

**COLLECTIONS LOAN AND MANAGEMENT AGREEMENT
– MAIN TERMS**

1. The Loan

- 1.1. The City Council agrees to lend the Collections to Explore and Explore agrees to accept the Collections on loan for the Term for the purposes of the management of the Collections subject to the terms of this Agreement.
- 1.2. The City Council and Explore acknowledge that certain items in the Collections are on loan to the City Council (“the Loaned Collections”) by third parties and the City Council does not assert any rights of ownership or otherwise in respect of it.
- 1.3. In the light of the acknowledgement expressed in Clause 2.2 the City Council hereby agrees to allow Explore to take custody of the Loaned Collections upon the terms of this Agreement but SUBJECT ALWAYS to the rights and titles of any person claiming ownership of it as against the City Council to remove it (with or without notice) or otherwise deal with it as owner and Explore hereby agrees that it will comply with the request of the City Council or any third party asserting title to or ownership of any item within the Loaned Collections and will deliver up custody of it immediately on request to the City Council or to such third party.
- 1.4. The City Council hereby warrants and undertakes to Explore that it is entitled to loan to Explore the Loaned Collections and has obtained all consents, permits, authorisations, approvals and permissions of any kind required from any third party to enable the City Council to grant the loan of and custody of the Loaned Collections to Explore.
- 1.5. The City Council shall indemnify and hold Explore harmless against and from any and all actions, claims, costs (including legal expenses properly incurred) damages, demands and liabilities raised against or suffered or incurred by Explore in connection with or arising out of a breach or the warranty in clause 2.4 by the City Council.

- 1.6. Explore agrees that the City Council is and remains the legal custodian of the Collections under all terms and conditions by which the Council originally came into possession or custody of the Collections and that Explore has no proprietary right or interest in the Collections and will not by virtue of this Agreement acquire any such right or interest other than in accordance with the terms of this Agreement.
- 1.7. The City Council agrees that nothing in this Agreement except where specifically otherwise stated shall transfer to Explore any of the City Council's statutory obligations and duties relating to the Collections and the Intellectual Property Rights arising from the provisions of any enactment.
- 1.8. Subject as provided elsewhere in this Agreement, the parties to this Agreement agree that the Collections shall be permanently kept at the Premises during the Term.

2. Intellectual Property Rights

- 2.1. The Council hereby grants to Explore an exclusive world-wide royalty-free all-media licence to use all Intellectual Property Rights currently owned or otherwise exploited or used by the City Council in the Collections and the Loaned Collections for the purposes of Explore managing the Collections, the Loaned Collections, providing and developing the Library & Archive Activity, marketing, advertising and promoting the Collections, the Loaned Collections, the Premises and/or the Library & Archive Activity and in connection with any merchandise of any nature produced by or on behalf of Explore in connection with the Library & Archive Activity ("the IPR Licence").
- 2.2. The City Council hereby warrants and undertakes to Explore that it is entitled to grant to Explore the IPR Licence and has obtained all consents, licences, permits, authorisations, approvals and permissions of any kind required from any third party to enable the City Council to grant the IPR Licence to Explore.
- 2.3. The City Council shall pay all costs of any kind (including without limiting the generality of the foregoing any maintenance, renewal, application or registration costs) in

connection with or arising out of the Intellectual Property Rights granted pursuant to the IPR Licence and owned by the City Council for the Term to ensure that such Intellectual Property Rights remain in full force and effect for the Term.

- 2.4. The City Council shall at the request of Explore and at the City Council's own expense do and execute all such further acts things and documents and obtain all such consents, licences, permits, authorisations, approvals and permissions of any kind required from any third party to give full effect to the IPR Licence.
- 2.5. Explore agrees that all income generated as a result of the IPR Licence will be clearly and separately identified within Explore's published accounts.

3. Temporary Removal

- 3.1. Explore may make such arrangements in relation to the management of the Collections as it, in its absolute discretion, decides PROVIDED ALWAYS that Explore shall act in accordance with its Rules, the Contract, the Collections Protocol and all relevant trust deeds, schemes and other such documents.
- 3.2. For the avoidance of doubt Explore shall be permitted to remove the Collections from the Premises for the purpose of temporary exhibition at a location other than the Premises. Such removals shall be at Explore's own expense unless otherwise provided for elsewhere in this Agreement.

4. Explore's obligations

- 4.1. Explore agrees that it will:
 - a) manage the Collections in accordance with the terms of the Contract, the Collections Protocol and relevant trust deeds, schemes and other such documents hereof or such updated and/or equivalent documents in force from time to time;
 - b) provide free of charge expert professional advice to the City Council on the most economical and efficient discharge of the City Council's obligations and duties towards its records

and archives as required by s224 of the Local Government Act 1972;

- c) conserve the Collections at its own expense and take such suitable advice and steps as seem fit and appropriate to protect and care for them;
 - d) keep the Collections in good repair as the same are now, fair wear and tear and ageing excepted, and will take proper precautions to prevent damage to or theft of the Collections;
 - e) allow the City Council to inspect the Collections on reasonable notice;
 - f) identify the City Council as the owner or custodian trustee of the Collections by labelling or in any collections management documentation relating to the Collections or by such other means (as far as it is possible to do so).
- 4.2. Explore will effect or procure to be effected and maintained such insurances as are necessary to protect the Collections.
- 4.3. Explore shall use its reasonable endeavours to procure that the cover provided by such insurances is substantially similar to the cover provided by the City Council immediately prior to the date of this Agreement.
- 4.4. Each of the City Council and Explore will procure that there be given to the other such information in connection with the insurances and copies of the policies as the other may reasonably require and Explore will promptly notify the City Council of renewals made and variations and cancellations of policies made or, to the knowledge of Explore, threatened or pending.
- 4.5. Explore shall procure prompt payment of all premiums (and provide evidence of the same to the City Council to keep the insurance policies (referred to above) in force provided that they are respectively available upon reasonable terms and if Explore determines that any of the insurances (save for mandatory insurances) is not so available it will promptly notify the City Council.

4.6. If Explore fails to comply with any of the provisions of Clauses 5.2 to 5.5 inclusive, the City Council shall immediately be entitled (but not obliged) to effect or renew the insurances concerned at the expense of Explore.

5. Termination of this Agreement

5.1. This Agreement shall terminate if:

- a) There is any material breach by Explore of any of this Agreement, the Contract, the Collections Protocol or the Leases and Licences and, in the case of a breach capable of remedy, the breach is not remedied within a reasonable time but, in any event, not later than sixty (60) days of Explore receiving notice specifying the breach and requiring its remedy; or
- b) The Term of the Leases and Licences shall expire or otherwise determine; or
- c) Explore ceases to exist or to operate; or
- d) An Insolvency Event occurs; or
- e) The Loan shall determine and the City Council shall recover the Collections; or
- f) Explore shall give six months written notice of its wish to terminate this Agreement.

5.2. In default of an agreement between Explore and the City Council as to whether:

- a) any situation act or omission constitutes a breach of the covenants or obligations herein contained; or
- b) circumstances have arisen which materially prejudice the condition, well being or repair of the Collections; or
- c) a particular period of time is reasonable in the circumstances in which to remedy a breach of covenant or other obligation;

the provisions of Clause 11.2 will apply.

5.3. On termination of this Agreement Explore agrees to deliver up the Collections to the City Council.

6. Removal of Collections

- 6.1. If the Collections are at any time at immediate risk of damage, loss or destruction for whatever reason, the City Council may remove the Collections which belong to them from the Premises without giving notice to Explore to a place of safety. Except where the Collections were at risk by reason of Explore's breach of the covenants and obligations herein contained and CYC has, in consequence of this breach, determined the Loan the Collections shall be returned to the Premises when in the opinion of the City Council they are no longer at risk.

7. New acquisitions

- 7.1. Any new items added to the Collections during the Term by way of deposit, loan, gift, purchase or bequest to Explore shall be transferred to the ownership or custodian trusteeship of the City Council.
- 7.2. Except as specified below, Explore shall pay the all initial costs ("the Transfer Costs") and other storage and conservation costs relating to transfers of new Civic Archives and new acquisitions of Deposited Public Records and Private Archives added to the Collections during the Term. The Transfer Costs will be defined as the costs of:
 - a) making an initial inventory of the new archives;
 - b) providing storage media for the new archives;
 - c) initial transport of the new archives to the Premises;to the quality standards set out in the Collections Protocol.
- 7.3. The City Council shall pay the initial direct costs of new Civic Archives which are added to the Collections during the Term where that transfer is necessary for the City Council to meet the requirements of s224 of the Local Government Act 1972.
- 7.4. The City Council shall pay all storage costs for new Civic Archives added to the Collections during the Term where transfer to the Civic Archive is necessary for the City Council to meet the requirements of s224 of the Local Government Act 1972 and where:

- a) for reasons of security, Data Protection, the safeguarding of children or other vulnerable persons, or commercial confidentiality the City Council requires the new acquisitions to be retained in the physical custody of the Council and not transferred to the Premises; or
- b) for any reason the City Council requires Explore to obtain the explicit permission of the City Council Officer before giving public access to the new acquisitions;

8. Data Protection

- 8.1. For the purposes of Data Protection legislation the City Council remains the Data Controller for the Collections.
- 8.2. As Data Controller the City Council shall pay all costs of research, drafting sending and replying to correspondence and making and supplying copies of items in the Collections which are incurred in responding to data subject access requests made under the provisions of Data Protection legislation in respect of the Collections.
- 8.3. Explore will pay all costs of giving data subjects direct physical access to the Collections on the Premises in response to a data subject request.
- 8.4. Explore will administer free of charge on behalf of the City Council the research exemption for public access to any of the Collections where such access falls under Data Protection legislation. Explore hereby warrants to the City Council that it will create and maintain adequate records of any research exemptions granted and that these records will be of a sufficient quality to satisfy the requirements of the Information Commissioner.

9. Freedom of Information

- 9.1. Explore will refer to the City Council any Freedom of Information requests which it receives which relate to the Civic Archives and Deposited Public Records and will only respond to such requests in accordance with specific guidance given to Explore by the City Council Officer.

- 9.2. The City Council shall pay all costs of research, drafting sending and replying to correspondence and making and supplying copies of items in the Collections which are incurred in responding to Freedom of Information requests relating to the Civic Archives and to Deposited Public Records.
- 9.3. Explore will pay all costs of giving individuals making Freedom of Information requests direct physical access to the Collections on the Premises.
- 9.4. Explore will respond directly and at its own expense to any Freedom of Information requests which it receives which relate to Private Archives and to the Local History Library. Explore hereby warrants to the City Council that it will create and maintain adequate records of such responses and that these records will be of a sufficient quality to satisfy the requirements of the Information Commissioner.

10. Miscellaneous

- 10.1. Terminations of this Agreement by any party under the terms of this Agreement shall be without prejudice to and shall not affect the liability of any other party in respect of events occurring prior to the termination.
- 10.2. Any dispute or difference between the parties (other than a decision by the City Council to remove the Collections to safe-keeping in accordance with Clause 7.1 when the decision of the City Council shall be final and conclusive) shall be referred to and determined by a sole Arbitrator to be appointed by agreement between the parties or in default of agreement by the President for the time being of the Law Society. Such arbitration shall take place in York and the costs of the arbitration shall be within the Arbitrator's decision.
- 10.3. This Agreement may be executed in any number of Counterparts and by the different parties in different Counterparts each of which when executed and delivered is an original. Any party may enter into this Agreement by executing a Counterpart and this Agreement shall not take effect until it has been executed by all the parties but all such Counterparts shall be deemed to constitute one and the same instrument.

- 10.4. Any delay of failure by either party to this Agreement to exercise any right(s) or remedy shall not constitute a waiver of such rights(s) or remedy.
- 10.5. This Agreement contains all the terms between the parties except fro such variations in writing as shall be agreed in writing by the City Council and Explore.
- 10.6. Explore is not permitted to sell, assign, change or otherwise dispose of any right or interest under this Agreement without the prior written consent of the City Council.
- 10.7. This Agreement shall be governed and construed in accordance with English law.

IN WITNESS whereof the City Council and Explore have executed this instrument as a Deed on the date first before written

Schedule 1 The Insolvency Events

Insolvency Event means any of the following events being in relation to Explore that:

[insert definitions of insolvency events as per YMT agreement]

Schedule 2 The Collections Protocol

- The City Council will retain custodian trusteeship/ownership of all items in the Collections.
- Any new acquisitions by any method will be vested in the City Council – Explore will not collect new material for the Collections for its own benefit, but for the citizens of York and beyond.
- Explore will identify and negotiate on behalf of the City Council new additions to the Collections of Civic Archives, Deposited Public Records, Private Archives, publications and any Intellectual Property Rights relating to them.
- Explore will act in the Council's best interests at all times over the management of the Collections, and will actively work to minimise and eliminate all unfunded liabilities relating to the Collections.
- Explore will initially manage the Collections in accordance with the current City Council Archives & Local History Collecting Policy approved by the Executive Member on 8th March 2011. Explore will from time to time revise this Policy in agreement with the City Council to reflect that Explore is an operator rather than an owner of the Collections. This policy will then be reviewed every five years in accordance with good practice guidance from The National Archives.
- In acting as the City Council's agent for the acquisition of new Deposited Public Records into Council custody Explore will act solely in accordance with best practice guidance on the management of Deposited Public Records as issued from time to time by The National Archives.
- Explore will assist the City Council to discharge the Council's responsibilities towards the Collections under s224 of the Local Government Act 1972 (including implementing wherever applicable

all guidance issued by the Secretary of State and The National Archives to clarify and define those responsibilities.)

- More generally, as agent for the City Council, Explore will manage the Collections in accordance with best current professional practice guidance as issued by The National Archives and The Arts Council as lead bodies for the archives and library sectors respectively.
- Explore will demonstrate that it is managing the Collections in accordance with best professional practice by achieving Archive Service Accreditation as overseen by The National Archives within the duration of the Contract.
- Explore will at all times employ a minimum of 1fte professionally-qualified archivist as a member of the senior management team of Explore with specific responsibility for the Collections.
- Explore will fund and operate improved physical and digital storage environments for the Collections complying with the provisions of British Standard PD5454:2012 which will protect them from loss, damage and degradation in line with best professional practice and guidance.
- Explore will actively generate funds to address the preservation needs of the Collections, ensuring that they are appropriately packaged, handled with care when in use or copies made for public use to protect the originals from damage, and where necessary active conservation or repair work is carried out by a qualified conservator.
- During the Term Explore will research, create and maintain the first comprehensive documented audit trail for the management of the Collections held by Explore. The audit trail will include documentation for:
 - the date, legal basis and any specific terms and conditions on which items in the Collections are acquired by the City Council and into the Council's legal custody both for items in the Collections as at [the Transfer Date] and any items subsequently added to the Collections after [the Transfer Date];

- the storage locations of the Collections in Explore's physical custody;
 - the conservation or copying of the Collections whilst in Explore's custody;
 - the commercial and non-commercial use of any intellectual property rights in the Collections whilst in Explore's custody;
 - the date, legal basis and any specific terms and conditions relating to the disposal of any items from the Collections whilst in Explore's custody
- Explore will for the first time publish an annual report each year during the Term listing additions to and disposals from the collections over the previous year, and summarising other significant collections management activities as requested by the City Council.
 - In addition to its commitment under the Contract to deliver the heritage Lottery Fund's Approved Purpose to widen access to the Collections, Explore will actively seek additional funding and resources to promote access to, the use of, and active participation in the development of the Collections by all sections of the community both in York and worldwide as far as reasonably practical, without discriminating on any grounds.
 - Explore will use the following tools to increase access to the Collections:
 - research, compilation and publication of catalogues and other finding aids to the Collections conforming to current relevant professional cataloguing standards for archives and libraries
 - making the Collections and their catalogues and finding aids available under supervision to users in person and remotely via the internet and through the production distribution and publication of copies and surrogates and by answering enquiries from users unable to use the collection in person and by actively promoting and marketing these services through all communications media and methods

- Negotiating the temporary loan-out of items from the Collections to other accredited archive institutions or museums for exhibition, display or research, provided that the loan period does not extend beyond the Term and that the loan is not to the physical detriment of the items loaned and that the loan does not unduly affect the quality of public access to the Collections as determined by the Council.
- Actively seeking out external funding opportunities for increased access from sources which are not available to the City Council.
- Explore will only dispose of items from the Collections in accordance with best practice ethical terms and procedures which will be set out in the current Collecting Policy.
- Explore will act as the City Councils' agent for day to day operational contact with The National Archives; and for completing and filing the any national statistical returns relating to the Collections;