

TITLE OF REPORT: Tyne and Wear Archives and Museums – Joint Agreement and New Governance Arrangements

REPORT OF: Paul Dowling, Strategic Director, Communities and Environment
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Purpose of the Report

1. To inform Cabinet of developments since November 2016 with regard to governance arrangements for Tyne and Wear Archives and Museums (TWAM) and to seek Cabinet approval in relation to the formation of a TWAM Strategic Board and Trading Company. In particular, to seek Cabinet approval of the Terms of Reference for the TWAM Strategic Board and the Shareholders' Agreement in relation to the TWAM Trading Company.

Background

2. On 29 November 2016, Cabinet approved in principle the adoption of new governance arrangements for TWAM including the dissolution of the existing Joint Committee to be replaced from 1 June 2017 by a Strategic Board and the establishment of a wholly-owned Trading Company. Authority was delegated to the Service Director, Legal, Democratic and Property Services to negotiate and prepare the necessary legal agreements, subject to a report back to Cabinet before the Council entered into any legally binding agreements.
3. The process of negotiating the necessary agreements has been completed with external legal support to TWAM from Bond Dickinson solicitors. Legal advisers from each of the four participating authorities have scrutinised the documentation and caused appropriate amendments to be made. The documents in question are:
 - Terms of Reference for the Strategic Board
 - Heads of Terms in relation to the Trading Company
 - Draft Articles of Association in relation to the Trading Company
 - Shareholders' Agreement in relation to the Trading Company
4. During the course of discussions between the legal advisers for the participating authorities, it became clear that the Strategic Board could not practically be constituted as anything other than a Joint Committee of the local authorities for the purposes of the Local Government Act 1972. The result is that there is a departure from the original proposal to dissolve the existing Joint Committee

and replace it with the Strategic Board. It is now proposed that there continue to be a Joint Committee, but that a sub-committee will be created to act as the Strategic Board. That will enable co-opted independent members to provide outside influence, albeit in a non-voting capacity. It is proposed that business of the sub-committee will precede business of the Joint Committee so that the Joint Committee may take into account the views of the independent members when arriving at its decisions.

Proposal

5. The Terms of Reference of the Strategic Board take account of the need for the continued existence of a Joint Committee and set out governance arrangements for the Strategic Board as follows:
 - The Strategic Board will be a sub-committee of a Joint Committee of the participating local authorities with independent members whose function shall be to advise the Joint Committee.
 - The Strategic Board shall be between 6 and 11 in number with six members to be elected members from the local authorities. Each local authority will appoint one member and there shall be two additional local authority members appointed on a rotating basis. The number of elected members is therefore guaranteed to be a majority of the Strategic Board, reinforced by a requirement that steps shall be taken to maintain that majority in the event of resignations or vacancies.
 - The Chair of the Strategic Board to be an independent member, but the vice chair to be an elected member, each to be appointed by the local authorities by consensus.
 - Independent members to be recruited by advertisement with the constituent councils deciding whom to interview and being represented on the interview panel.
 - Quorum for meetings to be five (5) with a requirement that a majority be elected (local authority members).
 - Certain decisions to be reserved matters to give clarity to the items of business which should be dealt with only by the TWAM Joint committee.

6. The Heads of Terms in relation to the Trading Company have been agreed subject to Cabinet approval. The proposed Articles of Association and Shareholders' Agreement in relation to the Trading Company accord with the agreed Heads of Terms. Key governance features of the Trading Company are as follows:
 - Company limited by shares with the four local authorities and the University (the JV Partners) each holding 20% of the share capital. The objects of the company will be to operate as a general commercial company for the purposes of making profits for distribution for the benefit of museums and archive services across the TWAM operation.
 - Guaranteed involvement of an elected member from at least one of the authorities on the trading company board.
 - Board to be between 3 and 7 in number with up to four independent directors and chair to be appointed by the JV Partners.

- Funding of the creation of the company is to be achieved from existing budget.
- Major decisions to require unanimity of the JV partners (the authorities and Newcastle University) and to require all JV partners to be present for a Quorum.
- Other substantial decisions to be made by simple majority of JV Partners.
- Minor decisions to be made by simple majority of board members.
- Deadlocked decisions to be resolved by a dispute resolution procedure leading ultimately to binding arbitration.

Recommendations

7. It is recommended that Cabinet:
- (i) Approves the modified approach with regard to the Strategic Board, namely that the Strategic Board will be a sub-committee of a continuing Joint Committee of the four participating local authorities.
 - (ii) Approves the signing of the Terms of Reference of the Strategic Board and delegates the signature of the same to the Service Director, Legal, Democratic and Property Services.
 - (iii) Approves the signing of the Heads of Terms in relation to the Trading Company and delegates the signing of the same to the Service Director, Legal, Democratic and Property Services.
 - (iv) Approves in principle the draft Shareholders' Agreement in relation to the Trading Company and delegates to the Service Director, Legal, Democratic and Property Services authority to negotiate and agree any necessary further amendments to the same and to sign the same once agreed.
 - (v) Approves in principle the incorporation of the Trading Company with the Articles of Association set out at appendix 3 and delegates to the Service Director, Legal, Democratic and Property Services authority to negotiate and agree any necessary further amendments to the same before incorporation of the Trading Company.

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APPENDIX 1

Policy Context

1. The proposal will help deliver Vision 2030's ambitions for a Creative Gateshead as well as the Council Plan priorities of Live Love Gateshead and Live Well Gateshead. It addresses the five big ambitions of the Creative Gateshead Culture Strategy.

Consultation

2. All Cabinet Members have been consulted on this report.

Alternative Options

3. Cabinet could elect not to proceed with the revised governance arrangements, however, this would present significant risk to the continuation of TWAM and potentially compromise £16m of Arts Council England funding.

Impact of Recommended Option

4. Resources

a) Financial Implications – The Strategic Director, Corporate Resources confirms that there is no direct financial implication from the content of this report. Future contributions to TWAM will be determined as part of the Council's normal budget setting process.

b) Human Resources Implications – There are no direct HR implications associated with Gateshead Council.

c) Property Implications – There are no direct property implications arising from this recommendation,

5. **Risk Management Implications** - There are two principal risks to TWAM associated with the proposals in this report. These will come in 2017/18 and the years that follow:

a) If any of the four participating authorities is unable to maintain its financial commitment. This would jeopardise the Arts Council England funding which supports the services. Mitigation is provided by the strong engagement of all partners.

b) If TWAM does not achieve National Portfolio Organisation funding for the period 2018-22. The measures included in this report provide significant mitigation against this risk.

6. **Equality and Diversity Implications** – There are no equality and diversity implications from this recommendation.

7. **Crime and Disorder Implications** – There are no crime and disorder implications from this recommendation.
8. **Health Implications** - There are no health implications from this recommendation.
9. **Sustainability Implications** – There are risks to the future sustainability of TWAM if these recommendations are not supported.
10. **Human Rights Implications** – There are no human rights implications arising from this report.
11. **Area and Ward Implications** – All.

Strategic Board

Terms of Reference

Introduction

1. These Terms of Reference were adopted by the Constituent Councils on [date] pursuant to the joint agreement between them dated [date] ("the Joint Agreement").
2. The purpose of these Terms of Reference is to set out the purpose and objectives of the Strategic Board, the composition of its membership and how it shall conduct its business.
3. The Strategic Board is created to enable Tyne and Wear Archives and Museums ("TWAM") to explore new ways of working and engage with a wider sector; and to ensure a sustainable, resilient and positive future for TWAM, particularly in light of significant reduction in public sector funding.
4. The Strategic Board substitutes and carries out the functions of the Joint Committee established under ss101 and 102 Local Government Act 1972 acting with responsibility for the provision and maintenance of the TWAM service. Members of the Strategic Board acknowledge and agree that, where the Strategic Board is discharging the statutory functions of the Constituent Councils and acting in its capacity as a Joint Committee, at law and pursuant to section 13 of Local Government and Housing Act 1989, only elected councillor members of the Strategic Board may vote in relation to such matters and be regarded as "voting members" of the Strategic Board for such decisions.
5. Notwithstanding this, the Strategic Board also recognises the benefit to TWAM of fully engaging with its non elected Board members and the advantages of having such members take an active part in Board meetings, contributing to the richness of debate and having their views taken into account in relation to all decisions made.

Objectives and purpose

6. The Strategic Board's key objective is to administer, maintain and develop TWAM ("the Objective"). More specifically, the Strategic Board is responsible for:
 - a. developing a strategic focus to drive growth;
 - b. providing scrutiny and leadership, democratic accountability, and enterprise support and challenge to TWAM and its executive team;
 - c. overseeing the overall governance and strategic leadership of TWAM in accordance with TWAM's mission and objectives;
 - d. ensuring TWAM's continuing financial viability and long term sustainability including by supporting TWAM to take advantage of new opportunities (notably in relation to generating income from commercial and philanthropic sources);
 - e. ensuring TWAM is making effective use of its assets, services and resources to support its museum and archive activities;
 - f. ensuring TWAM is delivering against Constituent Council and University priorities; and
 - g. ensuring TWAM is meeting the needs of its users and communities.

Functions

7. In order to achieve the Objective, the Strategic Board shall carry out the following functions ("the Functions"):
 - a. approve the Strategic / Corporate Plan for TWAM;
 - b. prepare a policy statement for TWAM and revise it from time to time as may be required;
 - c. monitor and review the work of TWAM;

- d. determine the budget and staffing of TWAM;
- e. comment on matters affecting museums, archives and records regionally, nationally and internationally insofar as they affect TWAM;
- f. provide practical support and challenge to TWAM's senior management team;
- g. ensure effective working relationships with TWAM's key stakeholders / partners including TWAM Enterprises Limited and TWAM Development Trust and with its funders, including Arts Council England;

and in carrying out those Functions, each member of the Strategic Board must observe and comply with the UK Corporate Governance Code and with the Code of Conduct at Appendix 3.

Powers

- 8. Subject to the provisions of the Joint Agreement, the Strategic Board shall have the powers delegated to it by the Constituent Councils to take such actions as are required to meet the Objectives and fulfil the Functions.
- 9. In making decisions pursuant to the exercise of its powers, the Strategic Board will have due regard to the capacity in which it makes such decisions and, when acting as a Joint Committee and discharging the statutory functions of the Constituent Councils, shall ensure that only elected councillor members of the Strategic Board vote on such matter. For the purposes of these Terms of Reference, decisions which amount to the discharge of a statutory function are known as "Reserved Matters" and those elected councillor members entitled to vote on such matters are known as "Reserved Matter Members".
- 10. The Strategic Board shall not incur expenses on behalf of TWAM without the prior approval of the Elected Members and the Rotating Members.

Number of members

11. The Strategic Board shall be between six and eleven in number. Members of the Strategic Board shall take steps to procure that the Strategic Board is at its full complement in order for it to effectively discharge its Objectives.
12. If the number falls below the minimum the Strategic Board shall take prompt steps to fill the relevant vacancy in accordance with these Terms of Reference.
13. Each of the Constituent Councils shall annually appoint one member (each member being an elected member of their Constituent Council) as member of the Strategic Board (each called an "Elected Member").
14. The University of Newcastle ("the University") shall annually appoint one member as a member of the Strategic Board (the "University Member").
15. Every year two different Constituent Councils may appoint one member each (each member being an elected member of their Constituent Council) as members of the Strategic Board (each called a "Rotating Member"). In any given year, the two Constituent Councils making the appointments must be different to the two Constituent Councils who made the appointments in the previous year.
16. There shall be up to four members appointed to the Strategic Board who are not members, employees or officers of the Constituent Councils or the University (the "Independent Members") and such Independent Members shall be appointed in accordance with the nominations protocol appended to these Terms of Reference ("Nominations Protocol").
17. The Elected Members and Rotating Members shall always be in the majority. If the removal or resignation of a member results in the Independent Members and University Member forming the majority of members of the Strategic Board, the Constituent Councils shall take steps to elect a member or members to ensure that the Elected Members and Rotating Members then form the majority and until such time, the remaining members may not take any further action under these Terms of Reference.
18. In appointing individuals as members, regard must be had to the skills, knowledge, experience and diversity needed for the Strategic Board to

successfully deliver its Objectives and fulfil its Functions. Upon appointment each member must promptly sign a declaration confirming that they are able and willing to act as a member and that in acting as member they shall at all times observe and comply with the UK Corporate Governance Code and with the Code of Conduct at Appendix 3.

Term of appointment of members

19. The annual appointment of each Elected Member shall be promptly confirmed in writing to the Strategic Board by the relevant Constituent Council by no later than 1 June each year.
20. The annual appointment of the University Member shall be promptly confirmed in writing to the Strategic Board by no later than 1 June each year.
21. The appointment of each Rotating Member shall be for a term of one year, and each appointment shall be promptly confirmed in writing to the Strategic Board by the two relevant Constituent Councils by no later than 1 June each year. The first two appointments under these Terms of Reference shall be made by North Tyneside Council and South Tyneside Council.
22. The appointment of the Chair (in his/her capacity as the chair of the Strategic Board meetings and not in his/her capacity as an Independent Member) shall be for a term of three years, subject to a maximum of two consecutive terms.
23. Save for the first Independent Members, who shall serve in office for the term specified in paragraph 24 the appointment of each Independent Member shall be for a term of four years, subject to a maximum of two consecutive terms.
24. The first Independent Members shall be the persons named below who shall serve in office for the following terms:

[]	for a period of 2 years
[]	for a period of 3 years
[]	for a period of 3 years

[] for a period of 4 years

The first Independent Members may be re-appointed at the end of their initial term for a further term of four years.

25. Notwithstanding paragraphs 23 and 24, in exceptional circumstances and where the best interests of TWAM require, the term of office of an Independent Member may be extended after s/he has served two consecutive terms in office but on a rolling one year basis and only with the agreement of all members (excluding the Independent Member concerned).
26. Any person who retires as a member by reason of them having served the maximum number of successive terms permitted under these Terms of Reference, or by giving notice pursuant to paragraph 30.a, is eligible for re-appointment after four years has lapsed from the date of their retirement, and may be so re-appointed in accordance with the relevant procedures set out in these Terms of Reference.

Appointment of Independent Members

27. The Constituent Councils shall together determine the appointment of the Independent Members. A Constituent Council (for the time being, the Council of the City of Newcastle upon Tyne) (hereinafter the “Lead Authority”) shall coordinate this process in accordance with the procedure set out in the Nominations Protocol at Appendix 1.

Appointment of the Chair and Vice Chair

28. The Constituent Councils shall together determine the appointment of the Chair of the Strategic Board, who shall be an Independent Member. A Constituent Council (for the time being, the Council of the City of Newcastle upon Tyne) (hereinafter the “Lead Authority”) shall coordinate this process in accordance with the procedure set out in the Nominations Protocol at Appendix 1.
29. The Elected Members and the Rotating Members shall, on an annual basis, appoint one of their number to be Vice Chair of the Strategic Board.

Retirement and removal of members

30. The appointment of any member of the Strategic Board shall terminate forthwith in any of the following circumstances:
- a. s/he resigns therefrom by notice in writing to the Chair of the Strategic Board;
 - b. s/he is disqualified by statute from acting as a trustee by virtue of sections 178-180 of the Charities Act 2011 (as amended from time to time), for example, by reason of the member's bankruptcy, fraudulent behaviour, or misconduct;
 - c. s/he is disqualified from acting as a director;
 - d. in the case of an Independent Member or the Chair, s/he is removed by the Lead Authority following consultation with and agreement of the Constituent Councils and after giving the Independent Member a reasonable opportunity to respond, on the basis that, in the Lead Authority's reasonable opinion, that Independent Member's conduct or behaviour is detrimental to the interests of the Strategic Board and / or to TWAM;
 - e. s/he dies;
 - f. s/he is absent from three consecutive meetings of the Strategic Board without good reason and the other members resolve to remove him/her. In the event that the member concerned is an Elected Member, a Rotating Member or the University Member, the person which appointed him/her shall be invited to appoint someone in his/her place;
 - g. in the case of an Elected Member, a Rotating Member, or the University Member, s/he is removed by the body who appointed him, in which case that body shall appoint someone in his/her place; and / or
 - h. s/he breaches the terms of these Terms of Reference or the Joint Agreement.

31. Each Elected Member shall cease to be a member of the Strategic Board if:
 - (a) s/he ceases to be a member of the Constituent Council appointing him/her; or
 - (b) the Constituent Council by which s/he was appointed terminates his/her appointment.

32. Subject to paragraph 17, should any vacancy arise amongst the Elected Members or the Rotating Members, the relevant Constituent Council shall appoint a member to fill the relevant vacancy and in the intervening period before such appointment is made the remaining members shall nonetheless constitute the Strategic Board and shall have full power to conduct the business of the Strategic Board.

Delegation by Strategic Board

33. The Strategic Board may delegate any of their powers or functions other than those relating to non-urgent Reserved Matters (defined below) to a sub-committee or sub-committees, and if they do, they shall determine the terms and conditions on which the delegation is made. The Strategic Board may at any time alter those terms and conditions, or revoke the delegation.

34. The Strategic Board's power of delegation is subject to the following requirements:
 - a. subject to paragraphs 34b and 34c, a sub-committee may consist of three or more persons (which may include non members);
 - b. where a sub-committee has delegated authority to make decisions on behalf of the Strategic Board, the majority of its members must be members of the Strategic Board;
 - c. where a sub-committee has delegated authority to make decisions on urgent Reserved Matters, only those members of the sub-committee who are Reserved Matter Members (defined below) may vote on the decisions;

- d. the acts and proceedings of any sub-committee must be brought to the attention of the Strategic Board as soon as is reasonably practicable;
- e. the Strategic Board shall from time to time review the arrangements which they have made for the delegation of their powers.

Reserved Matters

- 35. The Strategic Board recognises that certain decisions relating to the discharge of a statutory function are, at law, reserved to members who are Elected Members or Rotating Members of the Constituent Councils being elected councillors of a Constituent Council (together the “Reserved Matter Members”) being those decisions relating to TWAM of such significance to be considered by the Constituent Councils as being ones which are required for the discharge of the Constituent Council’s statutory obligations (“Reserved Matters”).
- 36. Except for the Reserved Matters listed in Appendix 2, the Constituent Councils agree that all day to day decisions relating to the business of TWAM which are made in accordance with the Strategic Board’s business plan from time to time approved (the “Business Plan”) shall be made by the Strategic Board acting collectively.
- 37. The matters identified in Appendix 2 as being within the scope of the Strategic Board’s authority may only be carried out with the agreement of the Reserved Matter Members unless such matters are set out in the Business Plan for the period in question which has been approved by the Reserved Matter Members, in which case, the Reserved Matter Members shall be deemed to have consented to such matter.
- 38. In relation to decisions made in relation to Reserved Matters, whilst the Independent and University Members may contribute fully in the debate leading up to such decision, all members recognise that, at law, only Reserved Matter Members can exercise a vote on such decision and be regarded as voting members of the Strategic Board.

39. In the event of dispute or doubt as to whether or not a decision amounts to a Reserved Matter, the question shall be directed to the heads of legal services at the Constituent Councils who shall, acting together, make a determination, recognising the need to make such determination promptly in order not to stifle the business of TWAM and the activity of the Strategic Board.

Meetings and proceedings

40. The Strategic Board shall meet at least four times a year and at such other times as it considers necessary to achieve its Objectives and fulfil its Functions.
41. The Chair may call a meeting of the Strategic Board at any time and shall do so upon written requisition of two members. The Secretary shall send (by post, e-mail or personally) to every member at least seven days before a meeting of the Strategic Board a notice confirming the date, time and location of the meeting specifying the business proposed to be transacted thereat.
42. Meetings may take place by video conference or conference telephone or similar means to allow every member to take part in the meeting.
43. In the absence or unwillingness of the Chair, the Vice Chair shall chair meetings of the Strategic Board. In the absence or unwillingness of the Chair and the Vice Chair, the members of the Strategic Board may elect a chair for the meeting from amongst its members present.
44. Save in relation to the Reserved Matters, and subject to paragraph 51, and unless otherwise stated herein, every matter arising at a meeting of the Strategic Board or a sub-committee thereof shall be decided by a majority of the votes of the members present and voting on the question and in the case of an equality of votes the chair of the meeting shall have an additional and casting vote.
45. No matter which is a Reserved Matter shall be voted on unless the Reserved Matter Members present at the meeting vote in favour of the same.

46. Any five members of the Strategic Board shall form a quorum provided that the Elected Members and Rotating Members present at a meeting shall be in the majority.
47. The Strategic Board may permit other persons to attend and speak at their meetings save that such persons shall not be entitled to vote.
48. Subject to paragraphs 34.b and 34.c, the quorum of a sub-committee of the Strategic Board shall be one third of all of the members of that sub-committee provided that in no case shall the quorum be less than two members and provided that Elected Members and the Rotating Members are in the majority.
49. Decisions of the members may be made either:
 - a. By resolution at a meeting; or
 - b. By resolution in writing in accordance with paragraph 50.
50. A resolution in writing signed by the members entitled to receive notice of a meeting of the Strategic Board shall be as valid as if it had been passed at a meeting of the Strategic Board duly convened (even if it consists of several documents in the like form each signed by one or more members), provided that:
 - c. the resolution is passed by the requisite number of members as would have been required to pass it at a meeting;
 - d. a copy of the proposed resolution has been sent to all the members eligible to vote;
 - e. the document signifying a member's agreement is authenticated by their signature, by a statement of their identity accompanying the document, and received at the principal office within 28 days beginning with the circulation date;
 - f. in the case of Reserved Matters, only (and all of) the Reserved Matter Members have confirmed their agreement to the resolution in writing.

Conflicts of interest

51. A member who has a conflict of interest in relation to business transacted at a meeting of the Strategic Board or of a sub-committee thereof (“Business”) must:
- g. at the outset of the meeting declare the nature and extent of his/her interest (either direct or indirect) before discussion on the Business;
 - h. withdraw from the meeting for discussion of the Business unless expressly invited to remain in order to provide information;
 - i. not be counted in the quorum for the part of the meeting during which the Business is discussed; and
 - j. withdraw during the vote on the Business and have no vote on the matter.

The minutes of the meeting shall confirm the actions taken to manage the conflict of interest in this regard.

52. An Elected Member, the University Member or a Rotating Member who is also a member, officer or employee of a Constituent Council or the University as the case may be, shall not be regarded as conflicted by virtue only of the fact that s/he is a member, officer or employee of a Constituent Council or of the University (as applicable).

Reporting requirements

53. The Strategic Board shall keep minutes of its meetings and a copy of those minutes, once approved by the Strategic Board, shall on request be made available to the Constituent Councils, including by publishing on TWAM’s website.
54. The minutes of each meeting of the Strategic Board shall clarify which decisions were made in relation to Reserved Matters and confirm that only Reserved Matter Members voted in relation to the same.

55. The Constituent Councils may, from time to time at their discretion seek any further information from the Strategic Board in relation to the performance of its Objectives and discharge of its Functions.
56. The Strategic Board shall, if requested, produce and present to the Constituent Councils a written report outlining the Strategic Board's work and activities over the preceding period.

Variation or termination

57. These terms of reference shall remain in force until varied or revoked by the members.

Appendix 1

Appointment of Independent Members and the Chair – Nominations Protocol

1. To ensure the continuing and effective functioning of the Strategic Board, the relevant processes set out in this Appendix shall be followed to appoint the Independent Members and the Chair.
2. The Lead Authority shall coordinate the appointment of Independent Members, and the Chair by the Constituent Councils by:
 - a. where the Lead Authority considers appropriate, advertising any vacancy for an Independent Member or the Chair within [time period] of that vacancy arising or within [time period] of the Lead Authority becoming aware of the vacancy being likely to arise;
 - b. inviting applications to be submitted to the Lead Authority within [time period] of the date that the vacancy is advertised pursuant to paragraph 2a (if it is advertised) or otherwise, within [time period] of the date on which the vacancy arose (the “Closing Date”);
 - c. together with the Constituent Councils, considering applications from potential candidates and deciding which candidates to interview;
 - d. making arrangements for the Constituent Councils to form a panel to interview applicants within [time period] of the Closing Date;
 - e. liaising with each of the Constituent Councils following such interviews, and reaching agreement on the person(s) (if any) that they wish to appoint to fill the position. If the Constituent Councils cannot reach agreement by consensus on any one or more candidates, they will repeat the above process until agreement is reached;
 - f. once agreement is reached, the Lead Authority shall notify the successful candidate(s) of their appointment as an Independent Member (and in the case of the Chair, his/her appointment as Chair);
 - g. notifying unsuccessful candidates that they have not been appointed to the Strategic Board.

In recommending, and either accepting or rejecting, an individual for appointment as an Independent Member, the Lead Authority and the Constituent Councils must have regard to (i) the skills, knowledge, experience and diversity needed for the Strategic Board to successfully deliver its Objectives and fulfil its Functions; and (ii) the Strategic Board's and TWAM's commitment to equal opportunities and the avoidance of discrimination.

The Chair will, once appointed in accordance with this Nominations Protocol, sit on the panel together with the Constituent Councils to interview candidates for Independent Members.

3. At least three months prior to expiry of an Independent Member's term of office or the Chair's term of office (as applicable), the Lead Authority must approach that Independent Member or the Chair and ask them to confirm in writing, and within 28 days of the approach, whether they are likely to stand again for a further successive term (if so permitted to stand again by these Terms of Reference).
 - a. If the Independent Member or the Chair (a) fails to confirm whether they will stand again; or (b) confirms that they will not stand again; or (c) is not permitted by the Terms of Reference to stand for a successive term, the process set out in paragraph 2 must immediately be followed.
 - b. If the Independent Member or the Chair confirms that they will stand again for a successive term, and that Independent Member or the Chair is permitted to so stand again under these Terms of Reference, then in good time prior to expiry of the Independent Member's or the Chair's current term:
 - i. the Lead Authority shall write to each Constituent Council to (a) inform them that the Independent Member or the Chair intends to stand again for a successive term and is permitted to do so under these Terms of Reference; and (b) give each Constituent Council [insert time period] to confirm whether they agree to the re-appointment of that Independent Member or that Chair. If a

member fails to respond within [insert time period] they will be deemed to agree to the re-appointment.

1. If no objections are received to the re-appointment, the Lead Authority shall write to the relevant Independent Member or the Chair (with copy to all members) to confirm their re-appointment, such appointment to be effective immediately upon expiry of their current term.
 2. If at least one objection is received, and the Lead Authority, acting reasonably, agrees with the rationale provided for the objection(s) the process set out in paragraph 2 of this Appendix must promptly be followed.
4. Subject to paragraph 0 of this Appendix, as soon as (a) the Lead Authority becomes aware that a vacancy for an Independent Member or the Chair has arisen; or (b) the Lead Authority becomes aware that a vacancy for an Independent Member or the Chair is likely to arise, whichever is earlier, the process set out in paragraph 2 of this Appendix must be followed. For the avoidance of doubt, if any member becomes aware that a vacancy for an Independent Member or a Chair has arisen or is likely to arise then they must, as soon as reasonably practicable, inform the Lead Authority.

Appendix 2

Reserved Matters

The following matters shall be deemed “Reserved Matters” for the purpose of the Terms of Reference:

1. Financial

- 1.1. Adoption of the annual budget and any variation to the same.
- 1.2. Expenditure in any one year on capital account of over limits from time to time under OJEU (or equivalent) in one transaction or series of transactions where those transactions are required by regulation 6 of the Public Contracts Regulations 2006 (or any successor legislation) to be aggregated for the purpose of calculating whether the relevant OJEU threshold is exceeded unless provided for in the relevant Business Plan.
- 1.3. Approval of appointment of new auditors.
- 1.4. Related party dealings with any members of the Strategic Board or connected persons.
- 1.5. Appointment of new bankers and change of authorised signatories to the bank accounts.
- 1.6. Change in accounting or taxation policies of TWAM.
- 1.7. Appointing any consultant, agent or other intermediary to conduct any aspect of the business other than any such appointment in the normal course of business and at a cost of more than the limits under OJEU (or equivalent) from time to time.
- 1.8. TWAM extending its activities outside the scope of the Business Plan, or closing down any business operation.
- 1.9. Approval or signing of the annual accounts.
- 1.10. Approval of the sublicensing of TWAM’s name or logo.
- 1.11. Disposal of items in the TWAM collections.

2. Management, directors and employees

- 2.1. Engagement by TWAM of new employees with remuneration in excess of, or dismissal of employees with remuneration in excess of £75,000 per annum.
- 2.2. Proposed appointment or removal of any Strategic Board member and appointment of any sub-committee member.
- 2.3. Devolution or transfer of management control of TWAM to persons outside the agreed Strategic Board.
- 2.4. Payment of any fees, remuneration or other emoluments to Strategic Board Members or varying any such fees, remuneration or emoluments.

3. Share / loan capital and constitutional matters

- 3.1. Creation, acquisition or disposal of any subsidiary (or shares in a subsidiary) of TWAM.
- 3.2. Capitalisation of profits or reserves of TWAM – e.g. proposal to convert income into a capital fund.
- 3.3. Change of name of TWAM.
- 3.4. Change in the status of TWAM from a joint local authority service.
- 3.5. Entry into any reconstruction, consolidation or amalgamation with any company, association, partnership or legal entity or the acquisition of any business or undertaking of any other person e.g. proposing to merge with another company.

Appendix 3

Code of Conduct

[NB this Code, when ready should contain reference to the Nolan Principles and compliance with Lead Authority's code of conduct]

APPENDIX 3

DATED 2017

Confidential

Heads of Terms for Joint Venture Trading Company
relating to TWAM

CONFIDENTIAL

HEADS OF TERMS FOR JOINT VENTURE RELATING TO TWAM TRADING SUBSIDIARY

These heads of terms are for discussion purposes only and are to be treated as and kept strictly confidential.

Apart from where expressly stated, these heads of terms do not create any legally binding obligations but are a clear indication of the basis/terms on which the JV Partners (defined below) wish to establish the JV.

Once agreed by JV Partners, these heads of terms will be used to draw up Articles of Association and Shareholders' Agreement (**Governance Documents**) governing the JV Company (defined below). These Governance Documents will need to be formally approved by the JV Partners in due course and will be legally binding.

HEADS OF TERMS

The principal terms of the proposed joint venture are as follows:

JV PARTNERS.

The JV Partners will be:

- Gateshead Council (**GC**);
- Newcastle City Council (**NCC**);
- North Tyneside Council (**NTC**);
- South Tyneside Council (**STC**); and
- The University of Newcastle (**UNI**).

who together will be shareholders of the **JV Company**.

JV STRUCTURE

The JV will be established as an English company limited by shares under Companies Act 2006 (**JV Company**).

SHAREHOLDERS IN JV AND INITIAL SHARE CAPITAL

The JV Partners will be equal (20%) shareholders in the JV Company.

JV Company will be established with nominal share capital of 100 shares, with each JV Partner subscribing for 20 shares on incorporation.

INITIAL AND FURTHER FUNDING

JV shall be initially funded through TWAM's existing budget

No legal obligation on JV Partners to provide funding in excess of the funding already allocated to TWAM's existing budget.

Any further funding for the JV (whether by equity or debt or external finance) is to be unanimously agreed between the JV Partners.

No JV Partner will have any obligation to guarantee the availability of any such funding or to guarantee repayment of any third party indebtedness.

CONSTITUTIONAL MATTERS

Name of JV – “TWAM Enterprises Ltd”.

Objects – to operate as a general commercial company (without limitation) for purpose of making profits for distribution for benefit of Museums and Archives Services across the TWAM operation.

Powers – all powers at law to do anything in order to achieve the objects.

Registered office – Discovery Museum’s address

Company Secretary (if required) - TWAM Finance Director

GOVERNANCE

Board of Directors:

To be between 3 – 7 in number

To include:

TWAM Director – ex officio

TWAM Head of Finance, Governance and Resources - ex officio

one director appointed by the TWAM Strategic Board, which shall be an elected member of the Strategic Board

up to four independent directors, appointed by other directors

Chair of JV Board to be appointed by the JV Partners as a Major Decision, Category A.

Chair of the JV Board to have a second or casting vote at meetings of the Board

Proceedings of the Board of directors:

Board to meet at least 4 times per year

Meetings to be held at registered office

Quorum for meetings to be 3 to include at least 2 independent directors

Directors not able to appoint alternates to attend Board meetings on their behalf

Board decisions:

Save for “Major Decisions” (see below), board decisions shall be decided by simple majority of Directors.

Major Decisions will require agreement of JV Partners. Category A Major Decisions will require consent of **all** JV Partners. Category B Major Decisions will require consent of **majority** of JV Partners.

Note that any action/activity/decision that is within the annual business plan of the JV will not be deemed a Major Decision as JV Partners will have approved in advance. Therefore, once a matter is included in an approved business plan no further approval will be required.

Category A decisions – unanimity of JV Partners required

- approval of annual business plan (including budgets);
- material changes to the business plan/adoption of new business plan;
- approving changes to the accounting policies/principles of the JV;
- change of name;
- appoint Chair of Directors
- any borrowing by the JV;
- JV giving any security or guarantees;
- change of corporate structure of JV;
- amendment of Articles of Association;
- amendment of Shareholders' Agreement;
- admission of new shareholders/issue of new shares (see below);
- any transfer/disposal/charging of shares by existing shareholder;
- creation of any classes of shares or variation to the same;
- issue of further shares to any JV Partner;
- re-purchase of shares from any JV Partner or cancellation of the same (see below);
- establishing any subsidiary of JV;
- approving the distribution of profits, approving/amending a distribution policy applicable to the JV or any other form of return of capital;
- sale of any JV assets other than in ordinary course of business or with a value in excess of £50,000;
- acquiring assets (including property assets and interests) other than in the ordinary course of business or with a value in excess of £50,000;
- entering into contract or arrangement with JV Partner (but decision to exclude JV Partner concerned) (excluding Shareholders' Agreement);
- closing/winding up the JV or taking any steps in anticipation of doing so;
- JV entering into any further JV arrangement, partnership or other collaboration with a third party or merging or amalgamating with the same;
- JV expanding business activities outside those of the agreed business plan or closing down any business operation;

JV terminating any agreement of a material/fundamental nature in the context of its business or making any material amendment to such agreement

removal of any director;

initiation/settlement of legal proceedings involving amounts in excess of £50,000 (excluding the enforcement of the management contracts referred to below);

entering into any contract or commitment of JV which is material in nature or which has a value of or likely to involve expenditure in excess of £50,000 or making a variation to any existing contract or commitment which would have such effect;

engaging any senior employees or engaging any employee, appointing any consultant, agent or contractor with an annual fee/salary in excess of £50,000 or varying the terms of any such engagement which would have such effect.

Category B decisions – decision of majority JV Partners required

establishing any pension scheme, share scheme or similar arrangement for employees;

change of JV's financial year end;

change of auditors;

change of registered office;

acquisition of shares, debentures or securities (eg investment) in any other person or company;

any related party transaction, arrangement or dealings between JV and a director(s);

appointment and variation of bankers and bank mandates;

transfer of control of company management to any other person;

any payment of fees, remuneration or other benefits to a director (other than reasonably and properly incurred expenses).

Shareholder matters (general):

JV Partners to appoint nominated representative to represent JV Partner at general meetings;

Nominated representative to act on instruction of JV Partner and represent their views;

JV Partners to recognise and acknowledge the interests of the JV and to put forward its views and make decisions with this in mind;

JV Partners to acknowledge that delay in decision making will have adverse impact on JV business and therefore endeavour to make decisions swiftly and decisively.

Shareholder proceedings:

Shareholders to meet annually for purpose of agreeing annual business plan and budget.
Timings set by Directors accordingly;

Other meetings to be held as and when required;

Quorum for shareholder meetings to be 3, unless Category A Major Decision required, in which case, all shareholders must be present through an authorised representative;

Decisions to be taken by majority, unless Category A Major Decision required;

Chair of general meetings to be chair of Directors;

All shareholders to have one vote.

DISTRIBUTION OF PROFITS TO SHAREHOLDERS

The JV Partners agree that the intention is that profits of the JV Company, after deduction of normal working capital costs should be paid to TWAM Development Trust by way of a donation to the Trust and the donation should be made in the relevant financial year that the profits are generated. The level of donation to be proposed by the Directors bearing in mind the cashflow needs of the JV and approved as a Category A decision. Any change to this policy will have to be approved by all JV Partners as Category A Major Decision.

Distribution/donation policy to incorporate the following principles:

No distribution to be made to the JV Partners as the intention is that all profits of the JV Company will be paid to the Trust by way of a donation in the relevant financial year;

Donations only to be paid from available profits;

Objective to minimise tax liability (to extent possible) by paying donations to TWAM Development Trust during the relevant financial year;

Directors to determine how much to retain within JV by way of working capital;

Distributions to TWAM Development Trust to be made on a restricted basis, with TWAM Development Trust using funds received for re-investment in the sector (such re-investment to be allocated on a pro rata basis across the TWAM services/locations based on JV trading income generated from/by such services/locations);

JV Partners not obliged to provide further funding to cover losses, but may agree to do so and, if so, terms to be agreed at that time, recognising that if not all JV Partners contribute equally, this will have an impact on Distributions Policy.

ADMISSION OF NEW PARTNERS/SHAREHOLDERS

Category A Major Decision requiring unanimous consent of JV Partners.

Before admitting any new shareholder, consider benefits and drawbacks, and alternatives, such as provision of services through contract;

No new shareholders admitted within 2 years of JV incorporation;

New shareholders only to be admitted on terms agreed and appropriate at the relevant time and considering:

a valuation of the business of the JV by a qualified and independent accountant at the relevant time;

financial contribution to the JV by any proposed new shareholder at relevant time (to take into account business valuation (above), amount of outstanding JV Partner loans plus any further contributions made);

impact of admission on distributions policy in place at the relevant time.

New shareholders to sign up to deed of adherence to Shareholders' Agreement.

DEADLOCK SITUATIONS (WHEN AGREEMENT CANNOT BE REACHED ON MATTERS)

If a decision cannot be reached by shareholders on a matter at a general meeting or in relation to a Major Decision, a further meeting will be called within 14 days to re-consider the matter.

If JV Partners still cannot reach agreement, then the matter is escalated as per below.

Directors notify CEO of JV Partner that deadlock has arisen and set out the relevant circumstances, with copies to JV Partner authorised representatives.

CEO of each JV Partner to discuss the matter with their authorised representative and confirm in writing their position to the Directors, with copies to other JV Partners.

CEO of each JV Partner to meet to discuss the issue and, where possible, reach agreement, recognising that the JV's business may be hampered during this time and therefore swift resolution required.

Where agreement of CEOs is reached at this stage, meeting re-convened and decision made.

Where agreement still not reached, JV appoints an agreed person to act as mediator in order to facilitate resolution on the issue.

Where agreement still cannot be reached, then JV Partners refer the matter to an independent arbitrator whose decision will be final and binding on the JV Partner.

DISPUTE RESOLUTION

Informal methods of dispute resolution preferable.

Disputes in relation to interpretation of Articles or Shareholders' Agreement shall be referred to an external firm of solicitors, whose decision shall be final.

Disputes in relation to decision making by JV Partners shall be as set out in clause 9.

Any other disputes to be dealt with in accordance with the following:

Aggrieved JV Partner to give notice to the Directors setting out nature of dispute;

Directors to notify other JV Partners that dispute has arisen;

Directors to call meeting of the JV Partners to discuss the matter and, where possible, reach agreement for resolution;

Where agreement cannot be reached, the process in clause 10.5 is followed.

CEO of each JV Partner to meet to discuss the dispute and, where possible, reach agreement, recognising that the JV's business may be hampered during this time and therefore swift resolution required.

Where resolution of CEOs is reached at this stage, they will notify the Directors of the position in writing.

Where agreement still not reached, matter is referred to mediation and failing resolution, thereafter referred to binding arbitration.

EXIT OF MEMBERS

Voluntary:

Notice to Directors in writing;

Presume share value still nominal as profits distributed through TWAM Development Trust. If not the case, valuation of shares carried out by independent accountant;

JV has first option to buy-back shares out of distributable profits;

If JV is unable or unwilling to buy-back shares, then the exiting shareholder will have the right to oblige the other JV Partners to acquire the shares at nominal value (i.e. £20).

Compulsory:

On winding up, dissolution, insolvency act;

Material and un-remedied breach of Shareholders' Agreement;

Actions of JV Partner bring JV (or TWAM) into disrepute (in reasonable opinion of other JV Partners).

On compulsory exit as per clause 11.2, defaulting JV Partner deemed to have issued notice to the Directors. Provisions of clause 11.1.2 – 11.1.4 then apply. All rights of defaulting JV Partner cease from point of notice.

JV Partners to have power to expel a shareholder who has acted in breach of the Shareholders' Code of Conduct in accordance with prescribed procedure (allowing for representations from said "naughty" shareholder).

Alternatively, in event of JV Partner exit, whether voluntary or compulsory, JV could commence orderly winding up of JV.

Include initial lock in period of two years during which JV Partner cannot exit voluntarily and/or JV cannot be wound up.

TIMINGS

Heads of Terms to be agreed and signed by JV Partners by end of March 2017.

Articles of Association and Shareholders' Agreement to be signed as soon as possible thereafter.

APPROVALS

The final signing completion of the legal documents requires formal approval of

For GC

For NCC

For NTC

For STC

For UNI

LEGALLY BINDING PROVISIONS

It is intended that the provisions of this paragraph 14 shall be binding on each of the parties to the proposed JV in accordance with its terms.

Except as required by law or any regulatory body of competent jurisdiction (and then only after the fullest consultation with all other parties to these heads of terms as is practicable in the circumstances) no party shall disclose or make any announcement regarding the proposed joint venture or to the effect that any discussions or negotiations are taking or have taken place between the parties without the prior consent of the other. This will not prevent disclosure of information to relevant advisers and financiers who are made aware of the confidentiality of such information.

The costs and expenses incurred relating to the definitive transaction documentation shall be met from the TWAM annual budget shared equally by the JV Partners. Each JV Partner will be responsible for its own legal costs and representations regarding these heads of terms.

These heads of terms will not, and are not intended to, create any terms which are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the proposed joint venture.

These heads of terms shall be governed by, and construed in accordance with, English law.

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

THE COMMON SEAL OF THE BOROUGH

)

COUNCIL OF GATESHEAD

)

was hereunto affixed in the presence of:

)

)

)

Mayor

Strategic Director of Legal
and Corporate Services

THE COMMON SEAL OF THE COUNCIL

)

OF THE CITY OF NEWCASTLE UPON TYNE

)

was hereunto affixed in the presence of:

)

)

)

Lord Mayor

Assistant Director Legal Services

THE COMMON SEAL OF THE BOROUGH

COUNCIL OF NORTH TYNESIDE

was hereunto affixed in the presence of:

)
)
)
)
)

Mayor

Head of Legal and Democratic
Services and Monitoring Officer

THE COMMON SEAL OF THE COUNCIL OF

THE BOROUGH OF SOUTH TYNESIDE

was hereunto affixed in the presence of:

)
)
)
)
)

Mayor

Head of Legal Services

THE COMMON SEAL OF THE UNIVERSITY OF

NEWCASTLE UPON TYNE

was hereunto affixed in the presence of:

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2017

Articles of Association

THE COMPANIES ACT 2006
COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF
TWAM ENTERPRISES LTD (COMPANY)

1. EXCLUSION

- 1.1 Except as provided for in these Articles, the Model Articles and any regulations set out in any statute or in any statutory instrument made under any statute concerning companies and which prescribe regulations as articles of association, shall be excluded from these Articles in their entirety and shall not apply to the Company. The following shall be the Company's articles of association.

PART 1

INTERPRETATION AND LIMITATION OF LIABILITY

2. INTERPRETATION

- 2.1 In these Articles the following expressions have the following meanings:

Act	the Companies Act 2006.
Articles	the Company's articles of association for the time being in force.
Business Plan	the Initial Business Plan and any detailed operating plan and financial budget of the Company for subsequent financial periods approved in accordance with the terms of the Shareholders' Agreement.
Category A Major Decision	a decision on an issue listed in the Shareholders' Agreement which can only be validly made in accordance with Article 9.1 (Major Decisions).
Category B Major Decision	a decision on an issue listed in the Shareholders' Agreement which can only be validly made in accordance with Article 9.1 (Major Decisions).
certificate	a paper certificate evidencing a person's title to specified shares.
Chair	the chair of directors appointed under these Articles.
Conflict	has the meaning given in Article 17.1 (Directors' Interests and

	Conflicts).
Donations Policy	the policy adopted by the Company which sets out how profits of the Company, after deduction of normal working capital costs, shall be distributed and / or donated.
director	a director of the Company, and includes any person occupying the position of director, by whatever name called.
eligible director	a director who would be entitled to vote on the matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter).
ex officio	has the meaning specified in Article 22.2.1.
fully paid	in relation to a share, means that the nominal value and any premium to be paid to the Company in respect of that share have been paid to the Company.
holder	in relation to shares means the person whose name is entered in the register of shareholders as the holder of the share.
Independent Director	a director who is not a shareholder, employee or officer of a JV Partner.
Initial Business Plan	the business plan in a form agreed by all of the JV Partners for the financial period from [insert] to [insert] as set out in the Shareholders' Agreement.
JV Partners	each of the following: <ol style="list-style-type: none"> 1. Gateshead Council; 2. Newcastle City Council; 3. North Tyneside Council; 4. South Tyneside Council; and 5. The University of Newcastle <p>(individually a "JV Partner" and a founding shareholder).</p>
Major Decisions	the Category A Major Decisions and Category B Major Decisions set out in the Shareholders' Agreement.
Model Articles	the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these Articles.

ordinary resolution	has the meaning given in section 282 of the Act.
Seller	the meaning specified in Article 34.1 (Pre-emption Procedure for Transfer of Shares).
shareholder	a person who is the holder of a share. Each shareholder is deemed to be a "shareholder" for the purpose of section 112 of the Act.
Shareholders' Agreement	the shareholders' agreement entered into at the date of these Articles between the Company and the JV Partners as from time to time amended.
Shareholders' Code of Conduct	the Company's code of conduct for shareholders as from time to time amended.
shares	shares in the Company.
special resolution	has the meaning given in section 283 of the Act.
subsidiary	has the meaning given in section 1159 of the Act.
TWAM	the Tyne and Wear Archives and Museums services.
TWAM Development Trust	the Tyne and Wear Archives and Museums Development Trust (company number 07334262, charity number 1137867).
TWAM Strategic Board	the strategic board established to oversee the management and administration of TWAM or any body which succeeds its purposes.

2.2 In these Articles:

- 2.2.1 a reference to a **disposal** includes a sale, transfer, assignment, charge, mortgage, subscription, renunciation, nomination or other disposition whereby a person ceases to be the absolute beneficial owner of the share in question or voting rights attached to such share and also includes an agreement (or more than one agreement) to enter into such a disposal or the grant of a right to compel entry into such agreement and **dispose** shall be construed accordingly;
- 2.2.2 unless otherwise stated in these Articles, notices and any communications to be given under the Articles, including any Transfer Notice, must be given in writing and for these purposes writing does not include "electronic form" (as defined in section 1168 of the Act) or any form of electronic communication;
- 2.2.3 the singular includes the plural and vice versa;
- 2.2.4 references to persons include bodies corporate, unincorporated associations, governments, states, partnerships and trusts (in each case, whether or not having separate legal personality);
- 2.2.5 a reference in these Articles to an **Article** is a reference to the relevant article of these Articles unless expressly provided otherwise;

- 2.2.6 unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time;
- 2.2.7 the headings in these Articles are for convenience only and shall not affect the interpretation of these Articles; and
- 2.2.8 general words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things.

3. LIABILITY OF SHAREHOLDERS

- 3.1 The liability of the shareholders is limited to the amount, if any, unpaid on the shares held by them.

PART 2

DIRECTORS

DIRECTORS' POWERS AND RESPONSIBILITIES

4. THE DIRECTORS' GENERAL AUTHORITY

- 4.1 Subject to the Articles and the Shareholders' Agreement, the directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

5. THE JV PARTNERS' RESERVE POWERS

- 5.1 Subject to the Shareholders' Agreement, the JV Partners may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- 5.2 Subject to Article 5.3, no such special resolution invalidates anything which the directors have done before the passing of the resolution.
- 5.3 If the directors or a director carries out or permits the carrying out of a Major Decision without the prior written consent of the JV Partners in accordance with the terms of these Articles and the Shareholders' Agreement, that action and shall be invalid so far as the Company is concerned.

6. DIRECTORS MAY DELEGATE

- 6.1 Subject to the Articles, the directors may delegate any of the powers which are conferred on them under the Articles:
 - 6.1.1 to such person or committee;
 - 6.1.2 by such means (including by power of attorney);
 - 6.1.3 to such an extent;
 - 6.1.4 in relation to such matters or territories; and
 - 6.1.5 on such terms and conditions;

as they think fit.

- 6.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- 6.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions.
- 6.4 Anyone acting with delegated authority from the directors shall, in no circumstances, be entitled or authorised to make a Major Decision.

7. COMMITTEES

- 7.1 Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the Articles which govern the taking of decisions by directors.
- 7.2 The directors may make rules of procedure for all or any committees provided they are consistent with the Articles and the Shareholders' Agreement.

DECISION-MAKING BY AND PROCEEDINGS OF DIRECTORS

8. MAJORITY DECISIONS

- 8.1 Save for Major Decisions, all directors' decisions shall be taken by either a simple majority of the eligible directors present at a meeting of the directors, or by resolution in writing (which may comprise either a single document or several documents containing the text of the resolution to which the majority of all directors have signified their agreement).

9. MAJOR DECISIONS

- 9.1 Major Decisions taken by the directors will require the prior written consent of the JV Partners before the decisions are effective and valid. Category A Major Decisions will require the prior written consent of all of the JV Partners. Category B Major Decisions will require the prior written consent of a majority of the JV Partners.

10. QUORUM FOR MEETINGS

- 10.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 10.2 The quorum for directors' meetings shall be at least three directors and shall include at least two Independent Directors.
- 10.3 If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision to appoint further directors.

11. CALLING A DIRECTORS' MEETING

- 11.1 Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.

- 11.2 Subject to Article 15.1 (Frequency of Meetings), notice of any directors' meeting must indicate:
- 11.2.1 its proposed date and time; and
 - 11.2.2 where it is to take place.
- 11.3 Notice of a directors' meeting must be given to each director, but need not be in writing.
- 11.4 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

12. PARTICIPATION IN DIRECTORS' MEETINGS

- 12.1 Subject to the Articles, directors participate in a directors' meeting, or part of a directors' meeting, when the meeting has been called and takes place in accordance with the Articles.

13. CHAIR AND CASTING VOTE

- 13.1 The Chair shall be appointed annually by the JV Partners, as a Category A Major Decision, from amongst the directors. The Chair shall act as chair at all meetings of the directors unless he is unwilling or unable to do so, in which case, the directors present shall appoint one of their number to chair the meeting.
- 13.2 In the event of equality of votes, the Chair shall have a second or a casting vote, but the Chair shall not have a second or casting vote in relation to a Major Decision which has not been approved by the JV Partners in accordance with these Articles.

14. FREQUENCY OF MEETINGS

- 14.1 The directors shall meet at least four times per year.

15. LOCATION OF MEETINGS

- 15.1 All board meetings shall be held at the Company's registered office address unless the directors agree in writing otherwise.

DIRECTORS' INTERESTS AND CONFLICTS

16. TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY

- 16.1 Subject to sections 177(5), 177(6), 182(5) and 182(6) of the Act and provided he/she has declared the nature and extent of his/her interest in accordance with the requirements of the Act, a director may vote as a director or be entitled to participate in any unanimous decision of the directors in regard to any transaction or arrangement with the Company in which he/she is interested or upon any matter arising therefrom and if he/she shall so vote or participate, his/her vote or participation shall be counted and he/she shall be reckoned in estimating any relevant quorum.

17. DIRECTORS' CONFLICTS OF INTEREST

- 17.1 The directors may, for the purposes of and subject to the provisions of section 175 of the Act, authorise any matter or situation which would, if not authorised, involve a director infringing his/her duty under that section to avoid a situation in which he/she has or can have a direct or indirect interest that conflicts with or may possibly conflict with the interests of the Company (**Conflict**). The directors may give any such authorisation subject to such terms, limits and conditions as they shall consider appropriate in the circumstances.
- 17.2 Where the directors authorise a Conflict, the director whose Conflict has been so authorised will not infringe any duty he/she owes to the Company under sections 171 to 177 of the Act if he/she acts in accordance with the terms, limits and conditions (if any) as the directors impose in respect of that authorisation.
- 17.3 A director shall not be regarded as conflicted by virtue only of the fact that he/she is an employee, director, officer or elected member of the JV Partners or shareholders, a shareholder of the TWAM Strategic Board or a shareholder, trustee or officer of the TWAM Development Trust.
- 17.4 Any question about whether a director has a conflict of interest shall be referred to the Chair, whose decision shall be final and, in the case of a conflict of interest for the Chair, shall be referred to the directors to make that determination.
- 17.5 If a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any director other than the Chair is to be final and conclusive.
- 17.6 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

18. BENEFITS

- 18.1 A director is not required, by reason of being a director, to account to the Company for any remuneration, profit or other benefit which he/she or a person connected with him/her (as defined in section 252 of the Act) derives from any transaction or arrangement referred to in Article 16 (Transactions or arrangements with the Company) or which derives from or is in connection with a Conflict which has been authorised by the directors or by the Company (subject in each case to any terms, limits or conditions attaching to that authorisation) and no such transaction, arrangement or other contract shall be liable to be avoided on such grounds and the receipt of any such remuneration, profit or benefit shall not constitute a breach of his/her duty under section 176 of the Act.

19. RECORDS OF DECISIONS TO BE KEPT

- 19.1 The directors must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

20. DIRECTORS' DISCRETION TO MAKE FURTHER RULES

- 20.1 Without prejudice to Article 9 (Major Decisions), the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

APPOINTMENT OF DIRECTORS

21. NUMBER OF DIRECTORS

- 21.1 Unless otherwise determined by ordinary resolution, the number of directors shall not be less than three and not more than seven.

22. APPOINTMENT OF DIRECTORS

- 22.1 Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director in accordance with the terms of these Articles and provided that the maximum number of directors permitted under Article 21.1 (Number of directors) is not exceeded.

22.2 Ex officio directors

- 22.2.1 The two persons from time to time holding the position of TWAM Director and TWAM Head of Finance, Governance and Resources for the time being together (the "**office holders**") shall automatically, by virtue of holding those offices ("**ex officio**"), be directors of the Company.

- 22.2.2 If unwilling to act as a director, the relevant office holder may:

- (a) before accepting appointment as a director, give notice in writing to the directors of his/her unwillingness to act in that capacity; or
- (b) after accepting appointment as a director, resign in accordance with the terms of these Articles.

The relevant office of ex officio director will then remain vacant until the office holder ceases to hold office.

22.3 Nominated directors

- 22.3.1 The TWAM Strategic Board may appoint one director.

- 22.3.2 Any appointment must be made at a meeting held according to the ordinary practice of the TWAM Strategic Board.

- 22.3.3 Each appointment shall be for a term of four years, subject to a maximum of two consecutive terms.

- 22.3.4 The appointment will be effective from the later of:

- (a) the date of the vacancy; or

(b) the date on which the Company is informed of the appointment.

22.3.5 The person appointed must be an elected member of the Strategic Board.

22.3.6 The TWAM Strategic Board may from time to time remove their appointed director and appoint a replacement in accordance with the above process.

22.4 Independent Directors

22.4.1 The directors may appoint up to and including four Independent Directors.

22.4.2 Save for the first Independent Directors, who shall serve in office for the terms set out immediately below, the appointment of each Independent Director shall be for a term of four years, subject to a maximum of two consecutive terms.

22.4.3 The first Independent Directors shall be the persons named below who shall serve in office for the following terms:

(a) [insert name] for a period of two years.

(b) [insert name] for a period of three years.

(c) [insert name] for a period of three years.

(d) [insert name] for a period of four years.

22.4.4 The first Independent Directors may be re-appointed at the end of their initial term for one further term of four years.

22.5 Miscellaneous

22.5.1 Notwithstanding the other provisions above of this Article 22, in exceptional circumstances and where the best interests of the Company require, the term of office of a director may be extended after they have served the maximum number of consecutive terms permitted in the provisions above, but on a rolling one year basis and only with the prior written agreement of all of the JV Partners.

22.5.2 Any person who retires as a director by reason of them having served the maximum number of successive terms permitted under these Articles is eligible for re-appointment after four years has lapsed from the date of retirement, and may be so re-appointed in accordance with the terms of these Articles.

23. TERMINATION OF A DIRECTOR'S APPOINTMENT

23.1 A person ceases to be a director as soon as:

23.1.1 that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;

23.1.2 a bankruptcy or similar order is made against that person;

- 23.1.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;
- 23.1.4 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
- 23.1.5 notification is received by the Company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms, provided that at least three directors remain in office;
- 23.1.6 he/she dies;
- 23.1.7 is absent without permission of the other directors from all their meetings held within a period of six months and the directors resolve that his/her office be vacated;
- 23.1.8 in the case of an ex officio director, he/she ceases to hold the position which entitles him/her to be an ex officio director;
- 23.1.9 in the case of a director appointed by the TWAM Strategic Board, he/she is removed by the TWAM Strategic Board, in which case, the TWAM Strategic Board shall appoint someone in his/her place; and
- 23.1.10 in the case of an Independent Director, he/she is removed by the directors on the basis that his/her conduct or behaviour is detrimental to the interests of the Company or he/she has acted contrary to any code of conduct from time to time in force and applicable to the directors.

and in all circumstances listed in 23.1.1 to 23.1.10 inclusive, the prior written consent of all the JV Partners is required as the removal of any director is a Category A Major Decision.

24. SECRETARY

- 24.1 The person holding the office of TWAM Finance Director for the time being shall be appointed by the directors as the secretary at such remuneration and upon such conditions as the directors may think fit.

25. DIRECTORS' REMUNERATION

- 25.1 Subject to Article 9 (Major Decisions) and Article 16 (Transactions or arrangements with the Company):
 - 25.1.1 directors may undertake any services for the Company that the directors decide;
 - 25.1.2 directors are entitled to such remuneration as the directors determine:
 - (a) for their services to the Company as directors, and
 - (b) for any other service which they undertake for the Company;
 - 25.1.3 a director's remuneration may:

- (a) take any form, and
 - (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director;
- 25.1.4 unless the directors decide otherwise, directors' remuneration accrues from day to day; and
- 25.1.5 unless the directors decide otherwise, directors are not accountable to the Company for any remuneration which they receive as directors or other officers or employees of the Company's subsidiaries or of any other body corporate in which the Company is interested, provided that nothing in this Article shall authorise the payment or remuneration of any director who is also a trustee of the TWAM Development Trust.

26. DIRECTORS' EXPENSES

- 26.1 The Company may pay any expenses that are reasonable and properly incurred by a director in connection with that director's attendance at:
- 26.1.1 meetings of directors or committees of directors,
 - 26.1.2 general meetings, or
 - 26.1.3 otherwise in connection with the exercise of that director's powers and the discharge of that director's responsibilities in relation to the Company.
- 26.2 A decision of the Company to pay any fees, remuneration or other benefits to a director which do not fall within the scope of Article 26.1 is a Category A Major Decision and therefore requires the prior written consent of all of the JV Partners in accordance with Article 9 (Major Decisions). Any such decision taken without the prior written consent of all of the JV Partners will not be valid or binding upon the Company.

PART 3

SHARES AND DISTRIBUTIONS

SHARES

27. POWERS TO ISSUE DIFFERENT CLASSES OF SHARE

- 27.1 Subject to the Articles and the Shareholders' Agreement, but without prejudice to Article 9 (Major Decisions) or the rights attached to any existing share, the Company may issue shares with such rights or restrictions as may be determined by ordinary resolution.
- 27.2 Subject to the Articles and the Shareholders' Agreement, and without prejudice to Article 9, the Company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the Company on such terms, conditions and manner of redemption as the JV Partners unanimously determine.

28. COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS

28.1 Except as required by law, no person is to be recognised by the Company as holding any share upon any trust, and except as otherwise required by law or the Articles or the Shareholders' Agreement, the Company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

29. SHARE CERTIFICATES

29.1 The Company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

29.2 Every certificate must specify:

29.2.1 in respect of how many shares, of what class, it is issued;

29.2.2 the nominal value of those shares;

29.2.3 that the shares are fully paid; and

29.2.4 any distinguishing numbers assigned to them.

29.3 No certificate may be issued in respect of shares of more than one class.

29.4 If more than one person holds a share, only one certificate may be issued in respect of it.

29.5 Certificates must be executed in accordance with the Act.

30. REPLACEMENT SHARE CERTIFICATES

30.1 If a certificate issued in respect of a shareholder's shares is:

30.1.1 damaged or defaced, or

30.1.2 said to be lost, stolen or destroyed, that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

30.2 A shareholder exercising the right to be issued with such a replacement certificate:

30.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;

30.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and

30.2.3 must comply with such conditions as to evidence and indemnity as the directors decide.

31. ALLOTMENT OF SHARES

- 31.1 Notwithstanding any provision of these Articles to the contrary, the directors may not allot any shares in the Company in the two year period commencing from the date on which the Company is registered at Companies House.
- 31.2 An allotment, disposal, grant of an option over, transfer or otherwise of shares to any person (including any director) (**Disposal**) will only be valid if:
- 31.2.1 all of the JV Partners give their prior written consent to the Disposal in accordance with Article 9 (Major Decisions);
 - 31.2.2 such person enters into a deed of adherence to the Shareholders' Agreement in the form set out in Schedule 3 of the Shareholders' Agreement; and
 - 31.2.3 the Disposal is on such terms and conditions as are agreed in writing by all of the JV Partners and considered appropriate by all of the JV Partners at the relevant time, bearing in mind, in particular:
 - (a) a valuation of the business of the Company carried out by a qualified and independent accountant at the relevant time;
 - (b) financial contributions to the Company proposed by any prospective new shareholder at the relevant time (to take into account the business valuation sought pursuant to Article 31.2.3(a), the amount of any outstanding JV Partner loans plus any further contributions made); and
 - (c) the impact of admission of the prospective shareholder on the Company's Donations Policy in place at the relevant time.
- 31.3 The JV Partners, when deciding whether to each give their written consent to a Disposal pursuant to Article 31.2, must consider the benefits and drawbacks of admitting a new shareholder, and any alternatives to admitting a new shareholder (such as the provision of services through contract).
- 31.4 No shares shall be issued at a discount.
- 31.5 Sections 561 and 562 of the Act are hereby excluded and shall not apply to any allotment by the Company of equity securities (as defined in section 560 of the Act).

32. TRANSFERS OF SHARES – GENERAL

- 32.1 Any purported transfer of shares other than in accordance with the provisions of these Articles shall be void and have no effect.
- 32.2 The transfer of Shares is a Category A Major Decision. The directors shall not therefore register any transfer of shares without the prior written consent of all the JV Partners, notwithstanding any contrary provision in these Articles.
- 32.3 Subject to Articles 34.4.1 (Matters relating to share transfers) and 9 (Major Decisions), the directors shall refuse to register any transfer of shares (notwithstanding that all JV Partners have consented to

the transfer) unless the transfer is permitted by these Articles and made in accordance with Article 34 (Pre-emption procedure for transfers of shares), and Article 35 (Compulsory share transfers).

33. PROHIBITED TRANSFERS OF SHARES

- 33.1 The directors shall not be permitted to register, and the JV Partners shall not be permitted to approve, any allotment of shares (other than the subscriber shares set out in Schedule 1 of the Shareholders' Agreement), or transfer of shares held by a JV Partner (the **Transferor**), for a period of two years from the date of incorporation of the Company, other than in the following circumstances:
- 33.1.1 on the winding up, dissolution, insolvency or something similar of the Transferor;
 - 33.1.2 the Transferor commits a material and un-remedied breach of the Shareholders' Agreement;
 - 33.1.3 the Transferor commits a material breach which is capable of remedy but goes unremedied for a period of three months from the date of the breach;
 - 33.1.4 the actions of the Transferor (in the reasonable opinion of the JV Partners, excluding the Transferor) bring the Company and/or TWAM into disrepute; and/or
 - 33.1.5 the Transferor commits a breach of the Shareholders' Code of Conduct from time to time in force and the JV Partners (excluding the Transferor) resolve to remove that JV Partner.
- 33.2 The directors shall not be permitted to register any allotment or transfer of shares without the prior written consent of all of the JV Partners.
- 33.3 The directors may only be permitted to register, and the JV Partners only permitted to approve, the transfer of the whole legal and equitable title to shares free from all liens, charges and encumbrances and with all rights, title and interest in existence at the date of transfer together with all rights which may arise in respect thereof.

34. PRE-EMPTION PROCEDURE FOR TRANSFERS OF SHARES

34.1 Transfer Notices

- 34.1.1 Any shareholder who wishes to transfer shares or any interest in shares (**Seller**) shall provide the Company with a written notice of its wishes (a **Transfer Notice**).
- 34.1.2 Subject to the provisions below, a Transfer Notice given in these circumstances shall constitute the directors as the Seller's agents for the sale of the shares specified in the Transfer Notice (**Sale Shares**) at the Sale Price (defined below).
- 34.1.3 Notwithstanding any provision to the contrary, a Seller is not permitted to transfer, at any one time, only some of their shares or part of their interest in their shares; a Seller must transfer, on any one occasion, all of their shares and all their interest in those shares.
- 34.1.4 A Transfer Notice once given, required to be given or deemed to have been given shall not be revocable except with the consent of all of the JV Partners, who may impose such

condition to their consent as they think fit, including a condition that the Seller bears all costs arising therefrom.

34.2 **Determination of Sale Price**

- 34.2.1 Subject to Article 34.2.2, the expression **Sale Price** shall mean where the Company has only made distributions and/or donations to the TWAM Development Trust and has not made distributions to its shareholders, in respect of each Sale Share the nominal value of that Sale Share.
- 34.2.2 If a Seller, acting reasonably, is unable and unwilling to sell its Sale Shares at their nominal value in accordance with Article 34.2.1, the matter shall be referred immediately to a Referee at [the Company's / the Seller's] cost and,
- (a) the Referee shall act as an independent expert and not as an arbitrator;
 - (b) the decision of the Referee as to the fair selling value of the Sale Shares on the open market shall be final and conclusive and shall be binding upon the relevant parties; and
 - (c) the Referee shall be instructed to produce a certificate showing the new value of the Sale Shares.

34.3 **Offers to Purchase**

- 34.3.1 Upon the Sale Price being determined in accordance with Article 35.2 above, the Company, provided it is able and willing to do so, shall buy-back the Sale Shares.
- 34.3.2 If the Company is unable or unwilling to buy-back the Sale Shares, the remaining JV Partners (the **Transferees**) shall be obliged to promptly purchase the Sale Shares in equal proportions (so far as is possible) and at nominal value.
- 34.3.3 The Seller shall be bound to promptly transfer the Sale Shares to the Company or Transferees (as applicable) when payment of the relevant Sale Price for the Sale Shares is made to the directors as agents for the Seller, and share certificates in respect of the relevant Sale Shares shall be promptly delivered to the directors.
- 34.3.4 The Seller shall be deemed to transfer the Sale Shares with full title guarantee free from all encumbrances and shall deliver to the directors on behalf of the Company or Transferees (as applicable) duly executed stock transfer forms in respect of and certificates for the Sale Shares.
- 34.3.5 If the Seller fails to promptly transfer the Sale Shares, the Chair or some other person appointed by the directors (and approved by the JV Partners excluding the Seller) shall be deemed to have been authorised by the Seller to execute, complete and deliver, in the name and on behalf of the Seller, a transfer of the Sale Shares to the Company or the Transferees (as applicable) against payment of the Sale Price to the Company.
- 34.3.6 On payment of the relevant Sale Price, the Company or Transferees (as applicable) shall be deemed to have obtained a good discharge for such payment and on execution and delivery of the transfer (subject to the transfer being duly stamped and to Article 34.4.1),

where appropriate, the Transferees shall be entitled to insist upon their names being entered in the register of shareholders as the holders by transfer of the Sale Shares.

34.3.7 The Company shall hold the purchase money in trust for the Seller but shall not be bound to earn or pay interest on it and shall act on behalf of the Seller in settling any fees or expenses falling to be borne by him. After the names of the Transferees have been entered in the register of shareholders in purported exercise of the powers referred to above the validity of the proceedings shall not be questioned by any person.

34.4 **Matters relating to Share Transfers**

34.4.1 Notwithstanding the foregoing provisions of this Article 34, the directors may decline to register any transfer of any share on which the Company has a lien or in respect of any share which is not fully paid.

35. **COMPULSORY SHARE TRANSFERS**

35.1 For the purposes of this Article 35 the following shall be deemed (without limitation) to be service of a Transfer Notice under Article 34 (Pre-emption procedure for transfers of shares) by a shareholder in respect of all the shares in the Company held by it:

35.1.1 any disposal (or purposed disposal) of a share or any interest thereon by that shareholder (whether or not for consideration or otherwise) otherwise than in accordance with the provisions of these Articles;

35.1.2 a change of control of that shareholder (where **control** is as defined in section 1124 of the Corporation Tax Act 2010), in which case the shareholder shall be deemed immediately prior to that change of control to have served a Transfer Notice under Article 34 (Pre-emption procedure for transfers of shares) in respect of all the shares held by it;

35.1.3 the appointment of an administrative receiver, receiver, manager or liquidator in respect of it or its assets or the entry by it into or a proposal by its directors of an arrangement with its creditors or the taking of any step by any person to appoint an administrator of that shareholder;

35.1.4 that shareholder commits a material and un-remedied breach of the Shareholders' Agreement;

35.1.5 the actions of that shareholder (in the reasonable opinion of the JV Partners, excluding that shareholder) bring the Company and/or TWAM into disrepute;

35.1.6 that shareholder breaches the Shareholders' Code of Conduct and; and/or

35.1.7 the Company is wound up.

35.2 In the event that Article 35.1.6 is triggered, the expulsion of the relevant shareholder may only take effect after the Company has followed the relevant procedures set out in the Shareholders' Code of Conduct.

35.3 A Transfer Notice deemed to have been given under Article 35.1 shall not be revocable and if a shareholder gives a Transfer Notice in circumstances where a Transfer Notice would otherwise be

deemed to have been given by him under this Article 35, then this Article 35 shall apply. For the avoidance of doubt, all of the relevant shareholder's rights shall cease from the point at which the Transfer Notice is deemed given.

36. EFFECTING SHARE TRANSFERS

36.1 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor. No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share, and the Company may retain any instrument of transfer which is registered.

36.2 The Transferor remains the holder of a share until the name of the relevant transferee (whether that be the Company or a Transferee) is entered in the register of members as holder of it.

37. DISTRIBUTION OF PROFITS

37.1 The profits of the Company, after deduction of normal working capital costs, shall be paid in accordance with the terms of the Shareholders' Agreement.

PART 4

DECISION-MAKING BY SHAREHOLDERS

ORGANISATION OF GENERAL MEETINGS

38. GENERAL MEETINGS

38.1 The JV Partners must meet annually, on such date and time as set by the directors, for the purpose of agreeing the Company's Business Plan.

38.2 Other general meetings may be held at any time, as and when required.

38.3 All general meetings must be held at the Company's registered office unless otherwise agreed in writing by the JV Partners.

39. ATTENDANCE AND SPEAKING AT GENERAL MEETINGS

39.1 Directors may attend and speak at general meetings, whether or not they are shareholders.

39.2 The chairman of the meeting may permit other persons who are not:

39.2.1 shareholders of the Company, or

39.2.2 otherwise entitled to exercise the rights of shareholders in relation to general meetings, to attend and speak at a general meeting.

39.3 The JV Partners shall each appoint a nominated representative to represent them at general meetings.

- 39.4 The nominated representative appointed in accordance with Article 39.1 shall only act on the instruction of their JV Partner and represent the views of their JV Partner.
- 39.5 The JV Partners recognise and acknowledge the interests of the Company and shall put forward its views and make decisions with those interests in mind.
- 39.6 The JV Partners acknowledge that delay in decision making will have an adverse impact on the Company's business and therefore agree to us all reasonable endeavours to make decisions promptly.

40. QUORUM FOR GENERAL MEETINGS

- 40.1 No business is to be transacted at a general meeting if the persons attending it do not constitute a quorum.
- 40.2 The quorum for general meetings shall be three unless a Category A Major Decision is required, in which case, all JV Partners must be present through a nominated representative.

41. CHAIRING OF GENERAL MEETINGS

- 41.1 The Chair shall chair the general meetings.
- 41.2 The person chairing a general meeting in accordance with this Article 41 is referred to as "the chairman of the meeting," but such person has no right to vote unless he is the authorised representative of a JV Partner.

42. ADJOURNMENT

- 42.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.
- 42.2 The chairman of the meeting may adjourn a general meeting at which a quorum is present if:
- 42.2.1 the meeting consents to an adjournment, or
 - 42.2.2 it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- 42.3 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
- 42.4 When adjourning a general meeting, the chairman of the meeting must:
- 42.4.1 either specify the time to which it is adjourned or state that it is to continue at a time to be fixed by the directors, and
 - 42.4.2 have regard to any directions as to the time of any adjournment which have been given by the meeting.

- 42.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):
- 42.5.1 to the same persons to whom notice of the Company's general meetings is required to be given, and
 - 42.5.2 containing the same information which such notice is required to contain.
- 42.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

43. VOTING AT GENERAL MEETINGS

- 43.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these Articles. Any decision other than a Category A Major Decision, shall be taken by a simple majority of votes cast at the meeting. Every JV Partner shall have one vote in relation to Major Decisions, and every shareholder shall have one vote in relation to all other decisions.

44. ERRORS AND DISPUTES

- 44.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 44.2 Any such objection must be referred to the chairman of the meeting, whose decision is final.

45. POLL VOTES

- 45.1 A poll on a resolution may be demanded:
- 45.1.1 in advance of the general meeting where it is to be put to the vote, or
 - 45.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 45.2 A poll may be demanded at any general meeting by any qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.
- 45.3 A demand for a poll may be withdrawn if:
- 45.3.1 the poll has not yet been taken; and
 - 45.3.2 the chairmen of the meeting consents to the withdrawal.

A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made.

45.4 Polls must be taken immediately and in such manner as the chairman of the meeting directs.

46. CONTENT OF PROXY NOTICES

46.1 Proxies may only validly be appointed by a notice in writing in accordance with the Act.

47. AMENDMENTS TO RESOLUTIONS

47.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:

47.1.1 notice of the proposed amendment is given to the shareholders in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and

47.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

47.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:

47.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and

47.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

47.3 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

48. DEADLOCK AND DISPUTE RESOLUTION

48.1 If a decision cannot be reached by the JV Partners on a matter, the relevant process set out in the Shareholders' Agreement must be followed.

48.2 If a dispute arises in relation to the terms of these Articles, the process for resolving such disputes as set out in the Shareholders' Agreement must be followed.

PART 5

ADMINISTRATIVE ARRANGEMENTS

49. MEANS OF COMMUNICATION TO BE USED

49.1 Anything sent or supplied by or to the Company under these Articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of the Act to be sent or supplied by or to the Company.

49.2 Any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

49.3 A director may agree with the Company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

50. RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS

50.1 Except as provided by law or authorised by the directors or an ordinary resolution of the Company, no person, other than a JV Partner, shall be entitled to inspect any of the Company's accounting or other records or documents.

51. INDEMNITY

51.1 Subject to the provisions of and so far as may be consistent with the Act, the Company shall provide:

51.1.1 for each relevant officer an indemnity out of the assets of the Company to the extent that such indemnity is a **qualifying third party indemnity provision** within the meaning of section 234 of the Act;

51.1.2 a relevant officer with funds in accordance with section 205 of the Act to meet expenditure incurred or to be incurred by him in defending any criminal or civil proceedings or in connection with any application under the provisions mentioned in section 205(5) of the Act or to enable a relevant officer to avoid incurring such expenditure, but so that any provision of funds will become repayable by the relevant officer or any liability of the Company under any transaction connected with any provision of funds will become repayable by the relevant officer not later than:

(a) in the event of the relevant officer being convicted in the proceedings, the date when the conviction becomes final;

(b) in the event of judgment being given against him/her in the proceedings, the date when the judgment becomes final; or

(c) in the event of the court refusing to grant him/her relief on the application, the date when the refusal of relief becomes final; and

51.1.3 a relevant officer with funds to meet expenditure incurred or to be incurred by him/her in defending himself/herself in an investigation by a regulatory authority or against action proposed to be taken by a regulatory authority in connection with any alleged negligence, breach of duty or breach of trust by that relevant officer in relation to the Company or an associated company of the Company or to enable a relevant officer to avoid incurring such expenditure.

51.2 In this Article 51 and in Article 52:

51.2.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

51.2.2 a **relevant officer** means any director or other officer or former director or other officer of the Company or an associated company, but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he/she is also a director or other officer), to the extent he acts in his/her capacity as auditor).

52. INSURANCE

- 52.1 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.
- 52.2 In this Article 52, a **relevant loss** means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company or any associated company.