

**BRIGDEND COUNTY BOROUGH COUNCIL / AWEN CULTURAL TRUST**  
**PARTNERSHIP AGREEMENT**  
**SUMMARY OF KEY PROVISIONS**

<b>Subject</b>	<b>Summary</b>
<b>Independence</b>	<p>The Trust has been established as a company limited by guarantee with exclusively charitable purposes.</p> <p>The Agreement further confirms that the Council fully acknowledges the independence of the Trust and the need for the Trust to retain that independence.</p> <p>These statements are critically important to ensure that the Trust satisfies the Charity Commission's requirements of independence, as set out in Charity Commission's Guidance Note RR7.</p>
<b>Partnership Arrangements</b>	<p>The Agreement recognises the important strategic partnership between the parties and the obligation on the parties to act in good faith to deliver the agreed objectives.</p>
<b>Services to be provided by the Trust</b>	<p>The Agreement confirms that the Trust is appointed to provide the Services and the agreed Service Outputs throughout the Service Period.</p> <p>Specifically, the Agreement provides that the Trust will:</p> <ul style="list-style-type: none"> <li>• Manage and operate the Facilities and Services</li> <li>• Deliver the Services during the minimum Opening Hours</li> <li>• Perform the Services in accordance with the Approved Business Plan and Annual Service Delivery Plan</li> <li>• Develop a range of Services and activities to encourage all sections of the local community to participate in cultural activities</li> </ul>
<b>Pricing</b>	<p>The Agreement establishes the pricing arrangements.</p> <p>The Trust will have full discretion to establish fees and charges for the Facilities and/or Services, save</p>

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	<p>that the Trust is required to comply with the prices set out in the Core Pricing Schedule.</p> <p>The Core Pricing Schedule relates to free and/or reduced price access to those who are unwaged or low waged.</p> <p>In determining fees and charges, the Trust should have regard to (inter alia):</p> <ul style="list-style-type: none"> <li>• The Trust's charitable objectives</li> <li>• The needs of the local community</li> <li>• The viability of the Trust</li> <li>• Prevailing market conditions</li> <li>• Pricing of other Facilities in the area</li> </ul>
<b>Programming</b>	<p>The Agreement requires the Trust to ensure a balanced programme, with a wide range of cultural activities which will appeal to all sections of the local community, regardless of age, earnings or ability.</p> <p>The Trust is under an obligation to continuously review and refresh the programme to ensure it is up-to-date and responsive to the changing needs and expectations of the local community.</p> <p>The first activity programme will be set out in the Annual Service Delivery Plan attached to the Agreement.</p>
<b>Annual Service Planning Process</b>	<p>Whilst the funding will be agreed in 3 year tranches, there will be an Annual Service Planning Process to ensure the Services being delivered are up-to-date and responsive to the needs of the local community.</p> <p>The Annual Service Planning Process is set out below:</p> <ul style="list-style-type: none"> <li>• By 1 October in each year, the Council will notify the Trust of its key objectives for the Services for the next Service Year</li> </ul>

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	<ul style="list-style-type: none"> <li>• By 1 December in each year, the Trust will submit its draft Annual Service Delivery Plan</li> <li>• By 1 February in each year, the parties will agree any changes required to the Annual Service Delivery Plan</li> <li>• By 1 March in each year, the parties will agree the Annual Service Delivery Plan for implementation from 1 April in each year</li> </ul> <p>It should be noted, there is flexibility to change the above dates, if required.</p>
<b>Council Request for a Change in Services</b>	<p>The Council and the Trust will adopt a flexible approach to delivery of the Services (having regard to the changing needs of the local community and prevailing economic and social conditions).</p> <p>If a Change is required by the Council in the Services provided by the Trust, the Council must serve a “Council Notice of Change” on the Trust, which will set out the required Change in sufficient detail to enable the Trust to assess any financial or operational impacts.</p>
<b>Trust Request for a Change in Services</b>	<p>The Trust may in turn wish to introduce a Change in the Services. In such a case, the Trust must submit a “Trust Notice of Change”.</p> <p>The Council will evaluate the Trust’s proposed Change in good faith and take into account all relevant issues, including any effect on the quality or likelihood of successful delivery of the Services.</p>
<b>Transfer of Additional Services</b>	<p>The Agreement acknowledges the importance of delivering a range of high quality affordable services for the benefit of the local community and notes that the Council wishes to explore options for local, voluntary and charitable organisations to deliver services in partnership with the Council, which may include exploring the transfer of Additional Services to the Trust.</p> <p>The Council must act reasonably and in good faith and have due regard to a range of factors when considering the transfer of Additional Services to the Trust. If the Council wishes to go ahead with this, it must issue a “Council Notice to Transfer Additional Services”.</p> <p>The Agreement then sets out a detailed procedure for how this Notice will be dealt with, including</p>

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	<p>provision of a detailed Estimate from the Trust to the Council of the likely effects of the transfer.</p> <p>If the parties agree to the transfer of an Additional Service, the parties must meet at the earliest opportunity to agree an implementation plan for the smooth transfer of the Additional Services to the Trust.</p>
<b>Trust Borrowings</b>	<p>The Agreement provides that the Trust will not be entitled to use any Facilities or Equipment or other assets of the Council as security for borrowings, nor can they bind the Council into acting as a guarantor relating to third party borrowings.</p>
<b>Grant of Leases</b>	<p>The Council will grant the Leases to the Trust on the Commencement Date. From the Commencement Date, the Trust will observe and perform all obligations required under the Leases and will be fully liable for the business rates at each of the Facilities – any breach of the provisions of the Leases is also a breach of the Agreement.</p> <p>If the Agreement is terminated for any reason the Council will exercise its right to break the Leases in accordance with the terms of the relevant Lease.</p>
<b>Trust's Use of the Facilities</b>	<p>The Trust will not use the Facilities or any part of them other than for the purpose of delivering the Services. The Trust will also keep the Facilities properly secured, will be responsible for safekeeping keys, passes etc., and will keep the Facilities open during the Minimum Opening Hours, or such other hours as agreed with the Council.</p>
<b>Council's Use of the Facilities</b>	<p>The Council will be entitled to use the Facilities in order to fulfil its obligations under this Agreement and for the following purposes: business continuity, emergencies, elections, staff conferences and training events. This is subject to normal hire costs other than in emergencies.</p>
<b>Maintenance of the Facilities</b>	<p>Responsibility for the repair and maintenance of the Facilities will be in accordance with the Repair and Maintenance Matrix. In summary, the Council will be responsible for the structure and replacement of major plant. The Trust will be responsible for all minor repairs and servicing and repair of plant.</p> <p>The Agreement also provides that, during the Service Period, the parties will ensure that:</p> <ul style="list-style-type: none"> <li>• the Facilities will be maintained in accordance with the agreed PPM Programme for each</li> </ul>

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	<p>Facility;</p> <ul style="list-style-type: none"> <li>• the Trust can deliver the Services in accordance with the Annual Service Delivery Plan; and</li> <li>• the Facilities are handed back on the Expiry Date or other date in a state of repair which is no worse than as at the Commencement Date, as evidenced by the Condition Surveys (except for fair wear and tear)</li> </ul> <p>There are also further provisions relating to maintenance, including on notification of repairs and maintenance, on carrying out of unprogrammed works outside the Minimum Opening Hours and on minimising or remedying any losses or costs to the Trust. In the event that the Council determines that it is unable to comply with all or part of the PPM Programme, the Council will serve a Notice of Change on the Trust pursuant to Clause 8 (Council Notice of Change) and the provisions of that Clause shall apply to assess any impact of the Council's position on the Trust/Services/Service Fee.</p>
<b>Redevelopment</b>	<p>The Agreement provides that the parties will continuously review the Facilities and explore options for continuous service improvement through investment.</p> <p>In particular, the Council will be entitled to undertake improvements to the Facilities during the Service Period through an "Investment Scheme". The Council must serve not less than 6 months' notice on the Trust to notify the Trust of its intention to undertake certain works through an Investment Scheme Notice.</p> <p>Upon receipt of this first Notice, the parties will meet to discuss and agree, inter alia, a timetable for the Investment Scheme Works, any impact on the Trust's Business Plan or Annual Service Delivery Plan and any changes to the Service Fee</p>
<b>Utilities</b>	<p>The Trust is under an obligation to use all reasonable endeavours to minimise its consumption of energy and water and to mitigate the environmental impact of the Services.</p> <p>The Trust is, also, fully responsible for the procurement and payment of all utilities used by the Trust at the Facilities.</p>
<b>Equipment</b>	<p>The Council will loan its Equipment to the Trust from the Commencement Date, as identified in the</p>

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	<p>Equipment Inventory, for use in delivering the Services.</p> <p>The Trust will be responsible for maintenance, insurance, repair and protection of the Equipment.</p>
<b>Book Stock</b>	<p>The Council will loan their Book Stock to the Trust as identified in the Library Management System. The Council will retain legal title to the Book Stock throughout the Service Period.</p> <p>The Trust will manage the Book Stock to ensure it complies with the Welsh Public Library Standards.</p>
<b>Staffing Issues</b>	<p>At all times during the Service Period the Trust will employ sufficient suitable staff with sufficient abilities and skills for the proper performance of the Services and must ensure that a suitably qualified employee is present at each Facility during the Opening Hours.</p>
<b>Apprenticeships</b>	<p>The Trust will use all reasonable endeavours to offer apprenticeships, work placements and job opportunities for school children/young adults, careers advice and information for school children/young adults, training &amp; retraining for the local workforce, and employment opportunities for young people.</p>
<b>B-Leaf / Wood B Safeguarding Issues</b>	<p>The Agreement makes specific reference to the significant safeguarding issues at the B-Leaf and Wood B Facilities and provides for the Council to retain duties and responsibilities relating to safeguarding, including assignment of a named officer to deal with service user assessments and individual outcomes. In turn, the Trust is required to have an appropriate level of suitably trained and/or qualified staff to provide the required level of tuition and support at B-Leaf and Wood B as well as other responsibilities including monitoring.</p>
<b>Health and Safety</b>	<p>The Trust will ensure that it and its employees comply with the Health and Safety at Work etc Act 1974 or any amendment/re-enactment of the same. The clause makes a number of detailed provisions in this regard.</p>
<b>Insurances</b>	<p>Throughout the Service Period, the Trust will, without prejudice to the Council's rights under this Agreement and at its own cost, take out such insurance (approved by the Council) as may be necessary. This includes (without limitation), the following:</p> <ul style="list-style-type: none"> <li>• Business interruption insurance and trustee indemnity insurance</li> </ul>

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	<ul style="list-style-type: none"> <li>• Public liability insurance of no less than £10 million</li> <li>• Employer's liability insurance of no less than £10 million</li> <li>• Other insurance obligations as required under the Leases e.g. contents insurance</li> </ul>
<b>Complaints</b>	The Trust will establish a customer satisfaction and complaints procedure and makes further provision relating to quality control and dealing with complaints.
<b>Customer Satisfaction</b>	The Trust will be required to regularly monitor customer satisfaction, the form of such monitoring to be agreed with the Council and the results of which will be presented at Review Meetings. This will be separate to research undertaken/commissioned by the Council.
<b>Audit</b>	The Trust will maintain and provide operational and financial records (which are current, complete and accurate) in relation to the delivery of the Services.
<b>Joint Procurement</b>	The parties will co-operate with regard to purchasing arrangements to maximise value for money.
<b>Co-operation</b>	The Council and the Trust will act in good faith and co-operate with each other to deliver agreed common objectives relating to the economic, social and environmental wellbeing of Bridgend.
<b>Grant Agreements</b>	The Trust acknowledges the Grant Agreements listed in Schedule 13 and will comply with the Grant Agreements so far as required by the clause.
<b>Service Fee</b>	<p>In consideration of the Trust providing the Services, the Council will pay the Service Fee to the Trust. This is arranged as follows:</p> <ul style="list-style-type: none"> <li>• The Service Fee payable from 1 October 2015 to 31 March 2019 is set out at Schedule 9 to the Agreement.</li> <li>• The Service Fee from 1 April 2019 until the end of the Service Period will be reviewed and adjusted if appropriate in accordance with Clause 34 of the Agreement.</li> <li>• The Service Fee for 1 October 2015 to 31 March 2016 will be paid 2 months in advance</li> </ul>

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	thereafter, unless otherwise agreed, the Service Fee will be paid in equal instalments quarterly in advance of the first Business Day of each relevant month, starting on 1 April 2016.
<b>Interest on Late Payment</b>	Interest shall be payable on any sum which either party fails to pay and which is due under the Agreement, from the due date up to the date of actual payment.
<b>Adjustments to the Service Fee</b>	<p>The Service Fee from 1 April 2019 will be reviewed and – if agreed – will be adjusted at the commencement of each three year period on the Service Fee Adjustment Date, as follows:</p> <ul style="list-style-type: none"> <li>• By 1 June 2018, the Council will notify the Trust of the Council’s objectives for the Service for 1 April 2019 to 31 March 2022</li> <li>• By 1 November 2018, the Trust will submit the Business Plan for 1 April 2019 to 31 March 2022</li> <li>• Parties negotiate in good faith to agree next tranche of funding by 1 February 2019</li> </ul> <p>If the parties cannot agree the Funding by an agreed date (Long Stop Date), then the Council has the option to terminate the Agreement.</p>
<b>Reporting Regime</b>	<p>The reporting and monitoring regime is as follows:</p> <ul style="list-style-type: none"> <li>• Attendance at quarterly Review meetings with the Council Officer and the Council’s Cabinet Member</li> <li>• Attendance at quarterly maintenance liaison meetings, meetings with elected members and regular meetings with relevant Council officers</li> <li>• Provision of monthly/quarterly financial and operational reports, per Schedule 10</li> </ul>
<b>Managing Poor Performance</b>	The Council may, if it reasonably determines that the Trust has materially failed to perform any of its obligations under the Agreement, give written notice of such breach to the Trust.

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	<p>Within 10 Business Days of receipt of such a notice, the Trust will prepare and submit an Action Plan to the Council for its approval, setting out a plan and timetable for remedying the breach or breaches, which the Council may approve all or part of within 20 Business Days.</p> <p>If the Council does not approve any part of the Action Plan there is provision for the Plan to be revised and re-submitted. The clause also sets out the Council's powers if breaches are not remedied.</p> <p>Subject to the above, if the Trust at all times materially complies with the Annual Service Delivery Plan and/or an Action Plan, or is unable to do so due to circumstances beyond its reasonable control, the Trust will not be in breach of the Agreement.</p>
<b>Council Step In</b>	<p>The Council is entitled to take action if it reasonably and properly believes that it is essential to take action because of the following circumstances:</p> <ul style="list-style-type: none"> <li>• A serious risk exists to the health or safety of persons or property or to the environment which the Trust is unable or expressly unwilling to remedy;</li> <li>• To discharge a statutory duty that the Trust is unable, or expressly unwilling, to comply with or undertake</li> <li>• An Emergency has arisen; and/or</li> <li>• There has been a material breach of the Agreement.</li> </ul> <p>If these circumstances arise and the Council is willing to take action, the clause sets out a mechanism by which action can be taken.</p>
<b>Voluntary Termination by the Council</b>	<p>The Council may terminate all or part of the Agreement at any time on/after 1 April 2019 by serving a Termination Notice to the Trust.</p> <p>The Agreement will terminate on the date falling 12 months after the date of receipt of the notice.</p> <p>Compensation will be payable to the Trust in those circumstances.</p>

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<b>Termination on Trust Default</b>	The Council may terminate the Agreement upon written notice in any of the circumstances set out in the clause – for example if an administration order is made or a receiver is appointed in respect of the Trust, or if the Trust commits persistent or material breaches of the Agreement.
<b>Termination on Council Default</b>	<p>The Trust may terminate the Agreement, on serving notice, within 30 Business Days of becoming aware of any Council Default.</p> <p>A Council Default is either a failure by the Council to pay the Service Fee under certain conditions, or a material breach by the Council of the Agreement which has not been remedied.</p>
<b>Termination on Force Majeure</b>	Either party may terminate the Agreement in the event of a “Force Majeure Event” such as a national emergency, war, prohibitive governmental regulations or any other cause beyond the reasonable control of the parties which renders performance of the Agreement impossible for a period of six months.
<b>Automatic Termination</b>	The Agreement and any Leases will terminate automatically at the Expiry of the Service Period, subject to the parties agreeing otherwise in writing.
<b>Consequences of Termination</b>	<p>In the event that the Agreement terminates or expires for whatever reason:</p> <ul style="list-style-type: none"> <li>• The Leases (or the relevant Lease in the case of Partial Termination) will automatically terminate</li> <li>• The Council will be entitled to re-enter and take back control of the Facilities and Council’s Equipment, and to acquire the Trust’s Equipment under certain conditions</li> <li>• The Trust will deliver the information which may be reasonably necessary to enable the Council or another organisation to carry on the Services</li> </ul> <p>Importantly, the Council will be required to pay compensation “Breakage Costs” to the Trust in the event of:</p> <ul style="list-style-type: none"> <li>• Council Default</li> </ul>

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	<ul style="list-style-type: none"> <li>• Voluntary Termination</li> <li>• Partial Termination</li> </ul> <p>Breakage costs will include all associated costs of early termination, including redundancy costs.</p>
<b>Exit and Handover</b>	<p>In the event of the Agreement terminating, then:</p> <ul style="list-style-type: none"> <li>• The parties shall meet to draw up an exit plan;</li> <li>• The Trust will agree not to take certain actions within a 6 month period leading to the expiry of the Agreement (or any other period remaining between the Council giving notice and such notice expiring);</li> <li>• The Trust will provide information to the Council on request, covering matters including details of Employees, users of the Facilities and existing/anticipated/threatened claims or disputes, subject to the Data Protection Act and other legislation.</li> </ul>