

Dated

2016

**WEST LINDSEY DISTRICT COUNCIL
SURESTAFF LINCS. LIMITED
WLDC STAFFING SERVICES LIMITED**

SOLE SHAREHOLDER'S AGREEMENT

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PARTIES

- (1) **WEST LINDSEY DISTRICT COUNCIL**, of Guildhall, Marshall's Yard, Gainsborough, Lincolnshire DN21 2NA (**Council**)
- (2) **SURESTAFF LINCS. LIMITED** (company number 06476932) whose registered office is at Guildhall, Marshall's Yard, Gainsborough, Lincolnshire DN21 2NA (**SSL**)
- (3) **WLDC STAFFING SERVICES LIMITED** (company number 10276205) whose registered office is at Guildhall, Marshall's Yard, Gainsborough, Lincolnshire, DN21 2NA (**WLDCSSL**)

BACKGROUND

- (A) As at the date of this Agreement, the Council is the sole member of SSL and WLDCSSL. It is envisaged that at some point the Council will incorporate a group holding company (**Group HoldCo**) transfer the shares it holds in each of SSL and WLDCSSL in exchange for shares in Group HoldCo. The Group HoldCo will be required (prior to that share exchange) to enter a Deed of Adherence.
- (B) At the date on which SSL and WLDCSSL enter into this Agreement, it is intended that SSL is a Trade Company and WLDCSSL is a Teckal Company.
- (C) In relation to each Teckal Company from time to time and for the purposes of compliance with the Teckal control test as defined in Regulation 12(3) of the Public Contracts Regulations 2015, it is intended that the Council shall exercise a decisive influence over both the strategic objectives and the significant decisions of that Teckal Company.
- (D) In relation to each Trade Company from time to time, pursuant to section 95 of the Local Government Act 2003, the Secretary of State may by order authorise best value authorities (as defined in the Local Government Act 1999) to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions. The Secretary of State has by way of the Local Government (Best Value Authorities (Power to Trade) England) Order 2009 so authorised the Council.
- (E) The parties have entered into this Agreement (i) to regulate the manner in which Group Holdco carries out Group Holdco Business, and each Teckal Company and Trade Company carries out its Teckal Company Business or Trade Company Business (as the case may be) and (ii) to ensure that the Council retains decisive influence over both the strategic objectives and significant decisions of Group Holdco and each Teckal Company.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

In this Agreement:

Accounting Reference Date means 31 March

Articles means the articles of association of any party to this Agreement other than the Council, where such party is a company (as defined in section 1.1(1) of the Companies Act 2006)

Boards means the Group Holdco Board, each Teckal Company Board and each Trade Company Board (and **Board** means any one of them)

Business Day means a day (other than a Saturday, a Sunday or a public holiday in the United Kingdom) on which banks in the United Kingdom are ordinarily open to effect transactions of the kind contemplated in this Agreement and, if a payment is to be made in euros, on which such payment system as the Council chooses is operating for the transfer of funds for the same day value

Business Plan means the operational business plan and budget of a Company as adopted in accordance with clause 2 from time to time

Companies means Group Holdco, the Teckal Companies and the Trade Companies and **Company** means any one of them

CEDR means the Centre for Effective Dispute Resolution

Confidential Information means, in relation to a person, all technical, commercial, financial or other information of whatever nature relating to that person's business, products, developments, services, trade secrets, know-how, personnel, supplies or historic current or potential customers, whether or not designated as confidential and whether disclosed orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or by any other means

Consolidated Business Plan means the operational business plan and budget of Group Holdco which incorporates the Business Plans of each Company

Council Directors means the Directors appointed to a Company by the Council in accordance with that Company's Articles

Council Representative means the person nominated by the Council from time to time to act as or as its authorised representative which shall be determined by the Council in accordance with its constitution from time to time and notified to each Company in writing

Deed of Adherence means a deed in the form or substantially in the form set out in Schedule 3

Directors means the Group Holdco Directors, the Teckal Company Directors (in relation to a Teckal Company) and the Trade Company Directors (in relation to a Trade Company) and **Director** means any one of them

EIR means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

Encumbrance means:

- (a) a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person; or
- (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts so as to effect payment of sums owed or payable to any person; or
- (c) any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect

Financial Year means each accounting reference period of 12 months ending on the Accounting Reference Date other than:

- (a) in relation to SSL, for which the first accounting reference period shall run on and from the current financial year end to and including the Accounting Reference Date in the calendar year following the date of the Agreement;
- (b) in relation to WLDCSSL for which the first accounting reference period shall run on and from the date of incorporation of the relevant Company to and including the Accounting Reference Date in the calendar year following the date of this Agreement; and

- (c) in relation to any Company incorporated after the date of this Agreement, for which the first accounting reference period of the relevant Company shall run on and from the date of incorporation of the relevant Company to and including the Accounting Reference Date in the following calendar year

or such longer or shorter period as the Shareholder Board, subject to clause 4.1, shall from time to time determine

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

Group Holdco Board means the Group Holdco Directors or such of them as are present at a duly convened and quorate meeting of the Group Holdco Directors

Group Holdco Business has the meaning given in clause 2.1

Group Holdco Director means a director of Group Holdco and includes any person occupying the position of director of Group Holdco, by whatever name called

Intellectual Property means present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights

Law means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in force in the United Kingdom

Prohibited Act means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;

- (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
- (iv) defrauding, attempting to defraud or conspiring to defraud the Council

Reserved Matters means the matters specified in Schedule 1

S.151 Officer means the Council's Chief Financial Officer with responsibilities under the section 151 of the Local Government Act 1972 and/or any deputy officer authorised to carry out the Chief Financial Officer's functions under the Council's constitution.

Teckal means the codified rule of EU procurement law as set out within Directive 2014/24/EU and Regulation 12 of the Public Contracts Regulations 2015, deriving from the Teckal case (*Teckal Srl v Comune de Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia (C-107/98)* [1999] ECR I-8121) pursuant to which the requirement for open advertisement and tendering for public contracts in accordance with the Public Contracts Regulations 2015 does not apply

Teckal Company means any direct or indirect subsidiary of the Council which is a Teckal-compliant body

Teckal Company Board means, in relation to a Teckal Company, its Directors or such of them as are present at a duly convened and quorate meeting of its Directors

Teckal Company Business has the meaning given in clause 2.2

Teckal Company Director means a director of a Teckal Company and includes any person occupying the position of director of a Teckal Company, by whatever name called

Trade Company means any direct or indirect subsidiary of the Council which is not a Teckal Company

Trade Company Board means, in relation to a Trade Company, its Directors or such of them as are present at a duly convened and quorate meeting of its Directors

Trade Company Business has the meaning given in clause 2.4

Trade Company Director means a director of a Trade Company and includes any person occupying the position of director of a Trade Company, by whatever name called

Working Hours means 9.00 a.m. to 5.00 p.m. on a Business Day

1.2 In this Agreement:

1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement;

1.2.2 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;

1.2.3 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;

1.2.4 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

- 1.2.5 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.6 a reference to a **party** or the **parties** are to a party or the parties to this Agreement from time to time and any person who agrees to be bound by the provisions of this Agreement from time to time by executing a Deed of Adherence but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time. A reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.2.7 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.9 a reference to **writing** or **written** includes email but not fax;
- 1.2.10 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.11 any requirement upon the Council or Group Holdco to procure a particular matter or thing does or does not occur in relation to a Company shall be deemed to include an obligation to exercise its powers as a member of Group Holdco or the relevant Company (so far as the same is lawful and reasonable) to seek to ensure that the particular matter or thing occurs or does not occur (as the case may be);
- 1.2.12 a reference to **this Agreement** (or any provision of it) or to any other agreement or document referred to in this Agreement is a reference to this Agreement, that provision or such other agreement or document as varied, amended or supplemented (in each case, other than in breach of the provisions of this Agreement) from time to time;
- 1.2.13 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.14 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.15 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- 1.2.16 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month; and
- 1.2.17 the expressions **body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the **first person**) shall be treated as a member of another company or undertaking if:
- (a) any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or

- (b) any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
- (c) any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (i) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (ii) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the relevant company or undertaking as it is at that time.

1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2 THE BUSINESSES AND BUSINESS PLANNING

2.1 The **Group Holdco Business** shall be to act as a holding company of each Teckal Company and Trade Company. Group Holdco shall not exercise any rights it may have as a shareholder of any Teckal Company otherwise than as directed by the Council.

2.2 **Teckal Company Business**, in relation to a Teckal Company, shall be to:

- 2.2.1 provide services to the Council and other legal persons controlled by the Council (within the meaning of regulation 12 of the Public Contracts Regulations 2015) in accordance with its Business Plan and the Consolidated Business Plan then in force and on terms agreed between the Teckal Company and the Council;
- 2.2.2 provide services to any person not otherwise covered by clause 2.2.1 in accordance with its Business Plan and the Consolidated Business Plan then in force and on terms agreed between the Teckal Company and that person; and
- 2.2.3 provide such other services as the Council may from time to time determine and on terms agreed between the Teckal Company and the relevant counterparty/ies.

2.3 The Group Holdco Business (in each case, to the extent it ultimately relates to Teckal Company Business) and the relevant Teckal Company Business shall be pursued, and the relevant Teckal Company shall be governed, in a manner which ensures that the relevant Teckal Company:

- 2.3.1 is and remains controlled (both by way of ultimate membership of the Teckal Company and decisive influence over both its strategic objectives and significant decisions) by the Council;

- 2.3.2 carries out the essential part of its activities for the Council and other legal persons controlled by the Council;
- 2.3.3 carries out those activities in furtherance of the Council's public service tasks; and
- 2.3.4 is not market orientated.

2.4 **Trade Company Business**, in relation to a Trade Company, shall be to:

- 2.4.1 provide services to the Council in accordance with its Business Plan and the Consolidated Business Plan then in force and on terms agreed between the Trade Company and the Council;
- 2.4.2 provide services to any person not otherwise covered by clause 2.4.1 in accordance with its Business Plan and the Consolidated Business Plan then in force and on terms agreed between the Trade Company and that person; and
- 2.4.3 provide such other services as the Council may from time to time determine and on terms agreed between the Trade Company and the relevant counterparty/ies.

2.5 Each Company shall prepare in respect of each Financial Year a Business Plan to include such content as the Council may require from time to time and notify to the Company in writing.

2.6 Each Company's Business Plan for a given Financial Year shall be:

- 2.6.1 prepared by that Company in accordance with the timetable agreed under the relevant governance arrangements of that Company from time to time; and
- 2.6.2 considered and, if though fit, approved by the Council (unless the Council delegates the ability to approve a Company's Business Plan to Group Holdco).

2.7 Group Holdco shall prepare in respect of each Financial Year a Consolidated Business Plan which shall include the Business Plan of each Company as drafted in accordance with clause 2.5 and approved in accordance with clause 2.6, together with any other content required by the Council from time to time and notified to the Company in writing.

2.8 The Consolidated Business Plan for a given Financial Year shall be:

- 2.8.1 prepared by Group Holdco in accordance with the timetable approved by the Council from time to time; and
- 2.8.2 considered and, if thought fit, approved by the Council.

2.9 The parties agree to work both together and with any third parties where required in good faith, to procure that each Business Plan is prepared and approved in accordance with clause 2 and that the business of each Company is carried out to interface as seamlessly as possible with the operations and services of the Council.

2.10 If at any time there is a requirement for a corporate vehicle to be established other than a private company limited by shares, such as a private company limited by guarantee or a limited liability partnership, the Council intends that such vehicle shall be governed as far as possible in the manner in which a Company is governed, subject always to any necessary changes to reflect the Law relating to such alternative vehicle.

3 COUNCIL'S ROLE AS ULTIMATE SHAREHOLDER

3.1 The Council will monitor and control the business and operations of each Company.

3.2 The Council:

- 3.2.1 shall, upon request, have unlimited, unrestricted and prompt access to any Company information and documents;
- 3.2.2 will not be a part of any Board;
- 3.2.3 will not usurp the functions of any Board but will monitor the activities of each Company to ensure that they are acceptable and accountable to the Council as ultimate owner of each Company; and
- 3.2.4 may, in addition to those matters requiring Council consent pursuant to clause 4:
 - (a) make recommendations from time to time to any Board; and/or
 - (b) give directions by notice in writing from time to time to any Board.
- 3.3 Any notice to or from the Council shall be sent to or from the Council Representative. Where a consent or approval is expressed in this Agreement to be required of the Council, it shall be given by the Council Representative. Such consent or approval shall be given in writing in advance of the decision or matter requiring consent or approval and the Council shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company within a period of 30 days from receipt of the requests provided that the Council shall not be deemed to have made a decision or given its consent or approval by virtue of the fact that it has not communicated the same within that time limit. Where the Company requires the Council to make any decision or provide any consent or approval, the Company shall provide such material information as the Council may require to enable it to consider the decision, consent or approval in question.
- 3.4 Once a consent or approval is given in accordance with clause 3.3 then, to the extent a special or an ordinary resolution is required pursuant to the Companies Act 2006 or otherwise, the relevant Company shall prepare and circulate to its member a draft resolution for consideration and, if thought fit, approval by that member. The Company's member shall approve any resolution which is in line with a consent or approval of the Council.
- 3.5 Each Company shall ensure that the Board chair and and/or any employees of each Company as requested by the Council shall attend such meetings or parts of meeting(s) of the Council as the Council may require and shall answer questions put by the Council and provide information regarding the activities of each Company as reasonably requested.

4 DECISION-MAKING

- 4.1 Except as set out in clause 4.2, insofar as a matter is a Reserved Matter relating to a Company, the Company shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent of the Council and such consent shall be sought with the intention to facilitate decisions being given by the Council as quickly as reasonably practicable.
- 4.2 Clause 4.1 shall not apply in connection with any decision or action relating to a Reserved Matter:
 - 4.2.1 approved in the Consolidated Business Plan then in force;
 - 4.2.2 which has been properly delegated in accordance with this Agreement to a particular Board or person; or
 - 4.2.3 to the extent the same decision has been taken by the Council in accordance with an agreement between the Council and the relevant Company,

and in those circumstances only, any reference in this Agreement to the approval of the Council (or similar wording) shall be amended so that it is a reference to the approval of the relevant Board or the approval of that other person, as the case may be.

- 4.3 Any variation to the list of Reserved Matters must be approved by the Council in writing. For the avoidance of doubt, the Reserved Matters may be varied and/or replaced in part or entirely, by the Council at its absolute discretion.
- 4.4 If any agreement between the Council and a Company is validly varied in accordance with its terms, the relevant sections of the Consolidated Business Plan shall be deemed amended on and with effect from the date of the variation of the agreement to the extent (but only to the extent) such amendment is necessary to ensure that the Consolidated Business Plan is fully consistent, and does not conflict, with the terms of that agreement.
- 4.5 With the exception of the Reserved Matters:
- 4.5.1 the Group Holdco Business and all affairs of Group Holdco shall be managed by the Group Holdco Board;
 - 4.5.2 each Teckal Company Business and all affairs of each Teckal Company shall be managed by the respective Board of each Teckal Company Board; and
 - 4.5.3 each Trade Company Business and all affairs of each Trade Company shall be managed by the relevant Trade Company Board.

To that end and with the exception of the Reserved Matters, the relevant Board shall have full and complete authority, power and discretion to direct, manage and control the Group Holdco Business, or the relevant Teckal Company Business or Trade Company Business (as the case may be) and the affairs and properties of that Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Group Holdco Business, or the relevant Teckal Company Business or Trade Company Business (as the case may be).

- 4.6 The Council and Group Holdco shall procure that each Company, and, in so far as it may legally do so, each Company, agrees that it, shall:
- 4.6.1 carry on and conduct its business and affairs in accordance with:
 - (a) the Consolidated Business Plan then in force;
 - (b) its Business Plan then in force;
 - (c) its Articles;
 - (d) all laws relating to companies as amended from time to time;
 - (e) sound governance and good business practice; and
 - (f) in a proper and efficient manner, for its own benefit; and
 - 4.6.2 use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own and operate its assets and to carry on its business properly and effectively and in accordance with the Consolidated Business Plan and Business Plan then in force.

5 BOARDS

- 5.1 The Board of each Company shall be composed of such persons and shall conduct their dealings in accordance with their Articles and this Agreement provided that the Council may by notice in writing nominate any person as a Director and, if so nominated, the relevant Company shall appoint the nominee as a Director.

- 5.2 Each Company shall review its Board every year to ensure that the composition and membership of the Board is such that it has the ability to sufficiently understand the Company's obligations and make sufficiently robust decisions in relation to those obligations.
- 5.3 On the nomination of a Director to the Board of a Company (whether by the Council or otherwise), the Board of that Company shall issue to that person the Letter of Appointment of a Nominated Director in the form or substantially in the form contained in Schedule 2 together with a summary of a Director's duties in relation to the Company.
- 5.4 The Council Representative shall have the right to attend (but not vote at) any Board meetings and receive papers in relation to such meetings at the same time as those papers are given to the Directors.
- 5.5 The Council may from time to time direct a Company by notice in writing to establish one or more committees of the Board of that Company for particular purposes and may also from time to time direct a Company by notice in writing to terminate the existence of such a committee.

6 POLICIES AND PROCEDURES

- 6.1 In respect of policies and procedures of each Company (**Policies and Procedures**):
- 6.1.1 each Company shall adopt necessary Policies and Procedures that enable it to act legally, efficiently and appropriately as a wholly owned subsidiary of a local authority. In the absence of any such Policies and Procedures, each Company shall adopt the relevant Policies and Procedures of the Council as the case may be;
- 6.1.2 Policies and Procedures shall be approved by the respective Company's Board;
- 6.1.3 the Policies and Procedures shall be subject to an internal audit and audit by the Council when requested by the Council.
- 6.2 The employment terms and conditions of a Company shall be approved by its Board. The Board shall not implement such terms without prior written approval from the Council.
- 6.3 The Board shall adopt and apply an agreed policy as to how conflicts of interest are to be dealt with both in recruitment and in carrying out its Teckal Company Business or Trade Company Business (as the case may be). This agreed policy shall be approved by the Council for use by the Company and may thereafter be revised as required by the Council. Any such revisions shall be implemented by the Board.
- 6.4 Each Company specifically confirms that no arrangement or contract has already been entered into which would require the approval of the Council under this Agreement if it were entered into after the date on which it becomes a party to this Agreement.

7 PROVISION OF INFORMATION

- 7.1 The Council may from time to time specify by notice in writing a Company's proposed obligations in respect of the provision of information.
- 7.2 If no notice is given to a Company pursuant to clause 7.1 then:
- 7.2.1 before 5pm on the 28th day after the end of each half year, that Company shall deliver to the Council or such other officer of the Council nominated by the Council in writing and notified to the Company (which may be for subsequent formal presentation to the Council):
- (a) a balance sheet (based on trial balance without timing adjustments such as accruals and prepayments) for the Company as at close of business on the last

day of the month of the half year just ended (including comparatives from previous month);

- (b) a profit and loss account (based on trial balance i.e. excluding timing adjustments) for the Company covering the period from the start of the Financial Year to the end of the month of the half year just ended;
- (c) a statement of cash flow for the Company covering the period from the start of the Financial Year to the end of the month of the half year just ended;
- (d) forecast profit and loss account for the Company for the period to the end of the current Financial Year on an accruals basis;
- (e) an assurance statement from a Director of the Company that all core account reconciliations have been carried out, with exceptions listed if necessary; and

7.2.2 before 5pm on the 28th day after the end of each half year, the Company shall deliver to the Council or such other officer of the Council nominated by the Council in writing and notified to the Company (which may be for subsequent formal presentation to the Council) a report setting out in respect of that half year such financial monitoring information as the Council may reasonably specify which shall include the following:

- (a) for each business division, profit and loss performance against Business Plan and Business Plan targets;
- (b) a completed proforma setting out in respect of that half year such other monitoring information as the Council may specify but to include the following:
 - (i) a complete list of contracts for new business where the aggregate annual value is greater than any threshold set in respect of the Council's own contracts from time to time, which were entered into during that half year with details of subject matter of the contract, parties to the contract, duration and estimated total value of the contract;
 - (ii) a note of all timed out freedom of information requests and reasons;
 - (iii) without prejudice to clause 7.7 below, a note of all matters in respect of which legal action (potential or actual) has been commenced by or against the Company and an update on ongoing legal action; and
 - (iv) if required by the Council (by further notice in writing to the Company), a record of all invoices where the aggregate monthly value is greater than any threshold set in respect of the Council's own invoices, to an officer nominated by the Council in order to publish details on the Council's website in accordance with the Council's required timescales.

7.3 The following shall apply in respect of the information provided under clauses 7.2 above:

7.3.1 the information shall have been provided and certified as accurate and complete by an executive Director (or if none exists, any Director);

7.3.2 the Company shall respond promptly to all reasonable requests from the Council for clarification of any parts of the information and shall forthwith upon such request supply any additional information and/or evidence that the Council may in its absolute discretion require to satisfy itself as to the financial and trading position of the Company; and

7.3.3 all such information and/or evidence (whether supplied originally or upon request) shall be supplied in such format or formats as the Council may in its absolute discretion consider is most appropriate for its purposes.

- 7.4 Each Company shall deliver to the Council Representative in writing the annual accounts of that Company, audited if that is a requirement, as soon as practicable and at the latest by six months after the end of the relevant Financial Year.
- 7.5 Each Company agrees that it shall give notice of any Directors' meeting to the Council Representative at the same time as it gives notice to the Directors.
- 7.6 Without prejudice to the above, each Company shall within 10 Business Days after any decision made by or meeting of the Directors send to the Council a copy of the minutes of that meeting and/or of that decision (as the case may be).
- 7.7 The Company shall immediately notify the Council of any legal action (potential, threatened or actual) of which it becomes aware which has been commenced by or against each Company.

8 AUDIT AND FRAUD

- 8.1 Where the Council discharges a Company's internal audit function, clauses 8.4, 8.5 and 8.7 shall not apply but other provisions in this clause 8 shall remain in force. For the avoidance of doubt, where the Council does not discharge the Company's internal audit function this entire clause 8 shall apply.
- 8.2 References in this clause to a Company's **Designated Person** are to any of that Company's Directors or any other person designated by the Company to act on behalf of the Company in respect of its audit and fraud obligations pursuant to this clause.
- 8.3 Without prejudice to the foregoing, no external auditors shall be appointed whose appointment at that time has not been approved in advance by the Council. If at any time the Council informs a Company that the S.151 Officer in his absolute discretion considers the current external auditors of the Company to be no longer appropriate, the Company shall without delay call a general meeting of the Company or otherwise circulate a resolution in writing to appoint replacement auditors approved by the S.151 Officer.
- 8.4 The Company shall afford the Council's internal audit function (and/or any external audit firm appointed by the Council to investigate on its behalf) during Working Hours (except in the event of an emergency, in which case access can be at any time) immediate and full access to all information regarding the activities and finances of the Company whenever (at the absolute discretion of the S.151 Officer) this shall be required and the Company shall ensure that all Directors, and all employees, contractors and/or agents of the Company shall provide all explanations required by the persons investigating on the Council's behalf. This may include requests to obtain regular downloads of system data used to perform data analysis in line with the Council's audit strategy and plan. This access shall normally be expected to be required during Working Hours but the Council may in its absolute discretion require access to be given outside Working Hours if in the opinion of the Council this is reasonably necessary and/or appropriate.
- 8.5 Each Company shall comply with all material provisions of appropriate codes including public sector internal audit standards with a declaration accompanying the annual audit opinion.
- 8.6 A Company's Designated Person shall before the start of each Financial Year provide to the Board of that Company the Company's proposed audit plan.
- 8.7 If requested by the Council from time to time by notice in writing to a Company, that Company's Designated Person shall provide audit files at random on request by the Council for review and for determining whether reliance can be placed on its conclusions. If the Council is not satisfied that the Council can place reliance on the Company's internal audit work, then the Council may commission additional audits in order to obtain the necessary assurance. The Company shall provide all information and explanations required in order for the Council's auditors to undertake this work.
- 8.8 If requested by the Council from time to time by notice in writing to a Company, that Company's Designated Person shall provide an annual audit opinion, accompanied by a report supporting that opinion, in relation to the adequacy and effectiveness of the Company's governance, risk

management arrangements and system of internal controls in accordance with the Council's defined assurance levels.

- 8.9 Each Board shall prepare an annual statement regarding internal audit and controls, which shall include a summary of the work done by each Company's internal audit function, the controls and good governance practice adopted in the period covered by the statement, the terms of reference for the Board and any committees of the Board, and such other or additional information as the Council may require in writing from time to time.
- 8.10 The documents referred to in clauses 8.8 and 8.9 shall be provided to the S.151 Officer within 3 months of the end of the Financial Year.
- 8.11 If requested by the Council from time to time by notice in writing to a Company, that Company's Designated Person shall include the Council in the distribution of its assurance and advisory reports. The Company's Designated Person shall present periodic progress reports to the Company's Board including summaries of audits undertaken during the period in question.
- 8.12 Each Company shall ensure that after the Company or any of its respective Directors or employees becoming aware of any allegations of fraud potentially involving the respective Company or any of its respective Directors, employees or contractors, the respective Company shall give notice of this to the Council's Counter Fraud Manager who shall consider this on the basis of the same criteria as are used for Council investigations. The Council's Head of Internal Audit and the S.151 Officer shall determine the most appropriate response to the allegation in accordance with the Council's anti-fraud and corruption strategy.
- 8.13 Each Company shall participate in national and the Council's proactive fraud detection exercises, providing data if required to do so by the Council.

9 PREVENTION OF BRIBERY

- 9.1 Each Company:
- 9.1.1 shall not, and shall procure that any Director, officer, employee, adviser or representative of any of them shall not, in connection with this Agreement commit a Prohibited Act;
- 9.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 9.2 Each Teckal Company and each Trade Company shall:
- 9.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- 9.2.2 within 10 Business Days of the date of this Agreement, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of such company) compliance with this clause 9 by such company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. Such company shall provide such supporting evidence of compliance as the Council may reasonably request.
- 9.3 Each Company shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any of its Directors, officers, employees, advisers or representatives of the company from committing a Prohibited Act and shall enforce it where appropriate.

- 9.4 If any breach of clause 9.1 is suspected or known, the party in breach must notify the Council immediately.
- 9.5 If any Company notifies the Council that it suspects or knows that there may be a breach of clause 9.1, such company must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 9.6 The Council may terminate this Agreement or any other agreement with the Company concerned by written notice with immediate effect if any such Company or Director, officer, employee, adviser or representative of such Company (in all cases whether or not acting with such Company's knowledge) breaches clause 9.1.
- 9.7 Any notice of termination under clause 9.6 must specify:
- 9.7.1 the nature of the Prohibited Act;
 - 9.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
 - 9.7.3 the date on which this Agreement shall terminate.
- 9.8 Any dispute relating to:
- 9.8.1 the interpretation of this clause 9; or
 - 9.8.2 the amount or value of any gift, consideration or commission;
- shall be determined by the Council and its decision shall be final and conclusive.
- 9.9 Any termination under clause 9.6 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

10 FINANCE AND RETURNS

- 10.1 Each Teckal Company shall be funded primarily through payments received from the Council for the delivery of services to the Council and other legal persons controlled by the Council (within the meaning of regulation 12 of the Public Contracts Regulations 2015).
- 10.2 Each Trade Company shall be funded primarily through receipts from trading.
- 10.3 If any Company requires debt or grant funding, it shall endeavour to seek and obtain such funding from the Council on such terms as the Company may agree with the Council. If the Council is unable or unwilling to provide such funding, then the Company may seek third party funding.
- 10.4 Subject to the terms of the Consolidated Business Plan and the Business Plan relating to a Company, the terms of any contract between the Council or other legal person controlled by the Council (within the meaning of regulation 12 of the Public Contracts Regulations 2015) and a Teckal Company, and Law, income and receipts of that Company shall be utilised in the following order of priority:
- 10.4.1 first, in payment of amounts owed to creditors;
 - 10.4.2 second, in payment of amounts owed to senior debt providers (if any), including principal, interest accrued thereon and any other associated costs such as interest breakage costs and premature pre-payment fees (save as determined by the terms of any senior creditor agreement);
 - 10.4.3 third, in repayment of any loans made by the Council and any interest accrued thereon;
 - 10.4.4 fourth, by way of retention to the Company's reserves; and

10.4.5 fifth, to the Council by way of distribution of profit.

10.5 A distribution of profits to the Council shall require the approval of the Council:

10.5.1 where the distribution of profits is a final dividend, within 10 Business Days of the draft annual accounts for the Financial Year in question being agreed in accordance with clause 7.4; and

10.5.2 where the distribution of profits is not a final dividend, within 10 Business Days of the Board recommending the same to the Council.

An **Approved Distribution** is a distribution which has received Council approval within that time period and the date on which that approval is given shall be the **Approval Date**.

10.6 The Company shall credit an Approved Distribution to the Council within 10 Business Days of the Approval Date. Payments will be in cash, unless a distribution was expressly approved by the Council in specie.

11 PENSIONS

11.1 Each Company agrees that if it is an "Admitted Body" for the purposes of the Local Government Pension Scheme (**LGPS**), it shall provide to the LGPS's actuary promptly on demand all information reasonably required by that actuary to enable the actuary to calculate the new contribution rates.

11.2 Having been provided with any adjustments to the recommended contribution rate by the actuary the respective Company shall:

11.2.1 if an increase in contribution rate is recommended, pay the increased rates in line with the actuarial recommendation, notifying the Council on each occasion.

11.2.2 if a decrease in contribution rate is allowed, make only such decrease in payment rate as is approved by the Council.

12 CONTRACTS

12.1 Each Company shall retain a contracts register into which every contract entered into with an aggregate annual value which is greater than the threshold set on an annual basis under the Business Plan of each respective Company.

12.2 Subject to the terms of any agreement between the Council and a Company, where the Company manages contracts on behalf of the Council:

12.2.1 those contracts must be entered into by an authorised officer of the Council after an appropriate procurement and decision process fully in accordance with the Council's rules, standing orders and its Constitution where applicable;

12.2.2 those contracts shall be on standard terms approved by the Council's legal department, except that where standard terms are not appropriate then the Council's legal department shall be engaged to prepare a bespoke contract;

12.2.3 unless expressly authorised by the Council, no officer or employee of the Company shall be impliedly authorised to enter into any contract in the name of the Council or shall hold him or herself out as so authorised;

12.2.4 no contract shall be entered into by or on behalf of the Company which purports to bind the Council as principal without the prior written consent of the Council; and

12.2.5 where required, all contracts to be entered into by the Council must be submitted to the Council for it to make arrangement for their execution/signing and the decision as to

which contracts are to be entered into under seal shall rest with the Council's Director of Governance and Law in accordance with the Council's Constitution.

13 DEALINGS IN SHARES AND NEW SHAREHOLDERS

- 13.1 No Company shall create any Encumbrance over, transfer, or otherwise dispose of or give any person any rights in or over any share in its capital unless it is:
- 13.1.1 permitted under this Agreement (and in particular Schedule 1) and its Articles; and/or
 - 13.1.2 carried out in accordance with the terms of this Agreement and its Articles.
- 13.2 Admitting a person as a new shareholder or member of any Company is a Reserved Matter and shall also be subject to such person executing a Deed of Adherence. Should a Company wish to admit a new shareholder or new member, the Board of such Company must procure that Deed of Adherence is signed and the prior written consent of the Council is obtained, prior to such new shareholder or member being admitted.
- 13.3 The Council shall procure that any new Company shall execute a Deed of Adherence to this Agreement as soon as reasonably practicable following incorporation of that Company and in any event prior to it starting business operations.

14 DISPUTE RESOLUTION

- 14.1 In the event of any disagreement or dispute arising between two or more of the parties in connection with this Agreement (a **Dispute**), the parties to the Dispute shall use all reasonable endeavours to resolve the matter on an amicable basis.
- 14.2 If one party to the Dispute serves formal written notice on one or more of the others that a Dispute has arisen and the parties are unable to resolve the Dispute within a period of 20 Business Days from the service of such notice, then the Dispute shall be referred to the respective Chief Executives or Managing Directors (as the case may be) of each of the parties who shall attempt to resolve the dispute within the next following 20 Business Days. No recourse to arbitration or litigation by any party against any other under this Agreement shall take place unless and until such procedure has been followed.
- 14.3 If the Chief Executives or Managing Directors (as the case may be) of the parties are unable to resolve a Dispute within two months of such Dispute being referred to them (**Initial Consideration Date**), then a **Deadlock** shall be deemed to have arisen on the date either two months after the Initial Consideration Date or the date on which the parties agree that Deadlock has arisen, if earlier (the **Deadlock Date**). Any Deadlock shall be dealt with in accordance with clause 14.4.
- 14.4 In the event that a Deadlock has arisen, then any party shall be entitled to refer the Dispute to a third party expert who shall, unless otherwise agreed, be an independent expert with knowledge of and experience in matters relating to the subject matter of the Dispute (**Expert**). The identity of the Expert shall be agreed between the parties within ten (10) Business Days of the Deadlock Date or, failing such agreement, shall be appointed by the President from time to time of the Institute of Chartered Accountants in England and Wales or any successor thereto and the fees and expenses of the Expert in making his determination shall be borne in such proportions as the Expert shall determine.
- 14.5 The parties shall co-operate with each other and with the Expert in an attempt to resolve the Dispute and Deadlock amicably. The decision of the Expert (appointed as aforesaid) as to the Dispute or Deadlock shall (save in the case of manifest error) be final and binding on all the parties for all purposes and (subject only to their fiduciary duties as Directors) the parties and their respective appointees on the Board shall execute all such documents and do and take all such action as may be necessary or reasonably desirable to give effect to and/or implement the said decision as promptly as reasonably practicable after the date of the same being so determined. For the purposes of this clause 14, any consent required from any party to implement the decision of the Expert made in accordance with the above provisions shall be deemed to have been given.

15 TERMINATION

- 15.1 Subject to clauses 15.2 and 15.3 this Agreement may be terminated by the Council serving no less than six months' written notice on all other parties or, if termination is in respect of one Company only, six months' written notice on that Company.
- 15.2 The Council may terminate this Agreement immediately where required in accordance with any Law.
- 15.3 The Council shall, on the fifth anniversary of the date of this Agreement, or at such other times as determined by the Council, review the requirement for this Agreement.
- 15.4 Termination of this Agreement shall not affect any accrued rights or liabilities of any person or any liability or obligation arising under or pursuant to this Agreement or any other agreement or arrangement between any of the parties hereto or, except where this Agreement expressly provides to the contrary, affect the provisions of:
- 15.4.1 clause 1 (*Definitions and Interpretation*);
 - 15.4.2 this clause 15 (*Termination*);
 - 15.4.3 clause 15.7 (*Confidentiality*);
 - 15.4.4 clause 17 (*Freedom of Information*);
 - 15.4.5 clause 21 (*Assignment and Subcontracting*);
 - 15.4.6 clause 22 (*Waivers and Consents*);
 - 15.4.7 clause 23 (*Rights and Remedies*);
 - 15.4.8 clause 27 (*Notices*);
 - 15.4.9 clause 28 (*Entire Agreement*);
 - 15.4.10 clause 29 (*Variation*);
 - 15.4.11 clause 30 (*Conflict with the Articles*);
 - 15.4.12 clause 31 (*Costs and Expenses*);
 - 15.4.13 clause 32 (*Set-off*);
 - 15.4.14 clause 33 (*No Partnership or Agency*); and
 - 15.4.15 clause 34 (*Governing Law and Jurisdiction*);
- which shall continue in full force and effect after termination.
- 15.5 Where a Company is to be wound up and its assets distributed, the parties shall endeavour to ensure that:
- 15.5.1 all existing contracts of such company or companies are performed to the extent that there are sufficient resources;
 - 15.5.2 the company or companies shall not enter into any new contractual obligations;
 - 15.5.3 the company or companies is dissolved and its assets are distributed as soon as practical in accordance with clauses 15.6 or 15.7 as applicable; and

15.5.4 any other proprietary information or Intellectual Property Rights belonging to or originating from a party shall be returned to it by the other party or the company or companies and all such proprietary information or Intellectual Property Rights shall be erased from the computer systems (to the extent possible) of the company or companies and the party who is/are returning it.

15.6 Subject to clause 15.7, in the event of any Teckal Company or any Trade Company being wound up, the assets of such company remaining after payment of all debts and liabilities of such company and of all costs, charges and expenses of winding up the same, shall be distributed amongst the current shareholders or members of such company.

15.7 In the event of any Company whose business is to provide housing services to the Council is being wound up, the assets of such subsidiary remaining after payment of all debts and liabilities shall be paid or transferred to either the Council's Housing Revenue Account of the Council (as defined under the Local Government and Housing Act 1989) or the General Fund of the Council, in each case as determined by the Council.

16 CONFIDENTIALITY

16.1 Each party undertakes that they shall not at any time hereafter use or disclose (in each case except for the purpose of exercising its rights and fulfilling its obligations under this Agreement) to any person any Confidential Information of any other party which may have or may in future come to its knowledge or possession, provided that any party may share such information:

16.1.1 with its professional advisers or to those of its directors, members, officers, employees, advisers and representatives who are directly concerned with the relevant party or its business;

16.1.2 as may be required by any applicable law or by any supervisory or regulatory body with whose rules it is necessary for that party to comply;

16.1.3 in connection with any proceedings arising out of or in connection with this Agreement; or

16.1.4 once it enters the public domain otherwise than by reason of a breach of this clause 16.1.

16.2 All parties shall use its reasonable endeavours to prevent the use or disclosure of any such Confidential Information otherwise than in accordance with this clause 15.7.

16.3 Notwithstanding the restrictions in clauses 15.7, any party may use such Confidential Information for the purpose of the promotion of the Group Holdco Business, or Teckal Company Business or Trade Company Business.

16.4 Each Director shall be entitled to disclose to the Council, all information to which the Council is entitled pursuant to clause 7 from time to time.

16.5 The parties shall use their reasonable endeavours to procure that any of their officers, employees, advisers and representatives coming into receipt of such Confidential Information shall be informed upon receipt that such information is confidential and (so far as such party is able to procure the same) shall comply with the provisions of this clause 16.5 in respect of such Confidential Information as if they were parties.

16.6 Where any party is required by any law, regulation or governmental or regulatory authority to retain any information (or copies of such information) of any other party, it shall notify the other party in writing of such retention giving details of the information that it is required to retain.

17 FREEDOM OF INFORMATION

17.1 The parties acknowledge that the parties are subject to the requirements of the FOIA and the EIR and the parties shall, where reasonable, assist and co-operate (at their own expense) with the other

parties for information to enable the other parties (where required) to comply with their information disclosure obligations.

17.2 Subject to clause 17.1, where a Company receives a request for information under either the FOIA or the EIR which it is holding on behalf of any other party, it shall:

17.2.1 transfer the request for information to the relevant party (or such other party as it is otherwise agreed between the parties is the best person to deal with such request) as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;

17.2.2 provide the relevant or other party with a copy of all information in its possession or power in the form that the relevant or other party requires within ten Business Days (or such longer period as the relevant or other party may specify) of the relevant or other party requesting that information; and

17.2.3 provide all necessary assistance as reasonably requested by the relevant or other party to enable the relevant or other party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

17.3 Where the Council receives a request under FOIA or EIR which relates to the operations of a Company, it shall notify the relevant Company and afford them an opportunity to make any comments or representations in respect of the disclosure of the information sought. The relevant Company shall respond within five Business Days of receipt of this notification. The Council shall take into account any such comments or representations in so doing and shall not respond to the request until the five Business Days response period referred to above has passed.

17.4 Each party shall be responsible for determining in its absolute discretion whether any information requested under the FOIA and EIR:

17.4.1 is exempt from disclosure; or

17.4.2 is to be disclosed in response to a request for information.

17.5 Each party acknowledges that the other party may be obliged under the FOIA and EIR to disclose information:

17.5.1 without consulting with the other parties where it has not been practicable to achieve such consultation; or

17.5.2 following consultation with the other parties and having taken their views into account.

18 DATA PROTECTION

The parties shall comply with Law relating to data protection at all times when carrying out their respective obligations pursuant to this Agreement and any other agreement to which it is a party.

19 UNLAWFUL FETTER ON A COMPANY'S POWERS

Notwithstanding any other provision contained in this Agreement, a party which is a Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any of its statutory powers, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

20 FURTHER ASSURANCE

Each party shall at its own cost and expense, on being required to do so by another party now or at any time in the future, do or procure the doing of all such acts and things and/or execute or procure

the execution of all such deeds and documents in a form satisfactory to such other party which such other party may reasonably consider necessary for giving effect to this Agreement.

21 ASSIGNMENT AND SUB-CONTRACTING

- 21.1 This Agreement is personal to the parties and no party shall assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Council. Each party hereby undertakes and represents to the other parties that it is entering into this Agreement only for its own benefit.
- 21.2 This Agreement shall be binding on and shall endure for the benefit of each party's successors.

22 WAIVERS AND CONSENTS

- 22.1 A waiver of any right or remedy under this Agreement or by Law, or any consent given under this Agreement, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 22.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Agreement by the Council shall be effective unless it is in writing.

23 RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

24 SEVERANCE

If any provision (or part of a provision) of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Agreement.

25 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one Agreement.

26 THIRD PARTY RIGHTS

Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

27 NOTICES

27.1 Delivery

Any notice or other communication required to be given to a party under or in connection with this Agreement shall be:

- 27.1.1 in writing;

27.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by electronic mail; and

27.1.3 sent to:

(a) the Council at:

Guildhall
Marshall's Yard
Gainsborough
Lincolnshire
DN21 2NA

Email: ian.knowles@west-lindsey.gov.uk
Attention: Mr Ian Knowles

(b) any other party

Guildhall
Marshall's Yard
Gainsborough
Lincolnshire
DN21 2NA

Email: penny.sharp@west-lindsey.gov.uk
Attention: Ms Penny Sharp

or to any other address or email address as is notified in writing by one party to the other from time to time.

27.2 Receipt

Any notice or other communication shall be deemed to have been received:

27.2.1 if delivered by hand, at the time it is left at the relevant address;

27.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

27.2.3 if sent by electronic mail, upon receipt by the party to which it is given.

A notice or other communication given as described in clause 27.2.1 or clause 27.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

27.3 Receipt by Council

Any notice or other communication given to the Council shall be deemed to have been received only on actual receipt.

28 ENTIRE AGREEMENT

28.1 This Agreement and the documents referred to in it (including the Articles and any Deed of Adherence) constitute the entire agreement between the parties relating to its/their subject matter and supersede all previous agreements between the parties relating to such matters.

28.2 Each of the parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and/or the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement. Each of the parties waives:

28.2.1 all rights and remedies which, but for this clause 28.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and

28.2.2 all rights and remedies, other than remedies for breach of contract available in respect of a breach of this Agreement and/or the documents referred to in it, which, but for this clause 28.2, might otherwise be available to it in respect of the falsity of any representation or warranty set out in this Agreement and/or the documents referred to in it,

provided that nothing in this clause 28.2 shall limit or exclude any liability for fraud or dishonesty on the part of any party.

29 VARIATION

No variation to the terms of this Agreement shall be effective unless made in writing and signed by each of the parties and any person who agrees to be bound by this Agreement.

30 CONFLICT WITH THE ARTICLES

If any provision of this Agreement is inconsistent with a provision of the Articles of any Company, then the terms of this Agreement shall prevail and the member(s) of such Company agree to procure the making of any amendment to the Company's Articles as soon as reasonably practicable which is required in order to make the Articles consistent with the provisions of this Agreement and the Council hereby consents to any such changes to the Company's Articles.

31 COSTS AND EXPENSES

All costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other documents referred to in it shall be borne by the Council, save for any private advice sought by any party which shall be for the cost of that party.

32 SET-OFF

All amounts falling due under this Agreement shall be paid in full without any set-off or counterclaim.

33 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or any of them, or to authorise any party to act as agent for any other party, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way.

34 GOVERNING LAW AND JURISDICTION

34.1 This Agreement is governed by and shall be construed in accordance with the laws of England and each party submits to the exclusive jurisdiction of the courts of England for all purposes relating to this Agreement.

34.2 Each party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this Agreement being served on it in accordance with the provisions of clause 14. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

This Agreement has been executed as a deed and has been entered into on the date stated at the beginning of it.

AS WITNESS the hands of the parties or their duly authorised representatives the day and year first before written

Executed as a deed by affixing) Seal
the common seal of)
WEST LINDSEY DISTRICT COUNCIL)
)
)
in the presence of)
)
.....)
Authorised signatory)

Executed as a deed by)
SURESTAFF LINCS. LIMITED)
acting by,)
a director, in the presence of) **Director**

Signature:

Name of witness:

Address:
.....
.....

Occupation of witness:

Executed as a deed by)
WLDC STAFFING SOLUTIONS LIMITED)
)
acting by,)
a director, in the presence of) **Director**

Signature:

Name of witness:

Address:
.....
.....

Occupation of witness:

SCHEDULE 1 – RESERVED MATTERS

Reference to a "Company" shall be to the relevant Company (as appropriate).

Number	Reserved Matter	Group HoldCo	Teckal Company	Trade Company
	Constitution of the Company			
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the Company.	✓	✓	✓
	Officers and shareholders of the Company			
2	The appointment and the appointment terms (including any remuneration terms) of any directors other than Council appointed directors.	✓	✓	✓
3	The removal of any directors (including any terms on which such directors are removed from their office as directors) other than Council appointed directors.	✓	✓	✓
4	The admission of further shareholders or members to the company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).	✓	✓	✓
5	The appointment or removal of the chair of the board (except where the chair is absent in which case the board will appoint an alternate chair).	✓	✓	✓
	Future direction and development of the Company			
6	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle	✓	✓	✓
7	Amalgamating or merging with any other company or business undertaking.	✓	✓	✓
8	Selling or disposing of any part of the business of the Company.	✓	✓	✓
9	Adopting or amending the Business	✓	✓	✓

Number	Reserved Matter	Group HoldCo	Teckal Company	Trade Company
	Plan of each respective Company and any in-year changes.			
10	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan except with the prior written consent of the Council	✓	✓	✓
11	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).	✓	✓	✓
12	Agreeing or approving any other material services the total value of which exceeds 15% of the respective Company's projected annual turnover per annum to be provided by the Company to a third party not approved under the Business Plan.	✓	✓	✓
13	Appoint any agent (not being a subcontractor) to conduct the whole or any part of the business of the Company.	✓	✓	✓
14	Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).	✓	✓	✓
	Management of the business of the Company			
15	Changing the Company's registered office.	✓	✓	✓
16	Changing the Company's name.	✓	✓	✓
17	Creating or agreeing to create a charge, security or Encumbrance over the Company's assets, shares or income	✓	✓	✓
18	Approving any matter that is reasonably likely to have an adverse effect on the reputation of the Council.	✓	✓	✓
19	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the Company.	✓	✓	✓

Number	Reserved Matter	Group HoldCo	Teckal Company	Trade Company
20	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which exceeds £75,000 per annum	✓	✓	✓
21	Giving notice of termination of any arrangements, contracts or transactions the total value of which exceeds £100,000 per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a Company.	✓	✓	✓
22	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the Company.	✓	✓	✓
23	Changing the Company's auditors.	✓	✓	✓
24	Make any borrowing.	✓	✓	✓
25	Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a Company which has been approved under the Business Plan) or giving any guarantee or indemnity (other than in the normal course of trading).	✓	✓	✓
26	Changing the Financial Year of the Company.	✓	✓	✓
27	Increase or reduce the amount of its issued share capital, grant any option over or in its share capital, redeem or purchase any of its own shares or otherwise alter, or effect any reorganisation of, its share capital (where applicable).	✓	✓	✓
28	Declare or pay any end of year dividend of the Company (where applicable).	✓	✓	✓

Number	Reserved Matter	Group HoldCo	Teckal Company	Trade Company
29	Establishing or amending any pension scheme or granting any pension rights to any Director, officer, employee, former director, officer or employee, or any member of any such person's family.	✓	✓	✓

SCHEDULE 2 - – LETTER OF APPOINTMENT OF A NOMINATED DIRECTOR

[on the headed notepaper of relevant Company]

To: [Name and address of Nominated Director]

[Date]

Dear ●

● Limited (the **Company**)

This letter contains the terms which we have discussed and agreed for your appointment as a director of the Company, as [a][the] Nominated Director of West Lindsey District Council (the **Council**). Your appointment is made pursuant to and is subject to the terms and conditions set in the Sole Shareholder's Agreement dated ● (**Agreement**).

You shall not be entitled to any fees or remuneration save as paid to you by your appointer or as otherwise expressly agreed in writing.

You shall be expected to attend Board meetings and general meetings (where requested) of the Company. You shall receive details of all such meetings in advance.

You shall not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions, or affairs of the Company or any client, customer or supplier of the Company which comes to your knowledge during the course of this appointment and shall comply with the provisions of clause 15.7 (*Confidentiality*) of the Agreement as if it applied to you. You shall, however, be entitled to disclose information to the shareholder appointing you as permitted under the Agreement.

The appointment shall automatically cease in relation to the Company in the event that: (a) you resign as a director; or (b) upon the delivery of a notice from the Council in accordance with the Company's Articles of Association removing you from office in relation to the Company. Without limitation to (a) and (b) above, in signing this letter, you acknowledge that your office is subject to the terms of the Agreement and the Company's Articles of Association and may be determined as permitted under the terms of the Agreement and the Articles and that upon such termination you shall vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company.

On termination of your appointment, you agree that you shall promptly return to the Company all papers and property of the Company which are in your possession or under your control.

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at our next Board meeting.

Yours sincerely

.....
Signatory, duly authorised
for and on behalf of the Company

I agree to and acknowledge the terms and conditions set out above relating to my appointment as director of the Company.

Signed

Dated

SCHEDULE 3 – DEED OF ADHERENCE

THIS DEED is made on

BY ● of ● (company number ●) whose registered office is at Guildhall, Marshall's Yard, Gainsborough, Lincolnshire DN21 2NA (the **Covenantor**) in favour of the persons whose names are set out in the schedule to this deed and is supplemental to the Sole Shareholder's Agreement dated ● made by (1) West Lindsey District Council, (2) ● and (3) ● (the **Agreement**)

THIS DEED WITNESSES as follows:

- 1 The Covenantor confirms that it has been given and read a copy of the Agreement and covenants with each person named in the schedule to this deed to perform and be bound by all the terms of the Agreement and to perform the obligations contained in the Agreement which are expressed to be performed by a [Group HoldCo] [[Teckal] [Trade] Company] (as defined in the Agreement), as if the Covenantor were a party to the Agreement.

- 2 This deed is governed by the laws of England and Wales.

IN WITNESS WHEREOF this deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

[Insert correct execution block]

Executed as a deed by)	
●)	
acting by a director and a director/ Secretary)
)	Director
)	
)
)	Director/Secretary

SCHEDULE – List of parties to Shareholder's Agreement including those who have executed earlier deeds of adherence