

The City of Edinburgh Council

10am, Thursday, 20 November 2014

Edinburgh International Conference Centre – Shareholders' Agreement

Item number	8.3
Report number	
Executive/routine	
Wards	All

Executive summary

Approval is sought to enter into a Shareholders' Agreement between the Council, Scottish Enterprise and Edinburgh International Conference Centre Limited in order to improve the governance arrangements in relation to the Edinburgh International Conference Centre.

Links

Coalition pledges
Council outcomes
Single Outcome Agreement

Edinburgh International Conference Centre – Shareholders' Agreement

Recommendations

- 1.1 To approve the entering into of a shareholders' agreement between the Council ("CEC"), Scottish Enterprise ("SE") and Edinburgh Internal Conference Centre Limited ("EICCL").
- 1.2 To grant delegated authority in favour of the Director of Corporate Governance to enter into the Shareholders' Agreement on behalf of CEC with such minor amendments as he may consider appropriate and to take all such other actions on behalf of CEC as may be necessary or desirable to implement any ancillary arrangements in relation to the Shareholders' Agreement.

Background

- 2.1 The EICC is owned by CEC but is operated by EICCL.
- 2.2 CEC is the majority shareholder in EICCL. SE has a minor shareholding with no voting rights attached. CEC officers have been in discussions with EICCL in order to agree a shareholders' agreement (the "Shareholders' Agreement") between the parties to update and improve governance arrangements in relation to the EICC in accordance with the Council's decision of 13 December 2012
- 2.3 Following a period of negotiation between CEC and EICC, the parties have reached agreement on the terms of the Shareholders' Agreement. A final draft of the proposed Shareholders' Agreement is set out in the appendix to this report.

Main report

- 3.1 The Shareholders' Agreement includes appropriate provisions to put in place the governance arrangements agreed by Council in December 2012.
- 3.2 This report seeks approval of the terms of the Shareholders' Agreement and delegated authority in favour of the Director of Corporate Governance to enter into the Shareholders' Agreement on behalf of CEC with such minor amendments as he may consider appropriate and to take all such other actions

on behalf of CEC as may be necessary or desirable to implement any ancillary arrangements in relation to the Shareholders' Agreement.

Measures of success

4.1 That the EICC contributes effectively to the delivery of the Council's outcomes.

Financial impact

5.1 There is no specific financial implication arising from this report.

Risk, policy, compliance and governance impact

6.1 The terms of the Shareholders' Agreement provide for more robust and accountable governance arrangements for EIC

Equalities impact

7.1 There is no impact on equalities issues arising from this report.

Sustainability impact

8.1 There is no impact on sustainability arising from this report.

Consultation and engagement

9.1 Not applicable.

Background reading/external references

10.1 None.

Alastair D Maclean

Director of Corporate Governance

Contact: Kevin McKee, Interim Legal Manager

E-mail: kevin.mckee@edinburgh.gov.uk | Tel: 0131 529 3906

Links

Coalition pledges	P15 – Work with public organisations, the private sector and social enterprise to promote Edinburgh to investors
Council outcomes	CO7 – Edinburgh draws new investment in development and regeneration CO8 – Edinburgh’s economy creates and sustains job opportunities
Single Outcome Agreement	SO1 – Edinburgh’s economy delivers increased investment, jobs and opportunities for all
Appendices	Final draft of Shareholders’ Agreement

SHAREHOLDERS' AGREEMENT

BETWEEN

EDINBURGH INTERNATIONAL CONFERENCE CENTRE LIMITED

SCOTTISH ENTERPRISE

AND

THE CITY OF EDINBURGH COUNCIL

DRAFT

CONTENTS

Clause	Page No
1. Definitions and interpretation	1
2. Business of the Company	3
3. Directors	4
4. Board representation	4
5. Observer rights	4
6. Business Plan, accounts, financial and other information	5
7. Undertakings	7
8. Confidentiality	8
9. Announcements	9
10. Waiver	9
11. Notices	9
12. Conflict with the Articles	10
13. Unlawful fetter on the Company's statutory powers	10
14. General	10
15. Governing law and jurisdiction	11
SCHEDULE	13
Part 1 Consent Matters	13
Part 2 Schedule of Notifiable Interests	15
Part 3 Director's Undertaking	16

AGREEMENT

BETWEEN

- 1) **EDINBURGH INTERNATIONAL CONFERENCE CENTRE LIMITED**, (registered number SC131773) whose registered office is at Conference House, 152 Morrison Street, Edinburgh EH3 8EB (the "**Company**");
- 2) **SCOTTISH ENTERPRISE**, constituted under the Enterprise and New Towns (Scotland) Act 1990 and having its principal office at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ ("**SE**");

and

- 3) **THE CITY OF EDINBURGH COUNCIL**, constituted under the Local Government, etc (Scotland) Act 1994 and having its principal office at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG (the "**Council**").

BACKGROUND

- (A) The Council and SE are shareholders in the Company.
- (B) The Council requires that all companies in which it has an interest are monitored on its behalf.
- (C) The Parties agree that the terms set out in this Agreement shall govern the relationship between the Parties.

AGREED TERMS

1. Definitions and interpretation

1.1 In this Agreement the following expressions have the following meanings:

"Adequate Procedures"	means 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;
"Agreement"	means this agreement including the Schedule;
"Annual Budget"	means the annual budget prepared for each Financial Year in accordance with clause 6 and adopted by the Company in accordance with this Agreement;
"Articles of Association"	means the articles of association of the Company from time to time;
"Auditors"	means the auditors of the Company from time to time;
"Board"	means the Directors, or such of those Directors present at a duly convened meeting of the Directors (or committee of the board of directors) at which a quorum is present in accordance with the Articles of Association;
"Business"	means the business as described in clause 2.1 and such other business as the Council agree in writing from time to time in accordance with this Agreement;

"Business Day"	means any day, other than a Saturday or a Sunday, on which banks are open in Edinburgh for normal banking business;
"Business Plan"	means the business plan prepared in accordance with clause 6 and adopted by the Company in accordance with this Agreement;
"Centre"	means the Edinburgh International Conference Centre, 150 Morrison Street, Edinburgh EH3 8EB as such may be altered, extended and/or refurbished from time to time;
"Confidential Information"	<p>means all information not publicly known, used in or otherwise relating to the Business or any other Party, including information obtained by a Party as a result of negotiating and entering into or performing this Agreement, whether or not labelled or designated as confidential including:</p> <ul style="list-style-type: none"> (a) any information relating to the other Party's business, finances, operations, products and services, marketing affairs and opportunities, customers and suppliers, plans, inventions, processes, trade secrets, know how, design rights, software and Intellectual Property Rights or any other information of a confidential or proprietary nature; (b) any information designated as confidential information by the other whether belonging to that Party or a third party; and (c) the subject matter and provisions of this Agreement and all other documents entered into pursuant to this Agreement;
"Councillor"	means an elected member of the Council;
"Councillor Directors"	means, for so long as they are Directors, the three Councillors appointed as Directors of the Board in pursuance of clause 3.1 and any Councillor appointed as a replacement;
"Director"	means any duly appointed director of the Company for the time being or a duly appointed alternate of any Director, including a Councillor 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, assignation, hypothecation, security interest, title retention or any other security agreement or arrangement having similar effect;
"Financial Year"	means any accounting reference period of the Company ending on 31 December each year, of whatever duration;
"Observer"	means an individual appointed pursuant to clause 5.1;
"Party"	means a party to this Agreement and "Parties" shall be construed accordingly;
"Quarter Days"	means 1 August, 1 November, 1 February and 1 May in each year or such other dates as may be agreed in writing between the Company and the Council;
"Schedule"	means the schedule, of three parts, to this Agreement;
"Subsidiary"	has the meaning given in section 1159 of the Companies Act 2006 provided that for the purpose of that section a

company shall be deemed to be a member of another when its shares in the other company are registered in the name of another person either in connection with the taking of security or as a nominee;

"Subsidiary Undertaking" has the meaning given in section 1162 of the Companies Act 2006; and

"Territory" means Scotland.

- 1.2 References to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time prior to the date of this Agreement and any subordinate legislation made under the relevant statute or statutory provision (as so modified, replaced, re-enacted or consolidated) in force prior to the date of this Agreement.
- 1.3 References to all genders include references to each other gender and references to the singular include the plural and vice versa.
- 1.4 References to a person include references to any individual (including that individual's legal personal representatives), firm, company, corporation or other body corporate, government, state, local authority or agency of a state or any unincorporated association, joint venture or partnership (whether or not having a separate legal personality).
- 1.5 The clause and Schedule headings in this Agreement do not affect its interpretation.
- 1.6 References to clauses and the Schedule are to clauses in and the Schedule to this Agreement and references to paragraphs are to paragraphs in the part of the Schedule in which such references appear.
- 1.7 The Schedule forms part of this Agreement and has the same force and effect as if set out in the body of this Agreement.
- 1.8 Any phrase introduced by the term "include", "including", "in particular", "other", or any similar general term is not limited by any particular examples preceding or following those general terms.
- 1.9 In construing this Agreement the *contra proferentem* rule shall not apply and accordingly wording shall not be given a restricted meaning by operation of such rule.
- 1.10 Unless otherwise expressly provided, all covenants, agreements, undertakings, indemnities, representations and warranties in this Agreement by more than one person are entered into, given or made by such persons severally.
- 1.11 A reference to a "notice" is to a notice in writing signed by or on behalf of the person sending it and given in accordance with clause 11.
- 1.12 Any request for consent of the Council in accordance with this Agreement shall be made to the Council's Director of Corporate Governance (or equivalent from time to time), whom failing the Council's Head of Finance (or equivalent from time to time).

2. Business of the Company

- 2.1 Subject to the consent matters referred to in clause 7.1.4 and set out in Part 1 of the Schedule, the business of the Company shall be:
 - 2.1.1 to procure the successful and continued operation of the Centre as a venue for conferences, exhibitions, trade shows, annual general meetings, cultural and sporting events, awards ceremonies and other such events in a global market place with international and national customers so as to maximise the economic benefit to the City of Edinburgh;
 - 2.1.2 to insure, maintain and upgrade the Centre from time to time as necessary to carry on its business; and
 - 2.1.3 to operate on a prudent commercial basis in accordance with the Business Plan.

No other material business shall be carried on by the Company without the prior written consent of the Council.

2.2 The Company shall not carry on the Business outwith the Territory or such other place as the Board may determine without the prior written consent of the Council.

3. Directors

3.1 The Board shall include three Councillors who will be Directors known as Councillor Directors.

3.2 The Councillor Directors will comprise two elected members from the administration group(s) and one elected member from an opposition group.

3.3 The Board shall include the Chief Executive of the Company and the Financial Director of the Company.

3.4 The Board shall include two non-executive directors with relevant experience of operating a business similar in size and scope to the Company.

3.5 The chairman of the Board shall be a Councillor Director.

3.6 The quorum for Board meetings shall be two Directors.

3.7 The Company shall procure that:

3.7.1 each Director completes, signs and delivers to the Company and the Council as soon as reasonably practicable following the date of this Agreement, or, if later, the date of their appointment to the Board, an undertaking in the form set out in Part 3 of the Schedule;

3.7.2 all material decisions relating to the Company will be taken at Board meetings;

3.7.3 the Board meets as often as it sees fit and, in any event, not less than 6 times every year; and

3.7.4 unless the Council agrees otherwise:

(i) no material business shall be transacted at any Board meeting (or meeting of a committee of the Board) save for that specified in the agenda referred to in clause 3.8.1; and

(ii) each such meeting shall be held in the United Kingdom.

3.8 The Company shall send to the Directors, the Council and the Observer:

3.8.1 not less than 5 Business Days' advance notice of each meeting of the Board and of each committee of the Board, such notice to be accompanied by a written agenda specifying the business to be transacted at such meeting together with all papers to be circulated or presented to the same; and

3.8.2 as soon as practicable after each such meeting a copy of the minutes of that meeting.

4. Board representation

4.1 For so long as the Council holds any shares in the Company, the Council shall be entitled by notice in writing to the Company to appoint the Councillor Directors by notice in writing to the Company and to remove any Councillor Director and appoint another person in this place.

4.2 Any such appointment or removal shall take effect at and from the time when the notice is received at the registered office of the Company or produced to a Board meeting. No Party (other than the Council) shall do anything to seek to remove any Councillor Director.

4.3 All other appointments of officers and termination of appointments of officers shall be in accordance with the Articles of Association.

5. Observer rights

5.1 In addition to the right to appoint Councillor Directors, for so long as the Council holds any shares in the Company the Council may by notice in writing to the Company appoint one

person as an Observer and remove any such person so appointed and appoint another person in their place.

5.2 Any such appointment or removal shall take effect at and from the time when the notice is received at the registered office of the Company or produced to a Board meeting. The Council confirms that the Observer will not also be a Director of the Company.

5.3 The Parties agree that any person appointed as an Observer pursuant to this clause 5 shall:

5.3.1 be entitled to attend and speak, but not vote, at all meetings of Directors or of committees of Directors of the Company; and

5.3.2 be at liberty from time to time to make full disclosure to the officials and members of the Council of any information relating to the Company provided that they shall only be entitled to provide copies of documents containing commercially sensitive information and/or discuss matters which are commercially sensitive with the Chief Executive and/or Director of Corporate Governance of the Council.

6. Business Plan, accounts, financial and other information

6.1 The Company shall and shall procure that its Subsidiaries and Subsidiary Undertakings shall, at all times, maintain accurate and complete accounting and other financial records in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable to the Company.

6.2 The Company shall and shall procure that its Subsidiaries and Subsidiary Undertakings shall produce:

6.2.1 quarterly financial accounts, including a profit and loss account for the period to date and a forecast for the current Financial Year, balance sheets, cash flow statements and such other trading and financial information as the Council may reasonably require as well as a comparison against the previous year's information for the relevant quarter and against the Annual Budget, together with an explanation for any material variances to forecasts and shall send a copy to the Council no later than 30 days after each Quarter Day and the Board shall consider such information at its following meeting;

6.2.2 unaudited accounts of the Company and its Subsidiaries comprising the individual accounts of the Company and its Subsidiaries and in the case of the Company the consolidated group accounts of the Company and shall send a copy to the Council for their comments as soon as reasonably practicable and in any event within 12 weeks of the end of the accounting period to which they relate; and

6.2.3 audited accounts of the Company and its subsidiaries comprising the individual accounts of the Company and its Subsidiaries and in the case of the Company the consolidated group accounts of the Company and its Subsidiaries and shall send a copy to the Council for their comments within 5 months of the end of the accounting period to which they relate. Such accounts shall be audited by a firm of reputable accountants and prepared to at least the standard applicable to medium sized companies within the United Kingdom.

6.3 The Company shall prepare an Annual Budget for the Company and its Subsidiaries and Subsidiary Undertakings in respect of each Financial Year and a Business Plan of the Company and its Subsidiaries and Subsidiary Undertakings once every calendar year, looking forward for at least three years and no more than five years, in each case on an individual and consolidated basis, in accordance with this clause 6.

6.4 Each Annual Budget shall be consistent with the Business Plan and shall include:

6.4.1 a summary of the Company's and its Subsidiaries' and Subsidiary Undertakings' business objectives for the forthcoming Financial Year including specific financial and non-financial KPIs together with appropriate measures of achievement against which performance of the Company and the Board will be assessed;

6.4.2 forecast profit and loss;

6.4.3 forecast revenue projection;

6.4.4 balance sheet and cash-flow statement on a phased monthly basis;

- 6.4.5 an operating budget including estimated capital expenditure and working capital on a phased monthly basis; and
 - 6.4.6 a financial report which includes an analysis of the results of the Company and its Subsidiaries and Subsidiary Undertakings for the previous Financial Year compared with the annual budget for that Financial Year, identifying variations in sales, revenues, costs and other material items.
- 6.5 Each Business Plan shall, unless otherwise agreed by the Council in writing, include:
- 6.5.1 a forecast profit and loss;
 - 6.5.2 a forecast revenue projection;
 - 6.5.3 a balance sheet and cash-flow statement on an annual basis
 - 6.5.4 a review of projected business and capital investment; and
 - 6.5.5 a summary of the Company's business objectives for at least three financial years following the reference year of the Business Plan.
- 6.6 Each Annual Budget shall be approved by the Board prior to the commencement of the Financial Year to which it relates and the Company shall consult with the Council in a reasonable and proper manner in drawing up the Annual Budget before approval. Once approved by the Board the Annual Budget shall be circulated to the Council for its information.
- 6.7 Each Business Plan shall be submitted to the Board in draft and thereafter shall be circulated to the Council not later than 30 days prior to the commencement of the first Financial Year to which it relates.
- 6.8 The Council shall have 30 days from receipt of the draft pursuant to clause 6.7 (the "**Review Period**") to review the Business Plan. The Council shall be entitled to indicate in writing its non-approval of a Business Plan. If before the expiry of the Review Period the Council indicates in writing its non-approval of a Business Plan or the Council's approval to the Business Plan is not provided by the end of the Review Period, the Company shall continue to trade in the ordinary course without material interruption but in a manner which is most likely to continue the status quo without materially deviating from the previous Business Plan until such time as a new Business Plan is approved by the Council in writing.
- 6.9 The Company shall:
- 6.9.1 grant the Council, the Councillor Directors and the Observer access to its accounts, books, records, senior employees and Directors upon reasonable notice and supply the Council with all information relating to the business affairs and financial position of the Company and its Subsidiaries and Subsidiary Undertakings as the Council may from time to time reasonably require;
 - 6.9.2 keep the Council informed of any material developments in the Business from time to time;
 - 6.9.3 supply the Council with a copy of a report prepared by the Company in respect of each Financial Year, demonstrating the implementation by the Company and its Subsidiaries and Subsidiary Undertakings of Adequate Procedures, such report to be provided within 30 Business Days of the end of the Financial Year to which it relates; and
 - 6.9.4 supply the Council with a report on the performance of the Company for the previous twelve month period, including summary information in relation to achievement of all KPIs. This report is to be provided within 30 Business Days of the end of the Financial Year to which it relates and shall be submitted by the Council to its Finance and Resources Committee for review.
- 6.10 If any information is not provided to the Council in accordance with any of the provisions (including the time for delivery) of clauses 6.1 to 6.9.3, then the Council may (after having given the Company not less than 5 Business Days to comply with such provisions) on behalf of the Company appoint a firm of accountants (or other relevant advisors) to prepare the relevant information and the Company agrees to provide all information reasonably required by such accountants (or other relevant advisors) for such purpose and to grant such accountants (or other relevant advisors) access to the accounts, books, records and

employees (if any) of the Company upon reasonable notice. The fees, costs and expenses (together with all value added tax on them) of the accountants (or other relevant advisors) shall be borne by the Company, which shall (if requested by the Council) reimburse the Council for them (on a full indemnity basis).

- 6.11 The Company acknowledges that the Council is subject to certain external audit requirements and shall give any auditors appointed in relation to the Council access to all information and records reasonably requested by them for such purpose from time to time.
- 6.12 Without prejudice to the foregoing generality, the Company, to the extent reasonable for a business of similar size and scope to the Company, shall and shall procure that its Subsidiaries and Subsidiary Undertakings adopt and comply with the Council's policies on:
- 6.12.1 the living wage;
 - 6.12.2 the Edinburgh guarantee scheme;
 - 6.12.3 modern apprenticeships;
 - 6.12.4 sustainability;
 - 6.12.5 social justice;
 - 6.12.6 economic well being; and
 - 6.12.7 environmental good stewardship,
- the details of which policies the Company shall be deemed to be aware.

7. Undertakings

- 7.1 The Company undertakes to the Council (to the extent it is legally able to do so) that it shall and shall procure that its Subsidiaries and Subsidiary Undertakings shall:
- 7.1.1 comply with the terms of this Agreement;
 - 7.1.2 conduct its business in accordance with all applicable legal and administrative requirements, the Annual Budget, the Business Plan and good business practice in the ordinary course of its business so as to seek to maintain its business as a going concern;
 - 7.1.3 ensure that it files all statutory returns on a timely basis;
 - 7.1.4 ensure that, save with the prior written consent of the Council, it shall not effect or propose any of the matters set out in Part 1 of the Schedule;
 - 7.1.5 take out and maintain insurances satisfactory to the Council and, on request, to supply the Council with a schedule of such insurances;
 - 7.1.6 if so requested by the Council, enforce, or procure to be enforced, to their full extent, all rights and remedies available to the Company under this Agreement and the Articles of Association;
 - 7.1.7 if so requested by the Council, enforce or procure to be enforced, to their full extent, the obligations of employees under their service or employment agreements;
 - 7.1.8 as soon as reasonably possible after becoming aware of the same, notify the Council in writing of any litigation by or against the Company or any Subsidiaries or Subsidiary Undertakings which materially affects the Business or any dispute or other circumstances which may give rise to any such litigation;
 - 7.1.9 forthwith upon receiving notice so to do from the Council, convene and hold at short notice a general meeting of the Company or any Subsidiaries or Subsidiary Undertakings at such place and time as the Council shall reasonably determine at which any resolution required by the Council shall be proposed;
 - 7.1.10 adopt, implement and review annually policies regarding:
 - (i) risk management and maintenance of a risk register;
 - (ii) whistleblowing;
 - (iii) bribery, anti-corruption, fraud and irregularity;

- (iv) formal recruitment and selection;
 - (v) health and safety;
 - (vi) equalities;
 - (vii) such other matters as may be required by the Council from time to time; and
- 7.1.11 adopt and comply with:
- (i) a complaints handling process commensurate with good industry practice; and
 - (ii) a model publication scheme under the Freedom of Information (Scotland) Act 2002; and
- 7.1.12 maintain a Schedule of Notifiable Interests for the Directors in the form set out in Part 2 of the Schedule.
- 7.2 The Company shall procure that no Subsidiary or Subsidiary Undertaking of the Company takes any action which would constitute a breach of Part 1 of the Schedule as if any reference therein (express or implied) to the Company were construed as a reference to each Subsidiary or Subsidiary Undertaking and as if every reference therein to the Business were construed as a reference to the business of each Subsidiary or Subsidiary Undertaking.
- 7.3 All figures in Part 1 of the Schedule shall be subject to inflation in line with the Retail Prices Index published by the Office for National Statistics (calculated on an annual basis on each anniversary of the date of this Agreement).

8. Confidentiality

8.1 Each Party undertakes:

- 8.1.1 to treat and keep the Confidential Information as secret and confidential and not, without the prior written consent of the other Party, which may be given on such terms as they consider appropriate, directly or indirectly communicate or disclose, or allow to be communicated or disclosed, (whether in writing or orally or in any other manner) such Confidential Information to any other person other than to its officers, employees, professional advisers and agents who need to know it strictly for the purposes of considering, evaluating or performing this Agreement; and
- 8.1.2 not to use the Confidential Information for any purpose other than solely in connection with the performance of this Agreement (including conducting the Business in the ordinary course) and in particular not to use the Confidential Information for any competitive or commercial purpose.

8.2 Each Party shall ensure that each of its officers, employees, professional advisers and agents to whom the Confidential Information is to be made available are made fully aware of the confidentiality obligations set out in this Agreement and each such Party shall procure that such persons will observe the terms of this clause.

8.3 Each Party shall take all reasonable and appropriate steps to enforce any duty of confidence owed to it by any person to whom the Confidential Information is made available insofar as such enforcement appears to be necessary for the protection of the confidentiality of the Confidential Information.

8.4 The provisions of clause 8.1 shall not apply to Confidential Information to the extent that:

- 8.4.1 such disclosure is made in the conduct of the Business in the ordinary course, provided that the recipient of such information has agreed to treat the same as confidential and not to use it for any competitive purpose;
- 8.4.2 disclosure is required by the laws of any relevant jurisdiction, or any governmental or regulatory organisation including, without limitation, the provisions of the Local Government (Access to Information) Act 1985 and the Freedom of Information (Scotland) Act 2002 and other obligations, guidance and

- provisions concerning access to information to which the Council and/or the Company are bound;
- 8.4.3 disclosure is required in order to complete tax returns or to obtain any relevant tax clearances; or
- 8.4.4 such information is in or has come into the public domain through no fault of the Party wishing to make the disclosure.
- 8.5 Where the Council receives a request for information under the Freedom of Information (Scotland) Act 2002 which may lead to the release of the Company's Confidential Information, the Council shall consult with the Company to allow a reasonable opportunity for the Company to comment on such release. The Council shall take into account the Company's views but shall not be bound by them and may release the Confidential Information at its sole discretion.

9. Announcements

- 9.1 Subject to clause 9.2, none of the Parties shall make or send any press or other public announcement, communication or circular (whether to shareholders, employees, customers, suppliers or otherwise) concerning the subject matter of this Agreement or any matter ancillary to it unless it first obtains the prior written approval of the other Party.
- 9.2 Clause 9.1 does not apply to any announcement, communication or circular:
- 9.2.1 jointly released by the Company and the Council;
- 9.2.2 required by the laws of any relevant jurisdiction, or any governmental or regulatory organisation, provided that, if reasonably practicable, the Party required to make it has first consulted with and taken into account the reasonable requirements of the other Party as to its timing, content and manner of making; or
- 9.2.3 made or sent by the Council to any (actual or prospective) stakeholder, manager, adviser, agent or creditor of the Council.

10. Waiver

- 10.1 Any waiver of any breach of, or default under, this Agreement shall only be effective if made in writing and shall not be deemed to be a waiver of any subsequent breach or default of this Agreement.
- 10.2 Any failure or delay on the part of any Party to exercise any right or remedy conferred under this Agreement or otherwise shall not in any circumstance operate as a waiver, nor shall any single or partial exercise of any right or remedy preclude or restrict the further exercise of any such right or remedy.

11. Notices

- 11.1 Any notice, demand or communication in connection with this Agreement shall be in writing and delivered personally or sent by pre-paid first class post (or airmail if overseas) to the recipient's address as set out at the start of this Agreement or to any other address which the recipient has notified in writing to the sender not less than 7 Business Days before the notice is despatched.
- 11.2 The notice, demand or communication is deemed given:
- 11.2.1 if delivered personally, at the time of delivery to the address provided for in this Agreement; or
- 11.2.2 if sent by pre-paid first class post (or airmail), on the second Business Day after posting it,
- provided that, if it is delivered personally on a day which is not a Business Day or after 4pm on any Business Day, it shall instead be deemed to have been given or made on the next Business Day.

12. Conflict with the Articles

Where the provisions of the Articles of Association conflict with the provisions of this Agreement, the Parties agree that the provisions of this Agreement shall prevail.

13. Unlawful fetter on the Company's statutory powers

13.1 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.

13.2 Nothing in this Agreement shall be construed to be a resolution of all the members of the Company in the absence of a properly passed resolution in accordance with the Articles of Association.

14. General

14.1 The Parties do not intend that any of the terms of this Agreement shall be enforceable as a third party right by any person not a party to it.

14.2 Nothing contained in this Agreement, and no action taken by the Parties pursuant to this Agreement, is intended or shall be deemed to constitute a relationship between the Parties of partnership, principal and agent or employer and employee. The Council has not, nor may it represent that it has, any authority to act or make any commitments on behalf of the Company, or otherwise bind the Company in any way.

14.3 If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Agreement and shall be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this shall not affect any of the other provisions of this Agreement which shall remain in full force and effect.

14.4 Any dispute between the Parties arising out of this Agreement, including without limitation in respect of the consent matters set out in Part 1 of the Schedule, shall be referred to the Chief Executive (or equivalent) of each party within 15 days of any such dispute arising with a view to it being resolved as early as possible.

14.5 This Agreement may only be varied by an agreement in writing signed by or on behalf of each Party to this Agreement.

14.6 Each Party shall do, or procure the doing of, at its own cost, all such further acts and things and execute, or procure the execution of, all such further documents as the other Party reasonably considers necessary to give full effect to the terms of this Agreement.

14.7 This Agreement, constitutes the entire agreement between the Parties and supersedes and replaces any previous agreement, understanding, undertaking or arrangement of any nature between the Parties relating to the subject matter of this Agreement, save that nothing in this Agreement shall limit or exclude any liability for fraud.

15. Governing law and jurisdiction

15.1 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or any term of it (including non-contractual disputes or claims) shall be governed by the law of Scotland.

15.2 The courts of Scotland shall have exclusive jurisdiction to settle any disputes (including non-contractual disputes or claims), which may arise out of or in connection with this Agreement. The parties irrevocably agree to submit to that jurisdiction.

IN WITNESS WHEREOF these presents consisting of this and the 10 preceding pages and the Schedule consisting of three parts have been subscribed as follows:

Subscribed for and on behalf of)
EDINBURGH INTERNATIONAL CONFERENCE)
CENTRE LIMITED by:)
at) Director
on

before the following witness:

.....
(Signature))
.....
(Full Name))
.....
(Address))
.....

.....
Witness

Subscribed for and on behalf of)
THE CITY OF EDINBURGH COUNCIL by:)
at)
on)
) Proper Officer

before the following witness:

.....
(Signature))
.....
(Full Name))
.....
(Address))
.....

.....
Witness

Subscribed for and on behalf of)
SCOTTISH ENTERPRISE by:)
at)
on)
) Proper Officer

before the following witness:

.....
(Signature)

.....
(Full Name)

.....
(Address)

.....

.....
Witness

SCHEDULE

Referred to in the foregoing agreement

Part 1

Consent Matters

The following are the matters referred to in clause 7.1.4:

Corporate matters

- 1 create, allot, issue, grant or agree to grant any option over, acquire, repay or redeem any class of share or loan capital or vary the rights of any class of share or loan capital or issue any security convertible into shares or loan capital of the Company or make any capitalisation of repayment of any amount standing to the credit of any reserve of the Company;
- 2 admit any person as a member of the Company save as provided for in this Agreement and the Articles of Association;
- 3 amend or waive any provision of the Articles of Association;
- 4 pass any resolution to wind up the Company (whether solvent or otherwise), or take any corporate action, legal proceedings or other procedure or step in relation to the dissolution of the Company, the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or similar officer in relation to the Company or any of its assets (in each case, whether out of court or otherwise), save where the Board is advised to do so by a licensed insolvency practitioner;
- 5 declare, make or pay any dividend or other distribution;

Accounts

- 6 make any change in the Company's residence for tax purposes;
- 7 make any change in the Company's accounting reference date or accounting policies;
- 8 appoint or remove the auditors of the Company;

Business of the Company

- 9 change the name of the Company or any trademarks used by the Company;
- 10 incorporate a Subsidiary or Subsidiary Undertaking;
- 11 adopt or amend any Annual Budget or Business Plan after its approval;
- 12 make any substantial change in the nature or organisation of the Business or discontinue or cease to operate all or a material part of the Business or wind up the Company other than on grounds of insolvency or the inability of the Company to pay its debts as they fall due;
- 13 amalgamate or merge with any other business or undertaking or acquire any business, or any material part of any business, or any shares in any company or enter into any partnership, joint venture, profit sharing arrangement or collaboration;
- 14 enter into or vary any agreement which will, or is likely to, result in the Company being managed by persons other than its Directors or appoint any agent or other intermediary to conduct any of the Business;

Liabilities and commitments

- 15 incur, or enter into any commitment to incur, expenditure on any single item (or items having an aggregate expenditure) in excess of £75,000 other than as specifically set out in the Annual Budget (the Council's consent not to be unreasonably withheld or delayed in this regard);

- 16 acquire any material interest in respect of any real property or land or dispose of any material part of its assets, except in the ordinary course of the Business;
- 17 any borrowing by the Company, other than by way of normal trade credit or in such manner as is approved under the Annual Budget, where such borrowing would result in the aggregate borrowing of the Company being in excess of the sum as specified in the then current Annual Budget;
- 18 fail to settle all debts incurred in the ordinary course of the Business within a reasonable period of time;
- 19 incur any liabilities other than trading liabilities incurred on arm's length terms in the ordinary course of the Business;
- 20 enter into any guarantees or indemnity or other agreement to secure, or incur financial or other obligations with respect to, another person's obligations other than any wholly-owned Subsidiary or wholly-owned Subsidiary Undertaking;
- 21 make any loan to any person other than any wholly-owned Subsidiary or wholly-owned Subsidiary Undertaking;
- 22 enter into any contract, liability or other commitment which cannot be terminated on giving three months' notice and/or which is of a long term nature (for this purpose "long term" means continuing in force for more than one calendar year) other than contracts with clients in the ordinary course of the Business;
- 23 enter into any transaction or agreement (or vary such agreement): (i) which is not on bona fide arm's length terms; or (ii) with any Director or any person connected with them; or (iii) which is not in the ordinary course of the Business;
- 24 grant any lease, licence or third party right to terminate, or give notice to terminate, a lease, licence or third party right in respect of any material property of the Company;
- 25 create any mortgage, charge, lien or Encumbrance over any property or any other asset or redeem an existing mortgage, charge, lien or Encumbrance over any property, undertaking or any other asset;
- 26 commence, threaten to commence, settle or agree to settle any legal, tribunal or arbitration proceedings involving the Company save for the collection of debt in the ordinary course of the Business and save where such proceedings do not involve significant reputational damage or potential financial liability exceeding £50,000;

Directors and employees

- 27 appoint or remove any Director other than in accordance with this Agreement and the Articles of Association;
- 28 appoint any Director, officer of any employee earning in excess of £50,000 per annum or whose contract cannot be terminated on three months' notice or less;
- 29 make any material change in the terms or conditions of employment or engagement or pension, bonus, incentive or other benefits of any employee, officer of Director (other than as set out and budgeted for in the then current Annual Budget);
- 30 create any share option, bonus or other incentive scheme; or
- 31 establish or amend any pension scheme.

Part 2

Schedule of Notifiable Interests

Notifiable Interest	Description of Interest
Remunerated Positions	A description of remunerated positions (but not the remuneration itself) by virtue of being:
	<ol style="list-style-type: none"> 1) employed or self employed 2) the holder of an office 3) a director of an undertaking 4) a partner in a firm; and 5) involved in undertaking a trade, profession, vocation or any other work
Non-remunerated Positions	A description of such interests as may be significant to, of relevance to or bear upon, the work or operation of the Company, including, membership of or office in:
	<ol style="list-style-type: none"> 1) public bodies; 2) clubs, societies and organisations; 3) trade unions; and 4) Voluntary organisations
Contracts	Disclosure of interests (direct, indirect or proposed) in contracts with the Company at a meeting of the directors in accordance with section 182 of the Companies Act 2006
Houses, land and buildings	A description of any rights of ownership or other interests that may be significant to, of relevance to, or bear upon, the work or operation of the Company
Shares and securities	Disclosure of interest in shares or debentures of the Company
	Disclosure of interest in shares or securities of any company, undertaking or organisation that may be significant to, or relevance to, or bear upon, the work or operation of the Company
Third party gifts/hospitality	Disclosure of third party gifts/hospitality in excess of £100 in value.

Part 3

Director's Undertaking

TO: THE CITY OF EDINBURGH COUNCIL
Waverley Court
4 East Market Street
Edinburgh
EH8 8BG

and **EDINBURGH INTERNATIONAL CONFERENCE CENTRE LIMITED**
Conference House
152 Morrison Street
Edinburgh
EH3 8EB

[DATE]

Dear Sirs

Agreement dated [REDACTED] 2014 between EDINBURGH INTERNATIONAL CONFERENCE CENTRE LIMITED (the "Company"), Scottish Enterprise ("SE") and THE CITY OF EDINBURGH COUNCIL (the "Council") (the "Agreement")

I confirm that I have been supplied with a copy of the Agreement and the articles of association of the Company (the "**Articles**") and undertake to the Company and separately to SE and the Council that I shall, so far as may be permitted by law and for so long as I remain a director of the Company:

1. be bound by and comply with the terms and conditions of the Agreement and the Articles;
2. do all within my power as a director to ensure that the Company complies with its obligations under the Agreement and the Articles;
3. attend not less than 90% of all Board meetings or appoint an alternate to attend in my place; and
4. submit all relevant details to the Company for inclusion in the Company's Schedule of Notifiable Interests.

Yours faithfully

Signature

Print Full name