



THE KENNET & AVON CANAL TRUST

Devizes Wharf, Couch Lane, Devizes, Wiltshire SN10 1EB

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Memorandum of Understanding

Introduction

1. This Memorandum of Understanding is between:

The Kennet and Avon Canal Trust ('Trust'), company number 00726331, registered as a charity with the Charity Commission number 209206, whose registered office is Devizes Wharf, Couch Lane, Devizes, SN10 1EB

and

The Kennet and Avon Canal Trust (Enterprise) Ltd ('Enterprise'), company number 02679756, whose registered office is Canal Visitor Centre, Couch Lane, Devizes, Wiltshire, SN10 1EB.

2. Enterprise is a wholly owned subsidiary of Trust, and was established to undertake trading activities to support the work and aims of Trust. Given the provisions of charity and tax law, only limited trading can be undertaken by Trust.
3. Given the provisions of the Articles of Enterprise, and given that it is the only member of Enterprise, Trust approves the appointment and re-appointment of directors of Enterprise. However, the two companies, and boards of directors, are legally separate, and are each individually responsible for compliance with the Companies Act 2006 and other relevant provisions including charity, employment and health and safety legislation.
4. The purpose of this Memorandum of Understanding is therefore to set out general principles about the relationship between the two companies, and specific detail on financial and operational matters.

General principles

(a) Scope of activities

5. The Trust is responsible for charitable activities such as running Crofton Beam Engines as a visitor attraction including organising special events, maintaining the museum at Devizes and Trust archives, and servicing the membership including publishing The Butty. Enterprise is responsible for trading activities such as the operation of the boat fleet, including catering and retail sales on boats, and the contracts to operate cafés in Trust owned or leased property, and under the terms of its Articles is able to undertake other fundraising activities.
6. Membership fees, entrance fees at Crofton and donations including those made at Crofton and Devizes museum and on boats and in cafés are therefore income for Trust. Donations received in this way will be shown against the relevant branch in the Trust management accounts.



7. Fares for boat trips and from charters are income for Enterprise, as are catering sales and other retail sales on boats. Expenditure relating to the operation and maintenance of boats and cafés is charged to Enterprise.
8. Because Enterprise is registered for VAT, input VAT can be reclaimed on expenditure properly charged to Enterprise.

(b) Responsibilities and reporting

9. Enterprise has management freedom to determine the best way of operating boats and cafés to achieve profit targets which will be agreed annually with Trust.
10. In accordance with Charity Commission guidance, Enterprise will have at least one director who is also a Trustee, and Trust will ensure that there is always at least one unconflicted director of Enterprise (ie who is not also a Trustee). Trust recognises that, to ensure good corporate governance, the chairman of Enterprise should normally be an unconflicted director.
11. It is the responsibility of unconflicted directors of Trust and Enterprise to ensure that, where a Trustee is also a director of Enterprise, conflicts of interest are resolved in a way consistent with charity and company law.
12. Enterprise will report its activities and financial performance to each meeting of Trust Council. This report will be presented by a director of Enterprise who is also a Trustee, although the chairman of Enterprise may be invited to attend meetings of Trust Council.
13. Trust and Enterprise will maintain a Deed of Covenant under which the lower of taxable and distributable profits will be paid up annually by Enterprise to Trust.

Operational matters

(a) Boats

14. Trust has transferred ownership of the boat fleet to Enterprise, which is responsible for all operational aspects including in particular compliance with Health and Safety and MCA requirements. Enterprise will at all times operate within the Health and Safety regime established by Trust, and participate as required in any Health and Safety Committee established by Trust.
15. Where Trust has operational and legal obligations under leases for property along the canal used for boat operations, Enterprise will discharge these obligations on behalf of Trust.

(b) Cafés

16. The following Trust owned or leased properties will be made available to Enterprise at no charge for the operation of cafés:
 - Trust owned property: Crofton café and kitchen;



- Trust leased property: Devizes café and kitchen, and buildings leased from CRT at Aldermaston and Bradford on Avon, and from West Berkshire District Council at Newbury.

17. Enterprise will agree with Trust the form of a model Licence which ensures that Trust's legal and reasonable operational requirements are met. Enterprise will in particular include in new or modified Licences provisions which recognise the role of cafés in promoting the canal and the Trust's charitable objects, for example by providing information leaflets and a donation pot. In all other respects, Enterprise will have full day to day control over these properties.
18. Enterprise will involve the relevant Branch in decisions on Licence modifications and regular reviews of café operations.

Financial arrangements

19. Enterprise will comply with the provisions of the Finance Manual agreed by Trust Council.
20. In particular, Branches will prepare annual budgets which, after review by the Enterprise board will be submitted to Trust Council for endorsement. Trust Council may set a budget mandate, in terms of expected profit, but it will be for Enterprise to determine the best way of meeting any such target.
21. Recognising that some staff and facilities are shared between Trust and Enterprise, it will be the responsibility of the Trust Treasurer to establish, following consultation with the auditors, procedures for ensuring appropriate allocation of costs.
22. Enterprise may apply for grants from Trust where it incurs expenditure which is not for commercial purposes, but supports the Trust's charitable objects.
23. Enterprise will prepare a full business case before commencing new trading activities, such as acquiring additional boats for public trips (including replacements for existing boats) or taking over operation of cafés, and will agree this with Trust where the activity involves capital expenditure or risk of financial loss before proceeding.
24. Enterprise will consult Trust before selling any of its major assets or deciding not to licence any of the cafés. Enterprise will ensure that any agreed sale achieves best value. Proceeds from the sale of assets may only be used to invest in new activities in accordance with the provisions of the previous clause. If reinvestment is not agreed, the net proceeds will be paid up to Trust as profit in accordance to the terms of the Deed of Covenant, or used to pay down loans where the full proceeds cannot be paid up.
25. Enterprise has an existing loan of £50,000 to provide working capital. It will enter into a formal loan agreement for this loan, at an interest rate which reflects the lost interest to Trust.
26. Enterprise may apply to Trust for additional loans to support investment in its trading activities. Any such application will be supported by a business case setting out the



activities to be supported, expected costs and revenues, and risks. It recognises that Trust can only make loans where this is consistent with Trust's charitable objects.

27. Enterprise will not borrow from external sources, including through bank overdraft facilities, without the agreement of Trust Council.

Signed for The Kennet and Avon Canal Trust

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..... (name) (date)

Signed for The Kennet and Avon Canal Trust (Enterprise) Ltd

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..... (name) (date)