

Appendix 1

DATED 18<sup>th</sup> January 2013.

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NORTH TYNESIDE TRADING COMPANY LIMITED

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ARTICLES OF ASSOCIATION

Companies Acts 1985 and 2006

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THE COMPANIES ACTS 2006

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PRIVATE COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

of

NORTH TYNESIDE TRADING COMPANY LIMITED

(Adopted by Special Resolution passed on 18<sup>th</sup> January 2013 )

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In these Articles "**Table A**" means Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985, the Companies Act 1985 (Electronic Communications) Order 2000, (Tables A to F) (Amendment) Regulations 2007 and the Companies (Table A to F) (Amendment) (No.2) Regulations 2007. Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in Table A shall have the same meanings in these Articles.
- 1.2 References to the CA 1985 and CA 2006 are to the Companies Act 1985 and the Companies Act 2006 respectively.
- 1.3 In these Articles, "**Act**" means the Companies Act 1985 as amended prior to adoption of these including any statutory modification or re-enactment thereof for the time being in force and the provisions of the Companies Act 2006 for the time being in force.
- 1.4 References to the Companies Acts are to the CA 1985 and the CA 2006 in each case the extent to which the provisions of the same are for the time being in force.
- 1.5 References in these Articles and in Table A to writing shall be construed as including references to any method of representing or reproducing words in a legible and non-transitory form.
- 1.6 In these Articles:

**"Articles"**

means these Articles of Association;

**"Business Day"**

means a day other than a Saturday, Sunday or bank holiday in England;

**"Chairman"**

means the Director as may from time to time be appointed by a resolution of the Board;

**“Controlling Shareholder”** means a member registered as the holder of not less than 90% of the issued shares of the company;

**“Senior Leadership Team”** means the team of officers appointed by North Tyneside Council at Head of Service or Director level from time to time.

**Headings in these Articles are for convenience only and shall not affect the interpretation hereof.**

## **2. ADOPTION OF TABLE A**

- 2.1 The Regulations contained in Table A shall, except where they are modified or excluded by these Articles or are inconsistent herewith, apply to the Company and, subject to any such modifications, exclusions or inconsistencies, shall together with these Articles constitute the Articles of association of the Company to the exclusion of any other regulations set out in any statute or in any statutory instrument or other subordinate legislation.
- 2.2 Regulations 7 to 21 (inclusive) 26, 40, 41, of Table A shall not apply to the Company.

## **3. OBJECTS**

- 3.1 The Object of the company is to provide services to other public bodies; and any other customers (whether public bodies or not) as considered appropriate.

## **4. LIABILITY OF SHAREHOLDERS**

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

## **5. DIRECTORS TO TAKE DECISIONS COLLECTIVELY**

- 5.1 Each Director shall have one vote.
- 5.2 The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 6.

## **6. UNANIMOUS DECISIONS**

- 6.1 A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

- 6.2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- 6.3 References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.
- 6.4 A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

## **7. QUORUM AT GENERAL MEETINGS**

- 7.1 The quorum at any general meeting of the Company or adjourned general meeting shall be two persons present in person or by proxy, of whom one shall be a member of the Senior Leadership Team and one shall be a Cabinet Member.
- 7.2 No business shall be transacted by any general meeting unless a quorum is present at the commencement of the meeting and also when that business is voted on.
- 7.3 If within 30 minutes (or such longer time as the persons present may all agree to wait) from the time appointed for any general meeting a quorum is not present, the meeting shall be dissolved.

## **8. CHAIRING OF DIRECTORS' MEETINGS**

- 8.1 The Board may appoint a director to chair the directors' meetings and terminate that appointment at any time.
- 8.2 The person so appointed for the time being is known as the "chairman".
- 8.3 If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

## **9. CASTING VOTE**

- 9.1 If the numbers of votes for and against a proposal are equal, the chairman or where relevant alternate director chairing the meeting shall have a second or casting vote.

## **10. PROXIES**

- 10.1 An instrument appointing a proxy shall be in writing, executed by or on behalf of the appointor and in any common form or in such other form as the directors may approve, and the directors may at their discretion treat a faxed or other machine-made copy of an instrument in any such form as an original copy of the instrument. The instrument of proxy shall, unless the contrary is stated in it, be valid for any adjournment of the meeting as well as for the meeting to which it relates, and shall be deemed to include authority to vote as the proxy thinks fit on any amendment of a resolution put to the meeting for which it is given.

- 10.2 The instrument appointing a proxy and (if required by the directors) any authority under which it is executed or a copy of the authority (certified notarially or in any other manner approved by the directors) may be delivered to the registered office, or to some other place or to some person specified or agreed by the directors, before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to act or, in case of a poll taken after the date of the meeting or adjourned meeting, before the time appointed for the taking of the poll, and an instrument of proxy which is not so delivered shall be invalid.

## **11. NUMBER AND AGE OF DIRECTORS**

The number of directors shall not be less than two. No director shall be required to retire or vacate his office, and no person shall be ineligible for appointment as a director by reason of his having attained any particular age.

## **12. METHODS OF APPOINTING DIRECTORS**

- 12.1 Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director by ordinary resolution of the shareholder.
- 12.2 When complete, the board of directors shall comprise of 4 (four) directors including:
- 12.2.1 2 members of Senior Leadership Team
- 12.2.2 2 Cabinet Members

## **13. TERMINATION OF DIRECTORS' APPOINTMENT**

- 13.1 A person ceases to be a director as soon as:
- 13.1.1 The shareholder who appointed the director notifies the company that the individual is to be removed as a director;
- 13.1.2 That person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
- 13.1.3 A bankruptcy order is made against that person;
- 13.1.4 A composition is made with that person's creditors generally in satisfaction of that person's debts;
- 13.1.5 A registered medical practitioner who is treating that person gives a written opinion to the company stating that the person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
- 13.1.6 By reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or
- 13.1.7 Notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms;



- 13.1.8 In the case of member of the Senior Leadership Team that person ceasing to be an officer of North Tyneside Council;
- 13.1.9 In the case of a member of the Senior Leadership Team that person ceasing to be a member of the Senior Leadership Team should the shareholder require such resignation should the officer remain employed by North Tyneside Council;
- 13.1.10 In the case of a cabinet member that person ceasing to be an elected member of North Tyneside Council.

#### **14. DIRECTORS' REMUNERATION**

- 14.1 Any remuneration of directors shall be determined by the shareholders. Directors may undertake any services for the company that the directors decide.
- 14.2 Unless the directors decide otherwise, directors' remuneration accrues from day to day.
- 14.3 Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

#### **15. DIRECTORS' EXPENSES**

- 15.1 Any expenses of directors shall be determined by the shareholders.

#### **16. APPOINTMENT AND REMOVAL OF ALTERNATE DIRECTORS**

- 16.1 The Shareholder appointing each of the directors shall in addition be entitled to appoint persons to be alternate directors and to replace such persons as alternate directors.
- 16.2 An alternate director shall be entitled to receive notice of all meetings of the directors and of all meetings of committees of directors of which the director for whom he is the alternate director is a member, to attend and vote at such meetings at which that director is not personally present, and generally to perform all the functions of that director in his absence.
- 16.3 An alternate director may be paid expenses and shall be entitled to be indemnified by the Company to the same extent as if he were a director.

#### **17. NOTICE OF BOARD MEETINGS**

- 17.1 A director may, and the secretary at the request of a director shall, call a meeting of directors.
- 17.2 Meetings shall be held at least quarterly at Quadrant, Cobalt Business Park, North Tyneside NE27 0BY or such other venue as agreed by the directors.
- 17.3 Notice of a meeting of the directors shall be deemed to be properly given to a director if it is given to him personally or by word of mouth or sent in writing to him at his last known address or any other address given by him to the Company for this purpose, or by any other means authorised in writing by the director concerned.

- 17.4 A director absent or intending to be absent from the United Kingdom may request the directors that notices of meetings of the directors shall during his absence be sent in writing to him at an address or to a fax number or an email address given by him to the Company for this purpose, but if no request is made to the directors it shall not be necessary to give notice of a meeting of the directors to any director who is for the time being absent from the United Kingdom.
- 17.5 A director may waive notice of any meeting either prospectively or retrospectively.

## **18. SHARE TRANSFERS**

- 18.1 Shares may only be transferred by shareholders to public bodies.
- 18.2 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.
- 18.3 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- 18.4 The company may retain any instrument of transfer which is registered.
- 18.5 The transferor remains the holder of a share until the transferee's name is entered in the register of shareholders as holder of it.
- 18.6 The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

## **19. DIRECTORS' INTERESTS AND CONFLICTS**

- 19.1 The directors may (subject to such terms and conditions, if any, as they may think fit to impose from time to time, and subject always to their right to vary or terminate such authorisation) authorise, to the fullest extent permitted by law, any matter which would otherwise result in a director infringing his duty to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company and which may reasonably be regarded as likely to give rise to a conflict of interest (including a conflict of interest and duty or conflict of duties), provided that the authorisation is only effective if:
- 19.1.1 any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director; and
- 19.1.2 the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

- 19.2 If a matter has been authorised by the directors in accordance with **Article 19.1** (an "**Approved Matter**") then (subject to such terms and conditions, if any, as the directors may think fit to impose from time to time, and subject always to their right to vary or terminate such authorisation or the provisions set out below), the relevant director:
- 19.2.1 shall not be required to disclose any confidential information relating to the Approved Matter if to make such a disclosure would result in a breach of a duty or obligation of confidence owed by him in relation to or in connection with that Approved Matter;
- 19.2.2 may be required by the Company to maintain in the strictest confidence any confidential information relating to the Approved Matter which also relates to the Company;
- 19.2.3 may be required by the Company not to attend any part of a meeting of the directors at which anything which may be relevant to the Approved Matter is to be discussed;
- 19.2.4 may absent himself from discussions, whether in meetings of the directors or otherwise, and exclude himself from information, which may be relevant to the Approved Matter;
- 19.2.5 shall not, by reason of his office as a director of the Company, be accountable to the Company for any benefit which he derives from the Approved Matter.
- 19.3 A director may, notwithstanding his office or the existence of an actual or potential conflict between the interests of a Company and those of a member of the same group which would be caught by section 175(1) of the 2006 Act, be a director or other officer of, or employed by or otherwise interested in, whether directly or indirectly, any other member of the same group (a "**Group Company Interest**") and the director in question:
- 19.3.1 shall be entitled to be counted in the quorum and to attend any meeting or part of a meeting of the directors or a committee of the board of directors at which any matter which is or may be relevant to the Group Company Interest may be discussed, and to vote on any resolution of the Directors or a committee of the board of Directors relating to such matter or to sign any written resolution relating to such matter, and any board or committee papers relating to such matter shall be provided to the director in question at the same time as the other directors;
- 19.3.2 shall not be obliged to account to the Company for any benefit which he derives from a Group Company Interest;
- 19.3.3 shall not be obliged to disclose to the Company or use for the benefit of the Company, any confidential information received by him by virtue of his Group Company Interest and otherwise than by virtue of his position as a director, if to do so would result in a breach of a duty or obligation of confidence owed by him to any other member of the same group or third party.
- 19.4 Any director who has a Group Company Interest shall, as soon as reasonably practicable following the relevant Group Company Interest arising, disclose to the board of directors the existence of that Group Company Interest and the nature and extent of it so far as the relevant director is able to do so at the time the disclosure is made, provided that no disclosure is required of any matter in respect of which the relevant director owes any duty of confidentiality to any third party.
- 19.5 The provisions of **Articles 19.1–19.3** (inclusive) shall not apply to a conflict of interest which arises in relation to an existing or proposed transaction or arrangement with the Company but the following provisions of this **Article 19.5** and **Article 19.6** shall apply. Any director



may be interested in an existing or proposed transaction or arrangement with the Company provided that he complies with the CA 2006 and (if applicable) regulations 85 and 86 of Table A.

- 19.6 Without prejudice to the obligation of each director to declare an interest in accordance with sections 177 and 182 of the 2006 Act, a director may vote at a meeting of the board of directors or of a committee of the board of directors on any resolution concerning a matter in which he has an interest, whether direct or indirect, which relates to a transaction or arrangement with the Company, or in relation to which he has a duty. Having so declared any such interest or duty he may have, the director shall be counted in the quorum present when any such resolution is under consideration and if he votes on such resolution his vote shall be counted.

## **20. DECISION MAKING BY SHAREHOLDERS**

- 20.1 Notice of a general meeting of the company need not be sent to a director in his capacity as such and Section 310(1)(b) of the Companies Act shall be excluded accordingly.
- 20.2 One person entitled to vote shall be a quorum if that person is a duly authorised representative of the Controlling Shareholder.
- 20.3 At any time where the company has one shareholder:
- 20.3.1 Any decision that may be taken by the company in general meeting may be taken by that shareholder solely; and
- 20.3.2 Such a decision is effective as if agreed by the company in general meeting.
- 20.4 Where a sole shareholder takes a decision under article 20.3 he must (unless that decision is taken by way of a written resolution) provided the company with written details of that decision.
- 20.5 The signatory on behalf of the Council as sole shareholder will be the Head of Legal, Governance and Commercial Services.

## **21. NOTICES ETC BY CONTROLLING SHAREHOLDER**

- 21.1 This article applies to:
- 21.1.1 Any notice given by the company to the controlling shareholder under these articles; and
- 21.1.2 Any consent given by the controlling shareholder under these articles.
- 21.2 Any notice or consent referred to in article 21.1 must be in writing and sent or supplied to the company in accordance with articles 21-23.
- 21.3 Any notice or consent by the controlling shareholder must be duly signed by that shareholder.

## **22. MEANS OF COMMUNICATION TO BE USED**

- 22.1 Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.
- 22.2 Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for that time being.
- 22.3 A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time to be less than 48 hours.

## **23. NOTICES – TIME OF SERVICE**

- 23.1 Any notice or other document may be served on or delivered to any Member by the Company either personally, or by sending it by pre-paid registered post (air mail in the case of an address for service outside the United Kingdom) addressed to the Member at his registered address or by leaving it at his registered address addressed to the Member, or by any other means authorised in writing by the Member concerned.
- 23.2 In the case of joint holders of a share, service or delivery of any notice or other document on or to one of the joint holders shall for all purposes be deemed a sufficient service on or delivery to all the joint holders.
- 23.3 Any notice or other document if given personally shall be deemed served when delivered, if sent by registered post, shall be deemed to have been served or delivered 2 Business Days after posting to an address in the United Kingdom (or five Business Days after posting to an address outside the United Kingdom). In proving such service or delivery, it shall be sufficient to prove that the notice or document was delivered to the address given for notice, or properly addressed, stamped and put in the post.
- 23.4 Any requirement in these Articles or in Table A for any notice, resolution or other document to be signed by or on behalf of any person shall be deemed satisfied where a notice, resolution or other document is received with the signature of the relevant person reproduced thereon by means of facsimile copy if such signature is confirmed by receipt of the notice, resolution or document bearing the original signature in manuscript within 10 Business Days of receipt of the reproduction.