
  - Acquire items honestly and responsibly
  - Safeguard the long-term public interest in the collections
  - Recognise the interest of people who made, used, owned collected and gave items in the collections
  - Support the protection of natural and human environments
  - Research, share and interpret information related to collections
  - Review performance to innovate and improve
- Ethical Guidelines 1 : Acquisition (revised edition 2004)

The guidelines 'aim to help museums and their staff apply ethical principles when acquiring items for the permanent collection':

The guidelines set out 'Basic Principles':

- The need for a clear acquisition policy
- The necessity of considering the cost of collections
- The necessity of ensuring transfer of title
- Ethical Guidelines 2 : Disposal (1996)

The guidelines were drawn up by the Museums Association's Ethics Committee to help museums make decisions about disposals and recommend procedures to follow. The basic principles are:

- There is a strong presumption against disposal
  - Every disposal must demonstrate long-term public benefit
  - Attempts must be made to keep public collections in the public domain
  - Disposal should never be undertaken principally for financial reasons
  - Decisions to dispose should be taken by the governing body
- Ethical Guidelines 3 : Trading And Commercial Activities (revised 2004)

Guidelines prepared by the Museums Association's Ethics Committee to help museums to take account of ethical principles in their commercial and training activities. The guidelines cover the following activities:

- Pricing policy
  - Retail
  - Catering
  - Location hire
  - Copyright
  - Sponsorship
  - Auctions
- Ethical Guidelines 4 : Access (1999)

The guidelines offer four key questions for museums to consider when hoping to widen their access, with suggested areas of investigation:

- Enhancing the visitor experience
- Increasing the visitor numbers
- Extending the use and appreciation of museum collections
- Ensuring that the range of diversity of users is as wide as possible

- Buying In The Market: A Checklist For Museums (2000)

The checklist is intended for any museums that are considering the purchase of any types of item for their collections from a dealer at auction. The checklist highlights the most important points to consider, including:

- Inspection
- Legal title

- Provenance
  - Condition
  - Price
- MA Statement : Museums, sales and valuations events (2004)
 

This offers guidelines for the relationship between museums and auction houses, particularly in relation to events held in museums, but also more generally in terms of museum staff not offering valuations.
  - Guidelines On Pollution Control In Museum Buildings (2000)
 

The guidelines are intended to help museums, archives and libraries make rational assessments of the risks of pollution damage to their collections, and adopt appropriate strategies.
  - Collections for the Future (2005)
 

Provides guidelines and recommendations on the management of collections and how to engage the public with them in more meaningful ways.

## **PART 6 CHANGE CONTROL PROCEDURES**

### **1 Principles**

- 1.1 Neither the Trust nor the Council shall unreasonably withhold or delay its agreement to any change proposed in pursuance of the provisions of this Part 7 of the Schedule.
- 1.2 Until such time as a change control note (“CCN”) has been signed by both the Trust and the Council, the Trust shall, unless otherwise expressly agreed in writing in accordance with provisions of clause 21 continue to perform the Trust Obligations in accordance with the Agreement.
- 1.3 Any discussions, negotiations or other communications which may take place between the Trust and the Council in accordance with any proposed change to the Agreement, including but not limited to the submission of the written communications, prior to the signing by the Trust and the Council of relevant CCN, shall be without prejudice to the rights of either party.

### **2 Procedure**

- 2.1 If the Council wishes to amend the Agreement pursuant to the provisions of this Part 7 of the Schedule then the Council representative shall submit a brief written paper (the “proposed change paper”) to the Trust representative addressing, as a minimum, the following points:
  - 2.1.1 the title of the proposed change
  - 2.1.2 the reason for the proposed change; and
  - 2.2.3 detail of the proposed change

- 2.2 Within [10] Business Days after submission of a proposed change paper (or such other period as may be agreed between the Trust and the Council) the Trust's representative shall prepare and deliver to the Council representative two copies of a written and signed response to the proposed change paper setting out in as much detail as possible:
  - 2.2.1 the title of the proposed change;
  - 2.2.2 technical details of how to implement the change;
  - 2.2.3 a list of deliverables in relation to the change (together with any acceptance criteria);
  - 2.2.4 a timetable for delivery of change;
  - 2.2.5 any tasks required to be completed by the Council in order to allow the TRUST to deliver change; and
  - 2.2.6 associated revisions to be made to the Agreement.
- 2.3 If the Trust wishes to amend the Agreement pursuant to the provisions of this Part 7 of the Schedule the Trust's representative shall prepare and deliver the Council representative two copies of a CCN setting out in as much detail as possible:
  - 2.3.1 title of the proposed change;
  - 2.3.2 technical details of how to implement change;
  - 2.3.3 a list of deliverables in relation to the change (together with any related acceptance criteria);
  - 2.3.4 a timetable for delivery of the change;
  - 2.3.5 any tasks required to be completed by the Trust in order to allow the Council to deliver the change;
  - 2.3.6 Associated revisions to be made to the Agreement;
- 2.4 Each CCN shall be uniquely identified by a sequential number.
- 2.5 Following receipt of a CCN, the Trust or the Council (as appropriate) may enter into discussions with the other party in relation to the contents of the CCN with the view to the Trust and the council reaching an agreed position; the Trust or the Council (as appropriate) must either receipt or reject a CCN. To accept a CCN, the Trust or the Council (as appropriate) must sign and return the CCN to the other party no later than [10] business days following its receipt of the CCN (or such other period as may be agreed between the Council and the Trust).
- 2.6 Following acceptance of a CCN, the agreement shall be deemed to be revised as set out in the CCN.
- 2.7 A CCN may only be used to vary the terms of the Schedule to the Agreement, all other amendments being subject to the provisions of clause 21.