

DATED _____ **2018**

TAVISTOCK TOWN COUNCIL

and

THE TAVISTOCK HERITAGE TRUST

PARTNERSHIP AGREEMENT

**In relation to arrangements for the use of
Part of the former Police Station and Guildhall
Guildhall Square, Tavistock, PL19 0AU**

Draft 6 – 22nd July 2017

Amendments following meeting of 21st July

Prepared jointly by the two parties

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THIS AGREEMENT is made on

2019 BETWEEN:

- (1) TAVISTOCK TOWN COUNCIL of Council Offices, Drake Road, Tavistock, Devon, PL19 0AU (the 'Council')
- (2) THE TAVISTOCK HERITAGE TRUST (Company number 10607931) whose registered office is at Redwoods, 2 Clyst Works, Clyst Road, Topsham, Exeter, Devon, EX3 0DB ('the Trust')

1. Recitals

- 1.1 The parties wish to enter into this Agreement in order to make the Premises available for use as the Interpretation Centre by the Trust and the local community as defined in Schedule 5.

2. Definitions and Interpretations

The following definitions and rules of interpretation apply in this Agreement.

2.1 Definitions:

Accessible area means areas which shall be accessible to the Trust for amenity use as set out in **Schedule 1**;

Charges means the agreed portion of the cost of services as set out in **Schedule 4**;

Council Priority Time will be the hours of 5.30pm-midnight Monday – Friday;

Council/Trust Management Review means quarterly meetings between the Council and the Trust to monitor, review and agree management arrangements for the Premises;

Grants means funding sought by the Council to support the Trust and funding sought by the Trust to support the repair and maintenance of the Premises, and/or delivery of the Interpretation Centre;

World Heritage Centre means the Cornwall and West Devon Mining Landscape World Heritage Site

Law means any statute or any other instrument or regulation made under it or any notice or order issued by a government department the legislative making institutions of the European Union minister or public regulatory or other authority;

Licence period means 25 years commencing from the opening of the Premises to the public;

Non Priority Time will be that time which is not otherwise designated as priority time for either the Council or THT and which may be utilised by one or other subject to availability.

Parties means the parties to this Agreement namely Tavistock Town Council and the Tavistock Heritage Trust;

Periodic Review means the joint meeting between the Council and the Trust following the completion of the annual audited accounts and projected income for the following year to establish the viable income of the Trust and its ability to pay the charges on the Premises as defined in **Schedule 6**;

Priority time – will be those times as may be allocated to either of the parties from time to time, by agreement, during which there will be a presumption in favour of use by the designated party. Such shall be without prejudice to the shared commitment to delivery of a Gateway Centre

compliant with the approved purposes of funders and/or exceptional circumstances or emergencies.

Plan 1 means the plan annexed to this Agreement showing the curtilage boundary drawing no. *** *use GYA plan*

Plan 2 means the plan annexed to this Agreement titled 'Ground Floor' drawing no. *** *use GYA plan*

Plan 3 means the plan annexed to this Agreement titled 'First Floor' drawing no. *** *use GYA plan*

Premises means the land and buildings comprising part of the former Police Station, the Trowtes House and the Guildhall edged in red on Plan 1 at Guildhall Square, Tavistock, PL19 0AU, the former Fire Station, ground floor of the Trowtes House and Guildhall (the former Magistrates' Court), the courtyard to the rear (Market Road) side of the Guildhall, and at first floor level the Former Courtroom and Magistrates' robing room as defined in Schedule 1, and for avoidance of doubt the Premises include the Fixed Equipment within the above spaces as defined in Schedule 1;

Shared Areas means the areas which are jointly used by the Council and the Trust;

Trust Priority Time means 9.00am up to and including 5.00pm Tuesday to Sunday (inclusive), and Public Holidays throughout the year and such other days and times as are agreed between the Council and the Trust in accordance with Schedule 3;

Waste means *to be added by Carl Hearn*

- 2.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 2.3 A **person** includes a natural person, corporate or incorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 2.4 The **Schedules** form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 2.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established. *Do we need this – seek legal advice?*
- 2.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.7 Unless otherwise required, a reference to one gender shall include a reference to the other genders.
- 2.8 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 2.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.10 A reference to a statute or statutory provision shall include all subordinate legislations made from time to time under that statute or statutory provision.
- 2.11 A reference to writing or written includes electronic form which has the meaning given in section 1168 of the Companies Act 200 or other legal source which determines this.
- 2.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2.13 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedules.

2.14 Any words following the terms including, **include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, descriptions, definition, phrase or term preceding those terms.

3. Aims

3.1 The Parties agree to pursue the following aims:

3.1.1 ensure the provision of valued opportunities for improved knowledge and education of local people and visitors about Tavistock's role in World Heritage site on the heritage in the area;

3.1.2 enhance local access to services, community cohesion, social inclusion and individual quality of life;

3.1.3 impact positively upon the creation of sustainable sources of education;

3.1.4 to promote the use of the Premises by children, families, visitors and tourists and by the local community;

3.1.5 ensure that the needs of the Trust and the local community are accommodated wherever possible during the hours that the Premises is open;

3.1.6 ensure that the Cornwall and West Devon Mining Landscape World Heritage Site is promoted through the Interpretation Centre.

4. Arrangements for Trust Use

4.1 The Council agrees to make the following available for the Trusts use:

4.1.1 the areas shown on plan 1, plan 2 and plan 3 at all times during the Trust Priority Time as set out in Schedule 4;

4.2 Arrangements for use will be in accordance with programme of use agreed annually between the Council and the Trust as defined in **Schedule 5**.

4.3 The Trust acknowledges that:

4.3.1 the Trust shall use the Premises as a licensee [*check required*] and that no relationship of landlord and tenant is created between the Council and the Trust by this Agreement;

4.3.2 the Council retains control, possession, responsibility and management of the Premises.

5. Staffing

5.1 The Council shall at all times ensure that all of its staff employed from time to time by the Council involved in the Premises:

5.1.1 comply (subject to Council policies taking precedence in the event of a conflict) with:

- I. all relevant and reasonable Trust policies supplied in writing to the Council annually or on any material amendment/addition to such policies;
- II. the procedures and rules of the Trust relating to its use of the Premises; (As presently constituted Council staff will have a signposting role only)

Needs something here about how the reception area is to be staffed and the interrelationship between the TTC and the THT regarding public arriving for TTC business as opposed to THT business;

- 5.1.2 the Council shall ensure that sufficient and suitably qualified staff are provided to supervise use of the Premises by the Council during the Council Priority Time or such other times as the Council may be responsible for the premises .
- 5.2 The Trust shall at all times ensure that all of its staff and volunteers employed from time to time by the Trust involved in the Premises:
- 5.2.1 comply with:
- I. all relevant and reasonable Council policies supplied in writing to the Trust annually or on any material amendment/addition to such policies;
 - II. the procedures and rules of the Council relating to its use of the Premises;
 - III. any direction of the Council, its officers or employees whether or not put in writing;
- 5.3 the Trust shall ensure that sufficient and suitably qualified staff and or trained volunteers are provided to supervise use of the Premises by the Trust during the Trust Priority Time or such other times as the Trust may be responsible for the premises . The Trust shall ensure that these staff and volunteers comply with the Trust's Child Protection and Vulnerable Adults Policies.

6. Temporary Closure

- 6.1 Except in an emergency, the Council, where practicable shall give the Trust not less than 2 months prior notice of any intended temporary closure of the Premises for a period of up to one week together with details of the length of closure and any maintenance or works to be carried out.
- 6.2 Except in an emergency, if the Council intends to close the Premises for a period of more than one week the Council will agree in advance the dates of said closure with the Trust so as to cause as little disruption as reasonably practicable to the Trust use of the Premises.
- 6.3 The Council shall use its best endeavours to minimise the period of any closure of the Premises.
- 6.4 In particular the parties to this Agreement acknowledge that the Council may use of the Premises for other purposes as part of its emergency planning and/or business continuity arrangements.

7. Cleaning

- 7.1 The Council will be responsible for cleaning and keeping clean the Premises both during and outside the Trusts Priority Time.
- 7.2 The Council will provide documentation on the level of cleaning that is to be as defined in Schedule 3.

8. Maintenance of the Premises

- 8.1 The Council agrees and undertakes with the Trust that the Council shall at all times (including for the avoidance of doubt the Trust Priority Time):
- 8.1.1 be responsible for the Premises and Fixed Equipment in accordance with this Agreement and the aims and objectives set out at Clause 3.1 of this Agreement;

8.1.2 forthwith effect repairs and make good any damage to the Premises Fixed Equipment and the wider adjoining Trust site arising out of or occasioned by the use of the Premises;

8.2 The Council will consult with the Trust in advance on an annual programme of planned preventative maintenance for the Premises.

8.3 The responsibility of exhibition material provided by others shall remain with the Trust and the provider of the exhibits.

8.4 in its use of the premises the Trust shall not commit any acts of waste to the building, its contents and any other resources or assets belonging to the Council.

9. Charges

The Trust, following the Periodic Review shall pay the agreed portion towards the costs as determined in Schedule 6, of the items as listed in Schedule 4 of this Agreement.

10. Restrictions on Use

For the duration of this Agreement both the Council and the Trust agree:

10.1 Not to do or permit to be done on the Premises anything which is illegal or which may be or become a nuisance (Whether actionable or not) or damage to the Premises or to any owner or occupier of neighbouring premises; and

10.2 Not to do anything that will or might constitute a breach of any grant funded scheme, planning permissions, the Council's obligations, and Trust obligations in Law, other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers affecting the Premises or which will or might vitiate in whole or in part any insurance by the Council in respect of the Premises from time to time.

10.3 To keep the Premises tidy and clear of rubbish and to ensure that the end of each use period by either party the Premises are left in the same condition than as at the commencement of that relevant period.

10.4 The Trust shall ensure that the Premises are used only for and in accordance with the permitted use as stated in this Agreement and the conditions of the Heritage Lottery Fund grant.

11. Liability to come from TTC lawyers

11.1

THIS TO BE REWRITTEN BY TTC LAWYERS

NEEDS CLAUSE RE FORCE MAJEURE?

12. Insurance

12.1 The Trust shall:

12.1.1 obtain and maintain sufficient policies of public liability and employee liability insurance in respect of the Premises with a reputable insurance company in respect of its liabilities and obligations under this Agreement; and

- 12.1.2 upon request, provide the Council with a copy of the insurance certificates and policies referred to in clause 12.1.1.
- 12.2 If the Trust fails to obtain and maintain insurance in accordance with the above the Council may, in its sole discretion either:
 - 12.2.1 obtain the appropriate insurance itself; or
 - 12.2.2 terminate this Agreement in accordance with this clause.
- 12.3 Where the Council obtains insurance in accordance with the above clause the Trust shall indemnify the Council in full against the cost of obtaining the insurance.
- 12.4 The Council and the Trust will each at their own cost take out and maintain adequate full third party public and occupiers liability insurance in a sum of not less than £5,000,000 *[this is what THT have organised to carry]* for each and every claim together with the Council insuring against loss and damage of its own equipment.

13. Termination

- 13.1 This Agreement may be terminated by either party with immediate effect on giving written notice to the other party if:
 - 13.1.1 either party commits a breach of a material term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of 15 working days (immediately in an emergency) or such other time as may be agreed between the Parties or has failed to take urgent and material steps without delay after receipt of notice in writing requiring it to do so; or
 - 13.1.2 either party commits a series of persistent minor breaches which when taken together, amount to a material breach; or
 - 13.1.3 either party purports to assign its rights or obligations under this Agreement (save as where to a successor body or organisation); or
 - 13.1.4 either party fails to obtain or maintain the insurance referred to in clause 12.
 - 13.1.5 Clause if the Trust fails? For lawyer in due course*
- 13.2 Termination of this Agreement shall be without prejudice of the rights of either party to claim against the other in respect of any antecedent breach of this Agreement.

14 Costs

- 14.1 All amounts due under the Agreement shall be paid in full without any deduction set-off (legal or equitable) or withholding other than as required by Law and neither party shall be entitled to assert any credit, set-off or counterclaim against the other party in order to justify withholding payment of any such amount in whole or in part.

15 Variation and Waiver

- 15.1 A variation of this Agreement shall be in writing and signed by or on behalf of each party to this Agreement.
- 15.2 No term or provision of this Agreement shall be considered as waived by any party to this Agreement unless a waiver is given in writing by that party.

16 Disputes

- 16.1 If any dispute or question whatever arises between the parties with respect to the construction or effect of the rights, duties or obligations of the parties to this Agreement then the dispute or question must be determined by a single arbitrator.
- 16.2 The arbitrator is to be appointed by agreement between the parties to the dispute or question or, if they do not agree within 14 days of one of them giving notice to the other of his nomination, by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors on application of either party to the dispute or question.
- 16.3 The Arbitration is to be conducted in accordance with the Arbitration Act 1996 or any statutory amendment or re-enactment of it.
- 16.4 The Arbitrator's fees and expenses and any VAT payable on them must be borne as the arbitrator awards. If any party in the dispute or question pays those fees and expenses he may recover the proportion of them due from the other party or parties as a debt from the other party.

17 No Agency

- 17.1 Nothing in this Agreement shall be construed as creating a **partnership**, a joint venture, a contract of employment or a relationship of principal and agent between the parties hereto. *[not sure that this clause is required – if it is then the word partnership needs to be removed as we are creating a partnership]*

18 Severability

- 18.1 If any term condition or provision contained in this Agreement shall be held to be invalid unlawful or unenforceable to any extent such term condition or provision shall (save where it goes to the root of this Agreement) not affect the validity legality or enforceability of the remaining part of this Agreement.

19. Non-Assignability

- 19.1 This Agreement is personal to the parties and none of them shall assign sub-contract or otherwise deal with their rights or obligations without the prior written consent of the others.

20 Governing Law and Jurisdiction

- 20.1 This Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1

Facilities and Fixed Equipment

Initial Schedule of Facilities

1. The Facilities comprise of the following areas shared between the Council and the Trust namely:

Ground floor gateway entrance [former fire station] and adjoining Gateway Centre with lift;
Ground floor below the Courtroom;
Courtyard to the east of the Courtroom and the external circulation to the west;
Ground floor of the Trowtes House and the two 1892 cells;

First floor Heritage Learning Space [Magistrates' Room] and adjoining lobby with lift and WC;
the Courtroom and lift on the east side

as identified on Plan 1, Plan 2 and Plan 3.

2. The Trust shall have access to TTC + Gateway Centre Staff Welfare and WC, and adjoining Shared Courtyard during Trust Core Hours as identified on Plan 2.

Fixed Equipment

3. The Trust shall have access to and use of the following equipment located within the areas described above:
 - Audio visual equipment
 - Servery facilities within the Guildhall
 - Wifi
 - Other equipment which the Trust may use from time to time with the agreement of the Council

Schedule 2

Payment of grant funding

1. Grant funding to the Trust – Delivery Stage

The Council will, through the Heritage Lottery Fund Round 2, receive monies for the specific use of the Trust as set out in the HLF Round 2 documentation; namely £31,850 in year one, £29,162 in year two and £9,000 in year three. The receipt of this funding is time limited as set out in the HLF Round 2 documentation. In order for the Trust to maintain a suitable level of cash flow the Council will pay the above sum in X *[add number of payments]* stages in advance of receipt from the HLF. The Trust will provide evidence of use of the monies by way of receipts and other documentation as may be necessary to meet the requirements of the HLF and the Council to enable the Council to seek reimbursement from the HLF and to enable the next stage payment to the Council and to the Trust to be made.

The Council will not be expected to provide other grants to the Trust. However, the Trust may apply for other grants through the normal Council grant application process.

2. Grant funding to the Council

The Trust may, by way of request from the Council, or in consultation with the Council, seek grant funding on behalf of the Council to support the maintenance and repair of the Premises or delivery of the HLF approved purposes.

The Council support and assist with the necessary support to apply for such grants. The Trust may agree to make such applications on behalf of the Council and costs for such will be agreed in writing with the Council prior to starting any application.

Such monies obtained through funding agencies will be paid to the Council in accordance with the requirements by the fund agency. The Council shall provide all necessary written evidence as may be required by the funding agency to assist with the claiming of the grant.

The Trust will not be liable for any failure to obtain such funding.

The Council accepts that all such applications must be made by the Trust and not by the Council using the Trusts name.

3. Other Grant funding

For clarity the foregoing provisions shall be without prejudice to applications THT may make in its own name or with other bodies for the delivery of the Gateway Centre and related purposes

Schedule 3

Cleaning Schedule

The Council will be responsible for cleaning and keeping clean the Premises. The extent of and quality of cleaning for the daily generic clean and the periodic clean shall be as defined with the Maintenance & Management Agreement.

The Council shall be responsible for ensuring all ancillary areas abutting the curtilage are kept free from litter and other possible detritus.

During Trust Priority Hours the Premises will be cleaned daily Monday to Saturday outside the Priority Hours in order to ensure that it is fit for use by the Trust and its visitors and guests.

The Trust following the Periodic Review demonstrating the Trust's sustainable income for the coming year, will contribute the apportioned cost associated with cleaning those parts of the Premises used by the Trust in accordance with Schedules 1 , 4 and 5.

In its quarterly invoice to the Trust, the Council will detail the charges due; including those for cleaning and the Trust shall pay those charges on a quarterly basis in arrears. The Council will hold and retain evidence of the costs due and shall provide evidence of such upon request of the Trust.

It will be the responsibility of the Trust, its employees and volunteers to clear up any accidental spillages during the Core Hours on Tuesdays to Saturdays, and to keep the toilet areas within the Premises to an acceptable standard of cleanliness generally but specifically during peak seasons, Sundays and Public Holidays. The level of requirement will form part of the volunteer information pack.

Maintenance & Management Plan to include details of standard of generic and deep cleans

Schedule 4

Charges subject to the provisions in Schedule 6

Charges and Payment

In consideration of the Council providing the Premises, following the Periodic Review the Trust shall pay the agreed apportionment of the costs associated with the use of the Premises and will include utility costs, Non domestic rates, cleaning. The Trust will not pay any rental charge for the Premises.

Inclusions within the Charging Schedule

The following will be included in the agreed apportionment charge to the Trust:

- Utilities (Electricity, Gas, Water and Sewerage)
- Non Domestic Rates
- Servicing, testing, repair and replacement of parts for all shared items including the two lifts, the security system, fire alarm system, audio visual systems and electrical equipment
- Cleaning and Cleaning Materials
- Landlords Insurance of the premises ~~to cover damage to the building~~ – *this needs to be tightened up*

Agreed Areas

The apportioned areas shall be as set out in Schedule 1.

The Premises nett floor areas in m²:

Trust on ground floor 217m²

Shared on first floor 175m²

The rate of apportionment shall be as described below.

Apportionment of Charges

Utilities:

Electricity – X % of separate meter reading for the Shared Area.

Gas – X % of separate meter reading for the Shared Area.

Water –X % of the separate meter reading for the Shared Area.

Sewage – X % of the water usage *in accordance with the billing arrangements of the supplier.*

Non Domestic Rates @ £X per m² [a discussion needs to be had with the DV before signing this agreement to establish what level of rates will be applicable as shared area]

Servicing, testing, repair and replacement

Servicing, testing, repair and replacement of parts of lifts, heating, security system, fire alarm system, automatic doors, audio visual systems and electrical systems and equipment @ 50 % of the cost.

Cleaning, cleaning equipment and consumables @ £X per m² apportionment to be based on X% of the Shared Areas.

Any changes to the agreed costs are to be discussed and agreed in writing between the parties before any change occurs.

Schedule 5

Initial Schedule of Use

Tavistock Town Council and the Tavistock Heritage Trust are subject to the provisions of a Joint Use Agreement for those areas marked in *** *[state the colour]* on Plan 1, Plan 2 and Plan 3, through which they intend to enhance and promote the use of the former Guildhall and Trowtes House portion of the Guildhall Complex as the World Heritage Gateway Centre for the benefits of the local community and the world at large.

The Joint Use Agreement sets out the terms and conditions for the operation and management of community and dual-use of the Shared Areas of the Premises.

Generally the Premises will be open to the public for use, subject to regular review of demand, during the following times:

- Tuesday to Saturday: 10.00am to 4.00pm
- Sunday : 11.00am to 4.00pm
- Bank and Public Holidays 11.00am to 4.00pm

The Trust and the Trust's officers shall have unrestricted access to the Premises at all times when not otherwise in use for pre-preparation for events, meetings, etc., and clearing away afterwards.

Access to and use of the Premises shall be granted to the Trust on Mondays for functions outside the generally accepted use by prior notice with the Council.

Access to and use of the Premises shall be granted to the Trust for functions outside the above hours by prior notice with the Council.

Charge and Payment

These to be determined

NEEDS FURTHER WORK

Schedule 6

Methodology for determining value of Trusts income for charging as set out in Schedule 4

The Trust will be seeking and receiving monies from various sources including grants, sponsorship, fund raising events, donations, gifts, gift aid, legacies and other possible sources. Some sources of monies will stipulate how such funding is to be spent and will therefore be shown as Restricted Funds within the Annual Accounts submitted to the Charity Commission. Restricted Funds shall not form part of the Trusts income when determining the Trusts income for charging.

The Trusts income shall be based on fund raising events/activities, and Earned Income (items as determined in Income & Expenditure Forecast submitted with the Stage 2 HLF bid in August 2017) which shall be Unrestricted Income. The Trust shall pay the Apportioned Charges as detailed in Schedule 4 when the Unrestricted Income exceed £26,000¹ per year. The figure of £26,000 shall be reviewed every 5 years at the Periodic Review.

In the event that there is a remaining balance of unrestricted monies following the payment in full of the approved charges to the Council by the Trust at year end, fifty percent of those monies shall be set aside as a restricted fund for to the continuing support of the project and premises.

The Council shall, following agreement at the Periodic Review, submit an invoice to the Trust for fifty percent of the previous four quarters.

¹ Figure taken from Carrie Blogg's Income & Expenditure Forecast March 2017.

Schedule 7

Management of and alteration to the fixed exhibition

It is understood that any fixed exhibition has a restricted life and will require refreshing, altering adapting and adding to over time. During the life of the HLF investment the Trust shall ensure that the Criteria for the grant is met and that any ideas for alterations, adaptations, additions shall be in relation to the approved documents. The Trust shall come forward to the Council with ideas which shall, after due consideration, seek advice from the HLF to enable the proposals to progress. Any such alterations shall be funded from the Trust's own funds or from grants.

On the completion of the HLF investment timescale any ideas for alterations, adaptations, or additions will be placed for the Council for their approval to progress. Any such works shall be funded from the Trust's own funds or from grants.

The Trust shall have the right to add freestanding stands, displays and the like, which relate to the content of and add to the overall exhibition, as they see fit.

IN WITNESS whereof the hands of the parties or their duly authorised representatives the day and year first above written.

Signed by

Duly authorised by the Council

Signed by

Duly authorised by the Trust