

Dated

2013

**CENTRAL DURHAM
CREMATORIUM JOINT COMMITTEE**

AGREEMENT

for the constitution of the above named Joint Committee

**Colette Longbottom
Head of Legal and Democratic Services**

A G R E E M E N T

MEMORANDUM OF AGREEMENT made the day of
Two Thousand and Thirteen **BETWEEN THE COUNTY COUNCIL OF
DURHAM** (hereinafter referred to as "the Durham County Council") of the one
part and **THE TOWN COUNCIL OF SPENNYMOOR** (hereinafter referred to as
"the Town Council of Spennymoor") of the other part.

WHEREAS:

- (1) The Councils being parties hereto may by Section 4 of the Cremation Act 1902 as amended by the Cremation Act 1952 respectively provide and maintain crematoria.
- (2) The Authorities to this Agreement have by their respective Councils (Durham County Council and Spennymoor Town Council) and by virtue of Section 102(1) of the Local Government Act 1972, the Local Government Act 2000 the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 the Local Authorities and all and every power enabling them agreed and resolved to constitute a joint committee to exercise the powers which each of the Authorities hereto might respectively have exercised by virtue of the Cremation Acts 1902 and 1952 for the provision of running, maintenance and management of the existing Crematorium at Durham within the County of Durham.
- (3) The said Authorities now wish to constitute the said Joint Committee on the terms set out below and to the intent that this of Agreement between the said Authorities and dated the third day of May one thousand nine hundred and eighty three shall cease to have effect.
- (4) By Section 103 of the Local Government Act 1972 is it provided that the expenses of a Joint Committee appointed thereunder shall be defrayed by appointing authorities in such proportions as they may agree upon.
- (5) The said Councils have each of them passed a resolution to enter into an Agreement as hereinafter appearing.

Interpretation

- (6) In this Agreement the following expressions have the meanings set out below, unless the contract otherwise requires.

"Authority", either Durham County Council or Spennymoor Town Council and "Authorities" shall be construed accordingly.

"Annual meeting", the annual meeting of the Joint Committee held each year in accordance with paragraph 6.1 of this Agreement.

"Chief Executive", the head of an Authority's paid service being the person designated as such under Section 4 of the Local Government and Housing Act 1980.

"Clerk", the person appointed by virtue of paragraph 6.1 to carry out certain duties allocated by this Agreement.

"Council", the Council of elected members of one or other of the Authorities to this Agreement.

"Crematorium", the crematorium known as Central Durham Crematorium which includes all buildings, grounds, equipment and other property appurtenant there.

"Financial year", the period running from 1 April in one calendar year until 31 March in the next calendar year (inclusive).

"Joint Committee", the Central Durham Crematorium Joint Committee constituted by this Agreement.

"Member", unless the context otherwise so requires, a member of the Joint Committee.

"Monitoring Officer", Durham County Council's Head of Legal and Democratic Services being the person designated under Section 5 of the Local Government and Housing Act 1989 or the Officer's nominated deputy in the case of absence or illness.

"Ordinary Meeting", any meeting of the Joint Committee that is not an Annual Meeting or a Special Meeting.

"Principal Office" in the case of Durham County Council, the Council Offices, County Hall, Durham and in the case of Spennymoor Town Council the Town Hall, Spennymoor.

"Special Meeting", a meeting of the Joint Committee convened in accordance with paragraph of this Agreement.

The Crematorium site is now vested in Durham County Council by virtue of Section 120(4) of the Local Government Act 1972 and all and every power so enabling and registered at HM Land Registry with Title Absolute under Title Number.

The Agreement

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

- 1 There shall be constituted a Joint Committee (hereinafter referred to as the "Joint Committee" of both the Councils being parties hereto (hereinafter collectively referred to as the two Councils) consisting of members appointed under provisions hereof and having the functions, powers and duties upon and subject to the terms and conditions hereinafter mentioned.
- 2 The name of the Joint Committee shall be the Central Durham Crematorium Joint Committee.

3 Membership of Joint Committee

- 3.1 The Joint Committee shall consist of Members appointed by each of the two Councils from amongst their respective Members in the following manner that is to say:-

<u>Appointing Council</u>	<u>Number of Members to be Appointed</u>
Durham County Council	12
Spennymoor Town Council	3

- 3.2 The whole number of Members of the Joint Committee shall retire on the first Thursday in May 2013 and on the first Thursday in May of every fourth year thereafter.
- 3.3 Each of the two Councils shall in respect of Members to retire on the first Thursday of May 2013 appoint the said Members at the first convenient meeting of such Council held after the execution of this Agreement.
- 3.4 In the year 2013 and every fourth year thereafter being a year in which Members of the Joint Committee shall retire each of the two Councils shall appoint Members of the Joint Committee as herein provided **at the first convenient meeting of such Councils.**
- 3.5 The two Councils may revoke an appointment of any Member at any time.
- 3.6 If either Authority does not appoint the number of Members which it is entitled to appoint the other Members of the Joint Committee shall be competent to carry out the business pursuant to the Agreement.
- 3.7 Any person who is a member of the Council of both Authorities shall only represent the first Authority to appoint him or her as a Member and any subsequent appointment by the other Authority shall be void.
- 3.8 Without prejudice to the generality of sub-clause 5 of this clause if a Member fails to attend four consecutive meetings of the Joint Committee such fact shall be reported by the Clerk to the Joint Committee to the Council by whom that Member was appointed and the Council may thereupon terminate the Member's term of office notwithstanding any other provision in this Agreement contained and any such termination of appointment shall be reported to the Clerk to the Joint Committee by the Council concerned.
- 3.9 If by reason of the operation of statutory provisions failure to attend meetings as hereinbefore mentioned or otherwise there shall be a vacancy and the Members of the Joint Committee as herein provided the Council out of whose appointment the vacancy occurs may thereupon appoint another Member to fill such vacancy and the person so appointed shall remain a Member of the Joint Committee until and shall retire on the date of the normal retirement under the provisions of this Agreement of the member whose place he or she fills.

4 Powers of the Joint Committee

The two Councils hereby delegate to the Joint Committee upon and subject to the terms and conditions of this Agreement all powers of the two councils with respect to the provisions and maintenance of crematoria in the area of each of them other than powers of borrowing money, levying or issuing a precept for a rate of holding land and without prejudice to the generality of the foregoing the Joint Committee shall to the exclusion of the two Councils have all the powers of each of the two Councils under the Cremation Act 1902 and 1952 and under any Act of Parliament or statutory instruments with respect to the provision of maintenance of crematoria.

5 Meetings of the Joint Committee

- 5.1 The Joint Committee shall hold four meetings at least in every year for the transaction of general business and may hold such other meetings including a visit to the Crematorium premises at such intervals as it may find necessary or convenient.
- 5.2 The Joint Committee shall elect annually from amongst its Members a Vice Chairman and shall appoint the outgoing Vice Chairman as Chairman.
- 5.3 The Election of the Chairman and Vice Chairman shall be respectively the first and second business transacted at the first meeting of the Joint Committee after the First June in any year (hereinafter referred to as the Annual Meeting).
- 5.4 So far as it is practicable to do so the Chairmanship and Vice Chairmanship shall alternate each year between a Member of Spennymoor Town Council and a Member of Durham County Council.
- 5.5 The Chairman of the Joint Committee shall, unless he or she resigns or becomes disqualified continue in office until his or her successor becomes entitled to act as Chairman. The Vice Chairman of the Joint Committee shall unless he or she resigns or becomes disqualified hold office immediately after the election of the Chairman of the Joint Committee at the next meeting of the Joint Committee.
- 5.6 If there is equality of votes as the appointment of Chair and Vice Chair then the Chairman for the time being of that meeting shall have a second or casting vote.

6 Notice of Meeting

- 6.1 The Joint Committee must appoint a Clerk and may appoint and pay such officers and servants as it may deem necessary for the purpose of carrying out its duties under this Agreement.
- 6.2 Sections 114 to 119 of the Local Government Act 1972 shall apply to an officer of the Joint Committee in the same manner as the said sections

apply to an officer of a local authority with such modifications as are necessary to make them applicable to officers of the Joint Committee.

- 6.3 Ordinary meetings and Annual meetings of the Joint Committee shall be convened by the Clerk who shall deliver notice thereof to each Member at least five clear days before the date of the meeting. This notice will give the date, time and place of each meeting and specify the business to be transacted.
- 6.4 With reference to the Notice referred to in paragraph 6.3 the Clerk shall send a copy of the agenda for the meeting which shall include:-
- Provision for the declaration of interests by Members for the purposes of the Code of Conduct issued under Section 50 of the Local Government Act 2000;
 - All items of business which have been, or are deemed to have been, referred to the Joint Committee by a Council resolution of either Authority
 - All reports submitted by any officer of either Authority, and
 - Any items of business directed to be included by the person appointed to preside at the meeting.
- 6.5 The quorum of a meeting will be one quarter of the whole number of Members (4 Members). Provided that there is at least one Member present from each Authority. During any meeting if the Chairman counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date to be 'fixed' by the Chairman'. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.
- 6.6 The Joint Committee and every officer thereof who is by reason of his office entrusted with the custody or control of money shall keep accounts of all money received by the Joint Committee or any such officer and all expenditure thereof by it or him as may be required for the purpose of Part VIII of the Local Government Act 1972 and Part III of the Local Government Finance Act 1982.
- 6.7 No act or proceeding of the Joint Committee shall be questioned on account of any vacancy or on account of any defect in the appointment of any Member.
- 6.8 The Chair and two members of the Joint Committee may at any time by notice specifying the business to be transacted and sent to the Clerk require a Special Meeting of the Joint Committee to be convened and the Clerk shall accordingly convene a special meeting which shall be held within thirty clear days of receipt by the Clerk of the said notice.
- 6.9 The Clerk shall give Members of the Joint Committee at least five clear days notice of the Special Meeting and such notice shall specify the business proposed to be transacted.

- 6.10 No business shall be transacted at a Special Meeting other than that specified in the notice sent to the Clerk and referred to in sub-clause 6.9 above.
- 6.11 No substitute Members may be appointed from either Authority to this Joint Committee. (Remove)

New Clause

Any member who is unable to attend a meeting of the Joint Committee for any reason may appoint another member of the relevant authority of which he is a member as a substitute member provided notification of the named substitute is given to the Clerk (including by electronic means), before four o'clock on the day before the meeting in question and thereon the substitute member shall be entitled to attend that meeting only and (subject to the requirements relating to the declaration of interests contained in the Code of Conduct of the Council of which he is a member) shall be entitled to speak and vote on all items of business. A member may only substitute another member from the relevant authority of which he is a member.

Chair at Meetings

- 6.12 The Chair or in his absence the Vice Chair shall preside at every meeting provided that if both the Chair and the Vice Chair are absent the Members present shall elect another Member of the Joint Committee who shall preside at that meeting.

Voting

7 Majority

- 7.1 Unless this Agreement provides otherwise, any matter will be decided by a simply majority of those Members voting and present in the room at the time the question was put.

Chairman's Casting Vote

- 7.2 If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.

Method of Voting

- 7.3 Unless a recorded vote is demanded under sub-clause 7.4 the Chairman will take the vote by show of hands or if there is no dissent, by the affirmation of the meeting.

Recorded Vote

- 7.4 If 3 Members present at the meeting demand it the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes.

8 Minutes

- 8.1 The Clerk shall be responsible for keeping a record of attendance and a record of the business transacted at every meeting of the Joint Committee and the minute book shall be submitted to, and signed at the next following meeting.
- 8.2 The person presiding at the next following meeting referred to in paragraph 1 above shall put the questions that the minutes be approved as a correct record of the previous meeting.
- 8.3 No discussion shall take place upon the minutes, except upon their accuracy. If no question is raised as to accuracy or if it is raised then as soon as it is disposed of, the person presiding shall sign the minutes.
- 8.4 Copies of the minutes of every meeting of the Joint Committee and any sub-committee thereof shall as soon as possible after each meeting be sent by the Clerk to each Authority.

9 Sub-Committee

The Joint Committee shall have power to appoint sub-committees from amongst its Members with or without delegated powers for any purpose which in its opinion could more satisfactorily be dealt with by a sub-committee.

10 Finance

- 10.1 The Joint Committee shall as soon may be after the conclusion of every financial year (which shall for the purposes of this Agreement be taken to be a period of twelve months ending on the thirty first day of March in any year) send to each of the two Councils a report on the operations of the Joint Committee during such financial year and a copy of the statutory statements of the Joint Committee for such financial year.
- 10.2 If the Joint Committee shall at any time require to incur capital expenditure for the acquisition of property or the construction of works or for other capital purposes in connection with the provision of crematoria then (unless the Joint Committee shall in their discretion decide to defray such expenditure out of revenue) such expenditure shall be borne by the two Council's respectively in the proportions four parts by the Durham County Council and one part by the Spennymoor Town Council **PROVIDED THAT** the Clerk of the Joint Committee shall obtain approval from both of the two Councils before the Joint Committee shall incur such expenditure.
- 10.3 That where possible any necessary borrowing be effected by the Durham County Council and that any requests for transfers of borrowing authority or capital expenditure allocation between the two Councils be made to the appropriate Minister or other authority.
- 10.4 Where any sum is to be borrowed by the County Council in pursuance of sub-clauses (1) and (2) of this clause the loan may be effected at the discretion of the Corporate Director Resources and Chief Financial

Officer for the time being of the Durham County Council through the Durham County Council's loans pool in which case the loan shall be chargeable at such rates of interest and expenses as shall be applicable to such loans as prescribed by the said Corporate Director Resources and Chief Financial Officer and the period of such loan shall be in accordance with any guidelines prescribed for the time being for loans by local authorities by the Secretary of State for the Environment or other authority.

- 10.5 Subject to any condition or conditions prescribed by either or both of the two Councils in giving consent to any capital expenditure under the proviso to sub-clause (2) of this clause the two Councils or either or them shall pay to the joint committee the amount of any sums borrowed in pursuance of this clause in such sums and at such times as the Joint Committee shall direct.
- 10.6 Subject as is hereinafter provided the Joint Committee shall from time to time pay to the two Councils or either or them the amounts of all interest and all instalments of principal or as and when the same shall become due and the cost of taking up any loans raised for such purposes by the two Councils or either of them.
- 10.7 The legal estate in all land acquired and works constructed whether by means of capital or annual expenditure for the purpose of enabling the Joint Committee to exercise its functions under the provisions of this Agreement shall be vested in the Council in whose area the same shall situate and that Council shall hold such land or works as the case may be for the purpose of provision and maintenance of crematoria expressly for the same to be maintained, controlled and managed by the Joint Committee.
- 10.8 All expenses incurred by the Joint Committee in any financial year so far as they are not paid out of income other than contributions from the two Councils under this clause shall be borne by the two Councils respectively in the proportions four parts by Durham County Council and one part by Spennymoor Town Council and such Councils shall pay to the Joint Committee such sum as the Joint Committee may estimate will be the proportion to be borne by that Council of any estimated deficit for that financial year.
- 10.9 The Joint Committee may:-
 - (a) use any part or all of any profits or surplus made in any financial year to finance capital expenditure or to redeem debt;
 - (b) carry forward part or all of such profits or surplus or reserves as is in the opinion of the Joint Committee required to meet contingencies or to defray any expenditure which may fall to be defrayed before the date on which moneys to be received by the Joint Committee whether from the two Councils in accordance with this Agreement or from the operation of the crematoria established by the Joint Committee will become available and the Joint Committee shall as soon as practicable return to the two Councils the amount of such profits or surplus or reserves not so applied by

the Joint Committee in proportion to the total amounts respectively contributed by each of the two Councils towards previous deficits provided that if at any time both the two Councils shall have had the total amount of their contributions towards previous deficits returned to them the Joint Committee shall pay all such unapplied profits or surplus to the two Councils in the same proportions in which by virtue of sub-clause (1) hereof the two Councils would have borne a deficit in that financial year had one occurred.

- 11.1 Either of the two Councils may terminate this Agreement by giving the other not less than one year's notice in writing to that effect expiring on the thirty first day of March in any year.
- 11.2 The Council which shall have given notice under sub-clause (1) of this clause shall bear the expense of settling the adjustment required by clause (12) hereof.
- 12 In the event of either of the two Councils at any time hereafter terminating this Agreement under the provisions hereinbefore contained or otherwise there shall as on the date of such termination be an adjustment between the two Councils of all property income debts liabilities and expenses then existing and of any financial relations affected by such termination and on such adjustment there shall be an adjustment of capital assets and liabilities acquired or assumed by either of the two Councils on such termination including any outstanding loans borrowed by either or both of the two Councils under clause 13 hereof and provision may then be made for the payment to either or both of the two Councils of such sum as seems equitable.
- 13 When this agreement is silent the Central Durham Crematorium Joint Committee will operate within the procedure rules and financial regulations of the lead partner authority, Durham County Council to ensure that the Central Durham Crematorium Joint Committee have effective and appropriate corporate governance arrangements and financial management arrangements in place, given the Committee's fiduciary duties in relation to the management of public resources, and Durham County Council will continue to be responsible for the management of the facility and for supporting the Joint Committee.
- 14 Subject to Section 103 (1) (b) of the Local Government Act 1972 all disputed between the two Councils or between either of them and the Joint Committee on the interpretation of this Agreement and all disputes or differences in any way or at any time arising hereon (including without prejudice to the generality of these words the adjustments required by clause 17 hereof) shall be referred to some competent arbitrator agreed on by the two Councils or in the absence of agreement to be named by the Secretary of State for the Environment or his successor and the Arbitration Act 1950 or any statutory modification thereof for the time being in force shall apply to any such arbitration.
- 15 This Agreement shall come into effect on the date of its sealing when it shall in all respects supersede and replace the provisions of the Memorandum of Agreement made on the third day of May one thousand nine hundred and eighty three between Council of the City of Durham

and the Town Council of Spennymoor relating to the constitution of a Joint Committee of those Councils to perform the functions of those Councils under the Cremation Act 1902 as amended by the Cremation Act 1952 and the Cremation (England and Wales) Regulations 2008 provided 1) that any rights or liabilities arising under the said Memorandum of Agreement dated the third day of May one thousand nine hundred and eighty three prior to the coming into effect of this Memorandum of Agreement shall not be affected thereby

- 16 That the making of this Agreement shall not be deemed to be a withdrawal by any party from the joint committee constituted thereby

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

THE COMMON SEAL of THE)
COUNTY COUNCIL OF)
DURHAM was hereunto affixed)
BY ORDER:)

Chairman:

Head of Legal and Democratic Services:

THE COMMON SEAL of THE)
TOWN COUNCIL OF)
SPENNYMOOR was hereunto)
affixed in the presence of:)

Town Clerk:

Mayor

Gateshead amendments DH/JM/PB: 23/07/12

This DEED of Agreement is made theday of2013

BETWEEN:-

- 1) The County Council of Durham, Durham County Council, County Hall, Durham and
- 2) The Borough Council of Gateshead of the other part.

WHEREAS:-

1. The Authorities to the Deed have by virtue of Section 102(1) of the Local Government Act 1972 the Local Government Act 2000 the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 the Local Authorities and all and every power enabling them agreed and resolved to constitute a joint committee to exercise the powers which each of the Authorities hereto might respectively have exercised by virtue of the Cremation Acts 1902 and 1952 for the provision running, maintenance and management of the existing Crematorium at Mountsett within the County of Durham which is more particularly described in paragraph 1 below.
2. The said Authorities now wish to constitute the said joint committee on the terms set out below and to the intent that the Deeds of Agreement between the said Authorities and dated 7th September 1976 and 8th September 1983 shall cease to have effect.

NOW in pursuance of the said agreement and the respective resolutions and in consideration of these presents **THIS DEED WITNESSES** as follows: -

1. Definition and Interpretation

- 1.1 In this agreement the following expressions have the meanings set out below, unless the context otherwise requires.

'Authority' either Durham or Gateshead and 'Authorities' shall be construed accordingly.

'Annual meeting' the annual meeting of the Joint Committee held each year in accordance with paragraph 7.2 of this agreement.

'Chief Executive' the head of an Authority's paid service being the person designated as such under Section 4 of the Local Government and Housing Act 1989.

'Clerk', the person appointed by virtue of paragraph 16.1 to carry out certain duties allocated by this agreement.

'Council' the Council of elected members of one or other of the Authorities to this agreement.

'Crematorium' the crematorium known as Mountsett Crematorium which includes all buildings grounds equipment and other property appurtenant there.

'Financial year' the period running from 1st April in one calendar year until 31st March in the next calendar year (inclusive).

'Joint committee' the Mountsett Crematorium Joint Committee constituted by this agreement.

'Member' unless the context otherwise so requires, a member of the Joint Committee.

'Monitoring officer', Durham County Council's Head of Legal and Democratic Services being the person designated under Section 5 of the Local Government and Housing Act 1989 or this officer's nominated deputy in the case of absence or illness.

'Ordinary meeting', any meeting of the Joint Committee that is not an Annual Meeting or a Special Meeting.

'Principal Office' in the case of Durham County Council, the Council Offices, County Hall, Durham and the case of Gateshead Council the Civic Centre as referred to at the beginning of the agreement.

'Special meeting' a meeting of the Joint Committee convened in accordance with paragraph 7.6 of this Agreement.

2. Duration of Joint Committee

The Authorities shall constitute the Joint Committee from the Commencement Date and the Joint Committee shall continue thereafter unless and until determined by either Authority or both of them under the provisions contained in this agreement.

3. Name of Joint Committee

The Joint Committee shall be known as the Mountsett Crematorium Joint Committee.

4. Provision and Location of Crematorium

4.1 The Crematorium is located on the Crematorium Site which was acquired by the Authorities prior to the date hereof.

4.2 The Crematorium site is vested 60% in Durham County Council and 40% Gateshead Council by virtue of Section 120(4) of the Local Government Act

1972 and all and every power so enabling and registered at HM Land Registry with Title Absolute Title Number.

5. Membership

- 5.1 The Joint Committee shall consist of Members appointed by the Authorities as follows: -
- 5.1.1 Each Authority shall appoint from its own membership nine Members from Durham County Council and seven Members from Gateshead Council which appointments shall reflect the political balance of each authority.
- 5.1.2 Subject to the provisions of this agreement each Member shall continue in office for a period of one year or until such time as he shall cease to be a member of the Council by whom he is appointed whichever is the sooner and any provision in the Procedure Rules of either Authority to the contrary is hereby waived. Each member shall be eligible for re- appointment until such time as he shall cease to be a member of the council by whom he is appointed.
- 5.1.3 If either Authority does not appoint the number of Members which it is entitled to appoint the other Members of the Joint Committee shall be competent to carry out the business thereof pursuant to this agreement.
- 5.1.4 Any person who is a member of the Councils of both Authorities shall only represent the first Authority to appoint him as a Member and any subsequent appointment by the other Authority shall be void.
- 5.1.5 The Chief Executive of each Authority shall notify the Chief Executive of the other Authority and the Clerk within fourteen days of any appointment of a member of his Council to the Joint Committee.
- 5.1.6 Any member may at any time resign his office as such Member by notice addressed to the Clerk who shall forthwith notify the respective Chief Executives of each of the Authorities.
- 5.1.7 Any member may be removed at any time by resolution by the Authority by whom he was appointed but such removal should only become effective upon receipt by the Clerk of notification thereof.

6. Chair and Vice Chair

- 6.1 At the first meeting of the Joint Committee and subsequently at its Annual Meeting in each successive year the Joint Committee shall select one of its Members as Chair and another as Vice Chair for the forthcoming year Provided that at no time shall the Chair and Vice Chair be members of the same Authority.

6.2 The Chair of the Committee shall alternate between both authorities on an annual basis unless otherwise agreed at the Annual meeting of the Committee.

6.2.1 The elected Chair and Vice Chair shall remain in office until the next Annual Meeting unless by reason of death resignation disqualification or any other cause before that time and upon a vacancy occurring during the term of office another Member from the same Authority shall be appointed by the Joint Committee to fill the vacancy until the next Annual Meeting.

6.3 If there is equality of votes as to the appointment of Chair or Vice Chair, then the Chair for the time being of that meeting shall have a second or casting vote.

7. **Substitute Members**

Any member who is unable to attend a meeting of the Joint Committee for any reason may appoint another member of the relevant authority of which he is a member as a substitute member provided notification of the named substitute is

- given to the Clerk (including by electronic means), before four o'clock on the day before the meeting in question and thereon the substitute member shall be entitled to attend that meeting only and (subject to the requirements relating to the declaration of interests contained in the Code of Conduct of the Council of which he is a member) shall be entitled to speak and vote on all items of business. A member may only substitute another member from the relevant authority of which he is a member.

8. **Meetings of the Joint Committee**

8.1 -The first meeting of the Joint Committee shall be convened by the Clerk.

8.2 The Joint Committee shall hold an Annual Meeting before the end of June in each year.

8.2 Other than the Annual Meeting, meetings shall be held at such places and on such dates and at such times as the Joint Committee may decide from time to time save that meetings shall be held not less than quarterly.

8.4 Ordinary meetings and Annual Meetings of the Joint Committee shall be convened by the Clerk who shall deliver notice thereof to each member at least five clear days before the date of the meeting.

8.5 With the notice referred to in paragraph 7.4 the Clerk shall send a copy of the agenda for the meeting which shall include:

- provision for the declaration of personal and prejudicial interests by Members for the purposes of the Code of Conduct issued under Section 50 Local Government Act 2000.

- all items of business which have been, or are deemed to have been, referred to the Joint Committee by a Council resolution of either Authority.
- all reports submitted by any officer of either Authority; and
- any item of business directed to be included by the person appointed to preside at the meeting.

8.6 A quorum of four members must be present to constitute a meeting Provided that there is at least one member present from each Authority.

8.7 The Chair and two members of the Joint Committee may at any time by notice specifying the business to be transacted and sent to the Clerk require a Special Meeting of the Joint Committee to be convened and the Clerk shall accordingly convene a special meeting which shall be held within thirty clear days of receipt by the Clerk of the said notice.

8.8 The Clerk shall give Members of the Joint Committee at least five clear days' notice of the Special Meeting and such notice shall specify the business proposed to be transacted.

8.9 No business shall be transacted at a Special Meeting other than that specified in the notice sent to the Clerk and referred to in paragraph 7.7 above.

9. **Person Presiding at Meetings**

9.1 The Chair or in his absence the Vice Chair shall preside at every meeting provided that if both the Chair and the Vice Chair are absent the Members present shall elect another Member of the Joint Committee who shall preside at that meeting.

10. **Voting**

10.1 Every matter at a meeting of the Joint Committee shall be decided by a simple majority of those Members voting and present and, in the venue, at the time the question is put. In the case of an equality of votes in relation to a particular item of business then consideration of that item shall be adjourned and shall be deferred for decision at a future meeting of the Joint Committee to allow informal discussion to take place between the parties

10.2 Except where a requisition is made under the next paragraph 9.3, the method of voting at meetings of the Joint Committee shall be by show of hands.

10.3 If a requisition for a recorded vote is made by any three Members present before a vote is taken on any question or motion, the voting shall be

recorded so as to show whether each Member present voted for or against that question or motion or abstained from voting.

11. Minutes

- 11.1 The Clerk shall be responsible for keeping a record of attendance and a record of the business transacted at every meeting of the Joint committee and the minute book shall be submitted to and signed at the next following meeting.
- 11.2 The person presiding at the next following meeting referred to in paragraph 10.1 shall put the question that the minutes be approved as a correct record of the previous meeting.
- 11.3 No discussion shall take place upon the minutes, except upon their accuracy. If no question is raised as to accuracy or if it is raised then as soon as it is disposed of, the person presiding shall sign the minutes.
- 11.4 Copies of the minutes of every meeting of the Joint Committee and any sub-committee thereof shall as soon as possible after each meeting be sent by the Clerk to the Chief Executive of each authority.

12. Sub-Committees

- 12.1 The Joint Committee may from time to time appoint sub-committees for any general or special purpose in connection with their powers and functions for the purposes of advising and reporting back to the Joint Committee. Any sub-committee so appointed shall consist of a minimum of three members and shall include at least one Member from each Authority.
- 12.2 Subject to clause 11.1 the Joint Committee shall at the time of appointing any sub-committee resolve what shall be the terms of reference of that sub-committee.

13. Vacancies

- 13.1 No act or proceeding of the Joint Committee shall be questioned on account of any vacancy or on account of any defect in the appointment of any Member.

14. Capital Expenditure

- 14.1 If the Joint Committee shall at any time require to incur capital expenditure for the:
 - 14.1.1 The acquisition of property
 - 14.1.2 The construction of works, or
 - 14.1.3 Any other capital purposes in connection with its powers.

14.2 Then the use of part or all of any profits or surplus made in any financial year shall be used to finance capital expenditure or upon agreement of the Joint Committee may carry forward part or all such profits or surplus as required to finance known future capital expenditure.

15. Revenue Expenditure

15.1 All losses/deficits or profits/surpluses either incurred or generated as a result of the normal operational business of the Joint Committee in any financial year shall be borne or distributed in the following percentages 35% Gateshead and 65% Durham County Council. This arrangement shall be subject to review at least every five years with the first review taking place in March 2015.

15.2 Any losses identified during the financial year should be first met by any available reserves. In the absence of available reserves each Authority should make a relevant contribution in accordance with the % mentioned in paragraph 14.1.

15.3 As soon as possible after the end of any financial year the Joint Committee shall calculate the exact net revenue expenditure for the preceding year and shall request or make payments to each Authority to be allocated in accordance with the % mentioned in paragraph 14.1 (total to the agreed distributable surplus amount).

15.4 The Joint Committee upon agreement may use or carry forward retained surplus made in any financial year for the purpose of:

15.4.2 Paying debts

15.4.3 Meeting contingencies

15.4.4 Meeting future expenses

15.5 But any amount of such profit or surplus not so applied (as agreed annually at the Annual General Meeting) shall be returned to the Authorities. Payable to each authority by the 1st October in each year.

16. Interest on Sums Due

16.1 Any sum properly payable by either of the Authorities to the Joint committee whether of a capital or revenue nature, which is not paid by the due date shall be liable to interest at the base lending rate of the Co-operative Bank plc until such time as the sum due is paid in full.

17. Appointment of Officers

17.1 (a) The Clerk shall be the Head of Legal and Democratic Services or their appointee of Durham County Council.

- (b) The Treasurer shall be the Corporate Director Resources of Durham County Council or anyone appointed by him.
- 17.2 The Joint Committee shall appoint and pay such employees as it deems necessary to provide equip maintain and manage the Crematorium and all services and duties ancillary thereto and required to be provided by virtue of this agreement or by statute and such employees shall be enabled to join any pension scheme which employees of Durham County Council are entitled to join by virtue of their individual contracts of employment.
- 17.3 The functions of the Joint Committee shall be dealt with by Durham County Council officers (identified at clause 16 above). For the avoidance of doubt the identified officers shall include officers succeeding to the named officer's responsibilities on any re-organisation.
- 18. Accounts**
- 18.1 The Treasurer shall keep accounts of all monies received by and all expenditure of the Joint committee as may be required for the purposes of Part 8 of the Local Government Act 172.
- 18.2 As soon as practicable after the end of the Financial Year the Joint Committee shall send to each Authority a full report of the operations of the Joint Committee during the last financial year and a copy of the accounts thereof.
- 18.3 Durham County Council will carry out an annual audit of the accounts and the Joint Committee will provide a copy of the report thereof to each of the Authorities as soon as practicably possible after receipt of the same.
- 18.4 When this agreement is silent the Mountsett Crematorium will operate within the procedure rules and financial regulations of the lead partner authority, Durham County Council, who will continue to be responsible for the management of the facility and for supporting the Joint Committee.
- 19. Performance of Agreement**
- 19.1 The Authorities shall at all times take all or any action as may be necessary for giving full effect to this agreement and every provision and obligation contained herein and any decision made by the Joint Committee pursuant hereto. Each party shall be committed to mutual cooperation and assistance to give effect to the terms of this Agreement which shall include:
- a) the setting up of a joint officer meeting to discuss and formulate advice and reports to the Joint Committee and;
 - b) not less than twenty business days before the date of any Joint Committee prior notification of agenda items only shall be given to officers of each Authority of items intended to be tabled as items of business for the Joint Committee in order to ensure that the same may be fully considered by officers of each Authority. An officer

Neighbourhood services Director of Resources from each authority to be involved in a pre-meeting to the committee hearing.

19.2 Each Authority shall bear its own costs for the negotiation preparation completion and stamping of this agreement.

19.2.1 If either Authority shall fail to carry out any necessary act required to be taken pursuant to paragraph 18.1 above, the other may implement any reasonable measures necessary to give effect to this agreement or any proper decision of the Joint Committee and the reasonable costs thereof shall be recoverable as a debt from the Authority which so failed to act.

20. Termination

20.1 If the Authorities or either of them shall wish to determine this agreement or make any alteration to the terms hereof then in default of agreement between the Authorities the matter shall be referred to arbitration in accordance with paragraph 20 below.

21. Arbitration

Any dispute between the Authorities under or arising out of this agreement shall be referred to a single arbitrator to be agreed upon by the Authorities or in default of agreement to be nominated by the Secretary of State for Communities and Local Government or such other Government Minister as shall be appropriate in accordance with and subject to the provision of [the Arbitration Acts 1950 and 1979] or any statutory modification or re-enactment of them for the time being in force.

22. Complaints

Any complaint received by the Joint Committee or either or both of the Authorities relating to the Crematorium or any officer employed thereat or to the performance of functions under this agreement shall be dealt with in the first instance in accordance with Durham County Council's formal complaints procedure and if the complaint is not resolved as a result of that process or if a complaint is received from the Local Government Ombudsman dealt with by the Monitoring Officer.

