

Housing, Homelessness and Fair Work Committee

10.00am, Thursday, 1 December 2022

Edinburgh International Conference Centre – Shareholders’ Agreement and Strategic Delivery Agreement

Executive/routine Wards Council Commitments	Executive 11 – City Centre
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1. Recommendations

- 1.1 It is recommended that Committee:
 - 1.1.1 Agrees the Heads of Terms for revision to the Shareholders’ Agreement between the Council and Edinburgh International Conference Centre Limited and the new Strategic Delivery Agreement between the Council and Edinburgh International Conference Centre Hotels Limited;
 - 1.1.2 Agrees to delegate authority to the Executive Director of Place to execute the Shareholders’ Agreement and Strategic Delivery Agreement; and
 - 1.1.3 Refers this report to the City of Edinburgh Council for final approval.

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Executive Director of Place

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Edinburgh International Conference Centre – Shareholders’ Agreement and Strategic Delivery Agreement

2. Executive Summary

- 2.1 This report proposes amendments to the Shareholder’s Agreement between the Council and Edinburgh International Conference Centre Limited (EICC) to reflect EICC’s involvement in the hotel and hotel school project previously agreed by Committee. The report also proposed the Council entering into a new Strategic Delivery Agreement (SDA) between the Council and Edinburgh International Conference Centre Hotels Limited (EICCH) in order to give the Council additional oversight of the project.

3. Background

- 3.1 EICC is a company limited by shares that was incorporated in 1991. 82.54% of the company is owned by the Council via its arm’s length company CEC Holdings Limited (CECH), with 15.87% being owned by the Royal Bank of Scotland and 1.59% by Scottish Enterprise. The principal business of EICC is the day to day operation of the Edinburgh International Conference Centre at 150 Morrison Street, Edinburgh, which opened in 1995 (with a major extension completing in 2013). The original Conference Centre is owned by EICC, while the extension is owned by the Council and leased (for a peppercorn rent) to EICC.
- 3.2 The relationship between the Council, Scottish Enterprise and EICC is governed by a Shareholder’s Agreement (CECH and the Royal Bank of Scotland are not parties to the Shareholder’s Agreement). The most recent iteration of the Shareholder’s Agreement, which dates from December 2016’ is set out at Appendix 1. The Shareholder’s Agreement covers the following matters:
- 3.2.1 The permitted business of EICC, and those activities that will need the additional specific consent of the Council (such as a proposal that will result in a substantial change in the nature of its business);
- 3.2.2 The composition of the EICC Board;
- 3.2.3 The Council right to appoint three elected members as directors (one of whom shall be the Chair of EICC);

- 3.2.4 The requirements around accounting and preparing an annual budget and business plan that the Council must be consulted upon in advance; and
- 3.2.5 The obligation upon EICC to, in effect, adopt and comply with certain elements of the Council's policy framework, including its policies on the Living Wage, the Edinburgh Guarantee scheme, sustainability, social justice, economic wellbeing, and environmental good stewardship.
- 3.3 The Council's assurance policies require a Service Level Agreement (or other appropriate legal agreement) to be put in place for each Council-owned arm's length external organisation.
- 3.4 On [28 October 2021](#), the Council approved a final business case for the Council entering into a 25-year head lease on a 349-bedroom hotel that is being developed at Haymarket Edinburgh by Quartermile Developments Limited, for The Prudential Assurance Company Limited, and sub leasing the hotel to EICC to operate the hotel (via a franchise agreement with the hotel brand Hyatt) along with a hotel school.

4. Main report

Shareholders' Agreement

- 4.1 The hotel and hotel school project represents an expansion of the business of EICC beyond that expressly permitted by the Shareholders' Agreement. In order to secure the hotel opportunity for the EICC, the Council has also had to enter into a head lease with The Prudential Assurance Company Limited. Given this, the Shareholders' Agreement will require to be amended to reflect the widened business of EICC and the change in risk profile to the Council. The proposed changes to the Shareholder's Agreement are set out at Appendix 2. The principal changes to the Shareholder Agreement are:
 - 4.1.1 Expanding the permitted business of EICC to include the operation of the hotel and hotel school;
 - 4.1.2 Amending the corporate structure, board structure, and governance arrangements for EICC to reflect its expanded activities by increasing the number of Council directors to five and requiring a minimum of two external directors to also be appointed;
 - 4.1.3 Placing an obligation upon EICC to run the hotel in accordance with good industrial practice and other standards;
 - 4.1.4 Placing obligations upon EICC with regards to financial matters;
 - 4.1.5 Requiring EICC to adhere to the various agreements entered into with Hyatt as part of the hotel and hotel school project; and
 - 4.1.6 Reflecting that CECH, not the Council, is a shareholder of EICC (albeit with the Council remaining a party to the Shareholders' Agreement).
- 4.2 It should be noted that the existing Shareholder's Agreement requires the EICC to submit annual business plans to be agreed by the Council and this will continue to

be the case. The Council, as the ultimate majority shareholder, also has the ability to pass special resolutions which could include but which are not limited to winding up the company or revisiting the articles of association. The proposed changes above are intended to build upon the existing shareholder agreement provisions and these general powers.

Strategic Delivery Agreement

- 4.3 To provide the Council with an additional degree of oversight to protect its interests, a SDA between the Council and EICCH has been drafted. EICCH is a subsidiary of EICC that has been established for the purposes of operating the hotel and hotel school. The SDA is set out at Appendix 3. The principal matters covered by the SDA are:
- 4.3.1 Requiring EICCH to operate the hotel to an “upper-upscale” standard;
 - 4.3.2 Specifying that EICCH and the Council shall establish a project team to oversee the development of the hotel;
 - 4.3.3 Setting out the process for agreeing the disbursement of surplus profits from the hotel between the Council and EICCH;
 - 4.3.4 Requiring EICCH to comply with all agreements entered into with Hyatt and other parties in connection with the operation of the hotel and hotel school;
 - 4.3.5 Requiring EICCH to meet all costs and expenses in the period prior to the opening of the hotel, appoint a hotel management team and suppliers, to purchase all operating supplies and equipment required for the hotel, and to appoint a project manager and clerk of works to oversee the development of the hotel;
 - 4.3.6 Requiring EICCH to report to the Council upon various matters relating to the operation and performance of the hotel;
 - 4.3.7 Requiring EICCH to pay all employees the Scottish Living Wage and to use “all reasonable endeavours” to ensure its main business partners do likewise;
 - 4.3.8 Requiring EICCH to have appropriate insurances in place;
 - 4.3.9 Requiring EICCH to enter into a memorandum of understanding with Edinburgh College in connection with the hotel school;
 - 4.3.10 Specifying the circumstances in which the Council has the right to “step-in” to take over the operation of the hotel from EICCH;
 - 4.3.11 Specifying the Council’s remedies for any breach of the SDA by EICCH; and
 - 4.3.12 Requiring EICC to pay the Council in connection with retrospective reasonable external costs incurred on the hotel and hotel school project and enabling the Council to recover future external and internal costs from EICCH in certain circumstances.
- 4.4 It should be noted that the new “step-in” rights are contractual and would allow the Council to arrange for a third party operator to run the hotel on its behalf should

there be underperformance by the EICC. This is in addition to the corporate “step-in” rights that are already available to the Council as the ultimate majority shareholder.

- 4.5 Importantly a key matter moving forward will be on how surplus profits are used. The SDA sets out that profits shall be firstly applied to cover the ongoing capital expenditure costs of the Conference Centre and the Hotel and thereafter that building a reserve to cover the hotel rental payment (should this be needed) is the next priority. The detail of this is a matter that will be reported on through annual Business Plans that will be considered by the Council and as such there will be an ongoing dialogue on this point.
- 4.6 The SDA further specifies the key performance indicators (KPIs) by which the performance of the hotel and hotel school will be monitored, with specific targets to be agreed as part of the annual business plan and budgetary process. The KPI headings, as agreed by Committee on [5 November 2020](#), are:
- 4.6.1 Turnover (sales revenue);
 - 4.6.2 Expenditure (operating expenditure);
 - 4.6.3 Economic impact (based on estimated expenditure by hotel guests);
 - 4.6.4 Occupancy (proportion of available hotel bedrooms sold);
 - 4.6.5 Customer satisfaction (based on feedback received);
 - 4.6.6 Carbon footprint;
 - 4.6.7 Fair work (calculated using the Scottish Government’s fair work tool for employers);
 - 4.6.8 Community benefits;
 - 4.6.9 Accreditations and awards; and
 - 4.6.10 Training (based on hours of structured training undertaken by employees).

5. Next Steps

- 5.1 If the amendments to the Shareholder’s Agreement and the new SDA are agreed, the Council and EICC will execute both documents.

6. Financial impact

- 6.1 The costs of amending the Shareholder’s Agreement and drafting the SDA have been met from existing budgets.
- 6.2 The SDA requires EICC to compensate the Council for certain retrospective costs associated with the development of the hotel and hotel school project

- 6.3 The SDA sets out the mechanisms via which surplus profits from the hotel and hotel school project would be distributed to the Council, subject to agreement between the Council and the EICC Board.

7. Stakeholder/Community Impact

- 7.1 The amendments to the Shareholder's Agreement and the drafting of the new SDA have been undertaken in conjunction with EICC Executive.

8. Background reading/external references

- 8.1 ["Edinburgh International Conference Centre Hotel and Hotel School - Final Business Case" – report to the City of Edinburgh Council, 28 October 2021](#)

9. Appendices

- 9.1 Appendix 1 - Shareholders' Agreement between Edinburgh International Conference Centre Limited, Scottish Enterprise, and the City of Edinburgh Council (existing).
- 9.2 Appendix 2 - Heads of Terms covering revisions to the Shareholders' Agreement between Edinburgh International Conference Centre Limited, Scottish Enterprise, and the City of Edinburgh Council and the basis for a new Strategic Delivery Agreement between the City of Edinburgh Council and Edinburgh International Conference Centre Limited (proposed).

SHAREHOLDERS' AGREEMENT

BETWEEN

EDINBURGH INTERNATIONAL CONFERENCE CENTRE LIMITED

SCOTTISH ENTERPRISE EDINBURGH AND LOTHIAN

AND

THE CITY OF EDINBURGH COUNCIL

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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 EDINBURGH AND LOTHIAN**, 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 agrees 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"	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: <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 undertakes to the Council 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 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 undertakes to the Council that it shall, and 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 undertakes to the Council that it shall, and 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, undertakes to the Council that it shall, and that its Subsidiaries and Subsidiary Undertakings shall, 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 undertakes to the Council 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 a Party is 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 or SE 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 or SE (as the case may be) shall consult with the Company to allow a reasonable opportunity for the Company to comment on such release. The Council or SE (as the case may be) 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 and SE have not, nor may they represent that they have, 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) *G. Munro*
CONFERENCE CENTRE LIMITED by:) Director
at *150 Morrison Street, Edinburgh*)
on *27 July 2016*)

before the following witness:

HESLIE MINDA FROEDICKS
(Full Name)
c/o 150 Morrison Street
(Address)
Edinburgh EH3 8EE

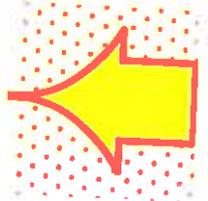
H. Froedicks
Witness

Subscribed for and on behalf of)
THE CITY OF EDINBURGH COUNCIL by:)
at *Edinburgh*)
on *8th July 2016*) Proper Officer
)

before the following witness:

KEVIN JOSEPH MCKEE
(Full Name)
c/o Waverley Court, 4 East
(Address)
Market St. Edinburgh EH3 8BG

Kevin McKee
Witness



Subscribed for and on behalf of
SCOTTISH ENTERPRISE as nominee for
SCOTTISH ENTERPRISE EDINBURGH
AND LOTHIAN:
at GLASGOW
on 2.12.2016

J Edwards

Proper Officer

before the following witness:
Paul Wilson
(Full Name)
ATKINSON COURT 50 WATERLOO ST
(Address)
GLASGOW G2 6HQ

Paul Wilson
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 or 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 [] 2015 between EDINBURGH INTERNATIONAL CONFERENCE CENTRE LIMITED (the "Company"), SCOTTISH ENTERPRISE EDINBURGH AND LOTHIAN ("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

Heads of Terms

The City of Edinburgh Council (the “CEC”)

Edinburgh International Conference Centre Limited (the “EICC”)

Haymarket Hotel, Edinburgh (the “Hotel”)

These Heads of Terms are in respect of (i) a strategic delivery agreement between the CEC and the EICC relating to the governance of the Hotel (the “**SDA**”); and (ii) the amendment and restatement of the existing shareholders’ agreement (the “**SHA**”) amongst the CEC, Scottish Enterprise Edinburgh and Lothian (“**SE**”) and the EICC dated 8 and 27 July and 2 December 2016 (the “**Amended and Restated SHA**”).

1. Introduction

- 1.1 The CEC will enter into an agreement for development and head lease with The Prudential Assurance Company Ltd (the “**Landlord**”) in respect of the Hotel (the “**Agreement for Head Lease**”), pursuant to which the Landlord will undertake to construct the Hotel, being a four star upper-upscale 349+ bedroom hotel and grant a head lease of the Hotel to the CEC. It is anticipated that, at or around the same time, (1) the CEC will enter into an agreement to sub-lease the Hotel to the EICC (and subsequently EICC Hotel Limited when incorporated) (the “**Agreement for Sub-Lease**”) (and resulting sub-lease (the “**Sub-Lease**”)) and the EICC will be responsible for the management, operation and governance of the Hotel and (2) the EICC (and subsequently EICC Hotel Limited when incorporated) will enter into a franchise agreement (and possibly ancillary agreements) with [Hyatt – full legal entity to be inserted] (the “**Hyatt**”) pursuant to which the Hotel will be branded and operated as a “Hyatt Centric” hotel (such franchise agreement and any such ancillary agreements being in these Heads of Terms collectively called the “**Franchise Agreement**”).
- 1.2 It is intended that, subject to completion of the Agreement for Head Lease and the Agreement for Sub-Lease, the CEC and the EICC will enter into the SDA and Amended and Restated SHA. These Heads of Terms set out the key terms agreed between the CEC and the EICC in respect of the SDA and, where applicable, the Amended and Restated SHA.
- 1.4 It is intended that any instruction or notice given under the SDA shall only be issued by a duly authorised representative of either the EICC or CEC. For the avoidance of doubt, it is not the intention of the SDA to grant powers to CEC officers to instruct the EICC Executive or vice versa. EICC Executive shall take instructions from the EICC Board and CEC officers shall take instructions from the Corporate Leadership Team of CEC and the Elected Members.
- 1.5 It is further intended that the EICC shall incorporate a wholly owned and fully capitalised subsidiary to be known as EICC Hotel Limited (or similar) (the “**Subsidiary**”) which shall be the operating and trading entity for the Hotel and shall (if incorporated by the time the Agreement for Sub-Lease and/or the resulting Sub-Lease require to be signed) be the entity with which the CEC shall in due course enter the Agreement for Sub-Lease and/or the resulting Sub-Lease. If the EICC has not incorporated the Subsidiary, then it shall enter the Agreement for Sub-Lease and/or the resulting Sub-Lease on its own account and there shall

be included in the Agreement for Sub-Lease and/or the Sub-Lease an obligation requiring the EICC, on written notice from the CEC, to novate the Agreement for Sub-Lease and/or the resulting Sub-Lease to its Subsidiary.

- 1.6 It is further intended that the Subsidiary shall be the entity with which Hyatt shall enter into the Franchise Agreement and all related service agreements. If the Subsidiary has not been incorporated at the time the Franchise Agreement requires to be signed with Hyatt then the EICC shall enter into the Franchise Agreement on its own account. The EICC shall ensure that it complies with any reasonable requirements of Hyatt and the CEC in terms of covenants and/or guarantees (such as parent company guarantees) which may be required by Hyatt and the CEC in respect of their relative rights and the correlative obligations of EICC in the Agreement to Sub-Lease, the resulting Sub-Lease, the Franchise Agreement (and related service agreements with Hyatt) and the Direct Agreement (defined below) entered into between the CEC, Hyatt and the EICC and/or Subsidiary.
- 1.7 It is further intended that the CEC and the EICC / its Subsidiary shall enter into a direct agreement with Hyatt (previously known as the Property Owners Agreement, and subsequently to be known as the Head Lessor's Agreement, or similar (the "**Direct Agreement**")) in respect of certain obligations to be assumed by the EICC / its Subsidiary relating to the Key Money under the Franchise Agreement.
- 1.8 References to the EICC in these Heads of Terms and the SDA shall be construed to apply to its Subsidiary once it has been incorporated in accordance with this Clause 1.

2. Amended and Restated Shareholders' Agreement

2.1 The Amended and Restated SHA will include the following provisions:

2.1.1 Business of the Hotel

- (a) The business of the Hotel (the "**Business**") shall be as follows:
 - (i) a minimum four star upper-upscale (as graded by Hyatt) 349+bed hotel with associated leisure space (including without limitation restaurant(s) and/or bar(s)) and including leisure and conferencing facilities; and
 - (ii) a hotel and/or restaurant training facility within the Hotel to accommodate vocational students (the "**Hospitality Centre of Excellence**"),

2.1.2 The corporate structure, board structure and governance arrangements will be amended to ensure that they are appropriate and in keeping with the EICC's additional operational activities in operating and carrying on Business. These amendments will include:

- (a) that the quorum for directors' meetings will reflect the current shareholders agreement;
- (b) that the CEC shall be entitled to appoint up to 5 directors to the board of directors and, for the avoidance of doubt, CEC shall retain the right to appoint the Chair of the Board, which position shall retain the right to exercise the casting vote at Board meetings in the event of deadlock. ;

- (c) a right of access for the CEC to conduct an audit of the books and records relating to the Hotel upon not less than 10 business days prior written notice;
 - (d) specific reference to the reporting requirements set out in the SDA in respect of the Hotel.
- 2.1.3 The EICC shall be responsible for the operation of the Business and will at all times carry out the Business in accordance with good industry practice, including:
- (a) with all due skill and care, in an efficient and effective manner;
 - (b) in accordance with the terms of the SDA, Amended and Restated SHA, Franchise Agreement and Agreement for Sub-Lease;
 - (c) in the best interests of the EICC and the shareholders of the EICC to generate profits in order to, among others, support future capital investment in the conference centre operated by the EICC (the “**Conference Centre**”);
 - (d) The Hospitality Centre for Excellence will be run in accordance with appropriate industry standards relevant to such courses and qualifications offered; and
 - (e) in accordance with all applicable laws and all applicable legal or regulatory requirements applying to the Business.
- 2.1.4 The EICC shall maintain accurate, complete and up to date accounting and other financial records of the Business in accordance with generally accepted accounting principles applicable.
- 2.1.5 The CEC will have the right to appoint a firm of accountants or auditors and other relevant advisers to conduct an audit of the Business and/or report on any aspect of the Business and the EICC shall grant such accountants, auditors and relevant advisers access to the Business, its accounts, books, records, senior employees and directors and supply such advisers with such other information reasonably required by them to conduct an audit and/or prepare their report.
- 2.1.6 In the event the EICC requires any additional funding in relation to the carrying on the Business, the EICC will set out in detail such funding requirements in the Annual Budget and Business Plan.
- 2.1.7 The EICC shall not take any steps to terminate the Franchise Agreement without the prior written consent of the CEC.
- 2.1.8 The EICC shall not amend, vary, assign, novate or otherwise deal with the Franchise Agreement without the prior written consent of the CEC.
- 2.2** The SHA will be further amended to reflect the fact that CEC Holdings Limited is a shareholder of the EICC and that the CEC is not a shareholder. The CEC will remain a party to the SHA in order to retain the benefit of the rights granted to the CEC under the SHA.
- 3. Strategic Delivery Agreement**
- 3.1 The CEC and the EICC agree that the SDA will include the following terms and provisions.
- 3.1.1 The EICC shall at all times operate the Business to those standards which could reasonably be expected to be provided at upper-upscale hotels of similar size, calibre

and geographic location to the Hotel including the provision of services and facilities which are ordinarily offered by such a hotel.

- 3.1.2 The EICC and the CEC shall set up a project team to oversee the development phase of the Hotel (the “**Project Team**”). The Project Team shall comprise representatives from the EICC, the CEC, QMile Group Ltd (the “Developer”) and such other representatives as the CEC deem appropriate, which may from time to time include the Hyatt. The Project Team shall meet at least monthly, unless otherwise agreed in writing by the CEC.
- 3.1.3 It is acknowledged that it is the intention of the parties that the profits generated from operation of the Business shall be firstly applied to cover the ongoing capex costs of the Conference Centre and the Hotel. The purpose to which remaining profits are to be applied shall be subject to agreement between the CEC and the Board of the EICC as part of annual budget discussions between the EICC and CEC with due consideration given to establishing a reserve to cover the annual hotel rental payment.
- 3.1.4 The EICC shall at all times comply with the terms of the Franchise Agreement, the Agreement to Sub-Lease, the Sub-Lease and any relevant agreement or memorandum of understanding entered into as regards the arrangements for the Hospitality Centre of Excellence with a suitable academic institution.

3.2 *Pre-Opening Obligations of the EICC*

- 3.2.1 The EICC will meet its costs and expenses incurred in the period prior to the opening of the Hotel from its existing cash balances, in accordance with the budget that has been agreed between the parties, including for the avoidance of doubt any payments due under the Agreement for Sub-Lease and sub-lease.
- 3.2.2 The EICC will appoint a hotel management team for the Business comprising General Manager, Director of Sales, Financial Controller and Operations Director which has appropriate experience and qualifications in the management of a hotel of a similar size, style and nature of the Hotel.
- 3.2.3 The EICC will appoint (i) a Project Manager and (ii) a Clerk of Works. The Project Manager shall have appropriate experience and qualifications and will be responsible for establishing the Hotel operating arrangements, staff, contracts etc, and can be appointed by the EICC Board from within or outwith the company. The Clerk of Works shall have appropriate experience and shall be responsible for inspecting the construction of the Hotel. The Clerk of Works shall be responsible for providing EICC’s input in respect of the oversight of the construction of the Hotel and shall ensure that design, health and safety and Cole Report considerations are met by the Developer in accordance with the terms set out in the Agreement for Head Lease..
- 3.2.4 The EICC will appoint relevant third party service providers for the provision of services to the Business no later than one month before the Hotel’s opening date.
- 3.2.5 The EICC shall ensure all operating supplies and portable equipment required for the operation and management of the Business is purchased, is in good order and is ready to be used prior to the opening date of the Hotel.

3.3 The SDA will provide for the following reporting obligations:

- 3.3.1 The SDA will provide a reporting framework in respect of which the EICC management team (the "**Management Team**") will report to the Board of EICC (the "**Board**"). It is anticipated that this will be flexible to recognise how the Business may develop from time to time but shall include as a minimum the following:
- (a) the first Annual Budget and Business Plan shall be delivered to the Board 3 months before the opening date of the Hotel. the EICC shall provide the Board with quarterly updates of the Annual Budget and Business Plan throughout the first year of operations. The Business Plan shall have a 3 year look ahead on rolling annual basis. Thereafter, 3 months in advance of each financial year, the Management Team will report to the Board by providing:
 - (i) a summary of the Hotel's business objectives for the forthcoming financial year including specific financial and non-financial key performance indicators.
 - (ii) a detailed operating plan and system for the operation and management of the Business; and
 - (iii) a sales and marketing plan in respect of the Business.
 - (b) No later than 3 months before the opening of the Hotel, the Management Team will prepare (and provide to the Board) a detailed opening plan and timetable, setting out the objectives, responsibilities and activities, for the 3 month period prior to the opening of the Hotel.
 - (c) No later than 3 months before the opening of the Hotel, the Management Team shall report to the Board on:
 - (i) the health and safety systems and manuals which are being put in place to comply with all applicable law and regulation;
 - (ii) the statutory licences which are for the operation of the Hotel and Business;
 - (iii) the sustainability and environmental policies and systems to comply with all applicable laws and which are in line with the CEC's environmental and sustainability principles including the target for Edinburgh to become a net zero carbon city by 2030;
 - (iv) appropriate procurement agreements with principal suppliers; and
 - (v) appropriate sales targets in respect of room bookings and food and beverage sales.
 - (d) In advance of each financial year, the Management Team will report to the Board by providing:
 - (i) a summary of the Hotel's business objectives for the forthcoming financial year;
 - (ii) forecast profit and loss;
 - (iii) forecast revenue projection;
 - (iv) an operating budget including any capital expenditure and working capital on a phased monthly basis;

- (v) forecast capital expenditure.
- (e) On a quarterly basis, the Management Team will report to the Board by providing:
 - (i) management accounts, comprising a balance sheet, profit and loss account and cash flow forecast;
 - (ii) forecast balance sheet and cash-flow statement; and
 - (iii) a financial report which includes an analysis of the results of the Hotel for the previous financial year compared with the annual budget for the coming financial year, identifying variations in sales, revenues, costs and other material items.
 - (f) Annual accounts, comprising a balance sheet, profit and loss account and cash flow statement, within 3 months of the end of each financial year.
 - (g) The Management Team will promptly notify the Board of any material litigation or insurance claims relating to or in connection with the Business.
 - (h) The Management Team shall notify the Board of any material events or matters relating to the Hotel.
 - (i) The EICC and the CEC shall agree such other reporting against key performance indicators from time to time and the Management Team shall measure and report to the Board in respect of such KPIs. Such KPIs shall be based on the principles set out in Appendix 1.

3.4 The SDA will provide for EICC to provide the following reporting to CEC:

- 3.4.1 The EICC shall prepare an annual budget and a business plan (the “**Annual Budget and Business Plan**”) for the Business in respect of each financial year. The first Annual Budget and Business Plan shall be delivered to the CEC 3 months before the opening date of the Hotel.
- 3.4.2 The SDA shall provide that in the event the CEC deems additional information is necessary, this shall be requested directly from the Board to the Management Team. The SDA shall reflect that the purpose of this reporting obligation is solely to provide the CEC with regular updates and assurance on the financial position of the EICC in line with Audit Scotland governance requirements for ALEOs.
- 3.4.3 The EICC will use its existing reporting methodology to measure the additional business brought to the Conference Centre which is attributable to the Hotel. The EICC will include reports on such additional business to the CEC as part of its annual reporting requirements.
- 3.4.4 The SDA shall provide for the agreed annual reporting parameters between the EICC and the CEC in respect of the KPIs (which shall be based on the principles set out in Appendix 1)
- 3.4.5 The EICC shall report the progress of KPIs on an annual basis.

3.5 *Obligations of the EICC*

- 3.5.1 The EICC will ensure that its obligations under the SDA are fulfilled and the operation and management of the Business are carried out by sufficient numbers of appropriately qualified, trained and experienced staff.
- 3.5.2 The EICC will ensure that all employees of the EICC working at the Hotel are at all times paid the relevant Scottish Living Wage in accordance with the SHA.
- 3.5.3 The EICC shall provide training and experience for people wishing to work in the hospitality industry, including both young people at the beginning of their careers and people wishing to retrain, offering qualifications ranging from National Certificate 4 to Higher National Diploma through the Hospitality Centre of Excellence.
- 3.5.4 The EICC will use all reasonable endeavours to ensure that all main business partners adopt fair work practices including paying the Scottish Living Wage and will endeavour to ensure the same in respect of other suppliers. To the extent that any main or regular suppliers do not pay the Scottish Living Wage, this shall be reported the Board of the EICC as soon as reasonably practicable. The obligations set out above in this Clause 3.5.4 shall not apply to the EICC where (a) there is a limited source of supply of the goods or services in question; (b) there is a one off purchase of goods or service; or (c) where the value of the supply is not material.
- 3.5.5 The EICC will ensure that it has appropriate insurances in place on market standard terms in respect of the operation and management of the Hotel and the Business.
- 3.5.6 The EICC shall seek to maximise community benefits, closely linked to employment, community support, community enhancements, and use of on-site regulated businesses including community benefits from third party contractors. The EICC will be responsible for managing the day to day relationship with the community.
- 3.5.7 The EICC will not agree or enter into any advertising or sponsorship arrangements or contracts and agreements which are not in accordance with, or which are against, the CEC policies and standards or which risk bringing the CEC into disrepute.
- 3.5.8 The EICC will promptly notify the CEC of any material litigation or insurance claims relating to or in connection with the Business.
- 3.5.9 The EICC will take all reasonable steps to minimise carbon emissions relating to the design and operation of the Hotel and the Business.

3.6 *Franchise Agreement*

- 3.6.1 The EICC shall at all times comply with the terms of the Franchise Agreement and shall use its reasonable endeavours to ensure Hyatt complies with the terms of the Franchise Agreement, and the EICC further undertakes to the CEC to report to the CEC all instances of material breach(s) of the terms and conditions of the Franchise Agreement by either the EICC and /or Hyatt and in such case, provide the CEC with copies of all information and reports relating to the material breach(s) by the EICC and / or Hyatt including mitigation and remediation measures along with any recovery plans agreed between EICC and Hyatt to rectify the material breach(s). The EICC shall notify the CEC of (i) any notices received or served under or pursuant to the Franchise Agreement and (ii) any material events or matters relating to the Hotel, in each case as soon as practicable and in any event within 5 business days.

- 3.6.2 The EICC shall not take any steps to terminate the Franchise Agreement without the prior written consent of the CEC.
- 3.6.3 The EICC shall not amend, vary, assign, novate or otherwise deal with the Franchise Agreement without the prior written consent of the CEC.
- 3.6.4 The Franchise Agreement shall include step-in-rights in favour of the CEC, it being acknowledged by both the EICC and the CEC that CEC shall only exercise such step in rights on an exceptional basis where EICC has been unable to rectify the material breach to the satisfaction of Hyatt.

3.7 *Hospitality Centre of Excellence*

The EICC will enter into a memorandum of understanding with Edinburgh College to set out the relationship between the parties in relation to the Hospitality Centre of Excellence. The progress of discussions with Edinburgh College in relation to the Hospitality Centre of Excellence shall be reported by the management of the EICC to the Board of the EICC, If the project proceeds then the SDA shall include a reporting obligation on the management of the EICC to the Board of the EICC on the delivery of the Hospitality Centre of Excellence along with any key proposed performance indicators to be applied to Edinburgh College (which indicators CEC will have the opportunity to comment on in advance of agreement between the EICC and Edinburgh College).

3.8 *Remediation Plan*

- 3.8.1 Where the EICC does not achieve a KPI Target (as determined by the EICC Board) for an individual KPI, the Board may require that a plan (including steps and timescales) to remedy the failure (the "**Remediation Plan**") be prepared and submitted to the Board within a period of time (as determined by the Board in its sole discretion) for approval.
- 3.8.2 The Board shall review the Remediation Plan and confirm if the Remediation Plan is approved or not. If the Remediation Plan is not approved, then it shall be promptly revised to take account of the Board's concerns. Following approval of the Remediation Plan, the Remediation Plan shall be implemented in accordance with its terms (including timescales). The Remediation Plan and its implementation shall be kept under review by the Board on a weekly or other basis consistent with the timescales for its implementation.

3.9 *Step-In*

- 3.9.1 The SDA will include step-in rights in favour of the CEC which will allow the CEC to "step-in" itself, or through the appointment of a third party, to carry out the Business (at the cost of the EICC). The step-in rights would apply in the event that:
 - (a) CEC provides cumulatively more than £5,000,000.00 (FIVE MILLION STERLING) in net operational funding to the Hotel in any rolling period of five financial years; or
 - (a) a material breach, or persistent breach, of any of the SDA, Franchise Agreement, Agreement for Sub-Lease (and/or Sub-Lease) and/or Amended and Restated SHA which is incapable of remedy or, if capable of remedy is not remedied within [30 days] of the CEC notifying the EICC of such breach of the SDA, Franchise Agreement, Agreement for Sub-Lease (and/or Sub-Lease) and/or Amended and Restated SHA; or

(b) a failure by the EICC to (i) implement the Remediation Plan in respect of a material or persistent failure to meet certain Service Levels; (ii) produce a Remediation Plan in accordance with the terms of the SDA Plan in respect of a material or persistent failure to meet certain Service Levels; or (iii) notwithstanding the implementation of the Remediation Plan, the implementation does not remedy the failure Plan in respect of a material or persistent failure to meet certain Service Levels for which it has been put in place; or

3.9.2 Notwithstanding the inclusion of step-in rights in the SDA, the SDA shall include binding obligations on the Parties to act in good faith such that step-in rights should be treated as a “last resort” option and the SDA should reflect the expectation of CEC and EICC that the Board would flag up in quarterly reports that performance was requiring improvement and be setting out remediation proposals. The SDA shall include a “best endeavours basis” obligation to work collaboratively to find solutions prior to step-in rights being triggered by CEC.

3.9.3 CEC's sole remedies for breach of the SDA shall be as set out in paragraphs 3.8 and 3.9 above.

4. Assignment

Neither party shall be entitled to assign the SDA or the Amended and Restated SHA.

5. Confidentiality

5.1 Pre-SDA Commencement Date

The CEC and the EICC will not disclose details or existence of these Heads of Terms, Amended and Restated SHA and/or the SDA to the press or otherwise prior to the SDA commencement date except:

5.1.1 with the reasonable consent of the other party;

5.1.2 to its respective agents and professional advisers in connection with the SDA and Amended and Restated SHA;

5.1.3 to its respective bankers or other providers of finance (and their professional advisers) in connection with the SDA and Amended and Restated SHA;

5.1.4 where required by law; and

5.1.5 where required to comply with the requirements of the Stock Exchange or any other regulatory or government authority.

5.2 After the SDA Commencement Date

Any press release after the SDA commencement date relating to the entry into the SDA or the Business is to be agreed in writing between the EICC and the CEC prior to its publication (both parties acting reasonably).

5.3 Agents

The parties will ensure that their respective agents and professional advisers comply with the undertakings in this paragraph 5 (*Confidentiality*).

6. Statutory Powers

Nothing contained or implied or done in these Heads of Terms and/or the documents to follow on these Heads of Terms shall prejudice or affect the powers, rights, duties and obligations of the CEC as local authority, planning authority, building authority or roads authority under or by virtue of any public or local act, order, statutory instrument, regulation or bye-law or relieve the EICC and/or the CEC as a party to such Heads of Terms and/or such documents from the necessity of obtaining from the CEC or their statutory successors as local authority, planning authority, building authority or roads authority all such approvals or consents in respect of plans or otherwise as may be requisite under or by virtue of any such act, order, statutory instrument or bye-law.

A provision to this effect will feature in all contractual documentation that the CEC is a party to.

7. Costs

Within 30 days of execution of the SDA, the EICC will pay to the CEC the fixed sum of [£tbc] in relation to CEC’s reasonable retrospective external costs expended on the project up to the date of execution. Thereafter any internal and external costs associated with the CEC services required by the EICC will be recoverable by the CEC from the EICC subject to agreement in advance between the parties on the costs involved.

8. Suspensive Conditions

These Heads of Terms and the SDA are subject to contract and conditional upon the following:

- conclusion of unconditional Agreement for Head Lease;
- conclusion of unconditional Agreement for Sub-Lease;
- completion of the Franchise Agreement and the related service agreements;
- completion of the Direct Agreement;
- full Council approval; and
- EICC Board approval.

9. Legally Binding Nature

Save for the provisions of paragraph 5, these Heads of Terms are not intended to form part of a legally binding contract and the correspondence of which they form part is expressly subject to the completion of formal legal contracts in accordance with Scots Law.

Signed for and on behalf of The City of Edinburgh Council

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Proper Officer

Signed for and on behalf of Edinburgh International Conference Centre Limited

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Director

Appendix 1
KPI Principles