

DATED

2017

**AGREEMENT IN RELATION TO**  
**ARCHIVES AND MUSEUMS**

BETWEEN:

THE COUNCIL OF THE CITY OF NEWCASTLE UPON TYNE

THE BOROUGH COUNCIL OF GATESHEAD

THE COUNCIL OF THE BOROUGH OF NORTH TYNESIDE

THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE

John Softly  
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Newcastle upon Tyne  
NE99 2BN

THIS AGREEMENT is made the                      day of                      Two Thousand and  
Seventeen

BETWEEN THE COUNCIL OF THE CITY OF NEWCASTLE UPON TYNE of the first part  
THE BOROUGH COUNCIL OF GATESHEAD of the second part THE COUNCIL OF THE  
BOROUGH OF NORTH TYNESIDE of the third part THE COUNCIL OF THE BOROUGH  
OF SOUTH TYNESIDE of the fourth part (hereinafter referred to collectively as “the  
Constituent Councils” and individually as “Constituent Council”).

WHEREAS:-

- (1) The Constituent Councils are local authorities constituted by the Local Government Act 1972 (hereinafter called “the 1972 Act”).
- (2) By virtue of Section 12 of the Public Libraries and Museums Act 1964 (“the 1964 Act”) the Constituent Councils may provide and maintain museums within their administrative area or elsewhere in England and Wales and may do all such things as may be necessary or expedient for or in connection with the provision or maintenance thereof.
- (3) By virtue of the Local Government Act 1985 (hereinafter called “the 1985 Act”) each of the Constituent Councils on the 1st day of April 1986 assumed as respects its area additional functions relating to the locating collecting preserving processing and promoting the uses of archives and records as defined in the Local Government (Records) Act 1962 (hereinafter called “the 1962 Act”) hitherto discharged by the Tyne and Wear County Council.
- (4) By virtue of Section 101 of the 1972 Act and subject as therein provided a local authority may arrange for the discharge of any of its functions by (inter-alia) any other local authority.
- (5) By virtue of Sections 101 and 102 of the 1972 Act two or more local authorities within the meaning of that Act may appoint a Joint Committee of those authorities for the purpose of discharging any of their functions jointly with or without restrictions as they think fit except the functions with respect to levying a rate or

issuing a precept for a rate or borrowing money and to advise the appointing authorities on any matter relating to the discharge of their functions.

- (6) By virtue of Section 103 of the 1972 Act the expenses incurred by a joint committee of two or more local authorities whether appointed or established under that Act or any other enactment shall be defrayed by those authorities in such proportions as they may agree or in case of disagreement as may be determined by a single arbitrator agreed on by the appointing authorities or in default of agreement appointed by the Secretary of State for the Environment.
- (7) By virtue of Section 136 of the 1972 Act two or more local authorities may make arrangements for defraying any expenditure incurred by one of them in exercising any functions exercisable by both or all of them.
- (8) By virtue of Section 113 of the 1972 Act a local authority may enter into an agreement with another local authority for the placing at the disposal of the latter for the purposes of their functions on such terms as may be provided in the agreement of the services of officers employed by the former.
- (9) A joint museums service for the County of Tyne and Wear known as Tyne and Wear Museums was provided and administered by a Joint Committee constituted by an agreement made between the Constituent Councils and the Council of the City of Sunderland which came into effect on the 1st day of April 1986 and expired on the 31st day of March 1996. This was renewed at expiry by a further agreement for a period of ten years which expired on the 31st day of March 2006 and by a further agreement for a period of ten years which was due to expire on the 31st day of March 2016.
- (10) A joint archives service for the County of Tyne and Wear in relation to those functions referred to in recital (3) hereof and known as the Tyne and Wear Archives Service was provided and administered by a Joint Committee constituted by an agreement made between the Constituent Councils and the Council of the City of Sunderland which came into effect on the 1st day of April 1986 and expired in March 1996. This was renewed at expiry by a further agreement for a period of ten years which expired in March 2006 and by a further agreement for a period of ten years which was due to expire in March 2016.

- (11) The Constituent Councils and the Council of the City of Sunderland believed that merger of Tyne and Wear Museums and the Tyne and Wear Archives Service would result in a better overall service. The Constituent Councils and the Council of the City of Sunderland resolved to merge the two services and agreed that the new combined archives and museums service would be provided and administered in accordance with the terms of an Agreement which came into effect on 1 April 2009 and was due to expire in March 2019.
- (12) By virtue of the Agreement dated 1 April 2009 the Council of the City of Newcastle upon Tyne henceforth acted as Trustee or Holding Authority for the combined archives and museum service.
- (13) Upon the withdrawal of the Council of the City of Sunderland from the Agreement dated 1 April 2009 the Constituent Councils consider it expedient to retain the Tyne and Wear Archives and Museum Service which will be provided and administered in accordance with the terms of this Agreement.
- (14) The Council of the City of Newcastle upon Tyne has to date acted as Trustee or Holding Authority in relation to the Tyne and Wear Archives and Museum Service and the Constituent Councils consider it expedient and have agreed that the Council of the City of Newcastle upon Tyne should continue to act as Trustee or Holding Authority for the Tyne and Wear Archives and Museum Service.
- (15) The Constituent Councils have passed the necessary resolutions for the purpose of entering into this Agreement.

NOW IT IS HEREBY AGREED between the parties hereto in pursuance of the powers conferred upon them by virtue of the hereinbefore recited enactments and of any other power (if any) respectively hereunto enabling them as follows:-

1. The joint archives and museums service shall be known as “Tyne and Wear Archives and Museums” (hereinafter referred to as “TWAM”).

**Joint Committee**

2. A joint committee to be known as “the Strategic Board” (hereinafter called “the Strategic Board”) shall be and is hereby constituted and shall conduct its business

in accordance with the provisions set out in the First Schedule hereto together with such further provisions as the Strategic Board may from time to time prescribe, with power to revoke or amend such further provisions PROVIDED THAT nothing in this provision shall be construed as giving the Strategic Board power to amend or delete any of the provisions contained herein.

3. The Strategic Board shall administer maintain and develop TWAM and shall do all such things as they consider necessary or proper to facilitate such purposes including:-

- a. developing a strategic focus to drive revenue growth;
- b. providing scrutiny and leadership, democratic accountability, and enterprise support and challenge to TWAM and its executive team;
- c. overseeing the overall governance and strategic leadership of TWAM in accordance with TWAM's mission and objectives;
- d. ensuring TWAM's continuing financial viability and long term sustainability including by supporting TWAM to take advantage of new opportunities (notably in relation to generating income from commercial and philanthropic sources);
- e. ensuring TWAM is making effective use of its assets, services and resources to support its museum and archive activities
- f. ensuring TWAM is delivering against Constituent Council and University priorities
- g. ensuring TWAM is meeting the needs of its users and communities

and each of the Constituent Councils hereby delegates to the Joint Committee their powers under the said 1962 Act and the said 1964 Act.

#### **Land Buildings and Assets**

4. For the avoidance of any doubt, it is acknowledged and agreed by the Constituent Councils that the Great North Museum: Hancock and the Hatton Gallery: Great North Museum, both situate in the City of Newcastle upon Tyne, are neither included within nor subject to the terms of this Agreement.

5. The land and buildings set out in the first column of the Second Schedule hereto shall form the property administered by TWAM and shall be held by the Constituent Council set out in the second column of the said Schedule for the joint use and benefit of all of the Constituent Councils.
6. Any further land and buildings acquired by the Constituent Councils in connection with the provision of a museum or archives service shall be held by the Constituent Council in whose area the said land or building is situate for the joint use and benefit of all of the Constituent Councils under the terms of this Agreement.
7. The museums objects and collections in the possession of any individual Constituent Council which were acquired by that Constituent Council (a) on or before the 1st day of April 1974 or (b) after the 1st day of April 1993 through the Individual Council Purchase Fund or (c) otherwise than in accordance with Clause 8 herein shall be the property of and be held by that Constituent Council for the joint use and benefit of all of the Constituent Councils and shall be administered by the Strategic Board under the terms of this Agreement.
8. Any museum objects and collections specifically acquired on behalf of the Strategic Board TOGETHER WITH the museum objects and collections acquired by the Tyne and Wear County Council (hereinafter referred to as "the County Council") in pursuance of its powers under Section 12 of the 1964 Act which by virtue of Article 5(5) of the Local Government Reorganisation (Property etc) (No.2) Order 1986 made under the 1985 Act were transferred to the Council of the City of Newcastle upon Tyne upon the abolition of the County Council shall be held by the said City Council (hereinafter called "the Holding Authority") as Trustee for the joint use and benefit of all of the Constituent Councils.
9. Any records and archives specifically acquired on behalf of the Strategic Board TOGETHER WITH the records and archives acquired by the County Council in pursuance of its powers under Section 12 of the 1964 Act which by virtue of Article 5(5) of the Local Government Reorganisation (Property etc) (No.2) Order 1986 made under the 1985 Act were transferred to the Gateshead Borough Council upon the abolition of the County Council shall be held by the Holding Authority as Trustee for the joint use and benefit of all of the Constituent Councils.

### **Officers of Strategic Board**

10. The Chief Executive and the Director of Resources of the Holding Authority shall respectively be the Clerk and Treasurer of the Strategic Board and the said Holding Authority undertakes to make available for the purposes of the Strategic Board the services of such secretarial and other staff and such other facilities (including accommodation) as the Strategic Board may reasonably require for the purpose of its functions under this Agreement.

### **Staff**

11. All staff engaged in the work of TWAM and including the Director shall be employed by the Holding Authority for museums.

### **Contracts and Insurance**

12. The Strategic Board may agree with any Constituent Council for that Constituent Council to enter into any contract on behalf of the Strategic Board on such terms as may be agreed between the Strategic Board and that Constituent Council, save that in respect of contracts of employment the terms and conditions shall, where practicable, be the normal employment terms and conditions of the Holding Authority.
13. The Strategic Board shall arrange for such insurance and on such terms and conditions as they consider appropriate of all of the aforementioned museum objects and collections, archives and records and the land and buildings set out in the Second Schedule hereto.

### **Acquisition and Disposal Policy**

14. The Strategic Board will maintain, publish and review an Acquisitions and Disposal Policy which will govern the acquisition and disposal of museum objects and archives.

### **Financial Arrangements**

15. The revenue expenditure of the Strategic Board shall be met in accordance with the provisions of the Third Schedule hereto.

16.
  - (a) The capital expenditure of the Strategic Board shall be met in accordance with the provisions of the Fourth Schedule hereto.
  - (b) For each financial year the Treasurer of the Strategic Board shall where required prepare a capital budget for approval by the Strategic Board and if the budget is approved by the Strategic Board it shall be submitted to each of the Constituent Councils for their approval before it becomes effective.
17.
  - (a) The Treasurer of the Strategic Board shall prepare a draft revenue budget for the Strategic Board which shall show inter alia the amount to be contributed by the Constituent Councils.
  - (b) Once the draft revenue contributions are approved by each Council an overall revenue budget shall be prepared by the Treasurer to the Strategic Board and submitted to the Strategic Board for its approval by the end of February or as soon as practicable thereafter before the start of the financial year to which the draft budget relates
  - (c) The Contributions to the cost of TWAM payable by each of the Constituent Councils as provided for in the agreed revenue budget shall be paid to the Holding Authority monthly on demand at the mid-point of each month on account of that Council's estimated contribution appropriately adjusted to account for any under or over recovery of costs in accordance with procedures agreed by the Treasurers of the Constituent Councils.
  - (d) Following the approval of the revenue budget a Service Level Agreement will be entered into between TWAM and each Constituent Council detailing the services to be provided for the agreed revenue budget.
18.
  - (a) The accounts of the Strategic Board shall be open at all reasonable times to inspection and copying without payment by any member of the Constituent Councils or by an officer thereof authorised for that purpose.
  - (b) A copy of the accounts of the Strategic Board and of any report made by the External Auditor to the Strategic Board shall be sent to each of the Constituent Councils as soon as may be practicable and in any case not later than six months after the end of the financial year or immediately following the completion of the audit whichever is the later.



- (c) The Treasurers of the Constituent Councils or their representatives shall have power to examine at all reasonable times all vouchers books and other relevant documents held by the Treasurer of the Strategic Board in respect of TWAM.
19. This Agreement shall commence on the 1st day of June 2017 and shall continue until 31 May 2027 unless terminated earlier in accordance with this Clause 19 until any Constituent Council gives to the other Constituent Councils not less than twelve months' notice to terminate on or after the first anniversary of the commencement of this Agreement PROVIDED THAT
- (i) should any of the Constituent Councils reasonably consider that the level of Government grant for museums affects the viability of TWAM then that Council may withdraw from this Agreement by giving not less than twelve months' notice in writing to all of the other parties to expire on the thirty-first day of March in any year;
  - (ii) should any Constituent Council wish to withdraw from the Agreement for any other reason and provided that that Constituent Council shall in consultation with the other Constituent Councils first reasonably consider the effect of withdrawal on the level of Government Grant paid to TWAM and the consequent viability of TWAM that Constituent Council may withdraw from this Agreement by giving not less than twelve months' notice in writing to all other parties to expire on the thirty-first day of March in any year;
  - (iii) in the event of a Constituent Council withdrawing from this Agreement under (i) or (ii) above, the Agreement shall be deemed to terminate on the effective date of such withdrawal, subject to any negotiated new agreement between the other Constituent Councils;
  - (iv) this Agreement may be also terminated by the agreement of all of the Constituent Councils.

### **Termination**

20. (a) In the event of termination of this Agreement or non-renewal of this Agreement on like terms all museum objects mentioned in Clause 8 hereto and other assets of TWAM held on its behalf by the Holding Authority shall

be divided between the Constituent Councils in such reasonable manner as they shall agree, having regard to

- (i) the council in whose area the museum object or other asset is ordinarily situated and,
- (ii) in the case where the object or other asset is part of a collection, the integrity of that collection and,
- (iii) the respective contributions made by the Constituent Councils to the cost of their acquisition

or in default of such agreement between the Constituent Councils as may be determined by the Department for Culture, Media and Sport (hereinafter referred to as "DCMS") or an Arbitrator acceptable to the DCMS PROVIDED THAT if any such museum object or other asset is disposed of by a Constituent Council within ten years of the termination of this Agreement the proceeds of the disposal shall be divided between the Constituent Councils in proportion to their respective aggregate contributions to TWAM from the 1st day of April 1986 to the termination of this Agreement and the certificate of the Treasurer of the Strategic Board of such contributions shall be conclusive evidence thereof.

- (b) In the event of termination of this Agreement, archives and records shall be divided as follows:-
  - (i) Those archives and records which are owned by a Constituent Council and held in trust by the Holding Authority on behalf of that Constituent Council shall be returned to that Constituent Council.
  - (ii) Those archives and records which are owned by the Holding Authority on behalf of the Strategic Board shall be disposed of in accordance with any known wishes of the donor and otherwise divided between the Constituent Councils having regard to the integrity of the collection of those archives and records, as can be agreed by them or otherwise determined by the DCMS or an Arbitrator acceptable to the DCMS or otherwise.

- (iii) Those archives and records owned by any third party and held in trust by the Holding Authority for that party shall be disposed of in accordance with the wishes of the owner, or where the owner cannot be traced, at the discretion of the Strategic Board having regard to the integrity of the collection of those archives and records.
  - (c) Any costs of redundancy of staff, disposal of equipment or associated costs arising from the termination of this Agreement shall be met by the Constituent Councils in such shares as they shall agree or in default of agreement in proportion to their respective aggregate contributions to TWAM from the 1st day of April 1986 to the termination of this Agreement and the certificate of the Treasurer of the Strategic Board of such contributions shall be conclusive evidence thereof.
  - (d) Costs of and occasioned by the withdrawal of any one Constituent Council including the costs referred to in sub-paragraph (b) and (c) above shall be borne by that Constituent Council.
21. SUBJECT as provided by Section 103 of the 1972 Act, any question dispute or difference in relation to any matter in connection with this Agreement which may occur between the Constituent Councils or any of them or between the Strategic Board and any of the Constituent Councils shall be referred to a single arbitrator to be appointed by agreement between the parties in dispute or in default of such agreement by the Secretary of State for Culture, Media & Sport for the time being and the decision of such arbitrator shall be final and binding and the Arbitration Act 1950 shall apply to such a reference.
22. ANY of the terms of this Agreement may at any time be varied or amended by deed executed by all of the Constituent Councils.

## FIRST SCHEDULE

### Proceedings of the Joint Committee to be known as the Strategic Board

#### **Strategic Board**

#### **Terms of Reference**

##### **Introduction**

2. These Terms of Reference were adopted by the Constituent Councils on [date] pursuant to the joint agreement between them dated [date] ("the Joint Agreement").
3. The purpose of these Terms of Reference is to set out the purpose and objectives of the Strategic Board, the composition of its membership and how it shall conduct its business.
4. The Strategic Board is created to enable Tyne & Wear Archives and Museums ("TWAM") to explore new ways of working and engage with a wider sector; and to ensure a sustainable, resilient and positive future for TWAM, particularly in light of significant reduction in public sector funding.
5. The Strategic Board substitutes and carries out the functions of the Joint Committee established under ss101 and 102 Local Government Act 1972 acting with responsibility for the provision and maintenance of the TWAM service. Members of the Strategic Board acknowledge and agree that, where the Strategic Board is discharging the statutory functions of the Constituent Councils and acting in its capacity as a Joint Committee, at law and pursuant to section 13 of Local Government and Housing Act 1989, only elected councillor members of the Strategic Board may vote in relation to such matters and be regarded as "voting members" of the Strategic Board for such decisions.
6. Notwithstanding this, the Strategic Board also recognises the benefit to TWAM of fully engaging with its non elected Board members and the advantages of having such members take an active part in Board meetings, contributing to the richness of debate and having their views taken into account in relation to all decisions made.

## **Objectives and purpose**

7. The Strategic Board's key objective is to administer, maintain and develop TWAM ("the Objective"). More specifically, the Strategic Board is responsible for:
  - a. developing a strategic focus to drive growth;
  - b. providing scrutiny and leadership, democratic accountability, and enterprise support and challenge to TWAM and its executive team;
  - c. overseeing the overall governance and strategic leadership of TWAM in accordance with TWAM's mission and objectives;
  - d. ensuring TWAM's continuing financial viability and long term sustainability including by supporting TWAM to take advantage of new opportunities (notably in relation to generating income from commercial and philanthropic sources);
  - e. ensuring TWAM is making effective use of its assets, services and resources to support its museum and archive activities;
  - f. ensuring TWAM is delivering against Constituent Council and University priorities; and
  - g. ensuring TWAM is recognising the diversity and meeting the needs of its users and communities.

## **Functions**

8. In order to achieve the Objective, the Strategic Board shall carry out the following functions ("the Functions"):
  - a. approve the Strategic / Corporate Plan for TWAM;
  - b. prepare a policy statement for TWAM and revise it from time to time as may be required;
  - c. monitor and review the work of TWAM;
  - d. determine the budget and staffing of TWAM;

- e. comment on matters affecting museums, archives and records regionally, nationally and internationally insofar as they affect TWAM;
- f. provide practical support and challenge to TWAM's senior management team;
- g. ensure effective working relationships with TWAM's key stakeholders / partners including TWAM Enterprises Limited and TWAM Development Trust and with its funders, including Arts Council England;

and in carrying out those Functions, each member of the Strategic Board must observe and comply with the UK Corporate Governance Code and with the Code of Conduct at Appendix 3.

## **Powers**

- 9. Subject to the provisions of the Joint Agreement, the Strategic Board shall have the powers delegated to it by the Constituent Councils to take such actions as are required to meet the Objectives and fulfil the Functions.
- 10. In making decisions pursuant to the exercise of its powers, the Strategic Board will have due regard to the capacity in which it makes such decisions and, when acting as a Joint Committee and discharging the statutory functions of the Constituent Councils, shall ensure that only elected councillor members of the Strategic Board vote on such matter. For the purposes of these Terms of Reference, decisions which amount to the discharge of a statutory function are known as "Reserved Matters" and those elected councillor members entitled to vote on such matters are known as "Reserved Matter Members".
- 11. The Strategic Board shall not incur expenses on behalf of TWAM without the prior approval of the Elected Members and the Rotating Members.

## **Number of members**

- 12. The Strategic Board shall be between six and eleven in number. Members of the Strategic Board shall take steps to procure that the Strategic Board is at its full complement in order for it to effectively discharge its Objectives.

13. If the number falls below the minimum the Strategic Board shall take prompt steps to fill the relevant vacancy in accordance with these Terms of Reference.
14. Each of the Constituent Councils shall annually appoint one member (each member being an elected member of their Constituent Council) as member of the Strategic Board (each called an “Elected Member”).
15. The University of Newcastle upon Tyne (“the University”) shall annually appoint one member as a member of the Strategic Board (the “University Member”).
16. Every year two different Constituent Councils may appoint one member each (each member being an elected member of their Constituent Council) as members of the Strategic Board (each called a “Rotating Member”). In any given year, the two Constituent Councils making the appointments must be different to the two Constituent Councils who made the appointments in the previous year.
17. There shall be up to four members appointed to the Strategic Board who are not members, employees or officers of the Constituent Councils or the University (the “Independent Members”) and such Independent Members shall be appointed in accordance with the nominations protocol appended to these Terms of Reference (“Nominations Protocol”).
18. The Elected Members and Rotating Members shall always be in the majority. If the removal or resignation of a member results in the Independent Members and University Member forming the majority of members of the Strategic Board, the Constituent Councils shall take steps to elect a member or members to ensure that the Elected Members and Rotating Members then form the majority and until such time, the remaining members may not take any further action under these Terms of Reference.
19. In appointing individuals as members, regard must be had to the skills, knowledge, experience and diversity needed for the Strategic Board to successfully deliver its Objectives and fulfil its Functions. Upon appointment each member must promptly sign a declaration confirming that they are able and willing to act as a member and that in acting as member they shall at all times observe and comply with the UK Corporate Governance Code and with the Code of Conduct at Appendix 3.

## **Term of appointment of members**

20. The annual appointment of each Elected Member shall be promptly confirmed in writing to the Strategic Board by the relevant Constituent Council by no later than 1 June each year.
21. The annual appointment of the University Member shall be promptly confirmed in writing to the Strategic Board by no later than 1 June each year.
22. The appointment of each Rotating Member shall be for a term of one year, and each appointment shall be promptly confirmed in writing to the Strategic Board by the two relevant Constituent Councils by no later than 1 June each year. The first two appointments under these Terms of Reference shall be made by North Tyneside Council and South Tyneside Council.
23. The appointment of the Chair (in his/her capacity as the chair of the Strategic Board meetings and not in his/her capacity as an Independent Member) shall be for a term of three years, subject to a maximum of two consecutive terms.
24. Save for the first Independent Members, who shall serve in office for the term specified in paragraph 24 the appointment of each Independent Member shall be for a term of four years, subject to a maximum of two consecutive terms.
25. The first Independent Members shall be the persons named below who shall serve in office for the following terms:

[	]	for a period of 2 years
[	]	for a period of 3 years
[	]	for a period of 3 years
[	]	for a period of 4 years

The first Independent Members may be re-appointed at the end of their initial term for a further term of four years.

26. Notwithstanding paragraphs 23 and 24, in exceptional circumstances and where the best interests of TWAM require, the term of office of an Independent Member may be extended after s/he has served two consecutive terms in office but on a



rolling one year basis and only with the agreement of all members (excluding the Independent Member concerned).

27. Any person who retires as a member by reason of them having served the maximum number of successive terms permitted under these Terms of Reference, or by giving notice pursuant to paragraph 31.a, is eligible for re-appointment after four years has lapsed from the date of their retirement, and may be so re-appointed in accordance with the relevant procedures set out in these Terms of Reference.

### **Appointment of Independent Members**

28. The Constituent Councils shall together determine the appointment of the Independent Members. A Constituent Council (for the time being, the Council of the City of Newcastle upon Tyne) (hereinafter the “Lead Authority”) shall coordinate this process in accordance with the procedure set out in the Nominations Protocol at Appendix 1.

### **Appointment of the Chair and Vice Chair**

29. The Constituent Councils shall together determine the appointment of the Chair of the Strategic Board, who shall be an Independent Member. A Constituent Council (for the time being, the Council of the City of Newcastle upon Tyne) (hereinafter the “Lead Authority”) shall coordinate this process in accordance with the procedure set out in the Nominations Protocol at Appendix 1.
30. The Elected Members and the Rotating Members shall, on an annual basis, appoint one of their number to be Vice Chair of the Strategic Board.

### **Retirement and removal of members**

31. The appointment of any member of the Strategic Board shall terminate forthwith in any of the following circumstances:
  - a. s/he resigns therefrom by notice in writing to the Chair of the Strategic Board;
  - b. s/he is disqualified by statute from acting as a trustee by virtue of sections 178-180 of the Charities Act 2011 (as amended from time to time), for

example, by reason of the member's bankruptcy, fraudulent behaviour, or misconduct;

- c. s/he is disqualified from acting as a director;
- d. in the case of an Independent Member or the Chair, s/he is removed by the Lead Authority following consultation with and agreement of the Constituent Councils and after giving the Independent Member a reasonable opportunity to respond, on the basis that, in the Lead Authority's reasonable opinion, that Independent Member's conduct or behaviour is detrimental to the interests of the Strategic Board and / or to TWAM;
- e. s/he dies;
- f. s/he is absent from three consecutive meetings of the Strategic Board without good reason and the other members resolve to remove him/her. In the event that the member concerned is an Elected Member, a Rotating Member or the University Member, the person which appointed him/her shall be invited to appoint someone in his/her place;
- g. in the case of an Elected Member, a Rotating Member, or the University Member, s/he is removed by the body who appointed him, in which case that body shall appoint someone in his/her place; and / or
- h. s/he breaches the terms of these Terms of Reference or the Joint Agreement.

32. Each Elected Member shall cease to be a member of the Strategic Board if:

- (a) s/he ceases to be a member of the Constituent Council appointing him/her;  
or
- (b) the Constituent Council by which s/he was appointed terminates his/her appointment.

33. Subject to paragraph 18, should any vacancy arise amongst the Elected Members or the Rotating Members, the relevant Constituent Council shall appoint a member to fill the relevant vacancy and in the intervening period before such appointment is

made the remaining members shall nonetheless constitute the Strategic Board and shall have full power to conduct the business of the Strategic Board.

### **Delegation by Strategic Board**

34. The Strategic Board may delegate any of their powers or functions other than those relating to non-urgent Reserved Matters (defined below) to a sub-committee or sub-committees, and if they do, they shall determine the terms and conditions on which the delegation is made. The Strategic Board may at any time alter those terms and conditions, or revoke the delegation.
35. The Strategic Board's power of delegation is subject to the following requirements:
  - a. subject to paragraphs 35b and 35c, a sub-committee may consist of three or more persons (which may include non-members);
  - b. where a sub-committee has delegated authority to make decisions on behalf of the Strategic Board, the majority of its members must be members of the Strategic Board;
  - c. where a sub-committee has delegated authority to make decisions on urgent Reserved Matters, only those members of the sub-committee who are Reserved Matter Members (defined below) may vote on the decisions;
  - d. the acts and proceedings of any sub-committee must be brought to the attention of the Strategic Board as soon as is reasonably practicable;
  - e. the Strategic Board shall from time to time review the arrangements which they have made for the delegation of their powers.

### **Reserved Matters**

36. The Strategic Board recognises that certain decisions relating to the discharge of a statutory function are, at law, reserved to members who are Elected Members or Rotating Members of the Constituent Councils being elected councillors of a Constituent Council (together the "Reserved Matter Members") being those decisions relating to TWAM of such significance to be considered by the Constituent Councils as being ones which are required for the discharge of the Constituent Council's statutory obligations ("Reserved Matters").

37. Except for the Reserved Matters listed in Appendix 2, the Constituent Councils agree that all day to day decisions relating to the business of TWAM which are made in accordance with the Strategic Board's business plan from time to time approved (the "Business Plan") shall be made by the Strategic Board acting collectively.
38. The matters identified in Appendix 2 as being within the scope of the Strategic Board's authority may only be carried out with the agreement of the Reserved Matter Members unless such matters are set out in the Business Plan for the period in question which has been approved by the Reserved Matter Members, in which case, the Reserved Matter Members shall be deemed to have consented to such matter.
39. In relation to decisions made in relation to Reserved Matters, whilst the Independent and University Members may contribute fully in the debate leading up to such decision, all members recognise that, at law, only Reserved Matter Members can exercise a vote on such decision and be regarded as voting members of the Strategic Board.
40. In the event of dispute or doubt as to whether or not a decision amounts to a Reserved Matter, the question shall be directed to the heads of legal services at the Constituent Councils who shall, acting together, make a determination, recognising the need to make such determination promptly in order not to stifle the business of TWAM and the activity of the Strategic Board.

## **Meetings and proceedings**

41. The Strategic Board shall meet at least four times a year and at such other times as it considers necessary to achieve its Objectives and fulfil its Functions.
42. The Chair may call a meeting of the Strategic Board at any time and shall do so upon written requisition of two members. The Secretary shall send (by post, e-mail or personally) to every member at least seven days before a meeting of the Strategic Board a notice confirming the date, time and location of the meeting specifying the business proposed to be transacted thereat.
43. Meetings may take place by video conference or conference telephone or similar means to allow every member to take part in the meeting.

44. In the absence or unwillingness of the Chair, the Vice Chair shall chair meetings of the Strategic Board. In the absence or unwillingness of the Chair and the Vice Chair, the members of the Strategic Board may elect a chair for the meeting from amongst its members present.
45. Save in relation to the Reserved Matters, and subject to paragraph 52, and unless otherwise stated herein, every matter arising at a meeting of the Strategic Board or a sub-committee thereof shall be decided by a majority of the votes of the members present and voting on the question and in the case of an equality of votes the chair of the meeting shall have an additional and casting vote.
46. No matter which is a Reserved Matter shall be voted on unless the Reserved Matter Members present at the meeting vote in favour of the same.
47. Any five members of the Strategic Board shall form a quorum provided that the Elected Members and Rotating Members present at a meeting shall be in the majority.
48. The Strategic Board may permit other persons to attend and speak at their meetings save that such persons shall not be entitled to vote.
49. Subject to paragraphs 35.b and 35.c, the quorum of a sub-committee of the Strategic Board shall be one third of all of the members of that sub-committee provided that in no case shall the quorum be less than two members and provided that Elected Members and the Rotating Members are in the majority.
- 50.** Decisions of the members may be made either:
  - a. By resolution at a meeting; or
  - b. By resolution in writing in accordance with paragraph 51.
- 51.** A resolution in writing signed by the members entitled to receive notice of a meeting of the Strategic Board shall be as valid as if it had been passed at a meeting of the Strategic Board duly convened (even if it consists of several documents in the like form each signed by one or more members), provided that:

- c. the resolution is passed by the requisite number of members as would have been required to pass it at a meeting;
- d. a copy of the proposed resolution has been sent to all the members eligible to vote;
- e. the document signifying a member's agreement is authenticated by their signature, by a statement of their identity accompanying the document, and received at the principal office within 28 days beginning with the circulation date;
- f. in the case of Reserved Matters, only (and all of) the Reserved Matter Members have confirmed their agreement to the resolution in writing.

### **Conflicts of interest**

52. A member who has a conflict of interest in relation to business transacted at a meeting of the Strategic Board or of a sub-committee thereof ("Business") must:
- g. at the outset of the meeting declare the nature and extent of his/her interest (either direct or indirect) before discussion on the Business;
  - h. withdraw from the meeting for discussion of the Business unless expressly invited to remain in order to provide information;
  - i. not be counted in the quorum for the part of the meeting during which the Business is discussed; and
  - j. withdraw during the vote on the Business and have no vote on the matter.

The minutes of the meeting shall confirm the actions taken to manage the conflict of interest in this regard.

53. An Elected Member, the University Member or a Rotating Member who is also a member, officer or employee of a Constituent Council or the University as the case may be, shall not be regarded as conflicted by virtue only of the fact that s/he is a member, officer or employee of a Constituent Council or of the University (as applicable).

## **Reporting requirements**

54. The Strategic Board shall keep minutes of its meetings and a copy of those minutes, once approved by the Strategic Board, shall on request be made available to the Constituent Councils, including by publishing on TWAM's website.
55. The minutes of each meeting of the Strategic Board shall clarify which decisions were made in relation to Reserved Matters and confirm that only Reserved Matter Members voted in relation to the same.
56. The Constituent Councils may, from time to time at their discretion seek any further information from the Strategic Board in relation to the performance of its Objectives and discharge of its Functions.
57. The Strategic Board shall, if requested, produce and present to the Constituent Councils a written report outlining the Strategic Board's work and activities over the preceding period.

## **Variation or termination**

58. These terms of reference shall remain in force until varied or revoked by the members.

## **Appendix 1**

### **Appointment of Independent Members and the Chair – Nominations Protocol**

1. To ensure the continuing and effective functioning of the Strategic Board, the relevant processes set out in this Appendix shall be followed to appoint the Independent Members and the Chair.
2. The Lead Authority shall coordinate the appointment of Independent Members, and the Chair by the Constituent Councils by:
  - a. where the Lead Authority considers appropriate, advertising any vacancy for an Independent Member or the Chair within [time period] of that vacancy arising or within [time period] of the Lead Authority becoming aware of the vacancy being likely to arise;
  - b. inviting applications to be submitted to the Lead Authority within [time period] of the date that the vacancy is advertised pursuant to paragraph 2a (if it is advertised) or otherwise, within [time period] of the date on which the vacancy arose (the “Closing Date”);
  - c. together with the Constituent Councils, considering applications from potential candidates and deciding which candidates to interview;
  - d. making arrangements for the Constituent Councils to form a panel to interview applicants within [time period] of the Closing Date;
  - e. liaising with each of the Constituent Councils following such interviews, and reaching agreement on the person(s) (if any) that they wish to appoint to fill the position. If the Constituent Councils cannot reach agreement by consensus on any one or more candidates, they will repeat the above process until agreement is reached;
  - f. once agreement is reached, the Lead Authority shall notify the successful candidate(s) of their appointment as an Independent Member (and in the case of the Chair, his/her appointment as Chair);
  - g. notifying unsuccessful candidates that they have not been appointed to the Strategic Board.



In recommending, and either accepting or rejecting, an individual for appointment as an Independent Member, the Lead Authority and the Constituent Councils must have regard to (i) the skills, knowledge, experience and diversity needed for the Strategic Board to successfully deliver its Objectives and fulfil its Functions; and (ii) the Strategic Board's and TWAM's commitment to equal opportunities and the avoidance of discrimination.

The Chair will, once appointed in accordance with this Nominations Protocol, sit on the panel together with the Constituent Councils to interview candidates for Independent Members.

3. At least three months prior to expiry of an Independent Member's term of office or the Chair's term of office (as applicable), the Lead Authority must approach that Independent Member or the Chair and ask them to confirm in writing, and within 28 days of the approach, whether they are likely to stand again for a further successive term (if so permitted to stand again by these Terms of Reference).
  - a. If the Independent Member or the Chair (a) fails to confirm whether they will stand again; or (b) confirms that they will not stand again; or (c) is not permitted by the Terms of Reference to stand for a successive term, the process set out in paragraph 2 must immediately be followed.
  - b. If the Independent Member or the Chair confirms that they will stand again for a successive term, and that Independent Member or the Chair is permitted to so stand again under these Terms of Reference, then in good time prior to expiry of the Independent Member's or the Chair's current term:
    - i. the Lead Authority shall write to each Constituent Council to (a) inform them that the Independent Member or the Chair intends to stand again for a successive term and is permitted to do so under these Terms of Reference; and (b) give each Constituent Council [insert time period] to confirm whether they agree to the re-appointment of that Independent Member or that Chair. If a member fails to respond within [insert time period] they will be deemed to agree to the re-appointment.

1. If no objections are received to the re-appointment, the Lead Authority shall write to the relevant Independent Member or the Chair (with copy to all members) to confirm their re-appointment, such appointment to be effective immediately upon expiry of their current term.
  2. If at least one objection is received, and the Lead Authority, acting reasonably, agrees with the rationale provided for the objection(s) the process set out in paragraph 2 of this Appendix must promptly be followed.
4. Subject to paragraph 0 of this Appendix, as soon as (a) the Lead Authority becomes aware that a vacancy for an Independent Member or the Chair has arisen; or (b) the Lead Authority becomes aware that a vacancy for an Independent Member or the Chair is likely to arise, whichever is earlier, the process set out in paragraph 2 of this Appendix must be followed. For the avoidance of doubt, if any member becomes aware that a vacancy for an Independent Member or a Chair has arisen or is likely to arise then they must, as soon as reasonably practicable, inform the Lead Authority.

## **Appendix 2**

### **Reserved Matters**

The following matters shall be deemed “Reserved Matters” for the purpose of the Terms of Reference:

#### **1. Financial**

- 1.1. Adoption of the annual budget and any variation to the same.
- 1.2. Expenditure in any one year on capital account of over limits from time to time under OJEU (or equivalent) in one transaction or series of transactions where those transactions are required by regulation 6 of the Public Contracts Regulations 2006 (or any successor legislation) to be aggregated for the purpose of calculating whether the relevant OJEU threshold is exceeded unless provided for in the relevant Business Plan.
- 1.3. Approval of appointment of new auditors.
- 1.4. Related party dealings with any members of the Strategic Board or connected persons.
- 1.5. Appointment of new bankers and change of authorised signatories to the bank accounts.
- 1.6. Change in accounting or taxation policies of TWAM.
- 1.7. Appointing any consultant, agent or other intermediary to conduct any aspect of the business other than any such appointment in the normal course of business and at a cost of more than the limits under OJEU (or equivalent) from time to time.
- 1.8. TWAM extending its activities outside the scope of the Business Plan, or closing down any business operation.
- 1.9. Approval or signing of the annual accounts.
- 1.10. Approval of the sublicensing of TWAM's name or logo.
- 1.11. Disposal of items in the TWAM collections.

#### **2. Management, directors and employees**

- 2.1. Engagement by TWAM of new employees with remuneration in excess of, or dismissal of employees with remuneration in excess of £75,000 per annum.

- 2.2. Proposed appointment or removal of any Strategic Board member and appointment of any sub-committee member.
- 2.3. Devolution or transfer of management control of TWAM to persons outside the agreed Strategic Board.
- 2.4. Payment of any fees, remuneration or other emoluments to Strategic Board Members or varying any such fees, remuneration or emoluments.

### 3. Share / loan capital and constitutional matters

- 3.1. Creation, acquisition or disposal of any subsidiary (or shares in a subsidiary) of TWAM.
- 3.2. Capitalisation of profits or reserves of TWAM – e.g. proposal to convert income into a capital fund.
- 3.3. Change of name of TWAM.
- 3.4. Change in the status of TWAM from a joint local authority service.
- 3.5. Entry into any reconstruction, consolidation or amalgamation with any company, association, partnership or legal entity or the acquisition of any business or undertaking of any other person e.g. proposing to merge with another company.

## **Appendix 3**

### **Code of Conduct**

All members (elected and non-elected) of the Strategic Board will be subject to the Code of Conduct of the organisation that appoints them to sit on the Strategic Board.

## SECOND SCHEDULE

### Property reserved for use of TWAM

#### Museums

#### Owning Constituent Council

Laing Art Gallery  
Discovery Museum

The Council of the City of Newcastle upon  
Tyne

Shipley Art Gallery

The Borough Council of Gateshead

Stephenson Railway Museum  
Segedunum Roman Fort, Baths & Museum

The Council of the Borough of North  
Tyneside

South Shields Museum and Art Gallery  
Arbeia Roman Fort and Museum  
and auxiliary buildings

The Council of the Borough of South  
Tyneside

### THIRD SCHEDULE

#### Revenue Expenditure

1. The revenue costs of the Strategic Board shall be categorised and met as follows:-
  - (i) Museums Operational Costs are those costs directly attributable to an individual Constituent Council. These include but are not exclusively items listed in (a) to (h) below:-
    - (a) all costs directly attributable to the employment of staff who are based at the property of TWAM set out in the Second Schedule hereto and any future land or buildings acquired for the purposes of museums under Clause 6 excluding any property referred to in sub-paragraph (iv)(c) below. Such costs to include the transport travel subsistence expenses and staff car allowances of the said staff and costs relating to the uniforms of the said staff;
    - (b) all costs directly attributable to the use of the properties and land and buildings referred to in sub-paragraph (a) above including the provision of telephone facilities insurance of buildings provision of gas water and electricity rent and rates;
    - (c) all costs directly attributable to the external repairs and internal repairs to the property referred to in sub-paragraph (a) above;
    - (d) the cost of loan charges relating to the properties and land and buildings referred to in sub-paragraph (a) above;
    - (e) the cost of the provision of equipment and materials excluding those items used by the services referred to in sub-paragraph (ii) below at the said land and buildings;
    - (f) the cost of the provision and maintenance of furniture and internal fittings internal decoration lighting and facilities for the display of exhibits in all of the properties referred to in sub-paragraph (a) above;
    - (g) the cost of the acquisition of items of art and other exhibits for museums;

- (h) any other such costs which the Treasurers of the Constituent Councils or in default of agreement the Strategic Board agree should be treated as Museums Operational Costs;

The Museums Operational Costs less any rental income for the use of the property shall be met by the Constituent Council for the council in which the said property is situate.

- (ii) Museums Specialist Costs shall comprise all costs incurred by TWAM in providing the following specialist services so far as they are used by the Constituent Councils:- Collections Services, including Conservation; Documentation of the Collections; Subject Specialisms, including Natural Sciences; Art; History; and Archaeology, and other specialist services including, Transport; Communications; Design and Technical Services, Learning and Development and Trading.

The Museums Specialist Costs shall be met by each of the Constituent Councils in proportion to their use of the said services.

- (iii) The Archives Costs shall comprise all costs attributable to the employment of staff specialising in archives and all other expenditure incurred attributable to the delivery of an archives service, (including, for the avoidance of doubt, such proportion of the Corporate Costs as is reasonably attributable to the archives service).

The Archives Costs shall be met by each of the Constituent Councils in proportion to the Office for National Statistics mid-year estimated population figures for each of the Constituent Councils for 2011.

- (iv) Corporate Costs of TWAM shall comprise:-

- (a) all costs directly attributable to the employment of staff responsible for the general management and administration of TWAM including the Director, Senior Managers and financial, HR and administrative staff. Such costs to include the transport travel and subsistence expenses and staff car allowances of the said staff
- (b) all costs directly attributable to the training of any employee of TWAM referred to in (iv)(a) above



- (c) all costs directly attributable to the maintenance and use of any land or building used for the general administration of TWAM (including in particular Blandford House) including the provision of telephone facilities insurance of buildings provision of gas water and electricity rent rates and external and internal repairs
- (d) all costs directly attributable to the administration of TWAM
- (e) all costs directly attributable to Information Technology
- (f) the financing costs which are deemed to be Corporate Costs by virtue of Clause 16 and paragraph (d) of Schedule 4 of this Agreement
- (g) any other such costs which the Treasurers of the Constituent Councils or in default of agreement the Strategic Board agree should be treated as Corporate Costs.

The Corporate Costs of TWAM (except such of those which have been allocated to the archives service under paragraph 1 (iii) of this schedule) shall be allocated between each Constituent Council on a percentage as set out in the Fifth Schedule (such percentages being those fixed at the 1st April 1997 and based on the total value of each Constituent Council's Operational and Specialist Costs at that date) or such other percentage as the Constituent Councils shall agree. In the first instance the Corporate Costs so allocated to each Council shall be met from the proportion of the Arts Council England (ACE) Core Grant allocated to such Council under paragraph 2(a) of this Schedule. Any part of the Corporate Costs allocated to a Constituent Council which are not met by the ACE Core Museums Grant allocation shall be met by that Council.

- (v) All Costs (other than those referred to in paragraphs 1(1),(c) and (d)) above shall be met in the first instance by the Holding Authority but shall be divided annually between the Constituent Councils as provided in this Agreement.

## 2. ACE Core Grant

The Strategic Board is in receipt of annual ACE Core Grant.

- (a) ACE Core Grant shall be allocated between the Constituent Councils in the proportion that the total of their Museums Operational Costs and Museums

Specialist Costs bore to the total Operational and Specialist Costs as at 1 April 1997, subject to adjustments required under clause (c) and/or other adjustments to the allocation required by ACE.

- (b) The grant conditions for the ACE Core Grant stipulate that the amount of grant could be varied if any one partner left the Joint Agreement which was signed on 29 November 2009. Following the decision of Sunderland City Council to withdraw from the Agreement this provision has not been invoked by Arts Council. However, on a transitional basis, TWAM will deliver some services to Sunderland Museums and Heritage for a transitional period up to March 2018, funded from ACE Core Grant. These services will be specified in a partnership agreement between TWAM and Sunderland Museums and Heritage.. For the avoidance of doubt this relates solely to the provision of some service and no grant will be paid to Sunderland Museums and Heritage. Any services delivered by TWAM to Sunderland Museums and Heritage after 1 April 2015 will be subject to separate negotiation. Such negotiation will be conducted on the basis that there will be no detrimental impact on the Constituent Councils.
- (c) Any change in service provision will not be met by a similar change in ACE Core Grant unless the ACE Core Grant is itself changed by central government.

### 3. Trading Accounts

- (a) Each Constituent Council shall have its own trading account in relation to the sale of goods at its properties situate in its council the net income of which shall be used to the benefit of that individual Constituent Council.
- (b) In every financial year each Constituent Council shall be provided with an estimate of its expected net trading surplus which shall reduce its revenue contribution accordingly. Any income generated in excess of that estimate may be vired at the Director's discretion to finance additional expenditure in that particular Constituent Council's council either in that financial year or be carried forward to subsequent years. Any net trading loss may similarly be carried forward from year to year.

## FOURTH SCHEDULE

### Capital Costs

- (a) Spending allocation for capital expenditure incurred in respect of facilities which are used for the general benefit of the Councils shall be provided by each of the Constituent Councils in proportion to the allocations set out in the Fifth Schedule herein or such other percentage as the Constituent Councils shall agree.
- (b) All revenue costs directly attributable to the financing of such capital expenditure shall be treated as Corporate Costs for the purposes of Clause 15.
- (c) All financing costs directly attributable to capital expenditure committed by the County Council shall be met by the Constituent Councils in proportion to the Office for National Statistics mid-year estimated population figures for each of the councils of the Constituent Councils for 2011.
- (d) Spending allocation for capital expenditure incurred in respect of facilities which are used for the general administration of the archives and all revenue costs directly attributable to the financing of such capital expenditure shall be met by the Constituent Councils in proportion to the Office for National Statistics mid-year estimated population figures for 2011.

All other capital expenditure and allocations in respect of TWAM and revenue costs directly attributable to the financing of such capital expenditure shall be met by the Constituent Council authorising such expenditure.

## FIFTH SCHEDULE

### Percentage of Corporate Costs allocated to each Constituent Council

	%
The Council of the City of Newcastle upon Tyne	56.24
The Borough Council of Gateshead	11.60
The Council of the Borough of North Tyneside	10.91
The Council of the Borough of South Tyneside	21.25

Following the withdrawal of Sunderland City Council from the Joint Agreement the percentages have been reallocated so that the whole of the grant is allocated to the constituent councils with each of the constituent councils retaining the same proportion relating to the other three councils.

IN WITNESS whereof the parties have caused their respective Common Seals to be hereunto affixed the day and year first before written.

THE COMMON SEAL OF THE COUNCIL  
OF THE CITY OF NEWCASTLE UPON TYNE  
was hereunto affixed in the presence of:

)  
)  
)  
)  
)

Lord Mayor

Assistant Director Legal Services

THE COMMON SEAL OF THE BOROUGH  
COUNCIL OF GATESHEAD  
was hereunto affixed in the presence of:

)  
)  
)  
)  
)

Mayor

Strategic Director of Legal  
and Corporate Services

THE COMMON SEAL OF THE BOROUGH  
COUNCIL OF NORTH TYNESIDE  
was hereunto affixed in the presence of:

)  
)  
)  
)  
)

Chair

Authorised Officer

THE COMMON SEAL OF THE COUNCIL OF

THE BOROUGH OF SOUTH TYNESIDE

was hereunto affixed in the presence of:

)  
)  
)  
)  
)

Mayor

Head of Legal Services