



Full Council

10 October 2016

**Establishing a Group Trading Company for West Lindsey District Council**

Report by:

Commercial Director

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Purpose / Summary:

The purpose of this report is to propose establishing of a Group Trading Company to support the Council's commercial activities.

**RECOMMENDATION(S):**

- (1) That Council approve the proposed group structure for trading companies (the trading arm) to facilitate the return of profits to the Council which can be used to ensure the sustainable delivery of front line services.**
- (2) That Council delegates authority to the Corporate Policy and Resources Committee for approval of annual business plans and accounts for the Group Holding Company and its individual subsidiaries.**
- (3) That Council approve the Shareholder Agreement for the Group Holding Company and its associated subsidiaries.**
- (4) That Council approve the Articles of Association for the Group Holding Company and its associated subsidiaries.**
- (5) That Council approve the nomination of a Director as Company Director and Chief Executive as Non-Executive Director for the Group Holding Company (WLDC Trading Ltd) and its Sure Staff subsidiaries (Sure Staff Lincs Ltd and WLDC Staffing Services Ltd).**

- (6) That Council approve the nomination of the S151 Officer, (the Director of Resources) as the Council's Shareholder representative.
- (7) That Council delegate authority to the Council's Section 151 Officer and the appointed Director of the SureStaff subsidiaries to agree the format and content of a Resourcing Agreement for the supply of services by the Council.

## IMPLICATIONS

### **Legal:**

The Council has the legal power to establish and operate trading companies. These can be wholly owned by West Lindsey District Council in order to enable the Council to take advantage of the powers to trade for profit introduced under the Local Government Act 2003, where opportunities to do so arise and it is appropriate to use the company as a vehicle for the trading activity proposed.

In addition, under the "general power of competence" introduced by Section 1 of the Localism Act 2011 local authorities now have a general power that enables them to do anything that a private individual is entitled to do, subject to certain statutory limitations.

It should be noted that things done for a commercial purpose even under the Localism Act 2011 must be done through a company.

### **Financial: FIN/58/17**

A business case has been produced for Sure Staff (and will be produced) for each company which forms part of the trading arm. These will forecast the potential cost and revenue implications for the Council of developing and operating each specific commercial activity.

The establishment of the trading arm, including the costs of specialist advice (legal, taxation) and company incorporation will be met from existing Invest to Earn funds. Any working capital requirements and/or cashflow subsidies will be provided to each company by the Council on commercial terms.

Each company within the trading arm will operate as a separate legal and commercial entity and distributable profits will be returned to the Council by way of dividend payments. The Council may also benefit from ownership of these companies by way of payments under a Resourcing Agreement and via interest charges on loans.

**Staffing:**

In most cases, the creation of the trading arm will represent the commercialisation of existing Council activities. Where this is the case, it is anticipated that existing staff will be used to deliver the service.

In the case of other commercial activity where the Council does not currently have an offer, the business plan includes provision for the creation of an appropriate staffing structure.

The acquisition of SureStaff Lincs Ltd has created the requirement to recruit a qualified professional to operate the company. Provision for this is again included in the specific business case.

**Equality and Diversity including Human Rights:**

There are no equality and diversity issues arising directly from this report

**Risk Assessment:**

The development of a trading arm represents a significant step forward for WLDC as it develops a range of commercial activities. Although this course of action presents opportunities, there are a number of potential risks.

**In summary, the key risks are:**

**Failure to comply with legislation or trade *ultra vires*** – the Council has engaged commercial support on an interim basis and is also commissioning legal advice (from specialists Bevan Brittan LLP) to guide it through the process of establishing a trading arm.

**Possibility of State Aid challenge** – Council support for any trading entities will be provided under a Resourcing Agreement and a set of Service Level Agreements that will ensure that market rates are used to set the relevant fees and payments.

**Failure to comply with prevailing taxation laws/regulations** – specialist advice has been commissioned from KPMG to provide guidance in relation to meeting the requirements in respect of both Corporation Tax and VAT.

**Failure to trade successfully** – each ‘business’ will be/has been developed using a market driven business plan which identifies and evaluates the market opportunity alongside the commercial and competitive landscape. In addition, the business plans identify relevant performance targets and the indicators for success/failure. Each reports monthly to Commercial Board in this respect, as well as holding their own monthly Board meetings to review activity and performance.

**Poor investment/acquisition** – the Council has developed a comprehensive due diligence checklist for a range of investment/acquisition scenarios; from property and land purchases to company acquisitions and market lending.

**Conflict of interest with Council priorities and resources** – each business case evaluates the resourcing requirements needed to trade in the context of the Council’s statutory duties. Where a conflict occurs, the business plan will need to support any additional resources that are needed.

**Climate Related Risks and Opportunities:**

**There are no direct climate related risks arising from this report**

**Title and Location of any Background Papers used in the preparation of this report:**

None

**Call in and Urgency:**

**Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?**

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

**Key Decision:**

A matter which affects two or more wards, or has significant financial implications

Yes

No

**1 Background**

1.1 A number of local authorities have identified that setting up a trading company – wholly owned by the Council, but operated as a separate legal entity – offers a way to develop services beyond their existing focus.

According to Localis, 58% of local authorities had trading companies in 2015<sup>1</sup> - based on a survey of 150 leaders in local government (e.g. chief executives, council leaders, finance). If representative of the sector as a whole, this would translate to around 189 English local authorities at the district/unitary level, indicating that the concept of the council-owned/run trading company is widely accepted. There is also significant evidence to suggest that trading companies are either under consideration or in active development by many other local authorities

1.2. West Lindsey District Council is developing a portfolio of commercial propositions based on both existing and new activities. Currently these activities are generating a modest level of income, but there is an ambition to build a number into significant revenue generating operations.

1.3 The Council has identified the need to establish a trading vehicle and has reviewed the options available to provide support for anticipated future activities by providing:

- Strategic direction
- Business opportunity development
- Support services
- Governance arrangements
- Financial planning

1.4 As well as establishing a vehicle to allow a range of trading activities, setting up a trading arm will support a number of WLDC's wider objectives:

- Service Quality
- Customer Focus
- Workforce Quality
- Innovation
- Cultural
- Sustainability
- Reputation.
- Retention of control and benefits

1.5 The report was considered by the Corporate Policy and Resources Committee on 27 July 2016, the minute is set out below.

#### **41 WEST LINDSEY TRADING COMPANY**

The Director of Resources noted that as the Commercial Director was on leave and had submitted apologies for the meeting he would update the Committee.

Following the acquisition of SureStaff the purpose of the report was to consider the establishment of a group of trading companies to support the Council's commercial activities.

The report set out the proposed structure and management and set out clarity regarding shareholders, removing conflicts of interest wherever possible. Advice had been taken from KPMG.

Initially the companies in the group structure would be configured as a 'Teckal' company (WLDC Staffing Services Ltd). This would enable the company to trade directly with the council, and potentially other public sector bodies. A Teckal company would 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 any business plan then in force and on terms agreed between the Teckal Company and the Council.

Once a group holding company was established with approved Articles of Association and Shareholder agreement, any future subsidiaries that the Council be created through a 'Deed of Adherence'. In essence, this meant that any subsidiary companies will be bound by the approved Articles and Shareholder agreement. This did not preclude the Council from establishing other companies or Special Purpose Vehicles outside this structure.

Some Members of the Committee spoke as members of the Council's Commercial Steering Group and agreed that the project was a good idea. It was questioned whether Members would see management accounts. The Director of Resources stated that as a non-executive

Director he would see the accounts and would present a summary to the Committee as part of the Annual Business Plan.

Members welcomed the start of a new era and new way of working for the Council, following changes to Government legislation. It was acknowledged that it was a balancing act to give freedom to act whilst maintaining supervision, but Members were satisfied that the model was robust.

Discussion ensued as to whether it would be feasible for a Councillor to be a representative on the board, whether the Chief Executive was an appropriate appointment, or whether an independent person should be appointed.

Councillor McNeill proposed an additional recommendation that an independent person be appointed. It was noted that the Council already had a number of independent persons appointed, particularly those lay members on the Governance and Audit Committee. It was noted however that this would incur additional costs not accounted for. But Members felt that it would add objectivity, independence and robust scrutiny.

It was moved and seconded and on being voted upon it was **RESOLVED** that a further recommendation be added to authorise the appointment of a suitable independent person as a non-executive Director in time for the Company's second AGM.

The recommendations were then moved en bloc and on being seconded and voted upon it was:

**RESOLVED** that:

- a) it be recommended for Council approval the proposed group structure for trading companies (the trading arm) to facilitate the return of profits to the Council which can be used to ensure the sustainable delivery of front line services;
- b) it be recommended that Council delegates authority to the Committee for approval of annual business plans and accounts for the Group Holding Company and its individual subsidiaries;
- c) it be recommended to Council that it approves the Shareholder Agreement for the Group Holding Company and its associated subsidiaries;
- d) it be recommended to Council that it approves the Articles of Association for the Group Holding Company and its associated subsidiaries;
- e) it be recommended to Council the nomination of the Commercial Director as Company Director and Chief Executive as Non-Executive Director for the Group Holding Company (WLDC Trading Ltd) and its Sure Staff subsidiaries (Sure Staff Lincs Ltd and WLDC Staffing Services Ltd);

- f) it be recommended to Council the nomination of the S151 Officer, (the Director of Resources) as the Council's Shareholder representative;
- g) authority be delegated to the Council's Section 151 Officer and the appointed Director of the SureStaff subsidiaries to agree the format and content of a Resourcing Agreement for the supply of services by the Council; and
- h) it be recommended to Council authority to appoint a suitable independent person as a non-executive Director in time for the second AGM.

1.6 The Governance arrangements were considered by the Governance and Audit Committee on 13 September 2016, the draft minute is set out below.

### **37 REPORT ON THE GOVERNANCE ARRANGEMENTS FOR MANAGING THE RISKS OF A WHOLLY OWNED LIMITED COMPANY (GA.24 16/17)**

Members gave consideration to a report, the purpose of which was to provide assurance to members of the Governance and Audit Committee that appropriate arrangements were being put in place to manage the risks of a wholly owned limited company.

By way of background Committee Members were advised that in June of this year WLDC had acquired a local business operating as a staffing agency in the district and surrounding area.

This company would continue to operate as an independent limited company that was wholly owned by the Authority. In addition, a second subsidiary would be created to act as a TECKAL company for the supply of the same services to public bodies. The TECKAL status currently allowed Authorities to give work to such companies without an open tender process.

At its meeting in July, Corporate Policy and Resources Committee had agreed a governance structure for recommendation to Full Council.

That same report was being presented to members of Governance and Audit Committee in order that they could review the arrangements, seek assurance that appropriate governance was in place and make any comments that may be raised by the Chair of the committee at the meeting of Full Council.

Discussion ensued and in response to Members' questions the roles of the Executive Director and Non-Executive Director were clarified. Initially there were concern that a Board was not being established for the company, however an independent member with experience of a managing a large private sector business confirmed that he would not expect a company of this size to have a Board. It was questioned whether Members would see management accounts. The

Director of Resources stated that as a non-executive Director he would see the accounts and would present a summary to the Corporate Policy and Resources Committee as part of the Annual Business Plan by which the company would be operated.

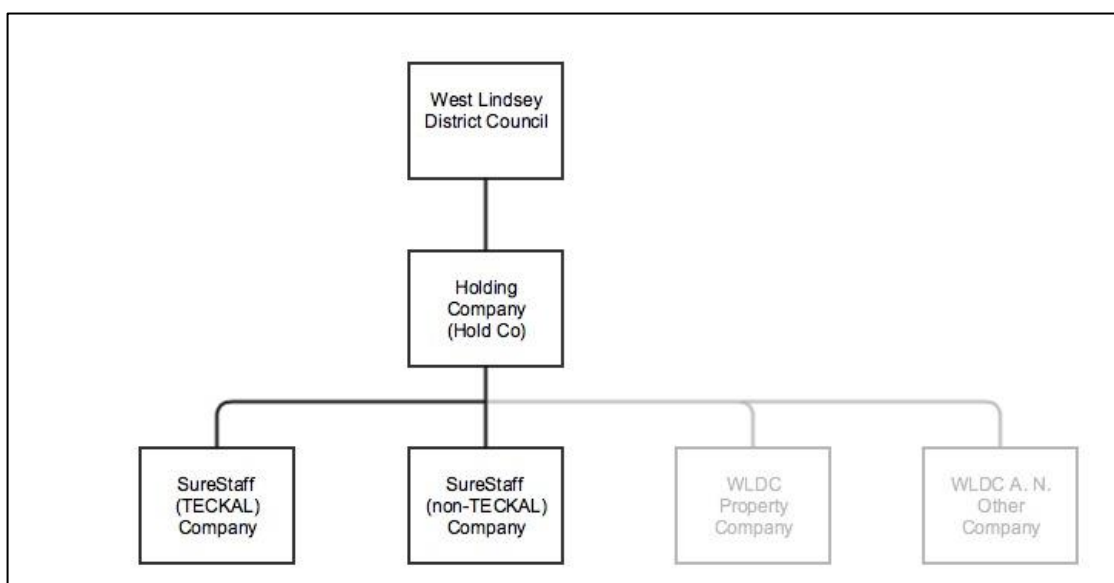
Officers also confirmed that there was a resourcing agreement between the agency and the Council, in order that State Aid Rules were adhered to. It was confirmed that the Council, as a Corporate Body, was the Shareholder, not individual Councillors, and the Director of Resources would be the named shareholder. Payroll Services were provided by the Council. Terms and Conditions for persons employed through SureStaff were not the same as those of people directly employed by the Authority, as this was a separate entity.

It was confirmed that the extra recommendation requested by the Corporate Policy and Resources Committee, namely that which related to the appointment of an independent Member as a Non-Executive Director, would be included within the report prior to it being submitted to Full Council.

**RESOLVED** that having reviewed the governance arrangements in the attached report, the committee have assurance that appropriate governance is in place and that there are no comments that they wish the Chair of the Committee to raise at Full Council.

## 2 Group structure

2.1 It is likely that the Council will want to consider establishing a series of Companies Limited by Shares for those operations which have a commercial character. It is believed that a group structure, similar to the example shown in the diagram below, would be the most appropriate to support the Council's commercial ambitions.





2.2 A group structure of this type will offer WLDC a number of advantages:

- Assets – usually property and intellectual property - can be ring-fenced to protect against claim if the trading company is subject to litigation.
- The operation of separate companies for different areas of the business of the company can be helpful if one part of a business is regulated or has a higher risk profile.
- To allow the operation of employee share schemes which are limited to the business in which the particular employees work.
- If there is potential to sell the business avoiding some of the legal issues that can arise with a sale of assets.
- A group company structure can be tax efficient.

2.3 Initially one the companies in this group structure will be configured as a 'Teckal' company (WLDC Staffing Services Ltd). This enables the company to trade directly with the council, and potentially other public sector bodies. A Teckal company will 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 any business plan then in force and on terms agreed between the Teckal Co and the Council

2.4 Once a group holding company is established with approved Articles of Association and Shareholder agreement, any future subsidiaries that the Council be created through a 'Deed of Adherence'. In essence, this means that any subsidiary companies will be bound by the approved Articles and Shareholder agreement. This does not preclude the Council from establishing other companies or Special Purpose Vehicles outside this structure.

### **3 Shareholding**

3.1 The Council will be the sole (100%) member of a group holding company which in turn will be the sole member of each of the subsidiaries, thereby creating a "flat" subsidiary structure underneath the holding company.

The Council will be named as the sole member of each subsidiary, but will exercise its rights (as owner or contract counterparty) through one or more authorised representatives.

### **4 Governance**

4.1 As the sole owner of the Group Holding Company and its subsidiaries, the Council will have ultimately govern the operations of the companies.

The Shareholders Agreement (Appendix 1) is a legally binding document that sets out the Council's expectations of its companies. The Council must approve the annual business plan and accounts for the Group

Holding Company and its subsidiaries. The Shareholder Agreement also details a list of *Reserved Matters*, issues that must revert to the Council, as sole Shareholder, for decision-making.

- 4.2 The Articles of Association (Appendix 2) set out the purpose and operational requirements of the Group Holding Company and its individual subsidiaries. These govern the way that the individual companies must operate.
- 4.3 Apart from the reserved matters, decisions which the Council (as member) is required to approve under the Companies Act 2006, and any matters which the Council directs a company's board to undertake (or not undertake), the day to day running of each subsidiary will be left to the company directors.

## **5 Council appointments:**

- 5.1 The Council will appoint one or more directors to each subsidiary Board and, depending on the composition, may appoint a majority of directors. Legal advice recommends that the Council's nominated directors should be officers rather than elected members to avoid potential conflicts of interest and given that it is the Council (ie all elected members) which is the shareholder and owner.
- 5.2 It is recommended that the Commercial Director is appointed as Director and Chief Executive as Non-Executive Director for WLDC Staffing Services Ltd, SureStaff Lincs Ltd and the Group Holding Company (WLDC Trading Ltd).
- 5.3 It is recommended that the Council's Section 151 officer, the Director of Resources be nominated as the Council's shareholder representative.

## **6 Tax Implications**

- 6.1 The Council commissioned specialist advice from KPMG, the Council's external auditors, in relation to both Corporation Tax and VAT. The advice focused on high level considerations in relation to Local Authority Trading Companies (LATC) and also provided detailed analysis in relation to SureStaff Lincs Ltd.
- 6.2 KPMG advised that it is common for local authorities to establish a group company structure:  
*"Often a company is incorporated which sits between the Local Authority and the Local Authority Trading Company. This is commonly referred to as a holding company. There are various reasons why a holding company structure is utilised however a major reason includes; facilitating management charges for services and mitigating tax on a future sale by way of substantial shareholding exemption relief" KPMG April 2016.*
- 6.3 It is proposed that any profits generated by subsidiary companies will be returned to the Council through a dividend payment and will only be

distributed in accordance with approved business plans and with Council approval.

- 6.4 It may be necessary to obtain more detailed advice about tax implications for each specific subsidiary. This advice will be commissioned as and when required.

## **6. Update on Sure Staff**

- 6.1 The acquisition of SureStaff was completed on 30<sup>th</sup> May 2016. The company, now formally owned by West Lindsey District Council, has moved into a start-up office in The Plough Business Hub. The company held its first formal Board meeting on 7<sup>th</sup> June.
- 6.2 Under the terms of the acquisition the previous owner has been working full-time in the business and continued to do so until 31 July 2016. He successfully set up the office and configured all the systems to operate as before. In addition, he redeveloped relationships with worker suppliers (Job Centre, employment services) and former clients with promising outcomes.
- 6.3 The business has successfully recruited and appointed a Manager who is now in place and has rapidly gained knowledge of Sure Staff. The Manager has previous staffing agency experience and is ambitious to develop the business. The Council's Finance team member has also been trained and are now provides the payroll administration service under the Resourcing Agreement.
- 6.4 The Council's Operational Services contract (Garden Waste) has transferred over to SureStaff is progressing well. This has produced revenue for the business one month earlier than projected in the business plan. In addition, the Council has placed additional requirements with Sure Staff and the business is currently supplying two other clients.

## **7 Conclusions**

- 7.1 The creation of a trading arm, configured as described above, offers the Council the opportunity to develop a suite of commercial activities and optimise its financial position in order to help fund front line services.
- 7.2 It is proposed that members approve the establishment of a Group Holding Company, the proposed Articles of Association and Shareholder agreement. In addition, it is recommended that the Council's nominated representatives are approved.

**COMPANY NUMBER 06476932**

**THE COMPANIES ACT 2006  
PRIVATE COMPANY LIMITED BY SHARES**

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**ARTICLES OF ASSOCIATION  
OF  
SURESTAFF LINCS. LIMITED**

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**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**SURESTAFF LINCS. LIMITED**

**PART 1 – INTERPRETATION**

**1 DEFINED TERMS**

1.1 In these Articles, unless the context requires otherwise:

**Articles** means the Company's articles of association as amended from time to time

**bankruptcy** includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy

**Chair** has the meaning given in Article 11

**Chair of the Meeting** has the meaning given in Article 41

**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** means the company governed by these Articles

**Conflict** has the meaning given in Article 13

**Council** means West Lindsey District Council, of Guildhall, Marshall's Yard, Gainsborough, Lincolnshire DN21 2NA and any statutory successor

**Council Director** has the meaning given in Article 17.1

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

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

**Distribution Recipient** has the meaning given in Article 32.2

**Document** includes, unless otherwise specified, any Document sent or supplied in Electronic Form

**Electronic Form** has the meaning given in section 1168 of the Companies Act 2006

**Eligible Director** means a Director who would have been entitled to vote on the matter had it been proposed as a resolution at a meeting of the Directors

**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

**Group Company** means, in relation to a company:

- (a) any subsidiary of the Company;
- (b) any parent undertaking or undertakings of the Company; and
- (c) any subsidiary of any such parent undertakings

**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 members as the holder of the Shares

**Instrument** means a Document in Hard Copy Form

**ordinary resolution** has the meaning given in section 282 of the Companies Act 2006

**paid** means paid or credited as paid

**participate**, in relation to a Directors' meeting, has the meaning given in Article 9

**Proxy Notice** has the meaning given in Article 47

**Shareholder** means a person who is the Holder of a Share.

**Shares** means shares in the Company

**special resolution** has the meaning given in section 283 of the Companies Act 2006

**Transmittee** means a person entitled to a Share by reason of the death or bankruptcy of a Shareholder or otherwise by operation of law

**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

- 1.2 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Companies Act 2006 as in force on the date when these Articles become binding on the Company.
- 1.3 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.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.



- 1.8 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.
- 1.9 A reference to **writing** or **written** includes email but not fax.
- 1.10 A reference to any agreement or document (or any provision of it) referred to in these Articles is a reference to that agreement or document (or the relevant provision of it) as varied, amended or supplemented (in each case, other than in breach of the provisions of that agreement or document) from time to time.
- 1.11 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.
- 1.12 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).
- 1.13 A reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it.
- 1.14 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
- 1.15 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:
- 1.15.1 any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
- 1.15.2 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
- 1.15.3 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:

- (a) 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
- (b) 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.

## **PART 2 - DIRECTORS**

### **DIRECTORS' POWERS AND RESPONSIBILITIES**

#### **2 DIRECTORS' GENERAL AUTHORITY**

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.

#### **3 SHAREHOLDERS' RESERVE POWER**

- 3.1 The Shareholders may, by special resolution, direct the Directors to take, or refrain from taking, specified action.
- 3.2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution.

#### **4 DIRECTORS MAY DELEGATE**

- 4.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles as follows:
- 4.1.1 to such person or committee;
  - 4.1.2 by such means (including by power of attorney);
  - 4.1.3 to such an extent;
  - 4.1.4 in relation to such matters or territories; and
  - 4.1.5 on such terms and conditions,
- as they think fit.
- 4.2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.
- 4.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

#### **5 COMMITTEES**

- 5.1 Committees to which the Directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the Articles which govern the taking of decisions by Directors.
- 5.2 The Directors may make rules of procedure for all or any committees, which prevail over rules derived from the Articles if they are not consistent with them.

### **DECISION-MAKING BY DIRECTORS**

#### **6 DIRECTORS TO TAKE DECISIONS COLLECTIVELY**

- 6.1 The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with Article 7.
- 6.2 If only one Director is eligible to vote on any authorisation required under Article 13, the general rule does not apply and the Eligible Director may take decisions in relation to the relevant matter without regard to any of the provisions in these Articles relating to Directors' decision-making.

- 6.3 Each Director shall be entitled to cast one vote on any resolution put to the Directors. However, if at any meeting of the Directors one or more Directors appointed by the Council are absent, the Director(s) appointed by the Council who are participating in the meeting may cast the votes of all absent Directors appointed by the Council, provided that:
- 6.3.1 the maximum number of votes able to be cast by those participating Directors (including their own votes) shall not exceed the number of Directors which the Council may at that time appoint (whether or not the Council has appointed all such Directors);
  - 6.3.2 those participating Directors may not cast a vote in relation to a Director who was not an Eligible Director; and
  - 6.3.3 if two or more participating Directors appointed by the Council are participating in the Directors' meeting, they may only cast the votes of the absent Directors appointed by the Council if those participating Directors agree on how the vote(s) of those absent Directors should be cast.
- 6.4 If the numbers of votes for and against a proposal are equal, the Chair shall not have a casting vote.

## **7 UNANIMOUS DECISIONS**

- 7.1 A decision of the Directors is taken in accordance with this Article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.
- 7.2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each Eligible Director or to which each Eligible Director has otherwise indicated agreement in writing.
- 7.3 A decision may not be taken in accordance with this Article if the Eligible Directors would not have formed a quorum at such a meeting.

## **8 CALLING A DIRECTORS' MEETING**

- 8.1 Any Director may call a Directors' meeting by giving notice of the meeting to the Directors and the Council in accordance with Article 8.2 or by authorising the company secretary (if any) to give such notice.
- 8.2 A meeting of the Directors must be called by at least 7 days' notice unless either:
- 8.2.1 the Directors and the Council unanimously agree otherwise; or
  - 8.2.2 urgent circumstances require shorter notice.
- 8.3 Notice of any Directors' meeting must include:
- 8.3.1 its proposed date and time;
  - 8.3.2 where it is to take place;
  - 8.3.3 if it is anticipated that persons 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;
  - 8.3.4 an agenda specifying in reasonable detail the matters to be raised at the meeting or the committee meeting; and
  - 8.3.5 copies of any papers to be discussed at the meeting or the committee meeting.
- 8.4 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company not more than 7 days after the date on

which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

## **9 PARTICIPATION IN DIRECTORS' MEETINGS**

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

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

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

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

9.3 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.

9.4 The Council Representative shall have the right to attend (but not vote at) any meetings of the Directors.

## **10 QUORUM FOR DIRECTORS' MEETINGS**

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

10.2 Subject to Article 6.2, 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.

10.3 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:

10.3.1 to appoint further Directors; or

10.3.2 to call a general meeting so as to enable the Shareholders to appoint further Directors.

10.4 If a quorum is not present with half an hour from the time appointed for the meeting, or during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time and place as the Directors may determine in accordance with these Articles.

## **11 CHAIRING OF DIRECTORS' MEETINGS**

11.1 At each meeting of the Directors the participating Directors may appoint a Director present to chair that meeting. The person so appointed for the time being shall be known as the **Chair**.

11.2 The Directors may terminate the Chair's appointment at any time during the meeting at which he is appointed.

## **12 CONFLICTS OF INTEREST – TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY**

12.1 The relevant provisions of the Companies Act 2006 (including, without limitation, sections 177 and 182) shall apply in relation to declarations of interest in proposed and existing transactions or arrangements with the Company.

12.2 Provided that he has disclosed to the Directors the nature and extent of any interest of his in accordance with and to the extent required by the Companies Act 2006, a Director notwithstanding his office:

- 12.2.1 may be a party to, or otherwise interested in, any contract with the Company or a Group Company of the Company or in which either or both of them is/are otherwise interested;
  - 12.2.2 may be an elected member, director or other officer of, employed by, a party to any contract with, or otherwise interested in, the Council, any Group Company of the Company or in any body corporate promoted by the Company, the Council, or a Group Company of the Company, or in which any of them is/are interested; and
  - 12.2.3 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor).
- 12.3 For the purposes of this Article 12.3:
- 12.3.1 a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being an elected member, director, officer or employee of the Council or any Group Company of the Company; and
  - 12.3.2 a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any contract in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such contract of the nature and extent so specified.
- 12.4 Where a Director is an elected member, director officer, or employee of the Council or a Group Company of the Company; he:
- 12.4.1 may in exercising his independent judgment take into account the success of the Council or Group Company as well as the success of the Company; and
  - 12.4.2 shall in the exercise of his duties have a duty of confidentiality to the Council or Group Company in relation to confidential information of that Shareholder or Group Company, but he shall not be restricted by any duty of confidentiality to the Company from providing information to the Council or Group Company except as may be imposed under Article 13.5.

### **13 CONFLICTS OF INTEREST REQUIRING BOARD AUTHORISATION**

- 13.1 The Directors may authorise any matter which would otherwise involve a Director (a **Relevant Director**) breaching his duty under section 175 of the Companies Act 2006 to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (a **Conflict**).
- 13.2 Any Director (including the Relevant Director) may propose that the Relevant Director be authorised in relation to any matter the subject of a Conflict. Such proposal and any authority given by the Directors shall be effected in the same way that any other matter may be proposed to and decided upon by the Directors under these Articles save that the Relevant Director (and any Director) shall not count towards the quorum nor vote on any resolution giving such authority.
- 13.3 Where the Directors give authority in relation to a Conflict:
- 13.3.1 the terms of the authority shall be recorded in writing (but the authority shall be effective whether or not the terms are so recorded); and
  - 13.3.2 the Directors may revoke or vary such authority at any time but this will not affect anything done by the Relevant Director prior to such revocation in accordance with the terms of such authority.
- 13.4 A Conflict in relation to a Director arising solely as a result of him being an elected member, director, officer or employee of the Council or any Group Company of the Company shall be deemed to have been authorised for the purposes of this Article 13 and section 175 of the Companies Act 2006.

- 13.5 Where Article 13.4 above applies or the Directors otherwise gives authority in relation to a Conflict, or where any of the situations referred to in Article 12 (a **Permitted Situation**) applies:
- 13.5.1 the Directors may (whether at the relevant time or subsequently) (i) require that the Relevant Director is excluded from the receipt of information, the participation in discussion and/or the making of decisions (whether at Directors meetings or otherwise) related to the Conflict or Permitted Situation; and (ii) impose upon the Relevant Director such other terms for the purpose of dealing with the Conflict as they may determine;
  - 13.5.2 the Relevant Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict or Permitted Situation; and
  - 13.5.3 the Directors may provide that where the Relevant Director obtains (otherwise than through his position as a Director of the Company) information that is confidential to a third party, the Director will not be obliged to disclose that information to the Company, or to use or apply the information in relation to the Company's affairs, where to do so would amount to a breach of that confidence.
- 13.6 A Director shall not, by reason of his office or of the fiduciary relationship thereby established, be liable to account to the Company or the Shareholders for any remuneration, profit or other benefit realised by reason of his having any type of interest in a Conflict authorised under this Article or in any Permitted Situation and no contract shall be liable to be avoided on the grounds of a Director having any such interest.

#### **14 EFFECT OF DIRECTORS' INTERESTS ON QUORUM AND VOTING**

- 14.1 Subject where applicable to disclosure in accordance with these Articles and subject to any terms imposed by the Directors in relation to any Conflict or Permitted Situation, a Director shall be entitled to vote in respect of any matter in which he is interested directly or indirectly (where that interest arises by virtue of a Conflict which has been authorised or a Permitted Situation) and if he shall do so his vote shall be counted and, whether or not he does, his presence at the meeting shall be taken into account in ascertaining whether a quorum is present.
- 14.2 However, a Director shall not be entitled to vote in respect of any other matter in which he is interested directly or indirectly and his presence at the meeting shall not be taken into account in ascertaining whether a quorum is present.
- 14.3 Subject to Article 14.4 below, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.
- 14.4 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

#### **15 RECORDS OF DECISIONS TO BE KEPT**

The Directors must ensure that the Company keeps a record, in writing, for at least ten years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors.

#### **16 DIRECTORS' DISCRETION TO MAKE FURTHER RULES**

Subject to the Articles, the Directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors.

## **APPOINTMENT OF DIRECTORS**

### **17 METHODS OF APPOINTING DIRECTORS**

17.1 Unless otherwise agreed by the Council, the board of Directors shall comprise of a minimum of two Directors and a maximum number as agreed by the Council from time to time, all of which shall be appointed by the Council (the **Council Directors**).

### **18 TERMINATION OF A DIRECTOR'S APPOINTMENT**

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

18.1.1 in the case of a Council Director, the Council notifies the Company that the individual is to be removed as a Director;

18.1.2 that person ceases to be a Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a Director by law;

18.1.3 a bankruptcy order is made against that person;

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

18.1.5 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months; or

18.1.6 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.

### **19 DIRECTORS' REMUNERATION AND EXPENSES**

19.1 Any remuneration of the Directors shall require the prior approval of the Council.

19.2 Any policy regarding expenses of Directors (and alternate Directors) shall be determined by the Council.

## **PART 3 - SHARES AND DISTRIBUTIONS**

### **SHARES**

#### **20 APPOINTMENT OF SHAREHOLDERS**

20.1 The subscribers to the Memorandum are the first Shareholders.

20.2 No person shall be admitted as a Shareholder unless they are approved unanimously by the Shareholders.

20.3 The Directors must keep a register of names and addresses of the Shareholders.

#### **21 LIABILITY OF SHAREHOLDERS**

The liability of the Shareholders is limited to the amount, if any, unpaid on the Shares held by them.

#### **22 ALL SHARES TO BE FULLY PAID UP**

22.1 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.

22.2 This does not apply to Shares taken on the formation of the Company by the subscribers to the Company's Memorandum.

### **23 POWERS TO ISSUE DIFFERENT CLASSES OF SHARE**

23.1 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.

23.2 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.

### **24 COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS**

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.

### **25 SHARE CERTIFICATES**

25.1 The Company must issue each Shareholder, free of charge, with one or more certificates in respect of the Shares which that Shareholder holds.

25.2 Every certificate must specify:

25.2.1 in respect of how many Shares, of what class, it is issued;

25.2.2 the nominal value of those Shares;

25.2.3 that the Shares are fully paid; and

25.2.4 any distinguishing numbers assigned to them.

25.3 No certificate may be issued in respect of Shares of more than one class.

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

25.5 Certificates must be executed in accordance with the Companies Act 2006.

### **26 REPLACEMENT SHARE CERTIFICATES**

26.1 If a certificate issued in respect of a Shareholder's Shares is:

26.1.1 damaged or defaced; or

26.1.2 said to be lost, stolen or destroyed,

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

26.2 A Shareholder exercising the right to be issued with such a replacement certificate:

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

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



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

## **27 SHARE TRANSFERS**

27.1 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.

27.2 No fee may be charged for registering any Instrument of transfer or other Document relating to or affecting the title to any Share.

27.3 The Company may retain any Instrument of transfer which is registered.

27.4 The transferor remains the Holder of a Share until the transferee's name is entered in the register of members as Holder of it.

27.5 The Directors may refuse to register the transfer of a Share, and if they do so, the Instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

## **28 TRANSMISSION OF SHARES**

28.1 If title to a Share passes to a Transmittree, the Company may only recognise the Transmittree as having any title to that Share.

28.2 A Transmittree who produces such evidence of entitlement to Shares as the Directors may properly require:

28.2.1 may, subject to the Articles, choose either to become the Holder of those Shares or to have them transferred to another person; and

28.2.2 subject to the Articles, and pending any transfer of the Shares to another person, has the same rights as the Holder had.

28.3 However, Transmittrees 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.

## **29 EXERCISE OF TRANSMITTEES' RIGHTS**

29.1 Transmittrees who wish to become the holders of Shares to which they have become entitled must notify the Company in writing of that wish.

29.2 If the Transmittree wishes to have a Share transferred to another person, the Transmittree must execute an Instrument of transfer in respect of it.

29.3 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 Transmittree has derived rights in respect of the Share, and as if the event which gave rise to the transmission had not occurred.

## **30 TRANSMITTEES BOUND BY PRIOR NOTICES**

If a notice is given to a Shareholder in respect of Shares and a Transmittree is entitled to those Shares, the Transmittree is bound by the notice if it was given to the Shareholder before the Transmittree's name has been entered in the register of members.

## DIVIDENDS AND OTHER DISTRIBUTIONS

### 31 PROCEDURE FOR DECLARING DIVIDENDS

- 31.1 The Company may by ordinary resolution declare dividends, and the Directors may decide to pay interim dividends.
- 31.2 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.
- 31.3 No dividend may be declared or paid unless it is in accordance with Shareholders' respective rights.
- 31.4 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.
- 31.5 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.
- 31.6 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.
- 31.7 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.

### 32 PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS

- 32.1 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:
- 32.1.1 transfer to a bank or building society account specified by the Distribution Recipient either in writing or as the Directors may otherwise decide;
- 32.1.2 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 specified by the Distribution Recipient either in writing or as the Directors may otherwise decide;
- 32.1.3 sending a cheque made payable to such person by post to such person at such address as the Distribution Recipient has specified either in writing or as the Directors may otherwise decide; or
- 32.1.4 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.
- 32.2 In the Articles, the **Distribution Recipient** means, in respect of a Share in respect of which a dividend or other sum is payable:
- 32.2.1 the Holder of the Share; or
- 32.2.2 if the Share has two or more joint holders, whichever of them is named first in the register of members; or
- 32.2.3 if the Holder is no longer entitled to the Share by reason of death or bankruptcy; or
- 32.2.4 otherwise by operation of law, the Transmittee.

### **33 NO INTEREST ON DISTRIBUTIONS**

- 33.1 The Company may not pay interest on any dividend or other sum payable in respect of a Share unless otherwise provided by:
- 33.1.1 the terms on which the Share was issued; or
  - 33.1.2 the provisions of another agreement between the Holder of that Share and the Company.

### **34 UNCLAIMED DISTRIBUTIONS**

- 34.1 All dividends or other sums which are:
- 34.1.1 payable in respect of Shares; and
  - 34.1.2 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.
- 34.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.
- 34.3 If:
- 34.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and
  - 34.3.2 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.

### **35 NON-CASH DISTRIBUTIONS**

- 35.1 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).
- 35.2 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:
- 35.2.1 fixing the value of any assets;
  - 35.2.2 paying cash to any Distribution Recipient on the basis of that value in order to adjust the rights of recipients; and
  - 35.2.3 vesting any assets in trustees.

### **36 WAIVER OF DISTRIBUTIONS**

- 36.1 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:
- 36.1.1 the Share has more than one Holder; or
  - 36.1.2 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**

### **37 AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS**

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

37.1.1 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

37.1.2 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.

37.2 Capitalised sums must be applied:

37.2.1 on behalf of the persons entitled; and

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

37.3 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.

37.4 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.

37.5 Subject to these Articles, the Directors may:

37.5.1 apply capitalised sums in accordance with Articles 37.3 and 37.4 partly in one way and partly in another;

37.5.2 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

37.5.3 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.

## **PART 4 - DECISION-MAKING BY SHAREHOLDERS**

### **ORGANISATION OF GENERAL MEETINGS**

#### **38 GENERAL MEETINGS**

38.1 The Council and the person admitted as a Shareholder in accordance with these Articles shall appoint and may remove or replace, a Council Representative and a Shareholder representative (as the case may be), in each case by notice in writing to the Company, in accordance with section 323 of the Companies Act 2006, to act as the representative of the Council or the Shareholder in accordance with these Articles.

- 38.2 Notice of a general meeting shall be given in Hard Copy Form, in Electronic Form or by means of a website, provided that the Company complies with any requirements relating to the giving of notice under the Companies Act 2006.
- 38.3 Notice of a general meeting shall be sent to the Council Representative, the Shareholder, every Director and any other person required by law to be sent such notice.
- 38.4 Notice of a general meeting shall:
- 38.4.1 state the time, date and place of the meeting;
  - 38.4.2 specify the general nature of the business to be dealt with at the meeting and set out the text of any special resolution to be voted upon at the meeting; and
  - 38.4.3 be accompanied by a proxy form;
- notice of a general meeting need not be in writing.
- 38.5 The accidental omission to give notice of a general meeting to, or the non-receipt of notice by, any person entitled to receive the notice; or a technical defect in the timing or manner of giving such notice of which the Directors are unaware shall not invalidate the proceedings of that meeting.

### **39 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS**

- 39.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 39.2 A person is able to exercise the right to vote at a general meeting when:
- 39.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - 39.2.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 39.3 The Directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 39.4 In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
- 39.5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

### **40 QUORUM FOR GENERAL MEETINGS**

No business other than the appointment of the Chair of the Meeting is to be transacted at a general meeting unless an authorised representative of each Shareholder (or in the case of the Council a member of the Shareholder Board) is present.

### **41 CHAIRING GENERAL MEETINGS**

- 41.1 The Chair shall chair general meetings if present and willing to do so.
- 41.2 If the Chair is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:

- 41.2.1 the Directors present; or
- 41.2.2 (if no Directors are present) the meeting,

must appoint a Director or Shareholder to chair the meeting, and the appointment of the Chair of the meeting must be the first business of the meeting.

41.3 The person chairing a meeting in accordance with this Article is referred to as the **Chair of the Meeting**.

## **42 ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS**

42.1 Directors may attend and speak at general meetings, whether or not they are Shareholders.

42.2 The Chairman of the meeting may permit other persons who are not:

- 42.2.1 Shareholders; or
- 42.2.2 otherwise entitled to exercise the rights of Shareholders in relation to general meetings, to attend and speak at a general meeting.

## **43 ADJOURNMENT**

43.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the Chairman of the meeting must adjourn it.

43.2 The Chair of the meeting may adjourn a general meeting at which a quorum is present if:

- 43.2.1 the meeting consents to an adjournment; or
- 43.2.2 it appears to the Chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

43.3 The Chair of the meeting must adjourn a general meeting if directed to do so by the meeting.

43.4 When adjourning a general meeting, the Chair of the meeting must:

- 43.4.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the Directors; and
- 43.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

43.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):

- 43.5.1 to the same persons to whom notice of the Company's general meetings is required to be given; and
- 43.5.2 containing the same information which such notice is required to contain.

43.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

## **VOTING AT GENERAL MEETINGS**

### **44 VOTING: GENERAL**

44.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these Articles.

### **45 ERRORS AND DISPUTES**

45.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

45.2 Any such objection must be referred to the Chairman of the meeting, whose decision is final.

### **46 POLL VOTES**

46.1 A poll on a resolution may be demanded:

46.1.1 in advance of the general meeting where it is to be put to the vote, or

46.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

46.2 A poll may be demanded by:

46.2.1 the Chairman of the meeting;

46.2.2 the Directors;

46.2.3 two or more persons having the right to vote on the resolution; or

46.2.4 a person or persons representing not less than one tenth of the total voting rights of all the Shareholders having the right to vote on the resolution.

46.3 A demand for a poll may be withdrawn if:

46.3.1 the poll has not yet been taken; and

46.3.2 the Chairman of the meeting consents to the withdrawal.

46.4 Polls must be taken immediately and in such manner as the Chairman of the meeting directs.

### **47 CONTENT OF PROXY NOTICES**

47.1 Proxies may only validly be appointed by a notice in writing (a **Proxy Notice**) which:

47.1.1 states the name and address of the Shareholder appointing the proxy;

47.1.2 identifies the person appointed to be that Shareholder's proxy and the general meeting in relation to which that person is appointed;

47.1.3 is signed by or on behalf of the Shareholder appointing the proxy, or is authenticated in such manner as the Directors may determine; and

47.1.4 is delivered to the Company in accordance with the Articles and any instructions contained in the notice of the general meeting to which they relate.

- 47.2 The Company may require Proxy Notices to be delivered in a particular form, and may specify different forms for different purposes.
- 47.3 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- 47.4 Unless a Proxy Notice indicates otherwise, it must be treated as:
- 47.4.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - 47.4.2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

## **48 DELIVERY OF PROXY NOTICES**

- 48.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid Proxy Notice has been delivered to the Company by or on behalf of that person.
- 48.2 An appointment under a Proxy Notice may be revoked by delivering to the Company a notice in writing given by or on behalf of the person by whom or on whose behalf the Proxy Notice was given.
- 48.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 48.4 If a Proxy Notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

## **49 AMENDMENTS TO RESOLUTIONS**

- 49.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- 49.1.1 notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the Chairman of the meeting may determine); and
  - 49.1.2 the proposed amendment does not, in the reasonable opinion of the Chairman of the meeting, materially alter the scope of the resolution.
- 49.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
- 49.2.1 the Chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - 49.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 49.3 If the Chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chairman's error does not invalidate the vote on that resolution.



## **PART 5 - ADMINISTRATIVE ARRANGEMENTS**

### **50 MEANS OF COMMUNICATION TO BE USED**

- 50.1 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.
- 50.2 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.
- 50.3 A Director may agree with the Company that notices or Documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

### **51 COMPANY SEALS**

- 51.1 Any common seal may only be used by the authority of the Directors.
- 51.2 The Directors may decide by what means and in what form any common seal is to be used.
- 51.3 Unless otherwise decided by the Directors, if the Company has a common seal and it is affixed to a Document, the Document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- 51.4 For the purposes of this Article, an authorised person is:
- 51.4.1 any Director;
  - 51.4.2 the company secretary (if any); or
  - 51.4.3 any person authorised by the Directors for the purpose of signing Documents to which the common seal is applied.

### **52 RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS**

- 52.1 The Shareholders and their authorised representatives or the Council Representative (in the case of the Council) shall have the right on giving to the Company reasonable advance notice, during normal business hours to inspect the books and records of the Company.

### **53 APPOINTMENT OF COMPANY SECRETARY**

The Council may appoint (and remove) the company secretary by notice in writing to the Company.

### **54 PROVISION FOR EMPLOYEES ON CESSATION OF BUSINESS**

The Directors may decide to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries (other than a Director or former Director or shadow Director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the Company or that Subsidiary.

## **DIRECTORS' INDEMNITY AND INSURANCE**

### **55 INDEMNITY**

- 55.1 Subject to Article 55.2, a relevant Director of the Company or an associated Company may be indemnified out of the Company's assets against:

- 55.1.1 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;
  - 55.1.2 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
  - 55.1.3 any other liability incurred by that Director as an officer of the Company or an associated Company.
- 55.2 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.
- 55.3 In this Article:
- 55.3.1 companies are **associated** if one is a Subsidiary of the other or both are subsidiaries of the same body corporate; and
  - 55.3.2 a **relevant Director** means any Director or former Director of the Company or an associated Company.

## 56 INSURANCE

- 56.1 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.
- 56.2 In this Article:
- 56.2.1 a **relevant Director** means any Director or former Director of the Company or an associated Company;
  - 56.2.2 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
  - 56.2.3 companies are **associated** if one is a Subsidiary of the other or both are subsidiaries of the same body corporate.

**Dated**

**2016**

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

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**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
	<b>Constitution of the Company</b>			
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the Company.	✓	✓	✓
	<b>Officers and shareholders of the Company</b>			
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).	✓	✓	✓
	<b>Future direction and development of the Company</b>			
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).	✓	✓	✓
	<b>Management of the business of the Company</b>			
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	)	.....
	)	<b>Director</b>
	)	
	)	.....
	)	<b>Director/Secretary</b>

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