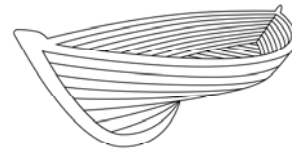


Shetland Arts Development Agency
Board of Trustees Meeting
Sunday 24 April 2011 at 10 am to 4 pm
Venue: Room 12, Islesburgh Community Centre, Lerwick



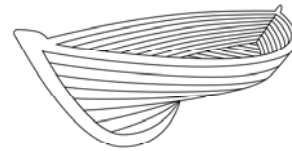
Shetland*arts*

Lunch will be provided.

PART ONE: 10:00 am – 1:00 pm

Item	Description	Report	Item taken by	Time
1	Welcome and introductions	Verbal	Chair	5 mins
2	Background			
2a	Where we are in terms of mission, models and money	Verbal	Gwilym/Sheila	10 mins
2b	How we got here, previous thinking, successes and challenges	Verbal	Kathy	10 mins
2c	How are we doing	Verbal (report circulated at Arts Dev. Trustee Meeting)	Kathy	10 mins
2d	Opportunities and threats: Creative Scotland funding relationship, economic climate and	Verbal		
2e	A Consultants View	Confidential report previously posted	David Williams	15 mins
2f	Questions and clarifications			10 mins
	Break			11am 10 mins
3a	Options for change and influencing factors		David Williams	45 mins
3c	Time scales and critical paths		David Williams	45 mins
3b	Recommendations to the Board	To be devised	Gwilym	20 mins
	Lunch			1pm 60 mins

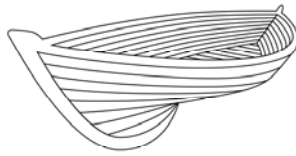
Shetland Arts Development Agency
Board of Trustees Meeting
Sunday 24 April 2011 at 10 am to 4 pm
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Shetland*arts*

PART TWO: 2pm – 4pm

Item	Description	Report	Item taken by	ACTION
1	Apologies and welcome	Verbal	Chair	Note
2	Minutes of last meeting			
2a	Approval of Board Minute for accuracy – meeting of the 12/02/11	Attached	Chair	Approval
2b	Matters arising that don't appear within the agenda	Verbal	Chair	Discussion
3	Finance and Management			
3a	Management Accounts and Annual Budget 2011/12 update	To follow	Head of Finance and Administration	Note/ Decision
3b	Directors travel update	Attached	Director	Note/ discussion
3c	Development Day recommendations	As discussed in morning session	Chair	Decision
3d	Law At Work Review	Verbal update	Head of Finance and Administration	Note
	Large Scale Project Updates			
4	Mareel Project			
4.1	Construction update	Verbal – detailed papers available on Basecamp	Director	Note
4.2	Operational update	Verbal update	Director	Note
4.4	Between Weathers LLP and Shetland IP CIC	Articles of Association and LLP Agreements	Director	Decision
4.5	Westside Cluster	Verbal update	Director	Note
5	Any Other Business as agreed by the Chair at the start of the meeting		Chair	
6	Dates of future meetings			
6a	SADA Board Meeting: Saturday 7 th May 2011 @ 10am Toll Clock Offices Thursday 16th June 2011 @ 6pm Bonhoga Gallery		Chair	Confirm dates and venues for future meetings



Shetland*arts*

To: Board of Trustees – Shetland Arts

24 April 2011

From: Director, Shetland Arts

1. Trips undertaken off island by the Director since last Board Meeting (12 February 2011)

When	Where	Why
15/02/11	Inverness	HIE Strengthening Community Policy Review
16/02/11	Inverness	Meeting with Hi-Arts
17/02/11	Glasgow	GHA Mareel Meetings/ Foundation Review Meeting
01/03/11	Aberdeen	B4Films Meeting
16/03/11 – 17/03/11	London	BoP Consultants Meeting (Creative Finance Project)/ Kate Swan (Film Producer) and Coaching Session
28/01/11	London	Franklin Rae meeting/ Kate Swan Meeting

2. Director planned off island trips

When	Where	Why
25/04/11	Aberdeen	B4Films Meeting
02/05/11 – 03/05/11	London	Between Weathers Meetings

3. Recommendations

The Board are asked to note the above report.

THE COMPANIES ACT 2006
COMMUNITY INTEREST COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

of

SHETLAND ARTS IP C.I.C.

2011

RMF.SHG.S10503.1001-0001



Edinburgh Quay 133 Fountainbridge Edinburgh EH3 9AG
Tel 0131 656 2000 Fax 0131 656 2020 DX ED58
Also at: 33 Bothwell Street Glasgow G2 6NL Tel 0141 275 4771 Fax 0141 275 4781 DX 512815-Glasgow Central
Email maildesk@todsmurray.com
www.todsmurray.com

THE COMPANIES ACT 2006
COMMUNITY INTEREST COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

of

SHETLAND ARTS IP C.I.C.

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company and to take at least one share.

<i>Name of each subscriber</i>	<i>Authentication by each subscriber</i>
Full name: Shetland Arts Development Agency	Sign: Trustee [get all to sign?]

Dated: [INSERT] 2011

THE COMPANIES ACT 2006

COMMUNITY INTEREST COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

SHETLAND ARTS IP C.I.C.

2011

RMF.SHG.S10503.1001-0001

FAS No 7646



Edinburgh Quay 133 Fountainbridge Edinburgh EH3 9AG

Tel 0131 656 2000 Fax 0131 656 2020 DX ED58

Also at: 33 Bothwell Street Glasgow G2 6NL Tel 0141 275 4771 Fax 0141 275 4781 DX 512815-Glasgow Central

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THE COMPANIES ACT 2006

ARTICLES OF ASSOCIATION

of

SHETLAND ARTS IP C.I.C.

INTERPRETATION

1 Defined terms

- 1.1 The interpretation of these Articles is governed by the provisions set out in the Schedule to the Articles.

COMMUNITY INTEREST COMPANY AND ASSET LOCK

2 Community Interest Company

- 2.1 The Company shall be a community interest company.

3 Asset Lock

- 3.1 The Company shall not transfer any of its assets other than for full consideration.

- 3.2 Provided the conditions in Article 3.3 are satisfied, Article 3.1 shall not apply to:

3.2.1 the transfer of assets to any specified asset-locked body, or (with the consent of the Regulator) to any other asset-locked body;

3.2.2 the transfer of assets made for the benefit of the community other than by way of a transfer of assets into an asset-locked body;

3.2.3 The payment of dividends in respect of shares in the Company;

3.2.4 The distribution of assets on winding up;

3.2.5 Payments on the redemption or purchase of the Company's own shares;

3.2.6 Payments on the reduction of share capital; and

3.2.7 The extinguishing or reduction of the liability of the members in respect of share capital not paid up on the reduction of share capital.

- 3.3 The conditions are that the transfer of assets:-

3.3.1 must comply with any restrictions on the transfer of assets for less than full consideration which may be set out elsewhere in the Articles of the Company.

- 3.3.2 Must not exceed any limits imposed by, or by virtue of, Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.
- 3.4 If:
- 3.4.1 the Company is wound up under the Insolvency Act 1986; and
- 3.4.2 all its liabilities have been satisfied
- any residual assets shall be given or transferred to the asset-locked body specified in Article 3.5 below.
- 3.5 For the purposes of this Article 3, the following asset-locked body is specified as a potential recipient of the Company's assets under Articles 3.2 and 3.4:
- 3.6 Name: Shetland Arts Development Agency
- 3.7 Charity Registration Number (if applicable): SC037082
- 3.8 Principal Office: Toll Clock Centre, 26 North Road Lerwick, Shetland, ZE1 ODE
- Otherwise defined as "SADA" in the Schedule to the Articles.

4 Not for profit

- 4.1 The Company is not established or conducted for private gain: any profits or assets are used principally for the benefit of the community.

OBJECTS, POWERS AND LIMITATION OF LIABILITY

5 Objects

The Company's objects are:-

- 5.1 To carry out activities which benefit the community and in particular (without limitation) to acquire, trade and invest in intellectual property for the benefit of the community of Shetland;
- 5.2 To carry on any other activity which may appropriately be carried on in connection with any of the objects of the Company;
- 5.3 To purchase, take on lease, hire, take in exchange, and otherwise acquire any property and rights which may be advantageous for the purposes of the activities of the Company;
- 5.4 To improve, manage, exploit, develop, turn to account and otherwise deal with all or any part of the undertaking, property and rights of the Company;
- 5.5 To sell, let, hire, license, give in exchange and otherwise dispose of all or any part of the undertaking, property and rights of the Company;
- 5.6 To lend money and give credit only to a wholly owned subsidiary of the Company, with or without security, and to grant guarantees and contracts of indemnity only on behalf of any such wholly owned subsidiary;

- 5.7 To borrow money and give security for the payment of money by, or the performance of other obligations of, the Company or any other person;
- 5.8 To draw, make, accept, endorse, discount, negotiate, execute and issue cheques, promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments;
- 5.9 To remunerate any individual in the employment of the Company;
- 5.10 To enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the Company and to obtain from any such organisation, government or authority any charter, right, privilege or concession;
- 5.11 To enter into partnership or any other arrangement for sharing profit, co-operation or mutual assistance with any body, whether incorporated or unincorporated;
- 5.12 To give any shares, debentures or securities and accept any shares, debentures or securities as consideration for any business, property or rights acquired or disposed of;
- 5.13 To effect insurance against risks of all kinds;
- 5.14 To invest money of the Company not immediately required for the purpose of its activities in such investments and securities (including land in any part of the world) and that in such manner as may from time to time be considered advantageous and to dispose of and vary such investment and securities;
- 5.15 To promote any company or other incorporated body formed for the purpose of carrying on any activity which the Company is authorised to carry on;
- 5.16 To amalgamate with any body, incorporated or unincorporated, having objects altogether or in part similar to those of the Company;
- 5.17 To subscribe for, take, purchase and otherwise acquire and hold shares, stocks, debentures and other interests in any company with which the Company is authorised to amalgamate and to acquire and take over the whole or any part of the undertaking, assets and liabilities of any body, incorporated or unincorporated, with which the Company is authorised to amalgamate;
- 5.18 To transfer all or any part of the undertaking, property and rights of the Company to any body, incorporated or unincorporated, with which the Company is authorised to amalgamate;
- 5.19 To accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely or conditionally or in trust for any objects of the Company;
- 5.20 To take such steps as may be deemed expedient for the purpose of procuring contribution to the funds of the Company, whether by way of subscriptions, grants, loans, donations or otherwise;
- 5.21 To carry out any of these objects in any part of the world as principal, agent, contractor, trustee, or in any other capacity and through an agent, contractor, sub-contractor, trustee or any person acting in any other capacity and either alone or in conjunction with others;

The objects set forth in any sub-clause of this clause shall not be restrictively construed but the widest interpretation shall be given thereto, and they shall not, except when the context expressly so requires, be in any way limited to or restricted by reference to or inference from any other object or objects set forth in such sub-clause or from the terms of any other sub-clause or by the name of the Company. None of such sub-clauses or the object or objects therein specified or the powers thereby conferred shall be deemed subsidiary or ancillary to the objects or powers mentioned in any other sub-clause, but the Company shall have full power to exercise all or any of the powers and to achieve or to endeavour to achieve all or any of the objects conferred by and provided in any one or more of the said sub-clauses.

It is hereby declared that where the context so admits the word “company” in this clause shall be deemed to include any partnership, firm or other body of persons whether or not incorporated and, if incorporated, whether or not a company within the meaning of the Companies Act 2006.

And it is declared that in this clause where the context so admits, “property” means any property, heritable or moveable, real or personal, wherever situated.

6 Powers

- 6.1 To further its objects the Company may do all such lawful things as may further the Company’s objects and, in particular, but, without limitation, may borrow or raise and secure the payment of money for any purpose including for the purposes of investment or of raising funds.

7 Liability of shareholders

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

DIRECTORS

DIRECTORS’ POWERS AND RESPONSIBILITIES

8 Directors’ general authority

- 8.1 Subject to the Articles, the Directors are responsible for the management of the Company’s business, for which purpose they may exercise all the powers of the Company.

9 Shareholders’ reserve power

- 9.1 The shareholders may, by special resolution, direct the Directors to take, or refrain from taking, specific action.
- 9.2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution.

10 Chair

- 10.1 The Directors may appoint one of their number to be the chair of the Directors for such term of office as they may determine and may at any time remove him or her from office.

11 Directors may delegate

- 11.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles or the implementation of their decisions or day to day management of the affairs of the Company:
- 11.1.1 to such person or committee;
 - 11.1.2 by such means (including by power of attorney);
 - 11.1.3 to such an extent;
 - 11.1.4 in relation to such matters or territories; and
 - 11.1.5 on such terms and conditions;
- as they think fit.
- 11.2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.
- 11.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

DECISION-MAKING BY DIRECTORS

12 Directors to take decisions collectively

Any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with Article 18. In the event of the Company being a single director company, a majority decision is made when that single Director makes a decision.

13 Calling a Directors' meeting

- 13.1 Two Directors may (and the Secretary, if any, must at the request of two Directors) call a Directors' meeting.
- 13.2 A Directors' meeting must be called by at least seven Clear Days' notice unless either:
- 13.2.1 all the Directors agree; or
 - 13.2.2 urgent circumstances require shorter notice.
- 13.3 Notice of Directors' meetings must be given to each Director.
- 13.4 Every notice calling a Directors' meeting must specify:
- 13.4.1 the place, day and time of the meeting; and
 - 13.4.2 if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 13.5 Notice of Directors' meetings need not be in Writing.
- 13.6 Notice of Directors' meetings may be sent by Electronic Means to an Address provided by the Director for the purpose.

14 Participation in Directors' meetings

14.1 Subject to the Articles, Directors participate in a Directors' meeting, or part of a Directors' meeting, when:

14.1.1 the meeting has been called and takes place in accordance with the Articles; and

14.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

14.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.

14.3 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

15 Quorum for Directors' meetings

15.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

15.2 The quorum for Directors' meetings may be fixed from time to time by a decision of the Directors, but it must never be less than two, and unless otherwise fixed it is two or one-third of the total number of Directors, whichever is the greater.

If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision to call a general meeting so as to enable the shareholders to appoint further Directors.

16 Chairing of Directors' meetings

The Chair, if any, or in his or her absence another Director nominated by the Directors present shall preside as chair of each Directors' meeting.

17 Voting

17.1 Questions arising at a Directors' meeting shall be decided by a majority of votes.

17.2 In all proceedings of Directors each Director must not have more than one vote.

17.3 In case of an equality of votes, the Chair shall have a second or casting vote.

18 Decisions without a meeting

18.1 The Directors may take a unanimous decision without a Directors' meeting by indicating to each other by any means, including without limitation by Electronic Means, that they share a common view on a matter. Such a decision may, but need not, take the form of a resolution in Writing, copies of which have been signed by each Director or to which each Director has otherwise indicated agreement in Writing.

18.2 A decision which is made in accordance with Article 18.1 shall be as valid and effectual as if it had been passed at a meeting duly convened and held, provided the following conditions are complied with:

18.2.1 approval from each Director must be received by one person being either such person as all the Directors have nominated in advance for that purpose or such other person as volunteers if necessary ("the Recipient"), which person may, for the avoidance of doubt, be one of the Directors;

18.2.2 following receipt of responses from all of the Directors, the Recipient must communicate to all of the Directors by any means whether the resolution has been formally approved by the Directors in accordance with this Article 18.2;

18.2.3 the date of the decision shall be the date of the communication from the Recipient confirming formal approval;

18.2.4 the Recipient must prepare a minute of the decision in accordance with Article 48.

19 Conflicts of interest

19.1 Whenever a Director finds himself or herself in a situation that is reasonably likely to give rise to a Conflict of Interest, he or she must declare his or her interest to the Directors unless, or except to the extent that, the other Directors are or ought reasonably to be aware of it already.

19.2 If any question arises as to whether a Director has a Conflict of Interest, the question shall be decided by a majority decision of the other Directors.

19.3 Whenever a matter is to be discussed at a meeting or decided in accordance with Article 18 and a Director has a Conflict of Interest in respect of that matter then, subject to Article 20, he or she must:

19.3.1 remain only for such part of the meeting as in the view of the other Directors is necessary to inform the debate;

19.3.2 not be counted in the quorum for that part of the meeting; and

19.3.3 withdraw during the vote and have no vote on the matter.

19.4 When a Director has a Conflict of Interest which he or she has declared to the Directors, he or she shall not be in breach of his or her duties to the Company by withholding confidential information from the Company if to disclose it would result in a breach of any other duty or obligation of confidence owed by him or her.

20 Directors' power to authorise a conflict of interest

20.1 The Directors have power to authorise a Director to be in a position of Conflict of Interest provided:

20.1.1 in relation to the decision to authorise a Conflict of Interest, the conflicted Director must comply with Article 19;

- 20.1.2 in authorising a Conflict of Interest, the Directors can decide the manner in which the Conflict of Interest may be dealt with and, for the avoidance of doubt, they can decide that the Director with a Conflict of Interest can participate in a vote on the matter and can be counted in the quorum;
- 20.1.3 the decision to authorise a Conflict of Interest can impose such terms as the Directors think fit and is subject always to their right to vary or terminate the authorisation.
- 20.2 If a matter, or office, employment or position, has been authorised by the Directors in accordance with Article 20.1 then, even if he or she has been authorised to remain at the meeting by the other Directors, the Director may absent himself or herself from meetings of the Directors at which anything relating to that matter, or that office, employment or position, will or may be discussed.
- 20.3 A Director shall not be accountable to the Company for any benefit which he or she derives from any matter, or from any office, employment or position, which has been authorised by the Directors in accordance with Article 20.1 (subject to any limits or conditions to which such approval was subject).

21 **Register of Directors' interests**

The Directors shall cause a register of Directors' interests to be kept. A Director must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Company or in any transaction or arrangement entered into by the Company which has not previously been declared.

APPOINTMENT AND RETIREMENT OF DIRECTORS

22 **Methods of appointing Directors**

- 22.1 Unless otherwise determined by ordinary resolution, the maximum number of Trustees shall be five and the minimum number of Directors shall be 3
- 22.2 Those persons notified to the Registrar of Companies as the first Directors of the Company shall be the first Directors.
- 22.3 For so long as SADA remains a shareholder of the Company, only person who is willing to act as a Director, is permitted by law to do so, and is appointed by SADA, may be appointed to be a Director of the Company.
- 22.4 If SADA ceases to be a shareholder of the Company, any person who is willing to act as a Director and is permitted by law to do so, may be appointed by a simple majority of the remaining shareholders of the Company.

23 **Termination of Director's appointment**

- 23.1 A person immediately ceases to be a Director if:
 - 23.1.1 his appointment is by virtue of being nominated by SADA and

23.1.1.1 he is an employee or officer of SADA and ceases to be such an employee or officer; or

23.1.1.2 his appointment as a nominee is revoked by SADA; or

23.1.1.3 SADA ceases to be a shareholder of the Company.

23.2 If the removal of Directors under Clause 23.1 will result in the Company not have any appointed Directors, prior to their removal the outgoing Directors must not take any other decision but must call a general meeting so as to enable the shareholders to appoint further Directors. Notwithstanding the terms of Clause 23.1 the outgoing Directors shall cease to be Directors at the end of such general meeting.

23.3 A person ceases to be a Director as soon as:

23.3.1 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;

23.3.2 a bankruptcy order is made against that person, or an order is made against that person in individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

23.3.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;

23.3.4 the Directors reasonably believe he or she is suffering from mental disorder and incapable of acting and they resolve that he or she be removed from office;

23.3.5 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 (but only if at least two Directors will remain in office when such resignation has taken effect); or

23.3.6 the Director fails to attend three consecutive meetings of the Directors and the Directors resolve that the Director be removed for this reason.

24 **Directors' remuneration**

24.1 Directors may undertake any services for the Company that the Directors decide.

24.2 Subject to the Articles and in particular Article 3 Directors are entitled to such remuneration as the Directors determine:

24.2.1 for their services to the Company as Directors; and

24.2.2 for any other service which they undertake for the Company.

24.3 Subject to the Articles and in particular Article 3, a Director's remuneration may:

- 24.3.1 take any form; and
- 24.3.2 include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that Director.
- 24.4 Unless the Directors decide otherwise, Directors' remuneration accrues from day to day.
- 24.5 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.

25 Directors' expenses

- 25.1 The Company may pay any reasonable expenses which the Directors properly incur in connection with their attendance at:
 - 25.1.1 meetings of Directors or committees of Directors;
 - 25.1.2 general meetings; or
 - 25.1.3 separate meetings of the holders of any class of shares or of debentures of the Company,
- or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

SHARES

26 All shares to be fully paid up and issued at nominal value

- 26.1 No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the Company in consideration for its issue.
- 26.2 This does not apply to shares taken on the formation of the Company by the subscribers to the Company's Memorandum.

27 Issues of Shares: Pre-emption Rights

- 27.1 In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (as defined in section 560(1) of the Act) made by the Company.
- 27.2 Unless otherwise agreed by Special Resolution, if the Company proposes to allot any equity securities, those equity securities shall not be allotted to any person unless the company has first offered them to all shareholders on the date of the offer on the same terms, and at the same price, as those equity securities are being offered to other persons on a *pari passu* and pro rata basis to the number of shares held by those holders (as nearly as possible without involving fractions). The offer:
 - 27.2.1 shall be in writing, shall be open for acceptance for a period of 15 Business Days from the date of the offer and shall give details of the number and subscription price of the relevant equity securities; and

27.2.2 may stipulate that any shareholder who wishes to subscribe for a number of equity securities in excess of the proportion to which he is entitled shall, in his acceptance, state the number of excess equity securities ("**Excess Securities**") for which he wishes to subscribe.

27.3 Any equity securities not accepted by shareholders pursuant to the offer made to them in accordance with Article 27.2 shall be used for satisfying any requests for Excess Securities made pursuant to Article 27.2. If there are insufficient Excess Securities to satisfy such requests, the Excess Securities shall be allotted to the applicants pro rata to the number of shares held by the applicants immediately before the offer was made to shareholders in accordance with Article 27.2 (as nearly as possible without involving fractions or increasing the number of Excess Securities allotted to any shareholder beyond that applied for by him). After that allotment, any Excess Securities remaining shall be offered to any other person as the Directors may determine, at the same price and on the same terms as the offer to the shareholders.

27.4 Subject to Articles 27.2 and 27.3 and to section 551 of the Act, any equity securities shall be at the disposal of the Directors who may allot, grant options over or otherwise dispose of them to any persons at those times and generally on the terms and conditions they think proper.

28 **Powers to issue different classes of share**

28.1 Subject to the Articles, but without prejudice to the rights attached to any existing share, the Company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

28.2 The Company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the holder, and the Directors may determine the terms, conditions and manner of redemption of any such shares.

29 **Company not bound by less than absolute interests**

29.1 Except as required by law, no person is to be recognised by the Company as holding any share upon any trust, and except as otherwise required by law or the Articles, the Company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

30 **Share certificates**

30.1 The Company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

30.2 Every certificate must specify:

30.2.1 in respect of how many shares, of what class, it is issued;

30.2.2 the nominal value of those shares;

30.2.3 that the shares are fully paid; and

30.2.4 any distinguishing numbers assigned to them.

30.3 No certificate may be issued in respect of shares of more than one class.

30.4 If more than one person holds a share, only one certificate may be issued in respect of it.

30.5 Certificates must:

30.5.1 have affixed to them the Company's common seal; or

30.5.2 be otherwise executed in accordance with the Companies Acts.

31 **Replacement share certificates**

31.1 If a certificate issued in respect of a shareholder's shares is:

31.1.1 damaged or defaced; or

31.1.2 said to be lost, stolen or destroyed,

that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

31.2 A shareholder exercising the right to be issued with such a replacement certificate:

31.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;

31.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and

31.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the Directors decide.

32 **Share transfers**

32.1 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.

32.2 No fee may be charged for registering any instrument of transfer or other Document relating to or affecting the title to any share.

32.3 The Company may retain any instrument of transfer which is registered.

32.4 The transferor remains the holder of a share until the transferee's name is entered in the register of shareholders as holder of it.

32.5 The Directors may refuse to register the transfer of a share to a person of whom they do not approve.

32.6 They may also refuse to register the transfer unless it is lodged at the registered office of the Company or at such other place as the Directors may appoint and is accompanied by such evidence as the Directors may reasonably require to show the right of the transferor to make the transfer, and by such other information, as they may reasonably require.

32.7 If the Directors refuse to register such a transfer, they shall, within two months after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal.

- 32.8 The provisions of this Article apply in addition to any restrictions on the transfer of a share which maybe set out elsewhere in the Memorandum or Articles of the Company.

33 Purchase of own shares

- 33.1 Subject to the articles, the Company may purchase its own shares (including any redeemable shares) and may make a payment in respect of the redemption or purchase of its own shares otherwise than out of the distributable profits of the Company or the proceeds of a fresh issue of shares. Any share so purchased shall be purchased at its nominal value.

34 Transmission of shares

- 34.1 If title to a share passes to a transmittee, the Company may only recognise the transmittee as having any title to that share.
- 34.2 A transmittee who produces such evidence of entitlement to shares as the Directors may properly require:
- 34.2.1 may, subject to the Articles, choose either to become the holder of those shares or to have them transferred to another person; and
- 34.2.2 subject to the Articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- 34.3 But transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

35 Exercise of transmittees' rights

- 35.1 Transmittees who wish to become the holders of shares to which they have become entitled must notify the Company in Writing of that wish.
- 35.2 If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.
- 35.3 Any transfer made or executed under this Article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

36 Transmittees bound by prior notices

- 36.1 If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of shareholders.

DIVIDENDS AND OTHER DISTRIBUTIONS

37 Procedure for declaring dividends

- 37.1 Subject to the Companies Acts, the Regulations and the Articles, the Company may by ordinary resolution declare dividends, and the Directors

may, provided that such decision is authorised by an ordinary resolution of the shareholders, decide to pay interim dividends.

- 37.2 A dividend must not be declared unless the Directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the Directors.
- 37.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 37.4 Unless the shareholders' resolution to declare or Directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- 37.5 If the Company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- 37.6 The Directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 37.7 If the Directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

38 **Payment of dividends and other distributions**

- 38.1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:
 - 38.1.1 transfer to a bank or building society account indicated by the distribution recipient either in Writing or as the Directors may otherwise decide;
 - 38.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered Address (if the distribution recipient is a holder of the share), or (in any other case) to an Address indicated by the distribution recipient either in Writing or as the Directors may otherwise decide;
 - 38.1.3 sending a cheque made payable to such person by post to such person at such Address as the distribution recipient has indicated either in Writing or as the Directors may otherwise decide; or
 - 38.1.4 any other means of payment as the Directors agree with the distribution recipient either in Writing or by such other means as the Directors decide.
- 38.2 In the Articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable:
 - 38.2.1 the holder of the share; or

38.2.2 if the share has two or more joint holders, whichever of them is named first in the register of members; or

38.2.3 if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

39 No interest on distributions

39.1 The Company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:

39.1.1 the terms on which the share was issued; or

39.1.2 the provisions of another agreement between the holder of that share and the Company.

40 Unclaimed distributions

40.1 All dividends or other sums which are:

40.1.1 payable in respect of shares; and

40.1.2 unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed.

40.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.

40.3 If:

40.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and

40.3.2 the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company.

41 Non-cash distributions

41.1 Subject to the terms of issue of the share in question, the Company may, by ordinary resolution on the recommendation of the Directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

41.2 For the purposes of paying a non-cash distribution, the Directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:

41.2.1 fixing the value of any assets;

41.2.2 paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

41.2.3 vesting any assets in trustees.

42 Waiver of distributions

42.1 Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the Company notice in Writing to that effect, but if:

42.1.1 the share has more than one holder; or

42.1.2 more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

CAPITALISATION OF PROFITS

43 Authority to capitalise and appropriation of capitalised sums

43.1 Subject to the Articles, the Directors may, if they are so authorised by an ordinary resolution:

43.1.1 decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and

43.1.2 appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

43.2 Capitalised sums must be applied:

43.2.1 on behalf of the persons entitled; and

43.2.2 in the same proportions as a dividend would have been distributed to them.

43.3 Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

43.4 A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the Company which are then allotted credited as fully paid to the persons entitled or as they may direct.

43.5 Subject to the Articles the Directors may:

43.5.1 apply capitalised sums in accordance with Articles 43.3 and 43.4 partly in one way and partly in another;

43.5.2 make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this Article (including the issuing of fractional certificates or the making of cash payments); and

- 43.5.3 authorise any person to enter into an agreement with the Company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this Article.

DECISION-MAKING BY SHAREHOLDERS

44 Meetings

- 44.1 The Directors may call a general meeting at any time.
- 44.2 General meetings must be held in accordance with the provisions regarding such meetings in the Companies Act.
- 44.3 A person who is not a shareholder of the Company shall not have any right to vote at a general meeting of the Company; but this is without prejudice to any right to vote on a resolution affecting the rights attached to a class of the Company's debentures.
- 44.4 Article 44.3 shall not prevent a person who is a proxy for a member or a duly authorised representative of a member from voting at a general meeting of the Company.

45 Written resolutions

- 45.1 Subject to Article 45.3, a written resolution of the Company passed in accordance with this Article 45 shall have effect as if passed by the Company in general meeting:
- 45.1.1 A written resolution is passed as an ordinary resolution if it is passed by a simple majority of the total voting rights of eligible shareholders.
- 45.1.2 A written resolution is passed as a special resolution if it is passed by shareholders representing not less than 75% of the total voting rights of eligible shareholders. A written resolution is not a special resolution unless it states that it was proposed as a special resolution.
- 45.2 In relation to a resolution proposed as a written resolution of the Company the eligible shareholders are the shareholders who would have been entitled to vote on the resolution on the Circulation Date of the resolution.
- 45.3 A shareholders' resolution under the Companies Acts removing a Director or an auditor before the expiration of his or her term of office may not be passed as a written resolution.
- 45.4 A copy of the written resolution must be sent to every shareholder together with a statement informing the shareholder how to signify their agreement to the resolution and the date by which the resolution must be passed if it is not to lapse. Communications in relation to written notices shall be sent to the Company's auditors in accordance with the Companies Acts.
- 45.5 A shareholder signifies their agreement to a proposed written resolution when the Company receives from him or her an authenticated Document identifying the resolution to which it relates and indicating his or her agreement to the resolution.

- 45.5.1 If the Document is sent to the Company in Hard Copy Form, it is authenticated if it bears the shareholder's signature.
- 45.5.2 If the Document is sent to the Company by Electronic Means, it is authenticated if it bears the shareholder's signature or if the identity of the shareholder is confirmed in a manner agreed by the Directors or if it is accompanied by a statement of the identity of the shareholder and the Company has no reason to doubt the truth of that statement or if it is from an email Address notified by the shareholder to the Company for the purposes of receiving Documents or information by Electronic Means.
- 45.6 A written resolution is passed when the required majority of eligible shareholders have signified their agreement to it.
- 45.7 A proposed written resolution lapses if it is not passed within 28 days beginning with the Circulation Date.

ADMINISTRATIVE ARRANGEMENTS AND MISCELLANEOUS

46 Means of communication to be used

- 46.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in 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.
- 46.2 Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors 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 the time being.
- 46.3 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 an agreed time of their being sent, and for the agreed time to be less than 48 hours.

47 Irregularities

The proceedings at any meeting or on the taking of any poll or the passing of a written resolution or the making of any decision shall not be invalidated by reason of any accidental informality or irregularity (including any accidental omission to give or any non-receipt of notice) or any want of qualification in any of the persons present or voting or by reason of any business being considered which is not referred to in the notice unless a provision of the Companies Acts specifies that such informality, irregularity or want of qualification shall invalidate it.

48 Minutes

- 48.1 The Directors must cause minutes to be made in books kept for the purpose:
 - 48.1.1 of all appointments of officers made by the Directors;

48.1.2 of all resolutions of the Company and of the Directors (including, without limitation, decisions of the Directors made without a meeting); and

48.1.3 of all proceedings at meetings of the Company and of the Directors, and of committees of Directors, including the names of the Directors present at each such meeting;

and any such minute, if purported to be signed (or in the case of minutes of Directors' meetings signed or authenticated) by the chair of the meeting at which the proceedings were had, or by the chair of the next succeeding meeting, shall, as against any shareholder or Director of the Company, be sufficient evidence of the proceedings.

48.2 The minutes must be kept for at least ten years from the date of the meeting, resolution or decision.

49 **Records and accounts**

The Directors shall comply with the requirements of the Companies Acts as to maintaining a shareholders' register, keeping financial records, the audit or examination of accounts and the preparation and transmission to the Registrar of Companies and the Regulator of:

49.1 annual reports;

49.2 annual returns; and

49.3 annual statements of account.

49.4 Except as provided by law or authorised by the Directors or an ordinary resolution of the Company, no person is entitled to inspect any of the Company's accounting or other records or documents merely by virtue of being a shareholder.

50 **Indemnity**

50.1 Subject to Article 50.2, a relevant Director of the Company or an associated company may be indemnified out of the Company's assets against:

50.1.1 any liability incurred by that Director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated company;

50.1.2 any liability incurred by that Director in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006); and

50.1.3 any other liability incurred by that Director as an officer of the Company or an associated company.

50.2 This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

50.3 In this Article:

50.3.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

50.3.2 a “relevant Director” means any Director or former Director of the Company or an associated company.

51 Insurance

51.1 The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant Director in respect of any relevant loss.

51.2 In this Article:

51.2.1 a “relevant Director” means any Director or former Director of the Company or an associated company;

51.2.2 a “relevant loss” means any loss or liability which has been or may be incurred by a relevant Director in connection with that Director’s duties or powers in relation to the Company, any associated company or any pension fund or employees’ share scheme of the Company or associated company; and

51.2.3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

52 Exclusion of model articles

The relevant model articles for a company limited by shares are hereby expressly excluded.

SCHEDULE

INTERPRETATION

- 1 In the Articles, unless the context requires otherwise, the following terms shall have the following meanings:

Term	Meaning
“Act”	means the Companies Act 2006;
“Address”	includes a number or address used for the purposes of sending or receiving Documents by Electronic Means;
“Articles”	means the Company’s articles of association;
“asset-locked body”	means (i) a community interest company or a charity or a Permitted Industrial and Provident Society; or (ii) a body established outside the United Kingdom that is equivalent to any of those;
“bankruptcy”	includes individual insolvency proceedings in a jurisdiction other than Scotland which have an effect similar to that of sequestration in Scotland pursuant to the Bankruptcy (Scotland) Act 1985 as amended;;
“Business Day”	means any day (other than a Saturday or Sunday) on which the Scottish clearing banks are open for over-the-counter business in Scotland;
“Chair”	has the meaning given in Article 10;
“charity”	means a body entered on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts;
“Circulation Date”	in relation to a written resolution, has the meaning given to it in the Companies Acts;
“Clear Days”	in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
“community”	is to be construed in accordance with the section 35(5) of the Companies (Audit, Investigations and Community Enterprise) Act 2004;
“Companies Acts”	means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company;

“Company”	Shetland Arts IP C.I.C.;
“Conflict of Interest”	any direct or indirect interest of a Director (whether personal, by virtue of a duty of loyalty to another organisation or otherwise) that conflicts or might conflict with the interests of the Company;
“Director”	means a director of the Company, and includes any person occupying the position of director, by whatever name called;
“distribution recipient”	the meaning given in Article 38;
“Document”	includes, unless otherwise indicated, any document sent or supplied in Electronic Form;
“Electronic Form and Electronic Means”	have the meanings respectively given to them in section 1168 of the Companies Act 2006;
“fully paid”	in relation to a share, means that the nominal value and any premium to be paid to the Company in respect of that share have been paid to the Company;
“Hard Copy Form”	has the meaning given in section 1168 of the Companies Act 2006;
“holder”	in relation to shares means the person whose name is entered in the register of shareholders as the holder of the shares;
“instrument”	means a Document in Hard Copy Form;
“Memorandum”	the Company’s memorandum of association;
“paid”	means paid or credited as paid;
“participate”	in relation to a Directors’ meeting, has the meaning given in Article 14;
“Permitted Industrial and Provident Society”	means an industrial and provident society which has a restriction on the use of its assets in accordance with regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006 or regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006;
“the Regulator”	means the Regulator of Community Interest Companies;
“the Regulations”	means the Community Interest Company Regulations 2005 (as amended);

"SADA"	Means Shetland Arts Development Agency, a charitable trust registered with the Office of the Scottish Charity Regulator (Registered Number SC037082) and having its principal office at Toll Clock Centre, 26 North Road, Lerwick, Shetland ZE1 0DE
"Scottish Charity Register"	means the public register of charities as created by section 3 of the Charities and Trustee Investment (Scotland) Act 2005 and maintained and regulated by the Office of the Scottish Charity Regulator (OSCR);
"Secretary"	the secretary of the Company (if any);
"shareholder"	in relation to shares means a person whose name is entered in the register of members as the holder of shares;
"shares"	means shares in the Company;
"specified"	means specified in the memorandum or articles of association of the Company for the purposes of this paragraph;
"subsidiary"	has the meaning given in section 1159 of the Companies Act 2006;
"Taxes Acts"	means the Income & Corporation Taxes Act 1988, the Income Tax (Earnings and Pensions) Act 2003, the Income Tax (Trading and Other Income) Act 2005 and the Income Tax Act 2007 including any statutory modification or re-enactment thereof for the time being in force;
"transfer"	includes every description of disposition, payment, release or distribution, and the creation or extinction of an estate or interest in, or right over, any property;
"transmittee"	means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and
"Writing"	means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in Electronic Form or otherwise.

- 2 Subject to clause 3 of this Schedule, any reference in the Articles to an enactment includes a reference to that enactment as re-enacted or amended from time to time and to any subordinate legislation made under it.

- 3 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Companies Acts as in force on the date when these Articles become binding on the Company.

Draft: 09.03.11

LLP MEMBERS AGREEMENT

between

SHETLAND ARTS DEVELOPMENT AGENCY

and

SHETLAND ARTS IP CIC

and

B4 FILMS LTD

and

BETWEEN WEATHERS LLP

2011

DGB.S10503.1001



Edinburgh Quay 133 Fountainbridge Edinburgh EH3 9AG

Tel 0131 656 2000 Fax 0131 656 2020 DX ED58

Also at: 33 Bothwell Street Glasgow G2 6NL Tel 0141 275 4771 Fax 0141 275 4781 DX 512815-Glasgow Central

Email maildesk@todsmurray.com

www.todsmurray.com

LLP MEMBERS AGREEMENT

between

SHETLAND ARTS DEVELOPMENT AGENCY, a charity registered in Scotland with number SC37082 and having its principal office at Toll Clock Centre, 26 North Road, Lerwick, Shetland ZE1 0DE ("**SADA**")

and

SHETLAND ARTS IP CIC, a community interest company incorporated in Scotland with registered number ***** and having its registered office at ***** ("**CIC**")

and

B4 FILMS LIMITED, a company incorporated in Scotland with registered number SC351956 and having its registered office at 108 Hammerfield Avenue, Aberdeen AB10 7FE ("**B4**")

and

BETWEEN WEATHERS LLP, a limited liability partnership incorporated in Scotland with registered number SO***** and having its registered office at [Toll Clock Centre, 26 North Road, Lerwick, Shetland ZE1 0DE] (the "**LLP**")

WHEREAS:-

SADA, CIC and B4 (together, the "**First Members**") and the LLP (each a "**party**" and, together, the "**parties**") have agreed to enter into this Agreement to set out the basis on which the LLP is to be organised and the rights and obligations of the LLP and the Members (as hereinafter defined)

NOW THEREFORE IT IS HEREBY AGREED among the parties as follows:-

1 INTERPRETATION

In this Agreement:-

- 1.1 the following words and phrases shall, except where the context otherwise requires, have the following meanings:-

"Accounts": the [audited] accounts prepared on behalf of the LLP in respect of each financial year in accordance with the Companies Acts and UK generally accepted accounting principles as applying to limited liability partnerships, including the report of the Auditors; and reference to the "final Accounts" is to the Accounts after they have become final in accordance with Clause 13;

"Accounts Date": [31 March] or such other date as may be agreed in accordance with this Agreement;

"Act": the Limited Liability Partnerships Act 2000;

"Auditors": [●] or such other auditors as may be appointed from time to time by the Members;

“Base Rate”: the base lending rate of [●] Bank or such other rate as may be decided from time to time by the Members;

“Business”: [the commissioning, distribution and exploitation of a motion picture, “Between Weathers”, with a view to ultimate ownership of the related rights being secured for the cultural and economic benefit of the Shetland community and with a view to profit from the project being re-invested for the long-term good of the Shetland Isles];

“Business Day”: a day (other than a Saturday or a Sunday) on which banks in Scotland are generally open for a normal range of banking transactions;

“Companies Acts”: the relevant provisions of the Companies Act 2006 as applied to limited liability partnerships by the Act, the Limited Liability Partnerships Regulations 2001, the Limited Liability Partnerships (Scotland) Regulations 2001 and any other relevant legislation from time to time;

“Confidential Information”: all information of a confidential nature relating to this Agreement, the LLP, the Business, or any Member or former Member, including the terms of any contract to which the LLP is a party, and the LLP’s financial information, business plans, strategic plans, and existing and proposed projects;

“date of this Agreement”: the date of execution hereof or, if this Agreement is executed on more than one date, the last date of execution;

“Intellectual Property Rights”: all intellectual property rights and all related rights in any part of the universe owned by, licensed to or used by the LLP including any trade mark, service mark, registered design, copyright, moral right, design right, business name, trade name, domain name, know-how, trade secret, Confidential Information, patent, discovery, process, invention, right in computer software and database right, together with all rights under any licence, consent, order, statute or otherwise in relation to any of the foregoing and including applications for, and renewals and extensions of, any of the foregoing and the right to apply for any of the foregoing in any part of the world;

“Management Accounts”: the unaudited accounts prepared on behalf of the LLP on a monthly basis showing the approximate financial position of the LLP as at the end of each month;

“Members”: the First Members and such other or additional persons as are admitted as members of the LLP in accordance with this Agreement and, in each case, whose membership of the LLP has not ceased in accordance with this Agreement;

“Name”: the name of the LLP as registered from time to time at Companies House and/or any other name decided upon from time to time by the Members;

“Net Divisible Profits”: the profits, if any, (whether in the nature of revenue or capital) of the LLP for any financial year after:-

- (i) payment by the LLP of the interest provided for in this Agreement, on Capital Account and Current Account balances; and
- (ii) making such adjustments as are required in respect of interest payable by any Member.

“this Agreement”: this agreement, as amended from time to time in accordance with its terms;

- 1.2 words and expressions in the singular include the plural and vice versa, and in the masculine include the feminine and neuter and vice versa;
- 1.3 reference to a person includes a natural person, firm, partnership, limited partnership, limited liability partnership, company, corporation, association, organisation, government, state, foundation and trust (in each case whether or not having separate legal personality);
- 1.4 reference to an individual includes his legal representatives and permitted successors;
- 1.5 reference to a statutory provision shall be construed as reference to that provision as amended, consolidated or re-enacted from time to time (except to the extent that any amendment, consolidation or re-enactment after the date of this Agreement would materially increase or extend the liability of the LLP or any of the Members) and includes any order, regulation, instrument or other subordinate legislation made under the relevant provision;
- 1.6 reference to a Scottish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing is, in respect of any jurisdiction other than Scotland, deemed to include a reference to what most nearly approximates in that jurisdiction to the Scottish legal term;
- 1.7 reference to a Clause is a reference to a clause of this Agreement;
- 1.8 reference to a “financial year” shall, except where the context otherwise requires, include reference to an accounting period of more or less than twelve months;
- 1.9 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression is to be construed without prejudice to the foregoing generality, as illustrative only, and without limiting the sense of the words preceding the term used;
- 1.10 the headings are inserted for convenience only and do not affect the construction of this Agreement; and
- 1.11 “writing” or “written” includes faxes but not e-mail.

2 AGREEMENT TO CARRY ON BUSINESS

- 2.1 This Agreement shall come into force with effect from and after the date of this Agreement.
- 2.2 The Members shall procure that the LLP shall carry on the Business in the Shetland Isles and in such other place or places as the Members may agree from time to time, on the terms and conditions of this Agreement, irrespective of any change in membership of the LLP after the date of this Agreement.
- 2.3 The LLP shall continue to carry on the Business in accordance with this Agreement without limit in point of time, unless and until:-
 - 2.3.1 the Members pass one of the resolutions set out in Clause 25; or

2.3.2 the LLP is otherwise wound up or ceases to exist.

2.4 For the avoidance of doubt:-

2.4.1 none of the Members shall have the right to resign its membership of the LLP; and

2.4.2 neither the expulsion of a Member, nor the insolvency of a Member, nor the admission of a new Member, shall operate to terminate this Agreement.

2.5 The LLP's registered office shall be at Toll Clock Centre, 26 North Road, Lerwick, Shetland ZE1 0DE or at such other address as may be decided from time to time by the Members.

2.6 The Members shall complete and deliver to Companies House all necessary documents and fees to incorporate the LLP and to keep it compliant with the Act.

2.7 The LLP shall indemnify each Member in respect of payments properly and reasonably made, and liabilities properly and reasonably incurred, in the ordinary conduct of the Business or in anything necessarily done in good faith for the preservation of the Business or property of the LLP.

3 **DESIGNATED MEMBERS**

Throughout the period in which each Member is a member of the LLP, it shall be a designated member for the purposes of the Act.

4 **NAME**

4.1 The LLP's name shall be "Between Weathers LLP".

4.2 The LLP shall carry on the Business under the Name and shall comply with all relevant legislation in the use of the Name.

4.3 No Member shall, at any time while a Member, have the right to use the Name in any manner except on behalf of the LLP or otherwise with the express prior approval of the LLP.

4.4 No Member shall, at any time after ceasing to be a Member, have the right to use the Name in any manner.

5 **THE LLP'S PROPERTY**

5.1 The Members shall have no individual entitlement to the property and rights created or owned by, or used for the purposes of, the LLP other than by their entitlement to such payments as may become due to them under this Agreement or following liquidation of the LLP.

5.2 Where at the date of this Agreement any property or right created or owned by, or used for the purposes of, the LLP is held on behalf of the LLP by one or more Members, the relevant Members hereby declare that the LLP's interest in such property or right is irrevocably held on bare trust for the benefit of the LLP; and where it subsequently becomes necessary or advisable for any such property or right to be

held on behalf of the LLP by one or more Members, or where any such property or right comes to be held by one or more Members, the Member or Members concerned shall, if so requested by the LLP, forthwith execute a declaration of trust (or comparable acknowledgement in a form acceptable to the LLP) in respect of such property or right.

6 THE LLP'S CAPITAL

- 6.1 The fixed capital of the LLP shall be such sum as shall be unanimously agreed by the Members from time to time.
- 6.2 Such capital shall, unless otherwise unanimously agreed by the Members, be contributed by the Members equally.
- 6.3 If any Member fails to contribute the required capital within 14 days of the date agreed by the Members for such capital to be paid in, interest shall be paid by the relevant Member to the LLP on the relevant unpaid capital at the rate of 4% per annum (or such other rate as the Members may agree from time to time) above Base Rate from the due date for paying-in until actually paid in.
- 6.4 The Members shall not be required to contribute any further capital on the insolvency of the LLP.

7 LOANS TO THE LLP

- 7.1 Separate from any fixed capital as referred to in Clause 6, the Members shall each lend to the LLP such sum as shall be unanimously agreed by the Members from time to time.
- 7.2 Such loans shall, unless otherwise unanimously agreed by the Members, be contributed by the Members equally.
- 7.3 If any Member fails to contribute the required loan within 14 days of the date agreed by the Members for such loan to be paid in, interest shall be paid by the relevant Member to the LLP on the relevant loan at the rate of 4% per annum (or such other rate as the Members may agree from time to time) above Base Rate from the due date for lending until actually lent to the LLP.
- 7.4 The Members shall not be required to lend any further sums on the insolvency of the LLP.

8 CAPITAL ACCOUNTS

- 8.1 There shall be maintained for each Member, in the accounting records of the LLP, an account referred to as its Capital Account, to which shall be credited the fixed capital contributed by each Member in accordance with Clause 6.
- 8.2 Provided there are sufficient profits available for the purpose in the relevant financial year, interest shall be paid on the sum standing at credit of each Member's Capital Account from time to time on a daily basis at the rate of ●% per annum (or such other rate as the Members may agree from time to time) above Base Rate.

- 8.3 No part of the sum standing at credit of any Member's Capital Account shall be withdrawn by any Member except as otherwise provided in this Agreement or as unanimously agreed by the Members.

9 CURRENT ACCOUNTS

- 9.1 There shall be maintained for each Member, in the accounting records of the LLP, an account referred to as its Current Account, to which shall be credited:-

- 9.1.1 any loans made by that Member in accordance with Clause 7;
- 9.1.2 all interest due to such Member in accordance with Clauses 8.2 and 9.2;
and
- 9.1.3 that Member's share of profits (if any) for each financial year.

- 9.2 Provided there are sufficient profits available for the purpose in respect of the relevant financial year, interest shall be paid on the sum standing at credit of each Member's Current Account from time to time on a daily basis at the rate of ●% per annum (or such other rate as the Members may agree from time to time) above Base Rate.

- 9.3 As at the Accounts Date in each financial year during the subsistence of this Agreement there shall be debited to each Member's Current Account all interest payable to the LLP by such Member for the financial year ending on that date in accordance with a Clause of this Agreement.

- 9.4 In the event of any Member being overdrawn on its Current Account as at the end of any financial year as determined by the LLP's final Accounts for that financial year, that Member shall pay the amount by which it is overdrawn into the LLP within seven days after such Accounts have been issued to it, with interest at the rate of 4% per annum (or such other rate as the Members may agree from time to time) above Base Rate from the expiry of the said seven-day period until actually paid to the LLP.

10 FINANCIAL MANAGEMENT

The Business and the affairs of the LLP shall at all times be conducted in accordance with what a majority of the Members consider from time to time to be sound financial management having regard to known facts and reasonable forecasts of future performance of the Business.

11 DIVISION OF PROFITS

- 11.1 Unless and until the Members otherwise unanimously decide, the Net Divisible Profits in respect of each relevant financial year shall be divided among the Members [pro rata in the ratio which each Member's aggregate fixed capital and loans bore to the aggregate fixed capital and loans of all Members as at the close of the relevant financial year].

- 11.2 The Net Divisible Profits in respect of each relevant financial year shall be paid to the Members in cash within seven days after the LLP's final Accounts for that financial year have been issued to the Members, unless the Members agree that the LLP's projected cashflow dictates that it would be imprudent to make such cash payments.

11.3 The LLP's profits (if any) in respect of each financial year shall be used in the following order of priority:-

11.3.1 first, in paying to the Members the interest on Current Account balances provided for in Clause 9.2;

11.3.2 secondly, in paying to the Members the interest on Capital Account balances provided for in Clause 8.2; and

11.3.3 thirdly, and subject to Clause 11.2, in paying the Net Divisible Profits to the Members in accordance with Clause 11.1.

12 **LOSSES**

If in any financial year the LLP makes a loss, such loss shall be apportioned equally among the Members, but strictly subject to the three following declarations:-

12.1 that each Member shall bear its apportioned part of such loss only by way of reduction in or extinction of its then credit balances, if any, on Current Account and Capital Account (any Current Account balance being extinguished before reduction in or extinction of its Capital Account balance);

12.2 that the only impact of a loss on the Members shall be the potential reduction in or extinction of their then credit balances, if any, on Current Account and Capital Account; and

12.3 that, unless the Members otherwise unanimously agree, no Member shall be under any obligation to contribute any funds of any description with a view to (a) maintaining the LLP's solvency, (b) rectifying any debit balance on Current Account or Capital Account which is caused by any part of such loss being debited to its Current Account or Capital Account, or (c) meeting any unsatisfied debt, liability or obligation of the LLP.

13 **ACCOUNTS**

13.1 The Members shall ensure that proper books of account, giving a true and fair view of the business, the state of affairs and profit or loss of the LLP, are properly kept and preserved. Such books of account shall be open to inspection at all times by each Member and its agents, with the right to make such copies of them as the Member may think fit, and shall, unless a majority of the Members otherwise agrees, be kept at *[CIC's address, or the registered office?]*.

13.2 CIC hereby assumes responsibility for the LLP's accounting and book-keeping and for prompt preparation of the Management Accounts.

13.3 Each Member shall be responsible for ensuring that full and proper entries of all transactions entered into by it or on its behalf in relation to the LLP are promptly made in the LLP's accounting and/or other books and records.

13.4 SADA shall procure that draft Accounts of the LLP are prepared by its Head of Administration and Finance as soon as practicable after the Accounts Date, and sent to the Auditors. Such Accounts shall be prepared together with an appendix (the "**Appendix**") which shall disclose the balances at credit of the respective Capital Accounts of the Members and at credit or debit of their respective Current Accounts.

- 13.5 A draft of the Accounts, including a report by the Auditors, shall be distributed to each Member as soon as practicable after being drafted. Each Member shall, within [15] Business Days of receipt of the draft Accounts, either sign them to evidence its acceptance of them, or intimate non-acceptance of them by serving notice to that effect on each of the other Members (setting out, in that notice, a detailed explanation of the reason for non-acceptance). If a Member neither signs acceptance nor intimates non-acceptance as described above, it shall be deemed to have accepted those Accounts for all purposes in connection with this Agreement and those draft Accounts shall for all purposes be treated as final and binding upon it.
- 13.6 If any Member intimates non-acceptance in accordance with Clause 13.5, it shall join with the other Members and the Auditors in seeking to resolve the matter in dispute; and if the matter is not resolved within [15] Business Days of that Member's intimation of non-acceptance, any point still unresolved shall be decided by the Auditors. Thereafter the Accounts and the Appendix as distributed to the Members shall, subject to such amendments as are agreed by the Members or are decided by the Auditors:-
- 13.6.1 conclusively fix the sum at credit or debit (as the case may be) of each Member and former Member in the books of the LLP as at the relevant Accounts Date; and
- 13.6.2 be held to have become final and conclusive against each Member and former Member, each of whom shall then be foreclosed from any examination of the books of the LLP, not only for that financial year but for all preceding financial years.
- 13.7 The final Accounts shall be filed at Companies House in accordance with the Companies Acts.
- 13.8 For the avoidance of doubt, a set of Accounts shall not be drawn up as at the date on which a Member ceases for any reason to be a Member, unless that date is the LLP's Accounts Date.

14 **GOODWILL**

For all purposes relating to the preparation of the Accounts (whether in respect of any financial year or upon the expulsion of a Member, or upon the dissolution of the LLP, or otherwise), the LLP has no goodwill and, without prejudice to the foregoing generality, no value shall in any event whatever be placed on goodwill; but the foregoing declaration in this Clause 14 is without prejudice to the other provisions of this Agreement.

15 **TIME, ATTENTION AND DUTIES**

- 15.1 Each Member shall devote such amount of time and attention to the LLP's affairs as is required from time to time in order to ensure the success of the Business.
- 15.2 [No Member shall without the consent of the other Members undertake any outside activity which would affect the fulfilment of its obligations under Clause 15.1.]
- 15.3 Each Member shall:-

- 15.3.1 act in accordance with generally accepted principles of good corporate governance in all matters relating to the LLP;
- 15.3.2 appoint such number of representatives (each, a “**Representative**”) to participate in the management of the LLP as the Members shall decide from time to time, it being agreed that each Member shall be entitled to the same number of Representatives as each other Member;
- 15.3.3 use best endeavours to fulfil (or procure that its Representatives shall fulfil) such responsibilities as may be delegated to it by the Members from time to time; and
- 15.3.4 procure that its Representatives take part in management and other meetings, seeking to agree budgets, to agree film commissioning policy and otherwise to come to agreed decisions for the benefit of the LLP and the Business.

16 **POSITIVE COVENANTS**

- 16.1 Subject to the terms of this Agreement, each Member undertakes to the LLP and to each other Member that it shall at all times while a Member:-
 - 16.1.1 be just and faithful, and show the utmost good faith, to the LLP and the other Members in all matters relating to the LLP;
 - 16.1.2 conduct itself in a wholly proper and responsible manner and use its best skills and endeavours to promote the LLP; and
 - 16.1.3 conduct itself so as not to cause harm to the Business or the reputation of the LLP or any other Member.
- 16.2 Subject to the terms of this Agreement, each Member undertakes to the LLP and to each other Member that it shall at all times, both while a Member and at any time during the period of five years after ceasing to be a Member (no matter how that cessation comes about), whenever requested to do so by the LLP:-
 - 16.2.1 promptly deliver to the LLP all files, memoranda, notes, records, reports and other documents in its possession which relate to the LLP or the Business and which are reasonably called for by the LLP or the other Members;
 - 16.2.2 promptly give the LLP a true and complete account of all matters relating to the LLP; and
 - 16.2.3 promptly sign and deliver all documents and perform all acts that the LLP reasonably requires for the purpose of enabling the LLP to be vested in, or to recover or enforce, any outstanding interest or right.

17 **NEGATIVE COVENANTS**

- 17.1 Subject to the terms of this Agreement, each Member undertakes to the LLP and to each other Member that while it is a Member, it shall not and shall procure that its Representatives shall not, without the consent of the other Members:-

- 17.1.1 other than in the ordinary course of the Business, enter into any contract affecting the LLP;
- 17.1.2 other than in the ordinary course of the Business, employ any of the money or assets of the LLP or pledge the LLP's credit;
- 17.1.3 other than in the ordinary course of the Business, sell or otherwise dispose of any property, asset or right of the LLP, whether tangible or intangible;
- 17.1.4 other than in the ordinary course of the Business, purchase or otherwise acquire any property, asset or right (whether tangible or intangible) in the name of or on behalf of the LLP;
- 17.1.5 be party to any dealings on behalf of the LLP which are not for full value on an arm's length basis;
- 17.1.6 give any guarantee or security on behalf of the LLP; or
- 17.1.7 assign or charge its interest in the LLP or any part thereof.
- 17.2 Subject to the terms of this Agreement, each Member undertakes to the LLP and to each other Member that while it is a Member and at all times thereafter, it shall not make any use of, or knowingly permit any third party to make use of, any Intellectual Property Rights which relate directly or indirectly to the "Between Weathers" motion picture or which otherwise arise from the conduct of the Business.
- 18 **MANAGEMENT**
 - 18.1 The management structure of, and management responsibilities within, the LLP shall be as decided from time to time by the Members. On an annual basis, or more frequently if required, the Members shall review the operation of the Business and shall seek to agree necessary amendments to such structure and responsibilities.
 - 18.2 There shall be a person (the "**Chair**") appointed to chair the LLP, holding office for a financial year on a rota basis, as follows:-
 - 18.2.1 in the period ending 31 March 2012 the Chair shall be one of the Representatives of B4;
 - 18.2.2 in the year ending 31 March 2013 the Chair shall be one of the Representatives of CIC;
 - 18.2.3 in the year ending 31 March 2014 the Chair shall be one of the Representatives of SADA;
 - 18.2.4 in the year ending 31 March 2015 the Chair shall be one of the Representatives of B4, and so on thereafter.
 - 18.3 If the LLP requires one or more employees from time to time, such person or person shall be chosen by the Members, on such terms as the Members shall decide.

19 MEMBERS' MEETINGS AND VOTING ARRANGEMENTS

- 19.1 Members' meetings shall be held quarterly or more frequently if required. Any Member may convene a meeting of the Members at any time.
- 19.2 Except in case of emergency:-
- 19.2.1 meetings shall be held on not less than 14 days' notice; and
 - 19.2.2 the agenda and related papers shall be distributed to the Members with notice of the meeting.
- 19.3 The Chair, whom failing, a Representative of another Member, shall take the chair at each Members' meeting.
- 19.4 Subject to the following provisions of this Clause 19, the quorum for a meeting of the Members shall be one Representative of at least two Members. A Representative shall be deemed to be present at a meeting of the Members (and may form part of the quorum) if in simultaneous communication, by telephone or audio or audio-visual communication, with those others taking part in the meeting.
- 19.5 Each Member shall have one vote at a Members' meeting, irrespective of how many of its Representatives are present at the meeting.
- 19.6 A Member shall declare any interest it may have in a matter to be discussed and voted on at a Members' meeting. Subject to such declaration being made, a Member shall be entitled to vote on any matter, even if that Member has an interest in it, and this includes B4 having the right to attend a meeting and vote on any commissioning agreement between the LLP and B4.
- 19.7 A vote at a Members' meeting may be cast by a Member's Representative in person or by proxy given to any other Representative (of itself or of another Member).
- 19.8 Except as may otherwise be resolved by majority vote (taken on a show of hands) at a meeting of the Members, voting shall be on a show of hands.
- 19.9 In the event of a tied vote, the Chair (or such person as is deputising for the Chair) shall have a casting vote.
- 19.10 Unless at any time a matter can, by law, only be voted upon at a meeting, a resolution or agreement in writing signed by one Representative of each Member shall have the full force and effect of, and be deemed to be, a unanimous vote of the Members as if cast by them at a quorate Members' meeting; and any such resolution or agreement may consist of several documents in like form, each signed by one or more Representatives.
- 19.11 A Member who has been given notice of expulsion in accordance with Clause 24:-
- 19.11.1 shall not have the right to be notified of any meeting (or its agenda) or of any intended vote or of the result of any vote;
 - 19.11.2 shall not have the right to attend any meeting;

- 19.11.3 shall be disregarded in any calculation of the quorum relating to any meeting or of any vote at any meeting;
 - 19.11.4 shall cease to receive Management Accounts and other management information relating to the LLP; and
 - 19.11.5 shall cease to have any voting rights in the LLP, provided however that no vote of the other Members while notice of expulsion is running shall have effect as regards the Member to whom such notice has been given if such vote (except on a matter directly relating to the expulsion or to protection of the LLP's interests during such notice or after its expiry) materially prejudices the interests of the Member to whom such notice has been given and does not in all substantial respects prejudice the other Members to a comparable extent.
- 19.12 A decision to grant any security over the LLP's property, assets or undertaking shall require [approval by a majority of the Members][unanimous approval of the Members].
- 19.13 Where this Agreement refers to any matter being agreed or determined by the Members, the same shall, except to the extent that the law or this Agreement expressly provides to the contrary, be deemed to have been so agreed or determined if agreed or determined by a majority of the Members.

20 **MATTERS REQUIRING UNANIMITY**

The following decisions shall require a unanimous vote of the Members:-

- 20.1 the amount of capital to be contributed by the Members (see Clause 6.1);
- 20.2 an unequal contribution of capital by the Members (see Clause 6.2);
- 20.3 the amount of loans to be made to the LLP by the Members (see Clause 7.1);
- 20.4 an unequal making of loans by the Members (see Clause 7.2);
- 20.5 the withdrawal of capital (see Clause 8.3);
- 20.6 a change to the division of Net Divisible Profits as set out in Clause 11.1;
- 20.7 admission of a new Member (see Clause 23.1);
- 20.8 an assignation as described in Clause 27;
- 20.9 to amend this Agreement;
- 20.10 to change the nature of the Business;
- 20.11 to change the LLP's name.

21 **BANKING**

- 21.1 The LLP shall bank with [●] Bank at its branch at [●] or at such other bank or branch as the Members may agree from time to time.

21.2 All money belonging to the LLP shall be paid promptly into one of the LLP's bank accounts for credit of the LLP.

21.3 Each Member shall be entitled to appoint one of its Representatives as a signatory on the LLP's bank accounts. All cheques drawn, or instructions for the transfer of money from, any bank account of the LLP for sums up to £[5,000] shall require the signature of one person, being a Representative of any Member, and for sums in excess of £[5,000] shall require the signature of two persons, each being a Representative of a different Member.

22 CONFIDENTIAL INFORMATION

22.1 Subject to Clause 22.2, each Member hereby undertakes to the LLP and to each other Member that it shall not (and that it shall use its best endeavours to procure that its Representatives shall not) at any time after the date of this Agreement divulge or communicate to any person or make any private use of, or permit the publication or disclosure of, any Confidential Information which may have come, or which may after the date of this Agreement come, to the knowledge of that Member or any of its Representatives.

22.2 Clause 22.1 shall not apply to Confidential Information:-

22.2.1 which a Member is required by law to disclose; or

22.2.2 which, in good faith, a Member considers it necessary to disclose to its professional advisers, provided that it does so on a confidential basis; or

22.2.3 which has come into the public domain through no fault of that Member or its Representatives; or

22.2.4 which a Member is disclosing to HM Revenue & Customs for any tax-related purpose.

23 ADMISSION OF NEW MEMBERS

23.1 A new Member shall be admitted to the LLP only if all the Members for the time being vote, in person or by proxy, in favour of such admission.

23.2 No new Member shall be admitted until it or he or she has agreed, in writing, in a form approved by the Members, to become a party to this Agreement and to be bound by its terms.

24 EXPULSION

24.1 A Member (the "Expelled Member") may be expelled as a Member of the LLP only if all of the Members for the time being (other than the Member whose expulsion is being considered) vote, in person or by proxy, in favour of expulsion.

24.2 It shall not be necessary for the other Members to justify the expulsion to the Expelled Member but, without prejudice to that statement, it is specifically agreed that a Member may be expelled:-

24.2.1 if it is in a material breach of any provision of this Agreement and the breach cannot be remedied; or

- 24.2.2 it is in material breach of this Agreement, the breach is or might be capable of being remedied, and the breach has not been remedied to the reasonable satisfaction of the other Members within [20] Business Days after the relevant Member has been asked by the other Members to effect such remediation; or
 - 24.2.3 if it becomes insolvent.
- 24.3 Notice of expulsion shall be given to the Expelled Member. The Expelled Member shall cease to be a Member with effect from the expiry of the notice. Such notice may, if so stated therein, take effect immediately or may take effect from the date and time specified in the notice.
- 24.4 The Expelled Member's entitlement to any share of the LLP's profits shall terminate as from the date of expiry of the notice.
- 24.5 At any time after notice of expulsion has been given under this Clause 24, the Expelled Member and its Representatives shall:-
 - 24.5.1 be excluded from entering any of the premises of the LLP;
 - 24.5.2 cease performing its and their duties as a Member; and
 - 24.5.3 cease to have further involvement with the Business; declaring however that at any time while a period of notice of expulsion is running the LLP shall be entitled to require the Expelled Member to provide, without delay, any information within the knowledge of the Expelled Member or any of its Representatives in relation to the LLP or the Business.
- 24.6 While a period of notice of expulsion is running, the Expelled Member shall (except to the extent stated to the contrary herein) continue to be bound by its other obligations under this Agreement and under the general law.
- 24.7 If the Expelled Member challenges the expulsion in any way (whether by reference to a court or otherwise) then, for the avoidance of doubt, the provisions of Clauses 19.11, 24.5 and 24.6 and this Clause 24.7 shall continue to apply while the challenge is being determined.
- 24.8 In the event of an expulsion:-
 - 24.8.1 the Expelled Member's share of profits for the financial year in which the notice of expulsion shall expire shall be limited to a proportionate part of the profits it would otherwise have received (assuming it had not been expelled) for the full financial year corresponding to the part of such financial year during which such Member shall have remained a Member, calculated on a day to day basis;
 - 24.8.2 the balance at credit of the Capital Account and Current Account of the Expelled Member shall, subject to Clause 24.8.3, become due and payable (with interest as provided in Clauses 6 and 7) to the Expelled Member in twelve equal monthly instalments commencing one month after the date of expiry of the notice of expulsion; and

- 24.8.3 the LLP shall be entitled to withhold the payment of any sum which would or might otherwise be or become due and payable to the Expelled Member until final resolution of any claims to be made by the LLP against the Expelled Member.

24.9 This Clause 24 shall apply notwithstanding any other provision of this Agreement.

25 **WINDING UP ETC.**

25.1 In accordance with the Insolvency Act 1986 as it is applied to limited liability partnerships, the Members may resolve (by a 75% majority vote of the Members present, or represented by proxy, at the relevant quorate meeting):-

- 25.1.1 to place the LLP into voluntary liquidation;
- 25.1.2 to make a proposal for a voluntary arrangement, scheme of compromise or arrangement with its creditors;
- 25.1.3 to apply for an administration order;
- 25.1.4 to appoint a liquidator; and/or
- 25.1.5 to apply to the court to wind up the LLP.

25.2 For the purposes of section 74 of the Insolvency Act 1986 as it is applied to limited liability partnerships, no Member is liable to contribute any amount to the assets of the LLP on liquidation to cover any of the matters set out in that section.

25.3 In the event of the LLP being liquidated, any surplus of the proceeds of the LLP's assets over its liabilities paid by the liquidator to any of the Members shall be pooled by the Members and applied as follows:-

- 25.3.1 firstly, in paying to each Member a sum equal to the credit on such Member's aggregate of Capital Account and Current Account or rateably if the available funds shall not be sufficient to make such payments in full; and
- 25.3.2 secondly, upon full payment of such Capital Account and Current Account credits, in paying any remainder of such surplus among the Members equally.

26 **NOTICES**

26.1 Any notice to be given under this Agreement shall be in writing, shall be signed by or on behalf of the person giving it, and shall be validly served by delivering it personally or sending it by pre-paid recorded delivery post:-

- 26.1.1 in the case of the LLP, to its registered office; and
- 26.1.2 in the case of a Member, to the UK address most recently notified by the Member to the LLP for the purposes of this Clause 26.

26.2 Any such notice shall be deemed to have been received:-

- 26.2.1 if delivered personally, at the time of delivery; and

26.2.2 in the case of pre-paid recorded delivery post, 48 hours from the date of posting,

provided that if deemed receipt occurs before 9 am on a Business Day, the notice shall be deemed to have been received at 9 am on that day, and if deemed receipt occurs after 5 pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9 am on the next Business Day.

26.3 In proving service it shall be sufficient to prove that the envelope containing such notice was properly addressed to the address of the relevant person in accordance with Clause 26.1 and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery letter.

26.4 Notice given under this Agreement shall not be validly served (unless explicitly acknowledged as such by the recipient) if sent by fax or e-mail.

27 **ASSIGNATION**

Except to the extent that this Agreement expressly provides to the contrary, neither the LLP nor any Member or former Member shall be entitled to assign or otherwise transfer, or purport to assign or otherwise transfer, any of its rights or obligations arising under this Agreement without the prior agreement in writing of the LLP and the other Members.

28 **THIRD PARTY RIGHTS**

Save to the extent set out in any express or necessarily implied provision of this Agreement, this Agreement does not, and shall not be construed so as to, create any right enforceable by a person who is not a party to it.

29 **OTHER PROVISIONS**

29.1 [All expenses incurred by or on behalf of each party, including professional fees in connection with preparation and execution of this Agreement, shall be borne solely by that party and the LLP shall have no liability in respect thereof.]

OR

[The LLP shall pay the reasonable professional fees properly incurred by or on behalf of each party in connection with preparation and execution of this Agreement, but no other expenses incurred by or on behalf of any party.]

29.2 The right which, but for this Clause 29.2, would enable a Member or former Member to apply to the court pursuant to section 994 of the Companies Act 2006 is hereby excluded.

29.3 To the extent that any express or necessarily implied provision of this Agreement is at variance with the "Default Provisions" contained in Part VI of the Limited Liability Partnership Regulations 2001 (S.I. 2001, No. 1090), such Default Provisions are hereby declared inapplicable to the LLP.

29.4 No failure to exercise, and no delay in exercising, any right or remedy in connection with this Agreement shall operate as a waiver of that right or remedy. No single or partial exercise of any right or remedy under this Agreement shall preclude any other

or further exercise of that right or remedy or the exercise of any other right or remedy. A waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach. No waiver by the LLP or by any Member of any of the requirements hereof or of any of its rights hereunder shall be effective unless given in writing and signed by or on behalf of that person and no forbearance, delay or indulgence by any person in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that person.

29.5 For the avoidance of doubt, the provisions of the Partnership Act 1890 shall not apply to the LLP or to the relationship between the Members.

29.6 The LLP and the Members consent to registration of these presents for preservation.

30 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with Scots law and the LLP and each of the Members hereby irrevocably submits to the non-exclusive jurisdiction of the Court of Session for all purposes relating to this Agreement.

IN WITNESS WHEREOF these presents comprising the [*insert number*] preceding pages and this page are executed by the LLP and the First Members as follows:-

Subscribed for and on behalf of Shetland Arts Development Agency at	on	Witness signature:.....
the	day of	Witness full name:.....
	2011 by:	Witness address:.....

.....
Authorised Signatory

Subscribed for and on behalf of Shetland Arts IP CIC at	on the	day	Witness signature:.....
of	2011 by:		Witness full name:.....

.....
Authorised Signatory

Witness address:.....
.....

Subscribed for and on behalf of B4 Films Ltd at	on the	day	Witness signature:.....
of	2011 by:		Witness full name:.....

Witness address:.....
.....
Director

Subscribed for and on behalf of Between Witness signature:.....
Weathers LLP at on
the day of 2011 by: Witness full name:.....

Witness address:.....

.....
For and on behalf of a Member

.....



Email to: Gwilym Gibbons

Copy to: Richard Findlay, Tods Murray

From: Granger Brash

Subject: **Between Weathers LLP**

The contents of this e-mail are confidential. The unauthorised use or disclosure of any information contained in it is prohibited.

Gwilym,

I refer to our previous discussions and, in particular, our lengthy telephone discussion on Friday 25 February. I said I would use that conversation as the springboard towards framing a first draft of the Members Agreement for Between Weathers LLP. I've been working on the document and am sending the latest draft with this email. It is, needless to say, a first draft and it would be normal for there to be a fair few amendments required after you have had an opportunity of looking at it. I do feel, however, that our recent discussion will mean that today's draft at least gets us to first base, as it were, if not second.

Before turning to the document itself, a few preliminary comments may be helpful to you and to those with whom you may wish to share these notes:-

- (a) As I mentioned when we spoke, my check at Companies House disclosed that on 9 February 2010 a company called Between Weathers Limited was incorporated. Its registered office, as I mentioned, is shown as 11A Bon Accord Crescent, Aberdeen and you indicated that this might be B4's production office. The Registrar of Companies ignores the "Ltd" and the "LLP" so, in the Registrar's terms, we would be trying to incorporate a limited liability partnership with exactly the same name as an existing limited company. That is impossible, so the two choices are (1) Between Weathers Limited changes its name (no doubt your preferred option) or (2) you find a new name for the entity that was going to be called Between Weathers LLP.
- (b) When SADA invests in the LLP, and does so as a charity, it would be putting its charitable funds into the same pot as commercial money from such as B4. I'm not the best person to advise on whether that gives you potential difficulty – so it might be worth having a word with the accountants who draw up SADA's annual accounts and, of course, you are welcome to speak to Richard Findlay on the point. I wonder if SADA has a trading subsidiary and, if so, whether any thought has been given to that subsidiary perhaps being the member of the LLP.

Edinburgh Quay, 133 Fountainbridge Edinburgh EH3 9AG
Tel 0131 656 2000 Fax 0131 656 2020 DX ED58
Also at: 33 Bothwell Street Glasgow G2 6NL Tel 0141 275 4771 Fax 0141 275 4781 DX 512815-Glasgow Central
Email maildesk@todsmurray.com
www.todsmurray.com

- (c) As Richard has mentioned, Tods Murray isn't giving tax advice in this matter so, if not done already, I think it would be worth speaking to SADA's tax advisers just to check that using an LLP structure has no tax downside when compared to using, say, a limited company. The great benefit of the LLP, as you know, is that it is tax-transparent.
- (d) Finally on preliminary thoughts, I understand the proposal to be that the CIC will commission the LLP to make the film, and the LLP in turn will commission B4 to make it. I'm assuming that the Commissioning Agreement between the LLP and B4 will provide for the Intellectual Property rights to belong to the LLP; and that the Commissioning Agreement between the CIC and the LLP will in turn provide for those IPRs to pass from the LLP to the CIC. If there is anything short of 100% clarity on how this will work out – and, in particular, the consequences of the LLP “giving away” the IPRs that it takes from B4 – then it would be worth ensuring that all concerned have a good handle on how this will work, though I am not the best person to speak to you in that regard.

I turn now to my draft Agreement and the following comments are in page-turning order:-

- 1 In the heading on the first page you will see that I have square-bracketed 26 North Road as the LLP's registered office – this, of course, is for the members to decide.
- 2 In the definition of Accounts you will see I have square-bracketed the word “audited” and, at the foot of the first page, you will see the definition of “Auditors”. If your tax advice is that the LLP won't have to have its accounts audited, I can easily make the necessary revisions.
- 3 I have made the definition of “Accounts Date” refer to 31 March because I believe that date is SADA's financial year-end, but the two do not have to marry up and the key action is for you to seek tax advice on whether there's any good reason, tax-wise, for shifting away from 31 March for the LLP.
- 4 Regarding the definition of “Auditors”, I think you said SADA's auditors are The A9 Partnership but, as requested, I haven't included their name and have left a “blob”.
- 5 My definition of “Business” is very much a starter-for-ten, which is why I have square-bracketed it. This was only to put some words on paper to give you something to revise and improve, please.
- 6 In the definition of “Management Accounts” I have referred to these being prepared monthly rather than quarterly, per your instructions.
- 7 The statement at 2.4.1 that no member can resign is not a statutory requirement. In most LLPs – Tods Murray LLP being an easy example – a member can resign by giving a certain period of prior notice, but in this particular case I rather suspect that the three members may want to tie each other in as per my draft wording.
- 8 At Clause 3 I have said that each member will be a designated member. As I mentioned, an LLP must have at least two designated members. A designated member has the statutory responsibility for filing the annual accounts and, on a liquidation, for answering the liquidator's questions about the history of the LLP. I mentioned that in Tods Murray, all three dozen partners are designated members,

and you (correctly, in my view) felt that in your LLP, all three members ought to have the same statutory responsibilities.

- 9 You will see how Clauses 6 and 7 are framed in a similar manner. As instructed, I have made them say that the amount of capital and the amount of loans both have to be unanimously agreed but I have left scope for unequal injections of capital or loans if the members so agree, on a unanimous basis.
- 10 Similarly, Clause 8 and 9 have been drafted along similar lines though not, of course, in identical wording. In most LLPs each member has a Capital Account (into which fixed capital goes, and out of which that fixed capital can very rarely be taken) and a separate Current Account into which loans and profit-shares are credited, and from which agreed amounts are debited. When you show this draft (or maybe the next draft, after I've heard your proposed revisions to this one) to your accountants, you can ask if my framework of Capital Accounts and Current Accounts fits in with how they'd expected the LLP's internal arrangements to look.
- 11 Clauses 8.2 and 9.2 provide for interest on the Capital Accounts and the Current Accounts. Unlike the 4% above base rate which you see in Clause 7.3 and elsewhere in a "default" situation, the rate of interest paid on credit balances is usually lower – typically base rate or perhaps 1% above base rate. For the moment I have left blobs in 8.2 and 9.2.
- 12 Turning next to profit-sharing, you will see I have square-bracketed some possible wording in Clause 11.1. I think you have in mind that profits will be divided according to the total (that is, capital plus loans) which each member has in the LLP at the relevant time. The division of profits is frequently one of the most difficult clauses to negotiate but perhaps not in this case, if the IPRs will be passed to the CIC such that serious profits won't remain within the LLP for division among the three members.
- 13 Clause 12 is important, underlining the fact that this is a limited liability partnership, under which the members might lose the money they have injected, but can't be called upon to come up with more money towards debts and liabilities.
- 14 As regards accounts, I think you said that CIC would prepare the monthly Management Accounts (see Clause 13.2) and SADA would have the annual Accounts prepared (see Clause 13.4).
- 15 You asked me to suggest some wording under which each member would have an opportunity to raise queries on the draft annual Accounts – you will see this in Clauses 13.5 and 13.6 which, as with all my drafting, can be varied as you wish.
- 16 Clauses 15, 16 and 17 contain a list of what the members promise to do and promise not to do and, rather than comment at length, I will simply invite you to read these wordings and give me your reactions. You will see at 15.3.2 that I have provided for each member to nominate representatives to act on its behalf but, as Clause 19.5 shows, that doesn't take us away from "one member, one vote".
- 17 When we turn to management, you will see that 18.1 sets out the basic position you mentioned, whereby the members will agree the structure and responsibilities on an

annual basis. The “revolving chair” is in 18.2 and I have started with B4 nominating the first Chair, as per your instructions.

- 18 You wanted me to leave open the possibility of taking on employees, and this is in 18.3.
- 19 On voting, you asked me to draft the document on the basis of the Chair having a casting vote in the event of a tie – see Clause 19.9. In a three-member LLP a tie is possible because, per your instructions, the quorum is two, as you'll see in 19.4.
- 20 I asked you whether a member is allowed to vote on a matter in which it has a potential conflict of interest – for example, B4 having a vote on the Commissioning Agreement between the LLP and B4 – and you said you would be happy for the “conflicted” member to have a vote, on the basis that there are three members and two can always outvote one. It's Clause 19.6 that provides for a member declaring an interest and then still being entitled to vote.
- 21 Still on voting, the basic position is that all decisions can be made by majority – see Clause 19.13 – except where the Agreement provides for unanimity; and I have set out all of these in Clause 20. No doubt you will be considering whether there are any other major decisions, where you want unanimity, and which I should be adding to Clause 20.
- 22 As instructed, Clause 21.3 provides for a single signature up to a certain amount (you asked me to square-bracket £5,000) and a dual signature above that level.
- 23 You confirmed that I should insert a confidentiality clause – see Clause 22.
- 24 When I referred to the possibility of a member being expelled, you asked me to provide some sample wording for your consideration, so please look at Clause 24, and also at Clause 19.11. The period of notice of expulsion might be as short as 24 hours, or might be a couple of weeks; I have left it flexible in Clause 24. No doubt, if this provision stays in, it would only be used if there was some cataclysmic failure by one of the three members.
- 25 The reason I have mentioned a 75% vote in Clause 25.1 is because that is the percentage mentioned in the legislation. Note that it is 75% of the votes of those who are present at a quorate meeting, so if only two members were represented at the meeting which was considering a winding-up, those two votes in favour of the winding-up would be treated as a 100% vote. In short, the 75% isn't 75% of the members, it's 75% of the members who turn up and vote at a validly-constituted meeting.
- 26 In relation to fees such as those of tax advisers and indeed Tods Murray, you will see two alternatives set out in Clause 29.1.
- 27 Clause 29.2 is extremely common. The Companies Act lets a single member of an LLP petition the Court, seeking a court order which says that the LLP's affairs have been conducted in a manner which is unfairly prejudicial to the petitioning member. The Act says that if the members agreed to do away with this right, they can do so, and certainly most LLP Members Agreements do so.
- 28 Similarly, Clause 29.3 is very common indeed. The legislation provides for so-called Default Provisions (an easy example being that profits are to be divided equally) but

the members can agree that the Default Provisions won't apply. Where a detailed Members Agreement is being drawn up, such as in this case, the Default Provisions are almost always dispensed with.

I do hope my draft and this commentary are found to be helpful and, needless to say, I would be pleased to hear from you.

With kind regards,

Granger

D G Brash
Partner
For Tods Murray LLP

email: granger.brash@todsmurray.com