

DATED 3 April 2014

UNIVERSITY OF EXETER

and

The Powys Society

and

The Dorset Natural History and Archaeological Society

**AGREEMENT for
The Powys Society Collection**



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DATED

3rd April

2014

PARTIES:

- (1) **UNIVERSITY OF EXETER** of Northcote House, The Queen's Drive, Exeter EX45 4QJ (hereafter 'the University')
- (2) The Powys Society, c/o the Hon Secretary Chris Thomas, Flat D, 87 Ledbury Road, London W11 2AG
- (3) The Dorset Natural History and Archaeological Society, Dorset County Museum, High West Street, Dorchester, Dorset, DT1 1XA

RECITALS:

- A. The Powys Society is the owner of the Powys Society Collection. The Collection was formed in 1992 as a consequence of two archives being donated to the Powys Society by, respectively, Francis and Kathleen Feather and E.E. Bissell. Other donations have subsequently been made to the Collection and further donations may be anticipated.
- B. The Powys Society and the Dorset Natural History and Archaeological Society have agreed to deposit on loan the Powys Society Collection to the University of Exeter on the terms set out in this Agreement.
- C. The Dorset Natural History and Archaeological Society has held the Powys Society Collection on loan from the Powys Society since 1992 under the terms of the Agreement originally signed in September 1992 [contract revised 28 April, 2001]. The Powys Society acknowledges the indispensable role played by the Dorset Natural History and Archaeological Society and by the Dorset County Museum in housing and conserving their Collection in accordance with the original agreement and in respect of the wishes of the original Feather and Bissell bequests. In lending the loaned Collection to the University of Exeter, the Dorset Natural History and Archaeological Society and the Powys Society will continue to act in accordance with these wishes. This agreement is therefore supplementary to the existing [50 year] loan agreement between the Powys Society and the Dorset Natural History & Archaeological Society.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS:

- 1.1 the 'Archive' means the Powys Society Collection as set out in the Powys Society Collection Catalogue (of which a copy is available on the Powys Society website) and any New Records.
- 1.2 the 'CALM System' means the University's database for cataloguing archives.
- 1.3 the 'Catalogue' means the descriptive catalogue of the archive created by the University of Exeter in accordance with clause 5.
- 1.4 'Intellectual Property Rights' means patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain names, rights in designs, rights in computer software, database rights, rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.5 'New items' means any items added to the Archive following the date of this Agreement in accordance with clause 2.2.
- 1.6 'Old Library' means the University's premises at the Old Library, Prince of Wales Road, Exeter EX4 4SB.
- 1.7 'Online Catalogue' means the University's publicly available archive catalogue.

2. LOAN OF THE ARCHIVE

- 2.1 In consideration of the University storing and maintaining the Archive in accordance with the terms of this Agreement, the Powys Society and the Dorset Natural History and Archaeological Society agree to deposit on loan the Archive to the University.
- 2.2 New items may be added to the Archive from time to time from any source in liaison with the Powys Society. The University may accept as gifts to the University, or may purchase, Powys-related materials that do not form part of the Archive. Any such purchases or gifts would become the property of the University of Exeter and would remain distinct from the Archive.

- 2.3 The University reserves the right to refuse or to return to the Powys Society or the Dorset Natural History and Archaeological Society, as appropriate, any new items which the University considers do not merit permanent preservation.

3. DURATION

- 3.1 This Agreement shall commence on the date hereof and shall continue until 4 September 2042.
- 3.2 Initially the parties will review the operation of this Agreement after two [2] years. Thereafter, the parties shall review the operation of this Agreement on a five [5] yearly basis. In the case of any major change in circumstances of any of the parties, an immediate review of the Agreement should take place.

4. REMOVAL AND STORAGE

- 4.1 The University will store the Archive in the strong rooms of the Old Library.
- 4.2 The Powys Society alone will meet the full cost for the removal of the Archive from its current location and the delivery of the Archive to the University within a reasonable period not exceeding 3 months from the date of this Agreement (subject to detailed arrangements being made between the parties as to the method and time of delivery).
- 4.3 The University will endeavour to ensure that the Archive is stored in conditions no less favourable than those conditions considered as acceptable for the storage of the University's own literary holdings.
- 4.4 The University will endeavour to ensure the collection of papers, miscellaneous items, graphic work and books, annotated and otherwise, of the two main gifts, are kept distinct in respect to their provenance as requested by the donors. The Powys Society and the Dorset Natural History and Archaeological Society shall provide all necessary information to ensure that the University has unrestricted access to the records of accession and provenance of all the gifts to the Collection and is fully informed of any conditions that may be attached. The University may, however, keep the collections in physically separate locations within its storage facility.

5. CATALOGUE

- 5.1 The University will complete a Catalogue of the items on loan on its CALM system as soon as is practical to do so.
- 5.2 The University shall ensure that all items are catalogued by qualified archivists or staff working under such professional supervision. The University may liaise with designated members of the Powys Society and the Dorset Natural History and Archaeological Society during the period of cataloguing (subject to informal arrangements as determined by the parties).
- 5.3 In the event that New Records are added to the Archive catalogue, these will be made available immediately online. If the Society requires a hard copy of the catalogue this shall be provided not more than once per annum.

6. ACCESS TO THE ARCHIVE

- 6.1 Subject to clause 6.4 below and any restrictions required by law, the University will use its reasonable endeavours to ensure that access to the Archive is granted to the public.
- 6.2 The University will use its reasonable endeavours to ensure that public access to the Archive is available between 10 am and 5 pm on all days that the University is open to the public during term time and by prior appointment during vacation periods. Public access will be subject to the standard rules and regulations of the Special Collections Reading Room.
- 6.3 The University will not charge for access to the Archive.
- 6.4 The University may restrict access to individual items in the Archive which it considers to be in need of conservation and deemed unfit for access.
- 6.5 Copies of any part of the Archive may be supplied to the public by the University, subject to the terms of applicable copyright legislation. Specifically, in the case of copyright for publication, permission must be sought by the requestor from the relevant copyright holder depending on the precise object within the Collection under consideration. The University may charge for the cost of providing such copies. The University will waive any such charges for reasonable requests to make individual copies for official usage (eg marketing, publication, exhibition and display) by either the Powys Society or the Dorset Natural History and Archaeological Society in liaison

with the Powys Society. The ownership of the material by the Powys Society should be clearly stated.

6.6 The University may allow other institutions, including the Powys Society and the Dorset Natural History and Archaeological Society, to borrow any part of the Archive for the purposes of temporary exhibitions. The terms of any such loan must be no less favourable than those that apply to the University's other literary holdings. Any borrower must be able to demonstrate to the satisfaction of the University that its security, storage and display facilities meet the requirements of the Heritage Collections loans policy. The borrower will become liable for any loss or damage incurred during the loan and will be responsible for insuring the loan. All loans must state clearly the ownership of the material by the Powys Society.

6.7 The University shall endeavour to publicise the scope and availability of the Powys Society Collection on its online catalogue, and may exhibit the Archive or any part of it in original, digital or copy form, subject to the terms of applicable copyright legislation.

7. FREEDOM OF INFORMATION

7.1 The Powys Society and the Dorset Natural History and Archaeological Society acknowledge that the University is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and that the University shall be responsible for determining at its absolute discretion whether information contained in the Archive is to be disclosed in response to a request for information submitted to it in accordance with the FOIA and/or whether the information contained in the Archive is exempt from disclosure under the FOIA.

7.2 The Powys Society and the Dorset Natural History and Archaeological Society also acknowledge that the University may disclose information contained in the Archive in accordance with the FOIA.

8. DATA PROTECTION ACT

8.1 The parties acknowledge that the University is a Data Controller with regard to the Personal Data contained in the Archive. Accordingly the University is responsible for determining its responsibilities as a Data Controller, including but not limited to

providing a right of access to Data Subjects in accordance with the Data Protection Act (DPA) in relation to Personal Data contained in the Archive.

8.2 The Powys Society and the Dorset Natural History and Archaeological Society warrant that to the best of their knowledge and belief the Personal Data contained in the Archive is accurate, and shall provide such assistance as the University may reasonably require in order to comply with its obligations under the DPA including but not limited to obligations regarding the accuracy of Personal Data.

8.3 'Data Controller', 'Data Subject' and 'Personal Data' shall have the meanings ascribed to them as set out in the DPA.

9. MAINTENANCE AND INSURANCE

9.1 The University shall use all reasonable endeavours to maintain the Archive in the condition in which it is received.

9.2 The University may copy records from the Archive for preservation purposes in microfilm or digital format, and may allow access to such copies in accordance with clause 6.

9.3 Where the University considers it necessary, conservation treatments including the physical repair of records contained in the Archive shall be carried out by qualified conservators or people working under professional supervision.

9.4 The University may apply to the Powys Society for a grant to meet the cost of the conservation of the Archive. The Powys Society reserves the right to decide whether or not to meet such cost.

9.5 The University shall use all reasonable endeavours to protect the Archive from damage and/or loss but shall accept no liability for any such loss or damage to the Archive whether caused by it or any of its officers, employees, agents or by a third party.

9.6 The University shall insure and keep insured the Archive against any loss or damage howsoever caused throughout the duration of this Agreement under its standard policy. The Powys Society will supply an up to date valuation, for this purpose at the

time the Collection is deposited with the University. The value will be increased by 3% on a five yearly basis to cover inflationary rises.

- 9.7 The University will provide the Powys Society and the Dorset Natural History and Archaeological Society on request with a copy of the current policy of insurance together with evidence of payment of the premium.

10. **INTELLECTUAL PROPERTY**

- 10.1 The Powys Society and the Dorset Natural History and Archaeological Society warrant that they will provide information to the University on any Intellectual Property rights held in the estates of individuals who have materials in the Powys collection.
- 10.2 The Powys Society and the Dorset Natural History and Archaeological Society acknowledge that the University owns all Intellectual Property Rights (including though not restricted exclusively to copyright) in any New Records added to the Archive Catalogue by the University. The University does not claim rights to the intellectual property of the holdings of the Collection itself.
- 10.3 Should any body, including the University, wish to publish any part of the Archive, prior permission must be obtained in writing from the Powys Society, such permission not to be unreasonably withheld or delayed, and from the relevant copyright holders or their agents. Requests for information relating to copyright holders should be directed to the secretary of the Powys Society in the first instance who will provide all reasonable assistance.
- 10.4 The University acknowledges that prior permission has been given by the copyright holders to the editors of the Powys Society Newsletter and the Powys Journal (only) to have material from the Powys Society Collection copied for use in these publications.
- 10.5 In the event that the Archive is withdrawn from the University in accordance with Clause 11 of this Agreement all Intellectual Property Rights (including but without limitation any copyright) in relation to any records added to the Archive by the University will be assigned to the depositor and the University shall execute such deeds or documents and do such acts or things as may be necessary or desirable to give effect to this assignment.

11. TERMINATION

11.1 Any of the three parties shall be entitled to terminate this Agreement by giving 12 months' written notice to the other two if either of the other two parties commits any continuing or material breach of any of the provisions of this Agreement.

11.2 This Agreement may be terminated at any time by agreement among the three parties.

11.3 On termination of this Agreement under clause 11.1:

11.3.1 The University reserves the right in circumstances other than it having committed a continuing or material breach to claim reimbursement from the party initiating termination for reasonable costs associated with the administering and storing of the Archive and any conservation or preservation work undertaken.

11.3.2 The University has the right to copy records from the Archive that are the subject of current research projects at the University and to retain such copies up until the completion of the research.

11.3.3 The Powys Society Collection cannot be sold under any circumstances and must be held together in its entirety for the benefit of the public. Should the Powys Society be unable to retain ownership for any reason, it will make provision for transfer of the ownership to an appropriate body after the expiry of the loan between the Powys Society and the Dorset Natural History & Archaeological Society on the 4 September, 2042.

11.3.4 On expiry of the present loan agreement between the Powys Society and the Dorset Natural History & Archaeological Society, the University and the Powys Society may renegotiate a further period during which the Powys Society Collection can be held on loan by the University, if it wishes to continue its involvement.

12 DISPUTES

12.1 All parties shall attempt to resolve in good faith any dispute arising between them out of the operation of this Agreement. If the dispute cannot be resolved informally, it shall be referred to mediation.

12.2 Any dispute arising out of the operation of this Agreement shall be subject to the exclusive jurisdiction of the English and Welsh courts.

13. **GENERAL**

13.1 This Agreement shall be binding on any successors in title to the ownership of the Archive or any part thereof.

13.2 Any notice, document or request to be given or served under the terms of this Agreement shall be sent by registered first class post to the registered address of the party being served. Any notice, document or request so sent will be deemed to have been given or served two working days after posting. Any party must give written notice of a change of address to the others for the purposes of this clause.

13.3 This Agreement may not be modified except by an instrument in writing signed by the duly authorised representatives of each of the parties.

13.4 The parties shall not assign, transfer or sub-contract any of their rights and responsibilities under this Agreement.

13.5 The provisions of this Agreement are severable and distinct from one another, and, if at any time any of the provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions shall not in any way be affected or impair

13.6 For the avoidance of doubt nothing in this Agreement shall confer on any third party any benefit or the right to enforce any provision of this Agreement.

13.7 This Agreement shall be governed and construed according to the law of England and Wales.

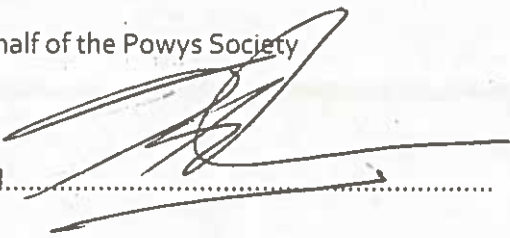
Signed.....



On behalf of the University of Exeter

Signed.....*Timothy Hyman x Powys*.....

On behalf of the Powys Society

Signed..........

x *DASH AS*

On behalf of the Dorset Natural History and Archaeological Society