

DATED

2020

(1) CITY OF YORK COUNCIL

- and -

(2) CITY OF YORK TRADING LIMITED

SHAREHOLDERS AGREEMENT

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THIS AGREEMENT is made on

2020

BETWEEN

- (1) **CITY OF YORK COUNCIL** of West Offices, Station Rise, York YO1 6GA~~The Guildhall, York YO1 9QN (update to West Offices?)~~ (the "**Council**");
- (2) **CITY OF YORK TRADING LIMITED** a company registered in England, (Company No. 07852072) whose registered office is at West Offices, Station Rise, York, YO1 6GA (the "**Company**");

RECITALS

- (A) The Council is a local authority within the meaning of the Local Government Act 2000.
- (B) The Company is a private company established in 2012 and is limited by ordinary shares of £1.00 each. The sole member of the Company is the Council, holding 1 ordinary share.
- (C) The Company is established under the provisions of the Local Government Act 2003 and the 2009 Trading Order with powers to provide and manage the Services to other third parties and the Council.
- (D) The parties entered a Shareholders agreement in 2012 to regulate the manner in which the Company is to be managed, and this Agreement replaces that original agreement.

1 DEFINITIONS AND INTERPRETATION

1.1 The following words and phrases shall, where the context so requires bear the following meanings:

- "2009 Trading Order"** Statutory Instruments 2009 No. 2393 Local Government, England The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009;
- "Act"** means the Companies Act 2006 including any duly enacted modification, re-enactment or amendment thereto, and any statutory instrument derived from it;
- "agreed terms"** means in a form agreed between the parties and initialled by them or their legal representatives

	accordingly;
"Annual Business Plan"	means the annual business plan to be approved by the Board and adopted by the Company each year;
"Articles"	the Articles of Association of the Company as amended from time to time;
"Associate"	means in relation to any company: <ul style="list-style-type: none"> (a) any company of which such company is a subsidiary; (b) any subsidiary of such company; or (c) any other subsidiary of such company's holding company;
"Board"	means the board of directors of the Company as constituted in accordance with this Agreement and the Articles from time to time;
"Business Day"	means a day other than a Saturday, Sunday or a bank holiday in England;
"Business Plan"	means the business plan dated 4 October 2011 prepared by the Council for the purpose of setting out the objectives of the Business, how they are able to be achieved and how related standards are to be met;
"Business"	means the trading business carried out or to be carried out by the Company as set out in the Business Plan or any Annual Business Plan;
"Chairman"	means such Council Non-Executive Director as may from time to time be recommended to be appointed as chairman of the Board by the Shareholder Committee

	and appointed by the Directors;
"Completion"	means completion of this Agreement in accordance with its terms;
"Connected Party"	means in relation to any Shareholder any Associate, employee, director or authorised representative of that Shareholder;
"contribution"	means any contribution made to a surplus of the Company;
"contributor"	means any Shareholder who has contributed to a surplus of the Company;
"Corporate Covenants"	means the covenants set out in Part 1 of Schedule 2;
"Council Covenant"	means the covenant set out in Part 2 of Schedule 2;
"Council Mission Statement"	means the Council's Corporate Strategy Document <u>Plan 2011/12 – 2019-23</u> , as updated, supplemented or replaced from time to time;
"Council Non-Executive Director"	has the meaning given in Clause 7.1.1 of this Agreement;
"CPA"	means the Audit Commission's local authority comprehensive performance assessment regime;
"Directors"	means the directors of the Company appointed in accordance with the terms of this Agreement and the Articles from time to time (each a " Director ");
"Encumbrance"	means any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest (including any created by law), title retention or other security agreement or arrangement or a rental, hire purchase credit sale or other agreement for payment on deferred terms;

"Executive Director"

means a Director who is engaged in the day to day running and administration of the trading business carried out or to be carried out by the Company;

"Indebtedness"

means any obligation for the payment or repayment of money, whether joint or several, actual or contingent, in respect of:-

- (a) moneys borrowed or raised (including the capitalised value of obligations under financial leases and hire purchase agreements and deposits), debit balances at bank accounts and interest and other charges thereon or in respect thereof;
- (b) any liability under any debenture, bond, note, loan stock, commercial paper or other security or under acceptance or documentary credit, bill discounting or note purchase facilities;
- (c) any liability in respect of the deferred acquisition cost of property, assets or services to the extent payable after the time of acquisition or possession thereof by the party liable;
- (d) any guarantee or other assurance against financial loss in respect of any of the indebtedness specified in this definition;
- (e) any cost or liability under any interest rate or currency hedging agreement; and
- (f) any other transaction having the commercial effect of the borrowing or raising of money;

"Independent Non-Executive Director"

has the meaning given in Clause 7.1.2 of this Agreement;

"Law"

means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
- (b) any enforceable community right within the meaning of section 2 (1) European Communities Act 1972 (as saved and modified by the European Union (Withdrawal) Act 2018);
- (c) any applicable guidance, direction or determination with which the Parties or some of them are bound to comply to the extent that the same are published and publicly available or the existence or the contents of them have been notified to the Company by the Shareholders; and
- (d) any applicable judgement of a relevant court of law which changes binding precedent in England and Wales,

in each case in force in England and Wales;

"Memorandum"	means the memorandum of association of the Company;
"Non-Executive Director"	means a Director who is not engaged full time in the day to day running and administration of the Business;
"Ordinary Shares"	means the ordinary shares of one Pound Sterling (£1) each in the capital of the Company
"parties"	means the parties to this Agreement;
"Project"	means any project undertaken by the Company in accordance with the Business Plan or Annual Business Plan as otherwise agreed to be undertaken by the Council;
"Remuneration and Staffing"	means the committee made up exclusively of the Non-Executive Directors, to whom the Board has delegated

Committee”	the responsibility of forming and implementing policy for the remuneration of the Executive Directors, determining targets for performance-related pay or share schemes and determining the total individual remuneration package of each Executive Director including, where appropriate, salary, bonuses, pensions, incentive payments and share schemes;
"s151 Officer"	means the officer appointed by the Council from time to time with responsibility for the proper administration of the Council’s financial affairs pursuant to s151 of the Local Government Act 1972;
"Services Agreement"	means the services agreement entered into between the (1) the Council and (2) the Company in respect of the making available and/or provision of the various business support services and other function related activities by the Council to the Company for the purposes of the Business, as amended by the parties from time to time in accordance with its terms and conditions;
“Services"	means the various business support services and other function related activities to be provided and managed by the Company to other third parties and the Council;
"Shares"	means issued shares in the capital of Company of any class;
"Shareholder"	means any person holding Shares from time to time;
"Shareholder Committee"	means the Shareholder Committee to be appointed in accordance with Clause <u>Error! Reference source not found.</u> of this Agreement; and
"Shareholder Policy"	means the policy developed by the Council detailing the role and responsibilities of the Shareholder Scrutiny Committee as amended from time to time.

- 1.2 This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 1.2.1 The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.
 - 1.2.2 Except where the context expressly requires otherwise, references to clauses, sub-clauses, paragraphs, sub-paragraphs, parts and Schedules are references to clauses, sub-clauses, paragraphs, sub-paragraphs and parts of and Schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement.
 - 1.2.3 The Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules.
 - 1.2.4 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
 - 1.2.5 Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
 - 1.2.6 The language of this Agreement is English. All correspondence, notices, and information shall be in English.
 - 1.2.7 References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same.
 - 1.2.8 References to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.
 - 1.2.9 The words in this Agreement shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed *contra proferentem*.

- 1.2.10 In construing this Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 1.2.11 Reference to a document being in Agreed Form is a reference to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf.
- 1.2.12 Where this Agreement states that an obligation shall be performed "**no later than**" or "**within**" or "**by**" a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
- 1.2.13 A reference to a "**subsidiary**" or "**holding Company**" in this Agreement shall have the meaning given to them respectively in the Act.
- 1.2.14 In the event of conflict between the terms of this Agreement and the Articles, the terms of this Agreement shall prevail and, in the event of such conflict, the Shareholders shall procure at the request of any of the Shareholders such modification to the Articles as shall be necessary to remedy such conflict.
- 1.2.15 A person, being a company, shall be "controlled" by another person if that other person owns a majority of the voting equity of that person or controls the majority of the votes at meeting of the board of directors of that person.

2 COMPLETION

- 2.1 Completion shall take place immediately upon the execution of this Agreement by each of the parties.
- 2.2 At Completion:
- 2.2.1 the Company shall procure that the necessary board and/or Shareholder resolutions are passed to adopt the Articles with immediate effect and enter into this Agreement; and

2.2.2 the Council shall procure that the necessary steps are taken to approve the entry into this Agreement.

3 COVENANTS

3.1 The Company covenants with the Council in the terms of the Corporate Covenants set out in Part 1 of Schedule 2.

3.2 The Council covenants with the Company in the terms of the Council Covenant set out in Part 2 of Schedule 2.

4 FURTHER CAPITAL

4.1 The Council shall not be required to subscribe for any further Shares or to provide any additional funding for the Company.

4.2 If, in the opinion of the Board the Company requires further funding, the Board shall, having consulted the Council, determine how the Company should obtain such additional funding, whether by way of the allotment of further Shares, by obtaining additional debt finance, or such other means as the Board may determine, provided always that the Board shall obtain prior written consent from the Council in accordance with the Corporate Covenants.

5 WARRANTY

5.1 The Company warrants and represents to the Council that it is duly incorporated under the law of England and Wales and has the corporate power to enter into and to exercise its rights and perform its obligations under this Agreement, the Services Agreement and the Articles to which it is a party.

6 PURPOSE AND MANAGEMENT

6.1 The primary purpose of the Company will be to develop the Business in accordance with the Business Plan and each subsequent Annual Business Plan thereafter. At all times during the term of this Agreement:

6.1.1 the Company shall operate policies which are consistent with the Council Mission Statement;

6.1.2 the business of the Company will consist exclusively of the Business;

- 6.1.3 with the exception of those matters reserved to the Council pursuant to the Corporate Covenants, all the business of the Company, other than routine day to day business, shall be undertaken and transacted by the Directors;
- 6.1.4 no payment will be made by the Company and no cheque or payment instruction of the Company shall be signed other than in accordance with the mandates (general or specific) authorised by the Board from time to time; and
- 6.1.5 the Company will conduct the Business and its affairs in a proper and efficient manner and for its own benefit and in accordance with the Business Plan and Annual Business Plan.

7 BOARD AND MEETINGS

- 7.1 The minimum number of Directors shall be ~~five (5)~~six (6), consisting of at least:
- 7.1.1 ~~two (2)~~three (3) elected Members of the Council, appointed by the Council as Non-Executive Directors (the “**Council Non-Executive Directors**”);
- 7.1.2 two (2) Non-Executive Directors who are neither employees of the Company, nor Members or Officers of the Council (the “**Independent Non-Executive Directors**”); and
- 7.1.3 the Managing Director of the Company.
- 7.2 The maximum number of Directors shall be ~~nine (9)~~ten (10), consisting of not more than ~~five (5)~~four (4) Executive Directors (including the Managing Director) and ~~four (4)~~six (6) Non-Executive Directors, no more than three (3) of whom shall be elected Members of the Council (in line with Clauses 7.1.1 and 7.1.2 above).
- 7.3 Any Director who is not an employee of the Company shall be appointed upon the terms and conditions set out in Schedule 3, or such other terms as the Board may agree from time to time.
- 7.4 The quorum for Board meetings shall be three (3), including at least one Non Executive Director. At Board meetings each Director shall have one vote.
- 7.5 The Company will advertise for the recruitment and appointment of Independent Non-Executive Directors and Executive Directors unless appointed by way of a restructure.

Where appropriate, the Board will then create a shortlist of and interview candidates. The Board will submit its final recommendations to Shareholder Committee for approval before the formal appointment of any such Directors by way of a formal Board resolution.

- 7.6 The Company shall procure that the Directors shall appoint the Council Non-Executive Directors recommended by the Shareholder Committee, and the Shareholder Committee shall recommend for appointment a replacement Council Non-Executive Director should the number of Council Non-Executive Directors fall below the number specified in Clause 7.1.
- 7.7 The Company shall procure that the Directors shall appoint the Council Non-Executive Director recommended by the Shareholder Committee as Chairman of the Board. If at any Board meetings the numbers of votes for and against a proposal are equal, the Chairman (or [any](#) other Director chairing the meeting) shall have a casting vote.
- 7.8 The Company shall not remove or purport to remove any Director as a Director of the Company or any of its subsidiaries without the prior written consent of the Shareholder Committee.
- 7.9 Resolutions of the Board shall be determined by a simple majority of votes cast for or against each resolution.
- 7.10 Unless otherwise agreed by all of the Directors, the Directors shall be given not less than ten (10) Business Days' notice (or such other period of notice as may be agreed from time to time by all of the Directors) of each meeting of the Board, specifying the date, time and place of the meeting. All meetings of the Board shall take place at such location as the Board shall agree.
- 7.11 Unless otherwise agreed by the Board:
- 7.11.1 meetings of the Directors shall be held at least monthly on such dates as they may agree (and failing such agreement on such day as the Chairman shall decide);
 - 7.11.2 a telephone conference call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants and at which for all times at that meeting a quorum of the Directors is able to so participate, shall be valid as a meeting of the Directors;
 - 7.11.3 a resolution in writing signed by all the Directors entitled to receive notice of a meeting and vote at the meeting shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held; and

7.11.4 any Director shall by notice to the Company and each other Director be entitled to convene a meeting of the Directors on not less than ten (10) Business Days notice.

7.12 Unless otherwise agreed by all of the Directors, an agenda (and copies of any relevant supporting documents) for each meeting of the Board shall be sent to all Directors not less than five (5) Business Days prior to the relevant meeting and, unless otherwise agreed by all of the Directors, draft minutes of meetings of the Board will be sent to each Director as soon as practicable after the holding of the relevant meeting.

7.13 The Company expressly acknowledges that, where Directors are employees of the Council, those Directors will act in accordance with their legal and general responsibilities as Directors and not (for the avoidance of doubt) in their capacity as employees of the Council.

8 SHAREHOLDER COMMITTEE

8.1 In support of the Company's business objectives, the Council has established a Shareholder Committee. The Shareholder Committee consists of a minimum of two (2) executive members of the Council. The Council may appoint additional non-voting members of the Committee.

8.2 The Shareholder Committee shall appoint one of its members as Chair.

8.3 The role of the Shareholder Committee shall not be operational. The Shareholder Committee shall:

8.3.1 receive and review each Annual Business Plan;

8.3.2 review the financial performance of the Company;

8.3.3 consider the performance by all parties of their respective obligations under this Agreement, the Services Agreement and the Articles;

8.3.4 consider the Directors' response to any queries previously raised by the Shareholder Committee; and

8.3.5 exercise the functions of the Council in relation to the giving of Shareholder consent for the matters set out in paragraph 1.2 of Schedule 2 below, other than consent required by the following paragraphs under Schedule 2 for which the approval of the Council's Executive is required:

8.3.5.1 paragraph 1.2.3 (allotment of further share capital);

- 8.3.5.2 paragraph 1.2.7 (formation of a subsidiary);
- 8.3.5.3 paragraph 1.2.8 (joint ventures);
- 8.3.5.4 paragraph 1.2.10 (amendments to the Articles);
- 8.3.5.5 paragraph 1.2.26 (winding up etc.);
- 8.3.5.6 paragraph 1.2.32 (listing of share capital); and
- 8.3.5.7 paragraph 1.2.34 (negotiations re sale etc.).

- 8.4 The Shareholder Committee will meet with the ~~the~~ Executive Directors and Chairman of the Board (or nominated substitute) at least twice in each year to consider and review the matters set out in Clause 8.3 above.
- 8.5 The Board will send a report at least twice per year to each of the Shareholder Committee. The Directors shall provide all information reasonably required for the Shareholder Committee to conduct an effective review.
- 8.6 The Shareholder Committee will not have any executive authority over the Company, but shall allow the Parties to make representations to one another in relation to (inter alia) the Company's performance under this Agreement, and the Council and the Company's satisfaction of their respective obligations under the Services Agreement.

9 DISTRIBUTIONS

- 9.1 For each accounting reference period of the Company in respect of which its annual audited accounts show that the Company has surplus contributions available, the Company shall, unless the Council otherwise determines, procure that such surplus shall be applied in the following manner:
 - (a) the provision of capital to finance the continuing operations and internal growth of the business of the Company in accordance with an Annual Business Plan;
 - (b) retention of profits consistent with the normal commercial requirements of a business similar to that carried on by the Company;
 - (c) the distribution of any surplus to contributors on the basis of their respective contributions to such surplus.
- 9.2 Any surpluses which remain undistributed may be distributed to the Shareholders as deemed appropriate by the Directors.

10 DATA PROTECTION, FREEDOM OF INFORMATION AND ANTI-BRIBERY

10.1 The Company shall:

10.1.1 comply with its obligations under the Data Protection Act 2018 (including where appropriate giving notification to the Information Commissioner thereunder), the Computer Misuse Act 1990, Human Rights Act 1998, Freedom of Information Act 2000 and the Bribery Act 2010;

10.1.2 provide the Council with such information as the Council may require to satisfy itself that the Company is complying with the obligations referred to in Clause 10.1.1;

10.1.3 provide the Council with all such assistance as the Council may require to enable it to comply with its obligations under the Freedom of Information Act 2000;

10.1.4 notify changes to the registrable particulars of the Company and take such other steps as may be necessary to afford the Council access to information which is required by the Council in connection with any of its statutory duties and responsibilities and for any purpose connected with this Agreement.

10.2 Neither party shall knowingly do anything which places the other in breach of its respective obligations under the Computer Misuse Act 1990, Data Protection Act 2018, Human Rights Act 1998, the Freedom of Information Act 2000 or the Bribery Act 2010.

11 CONFIDENTIALITY

11.1 For the purposes of this Clause 11, "**Confidential Information**" means all information (whether marked as confidential or not) of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party (the "**Disclosing Party**") to another party (the "**Receiving Party**") whether before or after the date of this Agreement including, without limitation, any information relating to the Disclosing Party's, operations, processes, plans or intentions, know-how, design rights, trade secrets, market opportunities and business affairs.

11.2 During the term of this Agreement and after termination or expiry of the Agreement for any reason whatsoever, the Receiving Party shall:

- 11.2.1 keep Confidential Information confidential;
 - 11.2.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party or in accordance with this Agreement; and
 - 11.2.3 not use Confidential Information for any purpose other than the performance of its obligations under this Agreement and the other Project Documents
- 11.3 During the term of this Agreement, the Receiving Party may disclose Confidential Information to its employees, contractors, sub-contractors, agents and advisers under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Agreement, or any other Project Document and may disclose Confidential Information to its funders, prospective funders, prospective Shareholders of the Company or prospective purchasers of its assets under conditions of confidentiality. In each case the permitted recipient of such Confidential Information shall be known as a "**Recipient**".
- 11.4 The Receiving Party shall so far as practicable procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient were a party to this Agreement.
- 11.5 The obligations contained in Clauses 11.2 and 11.4 shall not apply to any Confidential Information which:
- 11.5.1 is at the date of this Agreement in, or at any time after the date of this Agreement comes into, the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;
 - 11.5.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party;
 - 11.5.3 subsequently comes lawfully into the possession of the Receiving Party from a third party who is not bound by duties of confidentiality; or
 - 11.5.4 is required by Law or a regulatory authority or body or any Government department or by the Project Documents to be disclosed.

12 COMPLIANCE WITH LAWS

- 12.1 The parties agree that they shall not use the trading powers pursuant to the Local Government Act 2003 to authorise trading in anything or service which the Council is statutorily obliged to do or provide in relation to any person.
- 12.2 Nothing in this Agreement shall be deemed to, or shall require the Council to fetter its discretion in relation to any matter whatsoever.
- 12.3 The Company will keep proper books of account and make true and complete entries of all its dealings and transactions of and in relation to its Business.
- 12.4 The Company shall not carry out any activity which would or could render the holding of Shares by the Council unlawful provided that where a proposed change of Law would render such shareholding unlawful the Council will use its reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares; and
- 12.5 The Company will if it requires any approval, consent or licence for the carrying on of its business in the places, and in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to maintain the same in full force and effect.

13 GOVERNING LAW AND JURISDICTION

- 13.1 This Agreement shall be subject to the laws of England and Wales.
- 13.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

14 FURTHER ASSURANCE

Each party will execute any document and do any thing and use all reasonable endeavours to procure that any third party (where necessary) executes any deed or document and does any thing reasonably necessary to implement the terms of this Agreement.

15 COSTS

- 15.1 Each party shall bear its own costs in relation to the drafting, negotiating and implementation of this Agreement, the Services Agreement and the Articles.

16 DURATION

- 16.1 Forthwith upon it ceasing to hold any Shares the Council shall cease to have any rights or obligations under this Agreement save that its obligations under Clause 11(**Confidentiality**) shall not be affected.
- 16.2 Save as provided in Clauses 16.1, 16.4 and 16.5 this Agreement shall continue in full force and effect until the earliest of the following dates:
- 16.2.1 the date on which an effective resolution is passed or a binding order is made for the winding-up of the Company; or
- 16.2.2 the date on which the parties agree in writing to terminate this Agreement.
- 16.3 In the event of a termination occurring other than in accordance with Clause 16.2.2, the Company shall (if not already in liquidation) be placed into voluntary liquidation and after payment of liabilities, its assets shall be distributed to in the same proportions as the members holdings of Shares at the time of the determination.
- 16.4 The provisions of this Agreement shall nevertheless continue to bind the parties after termination of this Agreement to such extent and for so long as may be necessary to give effect to the rights and obligations embodied herein.
- 16.5 Nothing in this Agreement shall operate so as to prejudice any rights which one party may have against another and which may have accrued before its termination.

17 ASSIGNMENT

- 17.1 This Agreement, shall be binding on, and shall ensure to the benefit of, each of the parties and their respective successors.
- 17.2 No party shall assign, transfer, sub-contract or otherwise dispose of any interest in this Agreement.

18 ENTIRE AGREEMENT

Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject of this Agreement.

19 NOTICES

- 19.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, leaving the same at the addresses set out for each party at the beginning of this Agreement.
- 19.2 Any party to this Agreement may change its nominated address or facsimile number by prior notice to the other parties.
- 19.3 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- 19.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9:00am and 4:00pm; or
- 19.3.2 by 11:00am on the next following Business Day, if sent after 4:00pm, on a Business Day but before 9:00am on that next following Business Day.

20 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

21 WAIVER

- 21.1 No exercise or failure to exercise or delay by either party in exercising any right, power or remedy under this Agreement shall constitute a waiver by that party of any such other right, power or remedy.
- 21.2 If there is any conflict between the provisions of this Agreement and the Articles, the terms of this Agreement shall prevail.

22 SEVERABILITY

22.1 If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

23 NO AGENCY

23.1 Nothing in this Agreement shall be construed as creating a partnership.

23.2 No party shall be deemed to be, an agent of any other party and no party shall hold itself out as having authority or power to bind any other party in any way.

24 AMENDMENTS

This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of the parties.

25 TERMINATION OF PREVIOUS AGREEMENT

The Shareholders Agreement of 2012, which this Agreement replaces is hereby revoked subject to the savings in Clause 16.4 of that Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first above written

SIGNED (but not delivered until the date hereof) as a
DEED by **CITY OF YORK TRADING LIMITED** acting by

a director, in the presence of:

WITNESS:

Signature:

Address:

.....

.....

Occupation:

SIGNED (but not delivered until the date hereof) as a
DEED by **CITY OF YORK COUNCIL** by affixing the
common seal

in the presence of a duly authorised officer:

Signature:

Print Name:

Occupation:

SCHEDULE 1

Details of the Company

Name	City of York Trading Limited
Date of incorporation	18 November 2011
Place of incorporation	England and Wales
Company number	07852072
Accounting reference date	30 March

SCHEDULE 2

Part 1 - Corporate Covenants

1 SHAREHOLDER CONSENTS

- 1.1 The Company undertakes to the Council that it shall not, (save as set out in or as required by this Agreement) without the prior written consent of the Council and/or approval of the Shareholder Committee carry out any of the matters referred to in paragraph 1.2 of this Schedule 2.
- 1.2 The matters referred to in paragraph 1.2 of this Schedule 2 are:
- 1.2.1 making any substantial changes to any Annual Business Plan, such changes being to the structure of the Company and/or the Business, and/or the transfer of council employees to or from the Company (whether or not any such transfer is subject to the Transfer of Undertakings (Protection of Employment) Regulations 2006 or otherwise);
 - 1.2.2 the approval of any Annual Business Plan;
 - 1.2.3 the allotment of any further share capital of the Company;
 - 1.2.4 a variation of any rights, including class rights, attaching to any shares of the Company;
 - 1.2.5 the re-purchase or cancellation by the Company of any Shares, or the reduction of the amount (if any) standing to the credit of its share premium account or capital redemption reserve (if any) or any other reserve of the Company;
 - 1.2.6 the re-purchase, repayment, redemption or cancellation of any loan stock issued by any company controlled by the Company other than in accordance with their terms;
 - 1.2.7 the formation of any subsidiary undertaking;
 - 1.2.8 the entering into of any joint venture agreement with any third party;
 - 1.2.9 acquire any interest in the share capital or instruments convertible into share capital of any other company or body corporate;
 - 1.2.10 amendments to the Articles;

- 1.2.11 borrowing any money or obtain any advance or credit in any form other than normal trade credit or other than on normal banking terms for unsecured overdraft facilities or vary the terms and conditions of any borrowings or bank mandates;
- 1.2.12 entering into any material contract or arrangement outside the ordinary course of its business;
- 1.2.13 selling, transfer, lease, licence or in any other way dispose of any of its assets otherwise than in the ordinary course of its business;
- 1.2.14 factor or assign any of its book debts;
- 1.2.15 the making of any political donations or commencing any legal or arbitration proceedings (other than in the ordinary course of business);
- 1.2.16 pay any remuneration or expenses to any person other than as proper remuneration for work done or services provided as proper reimbursement for expenses incurred in connection with its business;
- 1.2.17 making any claim, disclaimer, surrender, election or consent of a material nature for tax purposes;
- 1.2.18 acquiring or making any investment in another company or business or incorporate any subsidiary;
- 1.2.19 creating or allowing to subsist any Encumbrance over any of its assets;
- 1.2.20 giving any guarantee, indemnity or security in respect of the obligations of any other person;
- 1.2.21 changing the accounting policies of the Company;
- 1.2.22 changing the accounting reference date of the Company;
- 1.2.23 entering into or varying any contract or arrangement (whether legally binding or not) with any of its Directors or any Shareholder or with any Associate of a Director or Shareholder;
- 1.2.24 the devolution or transfer of management control to persons outside the Board save as set out in the Business Plan or an Annual Business Plan;

- 1.2.25 the appointment or dismissal of any Executive Director, or the Council Non-Executive Director who acts as Chairman of the Board, or the amendment of any rights to appoint certain numbers of Directors;
- 1.2.26 the commencement of any winding-up or dissolution or of the appointment of any liquidator, administrator or administrative receiver of the Company or any of its assets unless it shall have become insolvent, and no party shall present or cause to be presented or allow any act which would result in the winding up or the presentation of any petition for the winding up of the Company;
- 1.2.27 vary the emoluments of any of its Directors or of any Associate of a Director, subject to both the prior written approval of the Shareholder Committee and the recommendations of the Company's Remuneration and Staffing Committee;
- 1.2.28 any change in the status of the Company as a limited liability company;
- 1.2.29 acquiring the assets and/or understakings of any other business entity;
- 1.2.30 lending of any money to any person (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit to any person (except to its customers in the normal course of business);
- 1.2.31 the capitalisation of profits or reserves of the Company;
- 1.2.32 a listing of the Company's entire share capital;
- 1.2.33 the Company participating in any activity which is detrimental to and/or incompatible with the Council Mission Statement;
- 1.2.34 enter into any negotiations concerning:
- 1.2.34.1 the sale or issue of any shares of the Company or any of its subsidiaries;
 - 1.2.34.2 the sale of any material part of the business, undertaking or assets of the Company, or any of its subsidiaries; and/or
 - 1.2.34.3 the refinancing of the Company or any of its subsidiaries.

2 POSITIVE OBLIGATIONS

2.1 The Company undertakes to the Council that:-

2.1.1 any expansion development or evolution of the Business will only be effected through the Company or a wholly owned subsidiary of the Company;

2.1.2 the Company shall, and shall procure that its subsidiaries shall, insure with a reputable insurance office and keep so insured at all times:-

2.1.2.1 all their respective insurable assets and undertakings which a prudent company would insure against loss (including loss of profits or business interruption), damage and such other risks as a prudent company would insure against; and

2.1.2.2 all their respective insurable potential liabilities in respect of which a prudent company would insure; and

2.1.2.3 all their respective directors and officers in respect of any potential liability arising in respect of them in their personal capacity;

all in such manner and to such extent as shall be in accordance with good commercial practice with regard to assets and liabilities of a like character and in comparable circumstances;

2.1.3 the Company shall observe, perform and comply with the terms of this Agreement, the Services Agreement and the Articles,

2.1.4 the Company shall adopt and maintain environmentally friendly working practices.

3 **MANAGEMENT**

3.1 The Company shall procure that all decisions made by or on behalf of the Company or any of its subsidiaries which are material to the Company and its subsidiaries as a whole are approved either at a properly convened meeting of the Board or by a resolution in writing signed by or otherwise approved in writing by all of the Directors of the Company.

4 **INFORMATION OBLIGATIONS**

4.1 The Company shall:-

4.1.1 keep the Council informed of material matters relating to the progress of its Business and that of every subsidiary of the Company to such extent and in such form and detail as the Council may from time to time reasonably require and shall

supply to the Council such written particulars of any matters concerned with and arising out of the activities of the Company and any of its subsidiaries as the Council may from time to time reasonably require; and

4.1.2 without limiting the generality of paragraph 4.1.1 of this Schedule above, deliver forthwith upon the same becoming available and not in any event later than 120 days after the end of each relevant financial year to the Council copies of the audited profit and loss accounts and audited balance sheets of the Company and any of its subsidiaries and the audited consolidated profit and loss account and the audited consolidated balance sheet of the Company and its subsidiaries all in respect of each financial year of the Company and any of its subsidiaries.

5 PROPERTY OBLIGATIONS

The Company shall advise the Council forthwith upon the Company or any of its subsidiaries becoming aware of the same of any discovery on any premises owned, leased, occupied or controlled by the Company or any of its subsidiaries of any substance capable of causing pollution of the environment in circumstances where such pollution is likely to materially adversely affect the value of such premises or the businesses of any of the Company and its subsidiaries.

SCHEDULE 2

Part 2 – Council Covenant

- 1 The Council undertakes to the Company other than that it will generally act in a manner that will promote the Business and the best interests of the Company and act at all times in good faith towards the Company, subject at all times to its statutory and common law duties.

SCHEDULE 3

Letters of Appointment of Nominated Directors

Dear

CITY OF YORK TRADING LIMITED ("Company")

1. This letter contains the terms which we have discussed and agreed for your appointment as a non-executive director of the Company, as the nominated director of City of York Trading Limited.
2. You will be expected to attend the Board Meetings and General Meetings of the Company. You will receive details of all such meetings in advance.
3. You will not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions, or affairs of the Company or any client, customer or supplier of the Company which comes to your knowledge during the course of this appointment and will comply with the provisions of clause 11 (**Confidentiality**) of the Shareholders Agreement as if it applied to you. You will, however, be entitled to disclose information to the Shareholder appointing as permitted under the Shareholders Agreement.
4. The appointment will automatically cease in relation to the Company in the event that you resign as a director or are removed from office in relation to the Company. In particular, in signing this letter, you acknowledge that your office is subject to the terms of the Shareholders' Agreement and the Company's Articles of Association (the "**Articles**") and may be determined as permitted under the terms of the Shareholders' Agreement and the Articles and that such termination will not give rise to any claim against the Company whatsoever.
5. On termination of your appointment, you agree that you will promptly return to the Company Secretary all papers and property of the Company which are in your possession or under your control.

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy.

Yours sincerely

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SIGNATORY

I agree to and acknowledge the terms and conditions set out above relating to my appointment as non-executive director of City of York Trading Limited.

Signed

Dated