

2017

Shareholders' Agreement  
relating to  
TWAM Enterprises Ltd

## DATE

## PARTIES

- (1) Gateshead Council.
- (2) Newcastle City Council.
- (3) North Tyneside Council.
- (4) South Tyneside Council.
- (5) The University of Newcastle.
- (6) [TWAM Enterprises Ltd.]

each a **party** and together the **parties**.

## AGREED TERMS

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in Clause 1 apply:

<b>Articles</b>	the articles of association of the Company in agreed form at the date of completion of this Agreement and as amended from time to time.
<b>Board</b>	the board of directors for the time being of the Company.
<b>Business</b>	the business of the Company as described in Clause 2.1 and such other business as the JV Partners may agree from time to time in writing should be carried on by the Company.
<b>Business Plan</b>	the Initial Business Plan and any detailed operating plan and financial budget of the Company for subsequent financial periods approved in accordance with Clause 6.5.
<b>Category A Major Decision</b>	a decision on an issue listed in Part 1 of Schedule 3, which requires the prior consent of all of the JV Partners.
<b>Category B Major Decision</b>	a decision on an issue listed in Part 2 of Schedule 3, which requires the prior consent of a majority of the JV Partners.
<b>Company</b>	TWAM Enterprises Ltd (CN [●]).
<b>Connected Party</b>	in relation to any Shareholder,  (a) any person connected with that Shareholder where <b>connected</b> has the same meaning in section 252 of the Companies Act 2006 and as if references to <b>director</b> in that section were references to a <b>Shareholder</b> ; or  (b) any employee or representative of that Shareholder.
<b>Deadlock</b>	has the meaning given in Clause 5.2.
<b>Deed of Adherence</b>	a deed of adherence in the form set out in Schedule 2.

<b>Director</b>	any director for the time being of the Company.
<b>Donations Policy</b>	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.
<b>Initial Business Plan</b>	the business plan in a form agreed by all of the JV Partners for the financial period from [●] to [●] set out in Schedule 4.
<b>JV Partners</b>	means Gateshead Council, Newcastle City Council, North Tyneside Council, South Tyneside Council and the University of Newcastle (each a <b>JV partner</b> ) and a founding Shareholder.
<b>Major Decisions</b>	the Category A Major Decisions and Category B Major Decisions set out in Schedule 3.
<b>Shareholders</b>	the shareholders from time to time in the Company and <b>Shareholder</b> means any of them.
<b>Shares</b>	the ordinary shares of £1 each in the capital of the Company.
<b>TWAM</b>	Tyne and Wear Archives and Museums.
<b>TWAM Development Trust</b>	the Tyne and Wear Archives and Museums Development Trust (company number 07334262 and charity number 1137867).

1.2 In this Agreement:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to persons include bodies corporate, unincorporated associations, governments, states, partnerships and trusts (in each case, whether or not having separate legal personality);
- 1.2.3 references to Clauses and Schedules are to Clauses of and Schedules to this Agreement;
- 1.2.4 the Schedules form part of this Agreement and the expression **this Agreement** includes the Schedules;
- 1.2.5 the headings in this Agreement are for convenience only and shall not affect interpretation;
- 1.2.6 any reference to a statutory provision includes a reference to any modification, replacement, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it;
- 1.2.7 a reference to any of the parties includes, where appropriate, persons deriving title under it;
- 1.2.8 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;
- 1.2.9 references to a person acting **directly** or **indirectly** include acting alone or jointly with or by means of any other person; and
- 1.2.10 references to any document (including this Agreement) or a provision thereof shall be construed as a reference to that document or provision as from time to time supplemented, varied or replaced.

## **2. OBJECTS OF THE COMPANY**

### **2.1 The Business**

The business of the Company will be to operate as a general commercial company (without limitation) for the purpose of making profits for distribution for the benefit of the development of the Museums and Archives Services across TWAM's operations.

### **2.2 Location**

The central management and control of the Company shall be exercised in the United Kingdom and each of the Shareholders shall use its best endeavours to ensure that the Company is treated by all relevant authorities as being resident for taxation and other purposes in the United Kingdom.

## **3. COMPLETION**

### **3.1 Details of the Company on completion**

3.1.1 On completion, each of the JV Partners shall take or cause to be taken the following steps at Board and Shareholders' meetings of the Company or by circulation of written resolutions of the Company (as appropriate) so that the details of the Company as set out in Schedule 1 become correct:

- (a) the issue of shares in the Company to be divided into 100 shares of £1 each and the authority of the Directors to allot such shares;
- (b) each JV Partner, as a founding Shareholder, to subscribe to 20 shares of £1 each;
- (c) the adoption by the Company of the Articles;
- (d) the adoption of the Donations Policy;
- (e) the adoption of the Company's agreement with TWAM Development Trust pursuant to Clause 6.3.46.3.4(e);
- (f) the registration of the Company at Companies House;
- (g) the appointment of [●],[●],[●] as Directors;
- (h) the appointment of [●] as chair;
- (i) the appointment of [●] as secretary of the Company;
- (j) the adoption of [●] as the registered office of the Company;
- (k) the appointment of [●] PLC of [●] as bankers to the Company;
- (l) the appointment of [●] of [●] as auditors of the Company at a fee to be agreed by all of the JV Partners; and
- (m) the adoption of [●] in each year as the accounting reference date of the Company.

### **3.2 Agreement to remain in force**

The provisions of this Agreement, to the extent not performed at completion, will remain in full force and effect despite completion.

## **4. THE BOARD**

### **4.1 Composition of the Board**

4.1.1 The maximum number of Directors holding office at any time shall be as set out in the Articles.

4.1.2 The Directors shall be appointed and removed in accordance with the terms of the Articles.

### **4.2 Chair**

4.2.1 The first chair shall be appointed by the JV Partners in accordance with the Articles and shall act as [non-executive chair] from completion of this Agreement without payment of any fee.

4.2.2 If the chair is unable to attend a Board meeting or a meeting of the members of the Company, the JV Partners, acting unanimously, shall be entitled to nominate another Director to act as chair in his place at the meeting.

### **4.3 Quorum**

4.3.1 The quorum for Board meetings shall be as set out in the Articles.

### **4.4 Board meetings**

4.4.1 Save for Major Decisions, all decisions of the Directors shall be decided by a simple majority of votes cast on the basis that each Director shall have one vote. The chair of the meeting shall have a second or casting vote in the case of an equality of votes.

4.4.2 Major Decisions will require the prior written consent of the JV Partners:

(a) Category A Major Decisions will require the prior written consent of all JV Partners.

(b) Category B Major Decisions will require the prior written consent of a majority of JV Partners.

4.4.3 Board meetings shall be properly convened in accordance with the Articles and held at the Company's registered office from time to time or such other place as the Directors determine, provided all Directors are able to participate.

### **4.5 Removal of the Directors and chair**

4.5.1 A Director may be removed in accordance with the Articles.

4.5.2 The chair of the Board meetings shall also be chair of the Shareholders' meetings and may only be removed by agreement of all of the JV Partners or by tendering his / her resignation as chair to the Company.

## **5. CONDUCT OF THE COMPANY'S AFFAIRS**

### **5.1 Exercise of voting rights**

5.1.1 Each Shareholder shall exercise all voting rights and other powers in relation to the Company so as to procure (so far as they are able) that:

(a) the business of the Company consists exclusively of the Business;

- (b) the Business is conducted in the best interests of the Company on sound commercial profit making principles in a way likely to promote the success of the TWAM Operation and the success of the Company for the benefit of its members as a whole and for the future maintenance and development of TWAM; and
- (c) the Company complies with the provisions of the Articles.

5.1.2 Each Shareholder undertakes with the others to exercise all voting rights and powers of control available to it in relation to the Company so as to give full effect to the terms and conditions of this Agreement.

## 5.2 **Deadlock**

5.2.1 If a decision cannot be reached by the JV Partners on a matter at a general meeting or in relation to a Major Decision, a further meeting shall be called within 14 days of the matter having been considered by the JV Partners to re-consider the matter.

5.2.2 If the JV Partners still cannot reach agreement, then the matter shall be escalated as follows:

- (a) The Directors shall notify the CEOs of the JV Partners that deadlock has arisen and set out the relevant circumstances, with copies to the JV Partners nominated representatives.
- (b) The CEO of each JV Partner shall promptly discuss the matter with their nominated representative and promptly confirm in writing their position to the Directors, with copies to the CEOs of each JV Partner and to the JV Partners.
- (c) The CEO of each JV Partner shall promptly meet to discuss the issue and, where possible, reach agreement, recognising that the Business may be hampered during this time and therefore swift resolution is required.
- (d) Where agreement of the CEOs is reached at this stage, a meeting of the JV Partners shall be re-convened and a decision made on the relevant issue.
- (e) Where agreement is still not reached, the Company shall promptly appoint an agreed person to act as mediator in order to facilitate resolution on the issue.
- (f) Where agreement is still not reached with the support of a mediator, then the JV Partners shall promptly refer the matter to an independent arbitrator whose decision will be final and binding on the JV Partners and the Company.

## 5.3 **Anti-corruption undertakings**

### 5.3.1 **Definitions**

In this Clause, the following definitions will apply:

<b>Adequate Procedures</b>	adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010.
<b>Associated Person</b>	in relation to a company, a person (including an employee, agent or subsidiary) who performs services for or on that company's behalf.

### 5.3.2 **Anti-corruption**

- (a) Each party undertakes to the other parties that:

- (i) it will not, and will procure that the Company will not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
- (ii) it has and will maintain in place, and will procure that the Company has and will maintain in place Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010; and
- (iii) from time to time, at the reasonable request of any other party, it will confirm in writing that it has complied with its undertakings under Clause 5.3.2(a)(i) and Clause 5.3.2(a)(ii) and will provide any information reasonably requested by such other party in support of such compliance.

## **6. BUSINESS PLANNING AND FINANCIAL MATTERS**

### **6.1 Initial funding**

6.1.1 The Company shall be initially funded through allocation from TWAM's existing budget.

### **6.2 No obligation for further funding**

6.2.1 No JV Partner shall be required to subscribe for any further Shares or to provide any additional funding for the Company in excess of the funding already allocated to TWAM's existing budget or provide any guarantees or security for the obligations of the Company whether as a result of the Company securing additional funding or otherwise.

6.2.2 In the event that the Company losses or shortfalls arise:

- (a) the Directors shall call a meeting of the JV Partners for the purpose of considering financing options for the Company;
- (b) any further funding for the Company (whether by equity or debt or external finance) shall be unanimously approved in writing by all of the JV Partners in advance of securing such finance as a Category A Major Decision; and
- (c) the level and terms of any further funding shall be unanimously agreed in writing by all of the JV Partners in writing by them at the relevant time.

### **6.3 Donations Policy**

6.3.1 Subject to the other provisions of this Clause 6, the parties agree that the profits of the Company, after deduction of normal working capital costs, shall be paid to the TWAM Development Trust by way of a charitable donation. To the extent possible, the parties agree that the Company shall make such donation within the financial year that such profits are generated in order for the Company to benefit from corporation tax relief under the gift aid regime.

6.3.2 The level of donation to the TWAM Development Trust shall be proposed by the Directors to the JV Partners but the Directors shall have discretion, within the terms of the Donations Policy, to determine the timing and amount of such donation, taking into account the financial requirements of the Company.

6.3.3 The Company shall adopt the Donations Policy as soon as possible following its establishment and the Donations Policy shall be approved in writing by the JV Partners as a Category A Major Decision. Any variation to or replacement of the Donations Policy may only take effect with the prior written consent of all of the JV Partners as a Category A Major Decision.

- 6.3.4 The parties agree that the Donations Policy shall as a minimum incorporate the following principles:
- (a) no financial distribution shall be made by the Company to its Shareholders on the basis that the Company's intention is that profits of the Company will be paid to the TWAM Development Trust by way of a donation in the relevant financial year;
  - (b) donations shall only be paid from the Company's available profits or distributable reserves;
  - (c) the Company's objective is to minimise its tax liability (to the extent legally possible) by paying donations to TWAM Development Trust during the relevant financial year and the Directors shall have regard to this objective in making its decisions regarding donations under Clause 6.3.2;
  - (d) the Directors shall determine in accordance with the Business Plan for the relevant period how much profit the Company shall retain by way of working capital for the following financial year;
  - (e) the Company shall enter into an agreement with TWAM Development Trust and that agreement shall provide that donations from the Company be held by TWAM Development Trust as restricted funds for specified purposes, and in return for such donation, the Company shall seek to oblige TWAM Development Trust to re-invest such donations in the development of the TWAM charitable services/activities; and
  - (f) the re-investment in the TWAM charitable services/activities shall be allocated on a proportionate basis across the TWAM services/premises based on the Company's trading income generated from and/or by such services/locations.

#### 6.4 **Financial information and accounts**

- 6.4.1 The Company shall supply the JV Partners with the following information:
- (a) the audited accounts of the Company for each financial year as soon as practicable and, at the latest, by four months after the end of that financial year;
  - (b) quarterly cashflow statements and cashflow forecasts for the Company as soon as practicable and at the latest by three weeks after the end of each quarter; and
  - (c) such reasonable other financial or management information relating to the Company as any JV Partner may reasonably request from time to time.
- 6.4.2 The JV Partners shall each be entitled to examine the separate books and accounts to be kept by the Company and to be supplied with all relative information, including the Business Plan, monthly management accounts and operating statistics and such other trading and financial information in such form as they may reasonably require.

#### 6.5 **Business plan and budgeting**

- 6.5.1 The Initial Business Plan shall be in a form agreed by all of the JV Partners as a Category A Major Decision.
- 6.5.2 The Directors shall procure that the Company shall prepare at least [three] months prior to the commencement of each financial year of the Company a detailed Business Plan of the Company for the following [three] financial years. Such Business Plan shall be approved in writing by all of the JV Partners. The Business Plan shall include the following matters:
- (a) a budget profit and loss account for the following financial year;



- (b) an operating budget for the following financial year (including capital expenditure projections);
- (c) a cash flow statement including a working capital forecast for the following financial year;
- (d) details of the Company's funding requirements including projections for the repayment of such funding; and
- (e) projected payments to the TWAM Development Trust.

6.5.3 The Business Plan shall be reviewed by the Directors [bi-annually] or on the occurrence of an event substantially affecting the future of the Business and any changes proposed by the Directors will not be effective without the prior approval of all of the JV Partners.

## **7. MATTERS REQUIRING WRITTEN CONSENT**

### **7.1 Directors to manage the Business**

Except for the matters listed in Clause 7.2, the Shareholders agree that all decisions relating to the Company shall be made by the Directors in accordance with Clause 4.

### **7.2 Matters reserved for the JV Partners**

7.2.1 The JV Partners shall exercise all voting rights and other powers available to them in relation to the Company so as to procure (so far as they are able) that no matter listed in Schedule 3 is carried out without the written consent of all the JV Partners in the case of Category A Major Decisions, or the written consent of a majority of the JV Partners in the case of Category B Major Decisions.

7.2.2 Notwithstanding the provisions of 7.2.1, for the purpose of this Clause 7 there can be unanimity or a majority (as applicable) if a JV Partner the subject of Clause 11 does not vote or consent so that for the purposes of this Clause 7 there can be unanimity or a majority as required (and as applicable) if the JV Partner the subject of Clause 11 does not vote or consent to the matter.

### **7.3 Amendments or variations to this Agreement**

A decision to amend or vary this Agreement is a Category A Major Decision and will therefore require the approval of all JV Partners to be valid and effective.

## **8. SERVICES TO BE PROVIDED BY SHAREHOLDERS**

8.1 Subject to Clause 8.2, each Shareholder shall procure that any contracts between it and the Company or between its Connected Parties and the Company shall be made on an arm's length basis and on terms that are not unfairly prejudicial to the interests of any Shareholder.

8.2 Notwithstanding Clause 8.1, the JV Partners may unanimously agree in writing that the Company may enter into a contract with a Shareholder or Connected Person on favourable terms, but only if the JV Partner concerned (if any) does not take part in the discussion and shall not vote on the matter

8.3 Nothing in this Clause 8 shall prevent the Company from entering into an agreement with the JV Partners for the JV Partners to transfer certain assets to the Company on its establishment and to thereafter provide services to the Company for the purpose of operating the Business

## **9. DEALING IN SHARES**

Unless otherwise set out in this Agreement, the issue and the transfer of Shares, together with any restrictions on dealing in Shares, the admission of new Shareholders, and exiting of Shareholders, are regulated in accordance with the Articles.

## **10. ALLOTMENT OF SHARES**

10.1 The Directors may not allot any shares in the Company in the two year period commencing from the date on which the Company is incorporated at Companies House.

10.2 An allotment, disposal, grant of an option over, transfer or otherwise of shares to any person (including any director) (**Disposal**) will only be valid and effective if:

10.2.1 all of the JV Partners give their prior consent to the Disposal in accordance with Clause 7.2 (Major Decisions);

10.2.2 such person enters into a deed of adherence in the form set out in Schedule 2 to the Shareholders' Agreement; and

10.2.3 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 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 10.2.3(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 Donations Policy in place at the relevant time.

10.3 The JV Partners, when deciding whether to each give their written consent pursuant to Clause 7.2 (Major Decisions), 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).

10.4 No Shares shall be issued at a discount.

10.5 Sections 561 and 562 of the Companies Act 2006 are hereby excluded and shall not apply to any allotment by the Company of equity securities (as defined in section 560 of that Act).

## **11. NON-INTERFERENCE/STEP-ASIDE**

### **11.1 Claims By the Company**

If the Company is entitled to bring a claim or enforce any rights it may have against any Shareholder or any Connected Party of a Shareholder then:

11.1.1 that Shareholder agrees to refrain from using voting rights and other powers in relation to the Company to prevent or delay the bringing of the claim or enforcement of the rights by the Company and in particular its consent shall not be required to any such action by the Company;

11.1.2 the parties agree that the Company shall be entitled to and shall enforce its rights under such contract; and

- 11.1.3 that Shareholder shall have no right to see or take copies of documents belonging to the Company in relation to such claim or right of enforcement which in litigation (whether or not commenced) would be privileged.

## 11.2 No Participation by an Interested Shareholder

- 11.2.1 Subject to 11.2.2, notwithstanding any provision in the Articles, in relation to the entry into of any contract with a Connected Party of a Shareholder requiring JV Partner written consent under Clause 7, the relevant JV Partner (if any) shall not participate in or vote at any part of a meeting of the JV Partners or on a resolution of the JV Partners where the matter requiring approval is being considered or voted on or agreed to (or have any entitlement to papers in relation to such matter). In that event, the other JV Partners shall constitute a quorum at any meeting of the JV Partners convened for the purpose of considering such contract and/or constitute any necessary percentage for agreeing to a resolution for approving such contract. In the case of a Major Decision, Category A, the resolution shall be passed if it is agreed in writing by all of the other JV Partners.
- 11.2.2 The provisions of 11.2.1 shall not apply in relation to any contract between the Company and the JV Partners which applies in common to all JV Partners, to the agreements specifically mentioned in Clause 8.3 or in relation to which the JV Partners unanimously agree the JV Partner(s) (or Connected Person(s)) with whom the contract is entered into may count in the quorum, participate in or vote at the relevant meeting or part thereof at which the matter is discussed.

## 11.3 Claims by a JV Partner

Each of the JV Partners agrees that, if it appears that the Company is in breach of an obligation which it owes to a JV Partner or a Connected Party of a JV Partner under any agreement, that JV Partner shall have no right to see or take copies of documents belonging to the Company in relation to such breach which in litigation (whether commenced or not) would be privileged.

## 12. DEADLOCK

### 12.1 When Deadlock occurs

This Clause 12 applies where there is a **Deadlock** because a matter relating to the affairs of the Company requires either unanimous or majority consent of the JV Partners under Clause 7 of this Agreement (or otherwise at law) and no such consent has been obtained and the matter is not resolved at the relevant meeting of the JV Partners. The parties undertake in these circumstances that they shall use all reasonable endeavours in good faith to resolve the matter giving rise to the Deadlock until the required agreement has been reached.

### 12.2 Procedure

- 12.2.1 Where a Deadlock arises and is not resolved at the relevant meeting of the JV Partners in accordance with Clause 12.1, the chair shall promptly call a further meeting of the JV Partners (the **Second Meeting**) to take place within 14 days of the meeting at which the Deadlock arises.
- 12.2.2 If the JV Partners are unable to reach an agreement at the Second Meeting the Directors shall notify the Chief Executive Officer (**CEO**) of each JV Partner, in writing, that a Deadlock has arisen and the relevant circumstances and background context to the Deadlock, with copies to each JV Partner's authorised representative.
- 12.2.3 The CEO of each JV Partner shall promptly, following receipt of notification pursuant to Clause 12.2.2, discuss the Deadlock with their JV Partner's authorised representative and promptly confirm in writing their position to the Directors, with copies to the other JV Partners. The Directors shall within [insert period] of receipt of the confirmations

from each CEO or [insert period], whichever is the sooner, arrange a meeting between the CEOs of each JV Partner to discuss the Deadlock.

- 12.2.4 The CEO of each JV Partner shall use all reasonable endeavours to attend the meeting arranged by the Directors pursuant to Clause 12.2.3 and, where possible, shall reach agreement on the Deadlock, recognising that the Business may be hampered during this time and therefore swift resolution is required by the CEOs.
- 12.2.5 Where agreement of the CEOs is reached at the meeting at Clause 12.2.4, the relevant meeting of the JV Partners shall be re-convened and a decision to resolve the Deadlock shall be made in accordance with the agreement of the CEOs.
- 12.2.6 Where agreement is not reached at Clause 12.2.4, the JV Partners shall appoint an agreed person to act as mediator in order to facilitate resolution on the Deadlock and , in the event the JV Partners do not reach agreement on the person to act as mediator, the Directors may make this appointment.
- 12.2.7 Where agreement cannot be reached within a reasonable time after following the steps set out above in this Clause 12.2, then the JV Partners shall promptly refer the Deadlock matter to an independent arbitrator whose decision will be final and binding on the JV Partners and Company.

### 12.3 Other relief

This Clause 12 is without prejudice to the rights of any party to seek any injunctive or similar relief from the courts to protect its intellectual property rights, its Confidential Information, restrictions on the activities of any Shareholder or other rights of any description.

## 13. DISPUTE RESOLUTION

- 13.1.1 Subject to the other provisions of this Clause, the parties agree and acknowledge that:
- (a) They will use all reasonable endeavours to resolve any disputes under this Agreement informally.
  - (b) Disputes in relation to interpretation of the Articles or the Shareholders' Agreement shall be promptly referred by the Directors to an external firm of solicitors, whose decision shall be final.
  - (c) Disputes in relation to decision making by the JV Partners shall be as set out in Clause 12.
  - (d) Any other disputes shall be dealt with in accordance with the following:
    - (i) the aggrieved Shareholder shall promptly give written notice to the Directors setting out the nature of the dispute;
    - (ii) the Directors shall promptly notify the other Shareholders in writing that the dispute has arisen;
    - (iii) the Directors shall promptly call a meeting of the Shareholders to discuss the matter and, where possible, reach agreement for resolution;
    - (iv) where agreement cannot be reached, the process in Clause 13.1.2 shall promptly be followed.
- 13.1.2 The CEO of each Shareholder shall meet to discuss the dispute and, where possible, reach agreement, recognising that the Business may be hampered during this time and therefore swift resolution is required. Where resolution of the CEOs is reached at this stage, they shall promptly notify the directors of the position in writing. Where

agreement is still not reached, the matter shall be promptly referred by the Directors to mediation and, failing resolution, thereafter referred to binding arbitration.

#### **14. WINDING UP**

- 14.1 This Agreement shall terminate and the Company shall be wound up if all the JV Partners unanimously agree to the same as a Category A Major Decision.
- 14.2 The parties agree and acknowledge that the Company shall not be wound up for a period of two years commencing on the date that the Company is incorporated at Companies House.

#### **15. EFFECT OF TERMINATION**

- 15.1 The provisions of this Agreement which, by their nature should remain in effect after termination of this Agreement, shall remain in full force and effect following such termination.
- 15.2 Termination of this Agreement shall not affect any rights or liabilities that the parties have accrued under it.
- 15.3 Where the Company is to be wound up and its assets distributed, the JV Partners shall unanimously agree in writing a suitable basis for dealing with the interests and assets of the Company and shall ensure that:
- 15.3.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;
  - 15.3.2 the Company shall not enter into any new contractual obligations;
  - 15.3.3 the Company is dissolved and its assets are distributed as soon as practical;
  - 15.3.4 any assets transferred to the Company from the JV Partners shall be returned as the JV Partners' (acting unanimously) direct; and
  - 15.3.5 any other proprietary information or intellectual property rights belonging to or originating from a party shall be returned to it by the other party or by the Company and all such proprietary information and intellectual property rights shall be erased from the computer systems (to the extent possible) of the Company and the person who is returning it.
- 15.4 Where any party is required by law, regulation or governmental or regulatory authority to retain any proprietary information (or copies) of any other party or of the Company, it shall notify the other parties in writing of such retention giving details of the information that it has been required to retain.

#### **16. COSTS**

- 16.1 The parties agree and acknowledge that the costs, legal fees and other expenses incurred in the preparation, negotiation, execution and implementation of this Agreement and any document referred to in it shall be payable from the TWAM annual budget.

#### **17. CONFIDENTIAL INFORMATION**

##### **17.1 Confidentiality Obligation**

- 17.1.1 The Shareholders shall keep confidential and keep separate from all other information (and shall procure that their employees and agents keep confidential and separate) all financial and other information concerning the Business, the Company and the other Shareholders unless that information is already accessible from public sources or becomes publicly available to third parties other than as a result of disclosure(s) in

breach of this Agreement. A Shareholder will not use or disclose this information except with the consent of the JV Partners [and the Company].

- 17.1.2 The obligations in this Clause 17.1 will continue without limit in time and shall remain binding on the Shareholders even after a Shareholder has disposed of all or any of its Shares. However, they will cease to apply to information which comes into the public domain other than by reason of breach of this Clause 17.
- 17.1.3 Nothing in this Clause 17 will prevent a Shareholder from disclosing information to the extent required in or in connection with:
- (a) legal proceedings before a court of competent jurisdiction or under any court order; or
  - (b) the requirements of any applicable law or regulation or as requested by any governmental, taxation or regulatory body or agency entitled to disclosure of the same.
- 17.1.4 The Shareholders agree that the information referred to in Clause 17.1.1 is valuable and that damages might not be an adequate remedy for breach of this Clause 17.1 and accordingly the remedies of injunction and other equitable relief will be available for any actual or threatened breach of this Clause 17.1 without proof of special damage.

## **17.2 Return of Confidential Information**

A Shareholder who ceases to be a Shareholder shall promptly hand over to the Company all confidential information, documents and materials belonging to the Company (unless that the Shareholder is required by law to retain the same) and shall, if so required by the Company, certify that it has not kept any records or copies of that information.

## **18. WAIVER**

- 18.1 No failure to exercise or any delay in exercising any right or remedy under this Agreement shall operate as a waiver of it or of any other right or remedy under it. No single or partial exercise of any such right or remedy shall prevent any further or other exercise of it or the exercise of any other right or remedy.
- 18.2 Any waiver given must be in writing and expressly stated by to be a waiver. Such a waiver will only apply to the specific events to which it is stated to relate and not to any other events, whether past or future.
- 18.3 The rights and remedies provided by this Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law or in this Agreement.

## **19. SEVERANCE**

- 19.1 If any provision of this Agreement shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from the remainder of this Agreement which shall remain in full force and effect to the extent permitted by law.
- 19.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification as may be necessary to make it valid.
- 19.3 In the circumstances referred to in Clause 19.1 and providing Clause 19.2 does not apply, the parties shall use all reasonable endeavours for a period of 30 days to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

During such period, the obligations of the parties under any invalid or unenforceable provision of this Agreement shall be deemed suspended.

## **20. ENTIRE AGREEMENT**

20.1 This Agreement and the documents referred to in it, constitute the entire agreement and understanding of the parties and supersede:

20.1.1 any previous agreement between the parties relating to the subject matter of this Agreement; and

20.1.2 any prior promises, representations and misrepresentations (whether oral or written) relating to the subject matter of this Agreement

but without prejudice to the rights and liabilities of the parties accrued before the date of this Agreement.

20.2 Each of the parties acknowledges and agrees that:

20.2.1 in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, misrepresentation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement;

20.2.2 its only remedy in respect of statements, representations, misrepresentations, warranties or understandings made or repeated in this Agreement or in relation to this Agreement shall be for breach of contract and it agrees that it shall have no additional remedy in respect of such statements, representations, misrepresentations, warranties or understandings upon which it may have relied in entering into this Agreement whether for misrepresentation or otherwise; and

20.2.3 all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

20.3 Nothing in this Clause 20 shall operate to limit or exclude any liability for fraud.

## **21. MISCELLANEOUS**

21.1 If there is any ambiguity or conflict arising between the terms of this Agreement and those of the Articles, the terms of this Agreement shall prevail as between the Shareholders. The JV Partners shall then procure the amendment of the Articles to the extent required to enable the Company to be administered as provided for in this Agreement and the documents referred to in it.

21.2 Notwithstanding any other provision contained in this Agreement, the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of the Company, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

21.3 Where any Shareholder is required under this Agreement to exercise its powers in relation to the Company to procure a particular matter or thing, such obligation shall be deemed to include an obligation to procure that any Director appointed by him shall procure such matter or thing, subject to the Director acting in accordance with his statutory duties as a director.

21.4 Nothing in this Agreement or in any document referred to in it or any arrangement contemplated by it shall constitute any Shareholder, a partner, agent, fiduciary or employee of any other Shareholder and the execution, completion and performance of this Agreement or any document referred to in it shall not confer on any Shareholder power to bind or impose any obligations to any third parties on the other Shareholders or to pledge the credit of the other Shareholders.

21.5 Each party shall upon demand and at its own expense execute and register or procure to be executed and registered all further deeds, documents and do all acts and things as may be necessary or desirable to give effect to this Agreement or any document executed or to be delivered pursuant to it.

## **22. NOTICES**

### **22.1 How communications should be given**

22.1.1 Any communication given under this Agreement shall be in writing and delivered by hand or prepaid recorded, special delivery or first class post (or air mail post if to an address outside the United Kingdom) to the address of the party who is to receive such communication as may from time to time be specified in writing by the relevant party as its address for the purpose of this Clause 22.

22.1.2 A communication given under or in connection with this Agreement is not valid if it is sent by electronic mail.

### **22.2 Deemed receipt**

22.2.1 A communication shall be deemed to have been received:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by prepaid recorded, special delivery or first class post, on the second business day after the date of posting; or
- (c) if sent by prepaid air mail post, on the fifth business day from the date of posting.

22.2.2 A communication received or deemed to be received in accordance with Clause 22.2.1 on a day which is not a business day or after 5.00pm on any business day shall be deemed to be received at 9.00am on the next business day .

### **22.3 Proving service**

In proving service:

22.3.1 by delivery by hand, it shall be necessary only to produce a receipt for the communication signed by or on behalf of the party due to receive it; or

22.3.2 by post, it shall be necessary only to prove that the notice was contained in an envelope which was properly addressed and posted in accordance with this Clause 22.

### **22.4 Undertaking to notify change of details**

Each party undertakes to notify all of the other parties in accordance with this Clause 22 if the address specified in this Clause 22 is no longer an appropriate address for the service of communications.

## **23. GOVERNING LAW AND JURISDICTION**

23.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

23.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes or claims (including any non-contractual disputes or claims) which may arise out of or in connection with this Agreement, its subject matter or formation (or any documents entered into in accordance with its provisions) or as to the rights and liabilities of the Shareholders in connection



with the Business and their holding of Shares and, for such purposes, irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.

#### **24. VARIATION**

Subject to Clauses 7.2 (Matters reserved for the JV Partners) and 25.2 (Rights of third parties), no amendment or variation of the terms of this Agreement or any documents entered into or delivered in accordance with its provisions shall be effective unless made or confirmed in writing and signed by all of the parties to this Agreement or such document.

#### **25. RIGHTS OF THIRD PARTIES**

25.1 This Agreement does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it except that a person who is a permitted successor to or assignee of the rights of a party to this Agreement is deemed to be a party to this Agreement.

25.2 Any variation, rescission or termination of any term of this Agreement shall only be effective if agreed in writing between all of the JV Partners [and the Company] and no other person's agreement or consent shall be required for such variation, rescission or termination.

#### **26. COUNTERPARTS**

This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same document, and any party may execute this Agreement by signing any one or more of such counterparts.

## SCHEDULE 1

### Details of the Company At Completion

Company number: [TBC]

Date of incorporation: [TBC]

Name: TWAM Enterprises Ltd

Registered office: [TBC]

Share Capital: 100 shares at £1 each

Shareholdings:

Name	Number of Shares Held	Percentage %
Gateshead Council	20	20
Newcastle City Council	20	20
North Tyneside Council	20	20
South Tyneside Council	20	20
The University of Newcastle	20	20

Directors: (1) [insert name], TWAM Director (ex officio); (2) [insert name], Head of Finance, Governance and Resources (ex officio); (3) [insert name of director appointed by the TWAM Strategic Board]; and (4) [insert name(s) of independent directors].

Chair: [insert name of person appointed by the JV Partners]

Secretary: [Insert name], TWAM Finance Director.

Bankers: [Insert name]

Auditors: [Insert name]

Accounting reference date: [TBC]

## SCHEDULE 2

### Form of Deed of Adherence

This Deed is made on 201[●] by [●] [Limited][plc][CN [●]] whose registered office is at [●][of [●]] (**New Shareholder**).

#### BACKGROUND

- (A) By an agreement dated [●] 2017 (**Shareholders' Agreement**) and made between Gateshead Council, Newcastle City Council, North Tyneside Council, South Tyneside Council, The University of Newcastle [and TWAM Enterprises Limited] (together the **Company**) [and to which [ ](**Transferor**) is a party by virtue of a Deed of Adherence dated [●] 201[●]], [●] (**Transferor**) has agreed to sell and transfer to the New Shareholder [number] Shares, conditional upon the New Shareholder entering into this Deed of Adherence.
- (B) The New Shareholder wishes to acquire those Shares, subject to such condition, and to enter into this Deed of Adherence pursuant to the Shareholders' Agreement.

#### THIS DEED WITNESSES:

- (a) The New Shareholder undertakes to and covenants with all the parties to the Shareholders' Agreement from time to time (including any person who enters into a Deed of Adherence pursuant to the Shareholders' Agreement, whether before or after this Deed is entered into) to comply with the provisions of and to perform all the obligations of the Transferor in the Shareholders' Agreement in so far as they remain to be observed and performed, as if the New Shareholder had been an original party to the Shareholders' Agreement in place of the Transferor.
- (b) The Transferor assigns to the New Shareholder its share of its rights, under the Shareholders' Agreement in proportion to the number of shares transferred as against the number of shares retained by the Transferor (if any).
- (c) Except as expressly varied by this Deed, the Shareholders' Agreement shall continue in full force and effect and the Shareholders' Agreement shall be interpreted accordingly.
- (d) The interpretation provisions and the provisions of Clauses 16 (Costs), 20 (Entire agreement), 22 (notices), 23 (Governing law and jurisdiction), 25 (Rights of third parties) and 26 (Counterparts) of the Shareholders' Agreement apply to this Deed as if those provisions had been set out expressly in this Deed which shall take effect from the date set out above.

Executed by the parties as a deed on the date set out above.

### SCHEDULE 3

#### Matters reserved for the Shareholders – Clause 7.2

##### Part 1

**Category A Major Decisions – decisions made on the issues below require the prior approval of all of the JV Partners before the decisions are valid and effective:**

- (a) approval of the Company's Business Plan (including budgets);
- (b) material changes to the Business Plan /adoption of new Business Plan;
- (c) approving changes to the accounting policies/principles of the Company;
- (d) change of name;
- (e) appointing the chair of Directors
- (f) any borrowing by the Company;
- (g) the Company giving any security or guarantees;
- (h) change of corporate structure of the Company;
- (i) amendment of the Articles;
- (j) amendment of the Shareholders' Agreement;
- (k) admission of new Shareholders and/or the issue of new Shares (see below);
- (l) any transfer, disposal or charging of Shares by existing Shareholder;
- (m) creation of any classes of Shares or variation to the same;
- (n) issue of further Shares to any JV Partner;
- (o) re-purchase of Shares from any JV Partner or cancellation of the same (see below);
- (p) establishing any subsidiary of the Company;
- (q) approving the distribution of Company profits, approving and/or amending a distribution policy or the Donations Policy applicable to the Company or any other form of return of capital;
- (r) sale of any of the Company's assets other than in ordinary course of business or with a value in excess of £50,000;
- (s) acquiring assets (including property assets and interests) other than in the ordinary course of business or with a value in excess of £50,000;
- (t) entering into contract or arrangement with a JV Partner (but the decision may only be taken with exclusion of the JV Partner concerned) (excluding Shareholders' Agreement);
- (u) closing or winding up the Company or taking any steps in anticipation of doing so;

- (v) the Company entering into any further Company arrangements, partnerships or other collaborations with a third party or merging or amalgamating with the same;
- (w) the Company expanding its Business activities outside those of the agreed Business Plan or closing down any Business operation;
- (x) the Company terminating any agreement of a material/fundamental nature in the context of its Business or making any material amendment to such agreement;
- (y) removal of any Director;
- (z) initiation and/or settlement of legal proceedings involving amounts in excess of £50,000 (excluding the enforcement of the management contracts referred to below);
- (aa) entering into any contract or commitment of the Company 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; and/or
- (bb) engaging any senior employees or engaging any employee, appointing any consultant, agent or contractor with an annual fee and / or salary in excess of £50,000 or varying the terms of any such engagement which would have such effect.

## **Part 2**

**Category B Major Decisions – decisions made on the issues below require the prior approval of the majority of the JV Partners before the decisions are valid and effective:**

- (a) establishing any pension scheme, share scheme or similar arrangement for employees;
- (b) change of the Company's financial year end;
- (c) change of auditors;
- (d) change of registered office;
- (e) acquisition of shares, debentures or securities (e.g. investment) in any other person or company;
- (f) any related party transaction, arrangement or dealings between the Company and a director(s);
- (g) appointment and variation of bankers and bank mandates;
- (h) transfer of control of the Company's management to any other person;
- (i) any payment of fees, remuneration or other benefits to a director (other than reasonably and properly incurred expenses).

**SCHEDULE 4**

**Initial Business Plan**

**This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.**

IN WITNESS whereof the parties have executed this Agreement on 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

Executed as a deed by THE UNIVERSITY OF  
NEWCASTLE UPON TYNE acting by [insert name] in the  
presence of [insert name] of witness:

Signature (Witness).....

Print Name.....

Address.....

.....

Occupation.....



[Executed as a deed by TWAM Enterprises Ltd acting by  
[insert name] in the presence of insert name of witness:

Signature (Witness).....

Print Name.....

Address.....

.....

Occupation.....]