

Report to	Cabinet 12 September 2012	Item
Report of	Deputy chief executive (Operations)	9
Subject	Establishment of Eastern Procurement Consortium as a company limited by guarantee	

Purpose

To advise on the process and implications to the Council of Eastern Procurement Consortium (EPC) becoming a company limited by guarantee.

Recommendation

1. To approve the proposed incorporation of EPC as a Company Limited by Guarantee; and
2. To agree that the Council becomes a member of the new company.

Corporate and service priorities

The report helps to meet the corporate priority “Decent housing for all” and the service plan priority.

Financial implications

The Council's exposure to risk as a result of a successful challenge from an unsuccessful supplier will be substantially reduced under this proposal.

Investigations have identified typical costs to establish a corporate procurement vehicle to be in the range of £20 to £25k, though on occasions this has been greater where members have extended the period of exploration and have engaged additional advisers over and above those appointed on behalf of the consortium as a whole. EPC has made provision for these costs within it's budgets for this year and therefore there will be no further costs for the Council.

Ward/s: All wards

Cabinet member: Councillor Waters – Deputy Leader and resources portfolio holder & Councillor McDonald - Housing

Contact officers

Chris Rayner, Head of Property Services

01603 213208

Background documents

None

Report

Background

1. EPC is a local consortium of 9 small/medium Registered Providers (RP's) and 2 local authorities who have 'joined together' to procure housing maintenance and improvement works. EPC is currently based at Saffron Housing Trust in Long Stratton (with EPC staff currently being employed by Saffron Housing Trust and Orwell Housing Association). EPC have a number of responsive, cyclical and planned contracts in place, which are all OJEU compliant from a procurement perspective.
2. In effect EPC procure contracts on behalf of its members. Members have the option to use these contracts to procure works and services. This approach has the significant collective advantage of increasing buying power and taking the burden of procurement away from individual members. The group has been in existence now for around 6 years and the Council joined the consortium in October 2011.
3. Cabinet approved the Council becoming members of EPC on 13 July 2011 in order to deliver planned works (kitchens, bathrooms, electrical rewires etc) to the Councils housing stock.
4. Current EPC Membership includes Freebridge Community Housing, Victory Housing Trust, Cotman Housing Association, Wherry Housing Association, Saffron Housing Trust, Suffolk Housing Society, Orwell Housing Association, Colne Housing Society, Hundred Houses Society, Great Yarmouth Borough Council and Norwich City Council. Currently each member of EPC elects a person to represent their organisation at the quarterly EPC Board meetings. The Councils representative is the Head of Property Services.
5. During the second half of 2011 EPC re-procured their framework agreement for the delivery of the planned and improvement work (property improvements framework) and on 14th March 2012 Cabinet approved the proposal to deliver the Councils planned work to the housing stock via this framework agreement.
6. The value of work currently being delivered through this framework for 2012/13 is £13.5m.
7. As members of EPC the Council can take advantage of any EPC contracts (or framework agreements) or can decide to procure work elsewhere. In this way the Council retains complete control of its procurement function, can benefit from the EPC arrangements, and, at the same time, has no commitment to use the EPC frameworks.
8. At the EPC Board meeting of July 2012, the Head of EPC made detailed proposals to enable incorporation of EPC as a Company Limited by Guarantee (CLG).

EPC Growth & Risk Management

9. In the spring of 2011 and in light of the increasing risk of legal challenge to EU procurements and EPC's increasing contract volumes and membership, the EPC Board requested further investigation into the various structural options for EPC into the future.

10. The EPC Board recognised the following key areas of concern for consideration in this regard:

- Management of Risk – in particular the cost of a legal challenge to members in the event of a challenge to an EPC procurement process.
- The increasing range and value of services offered and the impact this may have on members in terms of risk.
- Difficulty in decision making as membership grows.

11. The Board also identified the need to ensure that any potential opportunities presented by proposed changes to VAT rules were considered alongside the above key drivers.

12. Risks associated with EPC procurement and contracts primarily centre upon two key areas:

- Procurement risks; Changes to EU procurement legislation with particular reference to the Remedies Directive and continually developing case law.
- Contract Commercial risks caused by the market environment, increased contract values and the nature of the contractors likely to represent best value at tender.

13. The proposal seeks to address the issues around procurement risk.

Procurement Risk

14. The incidence of legal challenge to EU procurements has grown significantly since the inception of EPC and any claim is most likely to be made on the basis of 'loss of profit'. Assuming a 5% profit as the norm, the most significant risk would be in the area of a challenge to the Property Improvements Framework, with a potential claim in the order of £5,000,000.

15. EPC has implemented a stop-gap solution through amendments to its contractual consortium agreement. These amendments move to a 'joint and several' basis of risk sharing for each new procurement.

16. The EPC Board confirmed their desire for greater protection of their own individual organisations. Investigation identified that the only viable option would be to establish EPC as a corporate entity.

17. The Head of EPC sought advice from other National Change Associations (NCA) consortia, in particular the choices they have made and why, and also advice from EPC's legal advisers, Trowers and Hamblins.

18. Attached to this report is a full copy of the report drafted by the Head of EPC (Appendix A), the proposed Articles of Association (Appendix B) and Members Agreement (Appendix C).

Legal advice feedback

19. The Council's legal advisors, NPLaw, have reviewed the proposals and do not have any issues from a legal point of view, commenting that the reduction in risk to the Council will be a positive move.

Issues to consider

20. Operationally there will be no change to the way services are currently delivered. Tenants will not see a change in service delivery as a result of this proposal and there will be no changes to the cost of the contract as a result of this proposal.
21. Should Members not agree to the proposal, and assuming all other organisations voted for the move, then it would leave the Council in a very difficult position. In this situation the Council would then have to decide whether to accept the decision and be a part of the new company, and therefore continue to deliver work through the agreement as at present.
22. Alternatively a decision to leave the consortium at the end of this financial year and procure the work ourselves could be made, however this would have major resource and time implications (given the procurement process will take at least 6 months) and will almost certainly result in a delay to the planned programme of work for 2013/14 (mainly affecting the delivery of the new 'Norwich Standard').
23. As outlined in the report of the Head of EPC it is not intended that the proposed company will carry out work for organisations who are not members of the company.
24. Whilst the council's workload procured through the consortium is by far the largest it is possible that the Council will no longer have representation on the board of the new company, as it is proposed the board will only consist of six directors. Clearly there will be processes in place to ensure members are able to influence the running of the company but without representation on the board the Council's influence will be weakened.

Integrated impact assessment



NORWICH
City Council

The IIA should assess **the impact of the recommendation** being made by the report

Detailed guidance to help with completing the assessment can be found [here](#). Delete this row after completion

Report author to complete

Committee:	Cabinet
Committee date:	13 th September 2012
Head of service:	Head of property services
Report subject:	Establishment of Eastern Procurement Consortium as a company limited by guarantee
Date assessed:	13 August 2012
Description:	

	Impact			
Economic (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Finance (value for money)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Other departments and services e.g. office facilities, customer contact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
ICT services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Economic development	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Financial inclusion	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Social (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Safeguarding children and adults	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>S17 crime and disorder act 1998</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Human Rights Act 1998	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Health and well being	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Equality and diversity (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Relations between groups (cohesion)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

	Impact			
Eliminating discrimination & harassment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Advancing equality of opportunity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Environmental (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Natural and built environment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Waste minimisation & resource use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Pollution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sustainable procurement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Energy and climate change	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(Please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Risk management	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The proposal to establish EPC as a company limited by guarantee will reduce the risk to the Council in the event of a legal challenge or claim against EPC by moving the risk to the newly formed company with the Councils risk limited to an agreed amount (likely to be £1).

Recommendations from impact assessment

Positive

The reduction in risk in the event of a challenge or claim will be a positive move for the Council.

Negative

Neutral

Issues

It is possible that the Council will not have representation on the Board of the new company, as it does at present, and whilst in practice this will not impact on service delivery it may be an area of concern.

INTRODUCTION

At the EPC Board meeting of July 2012, the Head of EPC made detailed proposals to enable incorporation of EPC as a Company Limited by Guarantee (CLG).

The EPC Board openly discussed and developed the proposals in order that appropriate Heads of Terms were established such that appointed legal advisers could develop the documentation necessary for the incorporation of EPC.

The documents to enable incorporation have now been finalized, excepting the election of Board members.

In making their resolution to establish EPC as a CLG, the Board recommended the Head of EPC draft a summary report to be used in advising member organization Board members of the background and reasoning for the establishment of EPC as a CLG.

This report seeks to meet that requirement.

BACKGROUND

EASTERN PROCUREMENT CONSORTIUM (EPC)

EPC procures and strategically manages a range of Framework contracts on behalf of its Registered Provider Social Landlord and Local Authority members, each of which manages a stock of tenanted properties within East Anglia.

EPC maintains core service Frameworks enabling its members to obtain high quality and value for money delivery of asset maintenance and improvement services, without the need to individually procure.

EPC also provides benchmarking, in contract support and co-ordinates the activities of members into efficient multi-client programmes.

All members have a clear aim of achieving cost savings and high quality of service, promoting best practice across all projects and work to reinvesting cost savings back into social housing for the benefit of residents.

EPC Members enjoy many benefits from working together, including;

- Competitive pricing and managed supply chains, ensuring quality, performance, predictability and value
- Innovative approaches to integrated programme development and simplified pricing mechanisms
- EU compliant and transparent procurement
- Robust annual planning and works delivery
- Tenant involvement and satisfaction
- Multi-client initiatives and worksharing to reduce individual workloads
- Flexibility and standardisation, creating value, choice and satisfaction
- Investment in training and development for apprentices and trainees
- Robust benchmarking and top quartile costs and performance
- A real ability to influence the service received

Core Service Frameworks

All of the EPC Frameworks are open to both existing and new members, commitments are generally made annually for complete programmes - but short term and small scale projects can be managed

An ever growing range of services are available

- Responsive Repairs and Voids
- Gas Servicing and Repairs
- Survey, Design and Installation of Kitchens and Bathrooms
- Electrical Testing, Remedial Works and Whole House Rewires
- Void Upgrades
- Roofing Repairs and Re-Roofing
- Internal and External Decorations
- Asbestos Testing and Removal
- Fencing
- Disabled Adaptations
- Gas, Oil and Electric Heating Systems and Appliance Upgrade
- UPVC Windows and Doors
- Sewerage Treatment Plant Maintenance

EPC Membership

- Freebridge Community Housing
- Victory Housing Trust
- Cotman Housing Association (PfP)
- Wherry Housing Association (Circle)
- Norwich City Council
- Saffron Housing Trust
- Suffolk Housing Society
- Orwell Housing Association
- Colne Housing Society
- Hundred Houses Society
- Great Yarmouth Borough Council

EPC GROWTH AND RISK MANAGEMENT

In the spring of 2011 and in light of the increasing risk of legal challenge to EU procurements and EPC's increasing contract volumes and membership, the EPC Board requested further investigation into the various structural options for EPC into the future.

The Board recognised the following key areas of concern for consideration in this regard;

Management of Risk – in particular the cost of a legal challenge to members in the event of a challenge to an EPC procurement

The increasing range and value of services offered and the impact this may have

Difficulty in decision making as membership grows

The Board also identified the need to ensure that any potential opportunities presented by proposed changes to VAT rules were considered alongside the above key drivers.

MANAGEMENT OF RISK AND CORPORATE STRUCTURE OPTIONS

The value of the contracts procured through EPC has grown significantly since commencement, with a first year actual value of c. £3M and a current 5 – year forecast as follows;

	2012	2013	2014	2015	2016
Property Improvements & Heatings	£21,536,682	£16,912,463	£15,968,122	£21,736,703	£20,018,024
Special Improvement Projects	£1,000,000	£1,025,000	£1,050,625	£1,076,891	£1,103,813
Windows and Doors	£1,200,000	£1,230,000	£1,260,750	£1,292,269	£1,324,575
Repairs and Maintenance	£1,000,000	£1,500,000	£3,000,000	£3,000,000	£3,000,000
Gas Servicing	£500,000	£512,500	£1,000,000	£1,025,000	£1,050,625
Others	£500,000	£512,500	£525,313	£538,445	£551,906
	£25,736,682	£21,692,463	£22,804,810	£28,669,307	£27,048,944

Risks associated with our procurement and contracts primarily centre upon two key areas;

1. Procurement Risks; Changes to EU procurement legislation with particular reference to the Remedies Directive and continually developing case law.
2. In Contract Commercial risks caused by the market environment, increased contract values and the nature of the contractors likely to represent best value at tender.

This report seeks to address item 1 above.

PROCUREMENT RISK

The incidence of legal challenge to EU procurements has grown significantly since the inception of EPC.

Claims are most likely to be made on the basis of 'loss of profit'. Assuming a 5% profit as the norm, the most significant risk would be in the area of a challenge to our Property Improvements Framework, with a potential claim in the order of £5,000,000.

EPC has implemented a stop-gap solution through amendments to its contractual consortium agreement. These amendments move to a 'joint and several' basis of risk sharing for each new procurement.

The EPC Board confirmed their desire for greater protection of their own organizations. Investigation identified that the only viable option would be to establish EPC as a corporate entity.

The Head of EPC sought advice as follows;

1. Feedback from other NCA consortia, in particular the choices they have made and why
2. Advice from our legal advisers Trowers and Hamblins

OTHER NCA CONSORTIA STRUCTURES

A review of the structures adopted by other NCA Consortia identified that the most common solutions to be either of;

1. Company Limited by Guarantee or
2. Limited Liability Partnership

A small number retained their Contractual Consortium structure but were undertaking a review at this time. A very small number adopted more unusual models.

The largest consortia have invested heavily in deciding which structure to adopt and copies of reports have been obtained showing the wide and varied options and implications considered.

It would appear however that the principle motivations are;

1. Management of risk and implications for members
2. Management of earnings, profits and re-investment
3. A contractual consortiums inability to engage consultants or staff in its own right
4. Simplifying decision making and governance

LEGAL ADVICE - FINDINGS

Initially our legal advisers were commissioned to undertake an overall review of options, choices and implications. This identified that EPC's primary choices were indeed between a Company Limited by Guarantee or a Limited Liability Partnership.

The advice also identified a number of key considerations and requirements to be included into the development of any eventually established company. Examples include the need to meet the requirements of Teckel exemption and ensure that we are best placed with regard to impending taxation changes relating to shared service vehicles.

EPC CORPORATE VEHICLE UPDATE – LLP OR CLG?

Following initial reports, At the January 2012 EPC Board Meeting, the Board requested that we identify which of either CLG or LLP would be the most appropriate form of corporate vehicle for EPC.

Noting that Trowers and Hamblins John Maton had been instrumentally involved in the incorporation of other consortia the Head of EPC has had further discussions and took advice from Efficiency East Midlands and their / our advisers Trowers and Hamblins regarding the relative advantages and disadvantages of CLG and LLP.

PRINCIPAL ISSUES AND FINDINGS

The advice was obtained on basis that the particular reasons for incorporating are as follows:

1. Risk mitigation i.e. if an issue arises with a procurement, ensuring that any liability e.g. to a disappointed tenderer is liability of EPC rather than one or more individual members.

2. Clarity of responsibilities so that it is clear that the services offered by EPC to the members are offered by EPC not by Orwell or Saffron (current staff employers).
3. In the implementation of this proposal, we are interested in mitigating tax if possible.
4. It is not anticipated that EPC is going to do a significant amount of work for non-members

The distinction between the two possible legal entities is:

1. A CLG is regulated by the provisions of the Companies Act 2006 in broadly the same way as the more common share company structure. It can enter into contracts and employ staff and consultants in its own name. Because it is a separate legal entity there is generally no recourse to the company's members or (except in certain limited circumstances) its directors in the event of insolvency of the company. The liability of members in respect of the company's liabilities is limited to a specified amount, usually £1.
2. An LLP a separate legal entity governed by the Limited Liability Partnerships Act 2000. As a separate legal entity it can enter into contracts and employ staff and consultants in its own right. The liability of members in respect of the LLP's liabilities is limited to a specified amount. An LLP does not have "directors" in the same way as a company, but can have a board which directs its business.

There is a fundamental issue with charities becoming members of an LLP because an LLP has to be set up with a view to profit and that is not consistent with the vires of a charity. Accordingly it is generally advised that if a charitable organisation wishes to become member of an LLP it should set up a non-charitable subsidiary to become a member, unless it has an existing subsidiary which could do this. This obviously adds complexity or difficulty few existing and new members with charitable status.

The wider issues that arise are:

1. From the risk mitigation point of view, the liability of members is limited in both cases to members in a CLG or an LLP, although (without exploring every detail) the protection for members is marginally greater in a CLG.
2. From the point of view of drawing a distinction between services offered to the members a CLG and an LLP would be equally suitable.
3. Because some members would be charities there would be a layer of complexity in using an LLP which would not apply to a CLG.

From a tax point of view, there are distinctions between CLG and LLP.

The position on VAT is the same at the moment but may change following the enactment of legislation formalising the shared services exemption. All parties are still awaiting publication of the detailed regulations in respect of the shared services exemption. However, it is generally the view that when the shared services exemption does come into force a CLG will, or at least is likely to be more suitable than an LLP.

A CLG and an LLP are taxed differently;

1. If a CLG makes a profit that will be subject to corporation tax in the hands of the company.
2. An LLP is tax transparent i.e. if profit is distributed to its members it is taxed in their hands. Whether this makes a difference would depend on the tax position of each member, and the tax position would need to be considered in detail if we were to adopt this approach.

Other VAT complications arise, particularly as it is likely EPC's costs are going to be in part met by recovery under a % levy in the contracts. It is not envisaged that the effect of this would be greater in either an LLP or CLG based arrangement.

RECOMMENDATION

On the basis that a number of the members of EPC are charitable organizations and the potential taxation efficiencies available, it was proposed to the EPC Board that EPC should incorporate as a Company Limited by Guarantee.

It was further recommended that the implications of any VAT announcement are reviewed at the time when the announcement is made.

It should be noted that the impending VAT announcement is considered highly unlikely to affect the choice of company structure or entity but may give rise to advantages in making changes to fee collection methods.

INDICATIVE COSTS TO ESTABLISH AND OPERATE EPC AS A CORPORATE ENTITY

Investigations have identified typical costs to establish a corporate procurement vehicle to be in the range of £20 to £25k, though on occasions this has been greater where members have extended the period of exploration and have engaged additional advisers over and above those appointed on behalf of the consortium as a whole.

EPC has made provision for these expenses in its budget for 2012-13.

APRIL 2012 EPC BOARD DECISION TO PROGRESS

At the April 2012 EPC Board meeting, the Board resolved that the EPC management team should

1. make comprehensive recommendations (including details of due considerations to the legal and cost implications for members) to the Board in May 2012 for consideration and any subsequent approval in July 2012
2. Unless otherwise advised, that EPC should be established as a Company Limited by Guarantee
3. To achieve full implementation within a budget not exceeding £30k inc. VAT and contingency
4. Maximise the utilisation of work done by other consortia in order to minimise costs and abortive work in the process of establishing EPC as a CLG

JULY 2012 EPC BOARD DISCUSS AND AGREE HEAD OF TERMS

At the EPC Board meeting of July 2012, the Head of EPC made detailed proposals to enable incorporation of EPC as a CLG.

The Board openly discussed and developed the proposals in order that appropriate Heads of Terms could be established in order that our legal advisers could develop the appropriate documents for the incorporation of EPC.

These documents are currently in production and completion is planned for August 2012.

RECOMMENDATION

It is recommended that Board Members approve the incorporation of EPC as a Company Limited by Guarantee.



dated 2012

Eastern Procurement Limited

Articles of association

Trowers & Hamlins LLP
3 Bunhill Row
London
EC1Y 8YZ
t +44 (0)20 7423 8000
f +44 (0)20 7423 8001
www.trowers.com

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Registered Number:

The Companies Act 2006

Company limited by guarantee and not having a share capital

Articles of association

of

Eastern Procurement Limited

1 Interpretation and definitions

In these Articles unless the context otherwise requires:

the Act means the Companies Act 2006 and any statutory modification or re-enactment thereof for the time being in force;

Alternate means an alternate board member appointed in accordance with Article 24;

Articles means these Articles of Association;

Board means the board of directors of the Company from time to time;

Board Member means any director of the Company from time to time and shall not include co-optees;

Chair means the chair of the Board appointed pursuant to Article 29.1 or in his absence any vice or deputy chair appointed pursuant to Article 29.3;

clear days means in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

Committee means any committee of the board constituted under these Articles;

Contracting Authority shall have the same meaning as given to it by Regulation 3 of the Public Contracts Regulations 2006 as in force at the date of incorporation of the Company;

Elected Board Member means a Board Member elected by members in accordance with Articles 18.1 to 18.8;

Employee Board Member means a Board Member appointed in accordance with Article 18.9;

member means each of the subscribers to the Company's memorandum of association and any person who has from time to time been admitted as a member of the Company in

accordance with these Articles, provided in either case that this shall not include a person who has ceased to be a member in accordance with these Articles;

the seal means the common seal of the Company (if any);

Secretary means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company including a joint assistant or deputy secretary;

subsidiary has the meaning given by section 1159 of the Act;

the United Kingdom means Great Britain and Northern Ireland.

2 Interpretation

2.1 Unless the context otherwise requires words or expressions contained in these Articles bear the same meaning as in the Act but excluding any statutory modification thereof not in force on the date of incorporation of the Company.

2.2 In these Articles words importing individuals shall unless the context otherwise requires include corporations and words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender.

3 Model Articles

These Articles shall apply to the Company in place of the Model Articles (attached in Schedule 2 to the Companies (Model Articles) Regulations 2008).

4 Objects

The objects of the Company shall be:

4.1 to undertake and facilitate procurement initiatives of all kinds between and amongst its members and others; and

4.2 to carry out and facilitate the carrying out of activities which further the objectives of the members or any of them.

5 Powers

5.1 The Company shall have power to do any thing that a natural or corporate person can lawfully do which is necessary or expedient in furtherance of its objects unless prohibited by these Articles.

5.2 Without limiting the powers described in Article 5.1 the Company shall have the power:

5.2.1 to purchase and maintain insurance for the benefit of any persons who are or were at any time Board Members, co-optees, officers or employees of the Company or any other company which is a subsidiary or subsidiary undertaking of the Company or in which the Company has any interest, whether direct or indirect, or who are or were at any time trustees of any pension fund in which any employee of the Company or of any other such company or subsidiary undertaking are or have been interested, indemnifying such persons against

liability for negligence, default, breach of duty or breach of trust or any other liabilities which may be lawfully insured against;

- 5.2.2 to invest prudently and deal with the monies of the Company not immediately required in such manner as may from time-to-time be determined and to hold or otherwise deal with any investments made, provided that the Company shall not have power to invest in any organisation which is a member of the Company at the time the investment is made;
- 5.2.3 to promote any other company for the purpose of acquiring the whole or any part of the business or property or undertaking or any of the liabilities of the Company, or of undertaking any business or operations which may appear likely to assist or benefit the Company;
- 5.2.4 to pay all or any expenses incurred in connection with the formation and promotion and incorporation of the Company, the running costs and administration of the Company, the employment of consultants and the reimbursement of Board Members' reasonable out-of-pocket expenses;
- 5.2.5 to employ and pay any employees, co-optees, officers, and professional or other advisers and to pay its Board Members;
- 5.2.6 to set up, establish, support and maintain superannuation and other funds or schemes (whether contributory or non-contributory) for the benefit of any of the employees of the Company or of any subsidiary, holding or fellow subsidiary of the Company and of their spouses, widows or widowers, children and other relatives and dependants to lend money to any such employees or to trustees on their behalf or enable any such schemes to be established or maintained;
- 5.2.7 to borrow or raise money in such manner as the Company shall think fit and in particular by the issue (whether at par or at a premium or discount and for such consideration as the Company may think fit) of bonds, debentures or debenture stock (payable to bearer or otherwise), mortgages or charges, perpetual or otherwise, and, if the Company thinks fit, charged on all or any of the Company's property (both present and future) and undertaking, and collaterally or further to secure any obligations of the Company by a trust deed or other assurance;
- 5.2.8 to do any thing that a natural or corporate person can lawfully do which is necessary and expedient in furtherance of its objects unless prohibited in these Articles.

6 Application of income and property

- 6.1 The Company shall not trade for profit. The income and property of the Company shall be applied solely towards the promotion of its objects as set forth in these Articles. Save as provided below no portion of the income and property of the Company shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever by way of profit to members of the Company.
- 6.2 Notwithstanding the provisions of Article 6.1 the Company may make payment in good faith:

- 6.2.1 of reasonable and proper remuneration (including pensions, contributory pension payments, payment of premiums to pension policies and terminal grants and gratuities) to any co-optee, officer or employee of the Company in return for any services rendered to the Company;
 - 6.2.2 of fees, remuneration or other benefit in money or money's worth to a company or other body corporate of which a Board Member or co-optee may be a member holding not more than 2% of the share capital and controlling not more than 2% of the voting rights at general meetings of such company or body corporate;
 - 6.2.3 to any Board Member or co-optee of reasonable out-of-pocket expenses;
 - 6.2.4 of reasonable and proper remuneration to any member or to an employee thereof in return for any services rendered to the Company;
 - 6.2.5 of reasonable and proper rent for premises demised or let by any member; or
- 6.3 of reasonable and proper interest on money lent by any member; or
- 6.4 of any indemnities to Board Members, co-optees or other officers of the Company and any premium in relation to insurance in respect of liabilities of Board Members, co-optees and other officers of the Company, in each case as may be permitted under these Articles.

7 **Limited liability**

The liability of the members is limited.

8 **Members' guarantee**

Each member undertakes to contribute to the assets of the Company in the event of the Company being wound up while they are a member of the Company or within one year after they cease to be a member of the Company for payment of the debts and liabilities of the Company contracted before they cease to be a member of the Company and of the costs charges and expenses of winding up such amount as may be required not exceeding one pound.

9 **Winding up**

If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and liabilities any property whatsoever such property shall be divided between the members whose names appear in the register of members at the date of winding up or dissolution. The division shall be proportionate to the total value of expenditure through procurement contracts established by the Company made by each member during the three years prior to the date of winding up or dissolution. For the purposes of this Article a certificate in writing signed by the duly appointed auditors for the time being of the Company as to the proportions in which any property is to be divided will be sufficient.

10 **Admission of members and cessation of membership**

- 10.1 The Board may admit any Contracting Authority to membership on receiving a written application from any such Contracting Authority.

- 10.2 In the event that any member transfers the whole or substantially the whole of its business to another Contracting Authority (the **Transferee Authority**), the Board shall on receipt of an application for membership from the Transferee Authority admit the Transferee Authority to membership of the Company. The rights powers and obligations of each member under these Articles shall take effect on the admission of that person or organisation to membership.
- 10.3 Any member not being an individual shall nominate a person to act as its representative in the manner provided in Section 323 of the Act. Such representative shall have the right on behalf of the member to attend meetings of the Company and vote thereat and to exercise all rights of membership on behalf of the member. The relevant member may by written notice to the Company revoke the nomination of such representative and may nominate another representative in his place.
- 10.4 The rights of each member shall be personal and shall not be transferable and shall be exercisable only by the member or a duly authorised representative of the member.
- 10.5 Any member shall cease to be a member of the Company if it is removed or expelled under any agreement entered into between the members from time to time and the noting of the cessation of membership in the Company's register of members by the secretary shall be conclusive in this regard.

11 **General meetings and resolutions**

- 11.1 The Company shall once in every period of twelve months hold a general meeting which for the purposes of these Articles shall be called the annual general meeting. The Board Members may call general meetings and on the requisition of any member shall forthwith proceed to convene a general meeting as required pursuant to the provisions of Section 304 of the Act. If there are not within the United Kingdom sufficient Board Members to call a general meeting any Board Member or member may call a general meeting.
- 11.2 Any general meeting not called on the requisition of a member pursuant to Article 11.1 shall be called by at least fourteen days' notice or by shorter notice if it is so agreed by not less than 90% of the members. The notice shall specify the time and place of the meeting and the general nature of the business to be transacted. The notice shall be given to all members and to the Board Members and to the Company's auditors.
- 11.3 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at that meeting.
- 11.4 Any Board Member or co-optee shall, even though he is not a member, be entitled to attend and speak at any general meeting.
- 11.5 No business shall be transacted at any general meeting unless a quorum is present. A quorum is present when not less than two thirds of the members are present in person or by proxy or by duly authorised representative.
- 11.6 For the purposes of these Articles, a person is deemed to be present at a general meeting when:

- 11.6.1 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; and
- 11.6.2 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and 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 members attending the meeting.
- 11.7 The Board may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 11.8 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. 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.
- 11.9 If a quorum is not present within half an hour from the time appointed for a general meeting it shall stand adjourned to the same day in the next week at the same time and place or to such later day and time and/or other place as the members present decide.
- 11.10 If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall constitute a quorum.
- 11.11 An entry in the minutes of any general meeting stating that a resolution has been passed or not passed shall be conclusive evidence of the fact.

12 **Chair**

The Chair or in his absence some other Board Member who is present and nominated by the members shall chair the meeting. If neither the Chair or such Board Member is present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act, the members present shall elect another Board Member who is present to be the chair of the meeting and, if there is only one Board Member present and willing to act, he shall be the chair of the meeting. If no Board Member is present within fifteen minutes after the time appointed for holding the meeting or is willing to act as chair of the meeting the members present shall elect one of their number to be the chair of the meeting.

13 **Adjournments**

- 13.1 The chair may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the original meeting. It shall not be necessary to give notice of the adjourned meeting unless it is adjourned for fourteen days or more when at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted.
- 13.2 The chair may also, without the consent of the meeting, adjourn the meeting (whether or not it has commenced or is quorate) either to a time and place to be determined pursuant

to Article 13.3 or to such other time and place as he may decide if the conduct of persons attending the meeting is preventing the orderly holding or continuance of the meeting.

13.3 When a meeting is adjourned pursuant to Article 13.2 without a decision as to a new time and place, the time and place for the adjourned meeting shall be fixed by the Board. It shall not be necessary to give any notice of the adjourned meeting unless it is adjourned for fourteen days or more when at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted.

14 **Votes of members**

14.1 A resolution put to the vote of a meeting shall be decided on a show of hands.

14.2 On a show of hands every member present in person or by proxy or by an authorised representative shall have one vote. An ordinary resolution at a general meeting is passed when a simple majority of votes cast at the meeting are cast in favour of the resolution. A special resolution at a general meeting is passed when not less than 75% of the votes cast at the meeting are cast in favour of the resolution.

14.3 In the case of an equality of votes the chair shall not have a casting vote.

14.4 A declaration by the chair that a resolution has been passed or not passed unanimously, or by a particular majority, or passed, or not passed by a particular majority shall be final and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

14.5 No objection shall be raised to the qualification of any vote except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chair whose decision shall be final.

15 **Written resolutions**

A written resolution may be passed in accordance with the Act.

16 **Appointment of Proxies**

16.1 An appointment of a proxy shall be in writing, signed by or on behalf of the Appointor and shall be in such form as the Board may approve from time to time (if any).

16.2 The document appointing a proxy and any authority under which it is signed or a copy of such authority certified notarially or in some other way approved by the Board shall be deposited at the Company's registered office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote. An instrument of proxy which is not deposited or delivered in this manner shall be invalid.

16.3 A vote given or poll demanded by proxy or by the duly authorised representative of a member shall be valid unless termination of the proxy or representative's authority is received by the Company at its registered office or the place at which the meeting is due to be held before the meeting begins.

17 **Number of Board Members**

The Board shall consist of up to six Elected Board Members together with up to two Employee Board Members. In the event that the number of Board Members is less than that required by this Article the Board shall, as soon as is reasonably practicable, take such steps as are necessary to appoint further Board Members so as to ensure that the composition of the Board is as set out in this Article, but until such appointments are made may act notwithstanding this Article.

18 **Appointment and Election of Board Members**

18.1 Each Elected Board Member shall hold office for a fixed term expiring at the conclusion of an annual general meeting (each a “**fixed term**”). The fixed term shall be for a term of three annual general meetings unless the Board has set a lower number of annual general meetings for the relevant Elected Board Member at the first Board meeting following the Elected Board Member's election.

18.2 At every annual general meeting each Elected Board Member who has served their fixed term shall retire from office. Any Elected Board Member who retires from office at an annual general meeting under this Article 18.2 shall be eligible for re-election subject to any restrictions contained in these Articles.

18.3 Not less than two months before any annual general meeting the Company shall notify all members of the names of Elected Board Members whose fixed terms will end at the forthcoming annual general meeting in accordance with Article 18.2.

18.4 Each member may from time to time nominate one person as a candidate for election as an Elected Board Member, and may withdraw any nomination. Any such nomination or withdrawal must be in writing. Any nomination must be received by the Company not less than one month prior to an annual general meeting, and any nomination received late shall be invalid. A withdrawal of a nomination may be made at any time and shall be effective on receipt by the Company.

18.5 Every notice for an annual general meeting shall include a statement of those Elected Board Members continuing in office and any candidates for election.

18.6 If at elections for Elected Board Members the number of candidates for election does not exceed the number of vacancies on the Board the chair shall declare those candidates to have been duly elected. If the number of candidates exceeds the number of vacancies the meeting shall elect the Elected Board Members by ballot in such a manner as the chair directs.

18.7 In an election for candidates to be Elected Board Members at a general meeting every member present in person or by proxy or by an authorised representative shall have one vote for every vacancy but shall not give more than one vote to any one candidate.

- 18.8 If, at a meeting at which an Elected Board Member's term of office expires as provided for in Article 18.1, there are no other candidates to fill the post the retiring Elected Board Member shall, if willing to act, be deemed to have been re-appointed unless a resolution not to reappoint the Elected Board Member is passed by the meeting.
- 18.9 The Board may from time to time appoint up to two employees or officers of the Company as Employee Board Members, for such term of office as the Board may determine.
- 18.10 The Board may co-opt a person who is willing to act as a co-optee to the Board on such terms and subject to such conditions as the Board may resolve. Any person co-opted to the Board shall be known for the purposes of these Articles as a co-optee. A co-optee may act in all respects as a Board Member save that no co-optee may vote on any matter considered by the Board.
- 18.11 No co-optee may be appointed if such appointment would cause the number of co-optees to exceed two. If for any reason the number of co-optees exceeds this number at any time, the number of co-optees shall be reduced until this limit is satisfied. The identities of the co-optees to be removed shall be determined in the absolute discretion of the Board.

19 **Casual Vacancies**

Subject to Articles 17 and 20 the Board may appoint a person who is willing to act to be a Board Member to fill a vacancy until the next following annual general meeting, where that person has been nominated in writing by a member.

20 **Disqualification of and cessation of office for Board Members**

A person shall be ineligible for appointment or co-option to the Board and if already appointed or co-opted shall immediately cease to be a Board Member or co-optee if the relevant individual:

- 20.1 ceases to be a Board Member by virtue of any provision of the Act or becomes prohibited by law from being a company director; or
- 20.2 is or becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- 20.3 is or may be suffering from mental disorder and either:
- 20.3.1 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
 - 20.3.2 by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or
- 20.4 resigns his office by written notice to the Company; or
- 20.5 has been absent without permission of the Board from four consecutive meetings of the Board (including meetings of any Committee of which that Board Member or co-optee is a member) and the Board resolves that his office be vacated; or

- 20.6 is an Elected Board Member or a Board Member appointed in accordance with Article 19 to fill a vacancy and is removed from office by a resolution of or written notice signed by not less than three quarters of all the other Board Members from time to time (which may consist of several documents in substantially the same form signed by one or more Board Members); or
- 20.7 is an Employee Board Member and is removed from office by a resolution of or written notice signed by a majority of all the other Board Members from time to time (which may consist of several documents in substantially the same form signed by one or more Board Members); or
- 20.8 is removed from office by a resolution of or written notice signed by a majority of all the other members from time to time (which may consist of several documents in substantially the same form signed by or on behalf of one or more members); or
- 20.9 is an Elected Board Member and is removed from office by notice in writing signed by or on behalf of the member who nominated that Board Member prior to his appointment; or
- 20.10 is an Elected Board Member or a co-optee and the member having nominated that person in accordance with Article 18.4 ceases to be a member of the Company; or
- 20.11 is an employee or officer of the Company or of a member of the Company, or of a subsidiary or associate of the Company or of a member, and at any time ceases to be so employed or appointed (as the case may be).

21 **Powers of the Board**

21.1 The members may, by special resolution, direct the Board Members to take, or refrain from taking, specified action. Subject to:

21.1.1 any such resolution from time to time of the members in accordance with these Articles;

21.1.2 the provisions of the Act; and

21.1.3 these Articles;

the business of the Company shall be managed by the Board who may exercise all the powers of the Company. No alteration of these Articles and no resolution of the members shall invalidate any prior act of the Board which would have been valid if that alteration or resolution had not been made. The powers given by this Article 21 shall not be limited by any special power given to the Board by these Articles and a meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.

21.2 The Board may by power of attorney or otherwise appoint any person to be the agent of the Company for such purposes and on such conditions as the Board may determine including authority for the agent to delegate all or any of his powers.

22 **Borrowing powers**

The Board may exercise all the powers of the Company to borrow money without limit as to amount and upon such terms and in such manner as the Board considers fit and to grant any mortgage, charge or other security over the undertaking and property of the

Company or any part thereof and to issue any debenture whether outright or as security for any debt, liability or obligation of the Company or of any third party.

23 **Delegation of Board Members' powers**

- 23.1 The Board may delegate in writing any of its powers to any Committee consisting of two or more Board Members together with such other persons as the Board sees fit but so that Board Members shall constitute a majority.
- 23.2 The Board may delegate in writing to the Chair or to any vice or deputy chair or to any officer such of their powers as they consider desirable to be exercised by such person. Any such delegation may be made subject to any conditions the Board may impose and either collaterally with or to the exclusion of its own powers and may be revoked or altered. Subject to any such conditions the proceedings of any Committee shall be governed by the provision of these Articles insofar as they apply to proceedings of the Board.

24 **Alternate Board Members**

- 24.1 Alternates may be appointed on the terms of this Article 24.
- 24.2 Any Board Member (the **Appointor**) may appoint as an Alternate any other natural person to:
- 24.2.1 exercise that Board Member's powers; and
 - 24.2.2 carry out that Board Member's responsibilities
- in relation to the taking of decisions by the Board Members in the absence of the Alternate's Appointor. Any appointment or removal of an Alternate must be effected by notice in writing to the Company signed by the Appointor, or in any other manner approved by the Board. The notice must identify the proposed Alternate and, in the case of a notice of appointment, contain a statement signed by the proposed Alternate that the proposed Alternate is willing to act as the Alternate of the Board Member giving the notice.
- 24.3 A Board Member may only appoint a person as an Alternate where that person is an employee or officer of the member having nominated the relevant Board Member pursuant to Article 18.4.
- 24.4 An Alternate has the same rights, in relation to any Board meeting or Board Members' written resolution, as the Alternate's Appointor. Alternates are deemed for all purposes to be Board Members, are liable for their own acts and omissions, are subject to the same restrictions as their Appointors, and are not deemed to be agents of or for their Appointors. A person who is an Alternate but not a Board Member may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's Appointor is not participating), and may sign a written resolution (but only if it is not signed or to be signed by that person's Appointor). No Alternate may be counted as more than one Board Member for such purposes.
- 24.5 An Alternate is not entitled to receive any remuneration from the Company for serving as an Alternate except such part of the Alternate's Appointor's remuneration as the Appointor may direct by notice in writing made to the Company.

- 24.6 An Alternate's appointment as an Alternate terminates:
- 24.6.1 when the Alternate's Appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
 - 24.6.2 on the occurrence in relation to the Alternate of any event which, if it occurred in relation to the Alternate's Appointor, would result in the termination of the Appointor's appointment as a Board Member;
 - 24.6.3 on the death of the Alternate's Appointor; or
 - 24.6.4 when the Alternate's Appointor's appointment as a Board Member terminates, except that an Alternate's appointment as an Alternate does not terminate when the Appointor retires by rotation at a general meeting and is then re-appointed as a Board Member at the same general meeting.

25 **Board Members' expenses**

Board Members and co-optees may be paid all travelling hotel and other expenses reasonably and properly incurred by them in connection with their attendance at meetings of the Board or Committees of the Board or general meetings of the Company or otherwise in connection with the discharge of their duties and such other sums as may be determined by the members of the Company.

26 **Board Members' appointments and interests**

No Board Member or co-optee may have any financial interest personally or as a member of a firm or as a director or senior employee (being an employee with managerial status) or in any contract or other transaction of the Company unless it is permitted by these Articles.

27 **Proceedings of Board Members**

- 27.1 A meeting of the Board may take place in any manner which allows all those attending to hear and communicate with each other. In determining whether Board Members are participating in a meeting, it is irrelevant where any Board Member is or how they communicate with each other.
- 27.2 The quorum for the transaction of the business of the Board at the time when any Board meeting proceeds to business shall be two thirds of Board Members.
- 27.3 A meeting of the Board may be called by any Board Member. It shall not be necessary to give notice of a meeting to a Board Member who is outside the United Kingdom at the time at which the meeting is called.
- 27.4 If a quorum is not present within half an hour from the time appointed for a Board meeting the Board meeting shall if requested by a majority of those Board Members present be adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board Members present may determine.
- 27.5 If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the adjourned meeting then notwithstanding Article 27.2 the Board Members present shall constitute a quorum.

27.6 Save as expressly provided in these Articles questions arising at a Board meeting shall be decided by a majority of votes and each Board Member present in person shall be entitled to one vote. In the case of an equality of votes at any Board meeting the Chair shall have a second or casting vote.

28 **Conflicts of interest**

28.1 Any Board Member or co-optee having an interest in any arrangement between the Company and another person or body shall before the matter is discussed by the Board or any Committee of which they are a member disclose that interest to the meeting save that an interest arising because a Board Member or co-optee is a director or other officer of a company or body which is a member need not be disclosed.

28.2 Unless the interest is of the type specified in Articles 28.3 or 28.4 the Board Member or co-optee concerned shall not remain present during the discussion of that item unless requested to do so by the remaining members of the Board or Committee of the Board. Unless permitted by Articles 28.3 or 28.4 the Board Member or co-optee concerned may not vote on the matter in question but no decision of the Board or any Committee of the Board shall be invalidated by the subsequent discovery of an interest which should have been declared.

28.3 Any Board Member or co-optee may remain present during the discussion and any Board Member may vote on the matter under discussion where the interest arises only by virtue of the fact that:

28.3.1 the Board Member or co-optee is a director or other officer of a company or body which is a subsidiary undertaking of the Company as such term is defined in Section 1162 of the Act; or

28.3.2 the Board Member or co-optee is a director or other officer of a company or body which is a member of the Company.

28.4 No Board Member or co-optee shall be treated as having an interest:

28.4.1 of which the Board Member or co-optee has no knowledge and of which it is unreasonable to expect him to have knowledge;

28.4.2 in the establishment of a policy in respect of Board Member expenses or in any resolution relating to the remuneration of Board Members.

28.5 For the purposes of section 175 of the Act, the Board Members shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the Act. Any reference in these Articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

28.6 Authorisation of a matter under Article 28.5 shall be effective only if:

28.6.1 the matter in question shall have been proposed in writing for consideration by the Board Members, or in such other manner as the Board Members may determine;

- 28.6.2 any requirement as to the quorum at the meeting of the Board Members at which the matter is considered is met without counting the Board Member in question and any other interested Board Members (together the Interested Board Members); and
- 28.6.3 the matter was agreed to without the Interested Board Members voting or would have been agreed to if the votes of the Interested Board Members had not been counted.
- 28.7 Unless otherwise determined by the Board Members (excluding the Interested Board Members), any authorisation of a matter under Article 28.5 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 28.8 Any authorisation of a matter under Article 28.5 shall be on such terms and/or conditions as the Board Members (excluding the Interested Board Members) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the Board Members (excluding the Interested Board Members) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the Interested Board Members from all information and discussion of the matter in question. Any Board Member shall comply with any obligations imposed on him by the Board Members (excluding the Interested Board Members) pursuant to any such authorisation.
- 28.9 If a Board Member receives or has received any information otherwise than by virtue of his position as a Board Member and in respect of which he owes a duty of confidentiality to another person, the Board Member is under no obligation to:
- 28.9.1 disclose any such information to the Company, the Board Members or any other Board Member or employee of the Company; or
- 28.9.2 use or apply any such information in connection with the performance of his duties as a Board Member;
- provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the Board Member of the duty to avoid conflicts of interest set out in section 175 of the Act, this Article shall apply only if such situation or relationship has been authorised by the Board Members under Article 28.5.
- 28.10 No Board Member shall, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the directors under Article 28.5 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.
- 28.11 All acts done by the Board or by a Committee of the Board or by a person acting as a Board Member shall notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Board Member or that any Board Member was disqualified from holding office or had vacated office or was not entitled to vote be as valid as if every such person had been duly appointed and was qualified and had continued to be a Board Member and had been entitled to vote.

28.12 If a question arises at a meeting of the Board as to the right of a Board Member to vote the question may before the conclusion of the meeting be referred to the Chair or in his absence the chair of the meeting and his ruling shall be final and conclusive.

29 **Appointment of Chair**

29.1 As soon as reasonably practicable following the conclusion of each annual general meeting the Board shall appoint one of their number to be the Chair of the Board to hold office until the conclusion of the next following annual general meeting, or until he is either reappointed or until another chair of the Board is appointed or removed by ordinary resolution of the Members.

29.2 The Board Member so appointed as Chair shall preside at every meeting of the Board at which he is present. If there is no Board Member holding that office or if the Board Member holding it is not present within five minutes after the time appointed for the meeting the Board Members present may appoint one of their number to be chair of the meeting.

29.3 The Board may appoint a vice or deputy chair to act in the absence of the chair on such terms as the Board shall think fit.

30 **Written resolutions of the Board**

A resolution in writing sent to all Board Members and signed by not less than three quarters of all the Board Members including sufficient Board Members to satisfy the quorum requirements in Article 27.2 shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held and may consist of several documents in the like form each signed by one or more Board Members.

31 **Secretary**

The Company may appoint a Secretary who shall (if appointed) be appointed by the Board for such term at such remuneration and upon such conditions as they may determine and any Secretary so appointed may be removed by them.

32 **Minutes**

The Board shall cause minutes to be made in books kept for the purpose:

32.1 of all appointments of officers made by the Board Members; and

32.2 of all proceedings at meetings of the Company and of the Board and of Committees of the Board and of the members of the Company including the names of the Board Members present at any such meeting.

33 **The seal**

33.1 If the Company has a seal it shall only be used with the specific or general authority of the Board or of a duly authorised Committee of the Board. The Board may determine who may sign any instrument to which the seal is affixed and unless otherwise so determined any such instrument shall be signed either by a Board Member and by the Secretary or by two Board Members or by a Board Member and by a witness who signs to attest the signature of such Board Member.

33.2 The Company may exercise the powers conferred by the Act with regard to having an official seal for use abroad and such powers shall be vested in the Board Members.

34 **Notices**

34.1 Any notice to be given to or by any person pursuant to these Articles shall be in writing except that a notice calling a meeting of the Board or of a Committee of the Board need not be in writing.

34.2 The Company may give any notice to the members either personally, or by sending it by post in a prepaid envelope addressed to the members at their registered address, or by leaving it at that address, or by suitable electronic means in accordance with the provisions of the Act.

34.3 The members present in person or by duly authorised representative at any meeting of the Company shall be deemed to have received notice of the meeting and where requisite of the purposes for which it was called.

34.4 Proof that an envelope containing a notice was properly addressed prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted, or 24 hours after being sent by electronic means or delivered by hand to the relevant address, or on being handed to a member (or in the case of a member organisation its authorised representative) or Board Member personally, or as soon as the member or Board Member acknowledges actual receipt.

34.5 Subject to these Articles anything sent or supplied by or to the Company under these Articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of the Act to be sent or supplied by or to the Company.

35 **Indemnity**

35.1 Every Board Member or other officer of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto including any liability incurred by him in defending any proceedings whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under Section 1157 of the Act in which relief is granted to him and no Board Member or other officer shall be liable for any loss damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto provided that this Article shall only have effect in so far as its provisions are not avoided by Section 232 of the Act.

35.2 The Board shall have power to purchase and maintain for any Board Member or officer of the Company insurance against any such liability as is referred to in Section 232 of the Act.



dated

2012

Members' agreement

Eastern Procurement Limited

Trowers & Hamblins LLP
3 Bunhill Row
London
EC1Y 8YZ
t +44 (0)20 7423 8000
f +44 (0)20 7423 8001
www.trowers.com

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Members' agreement

dated

Parties

- (1) **[Current members]**; and
- (2) **Eastern Procurement Limited** a company incorporated and registered in England and Wales with registered number [] whose registered office is at [] (the **Company**).

Introduction

- (A) The Company was incorporated under the Companies Act 2006 on [] as a private company limited by guarantee.
- (B) This Agreement sets out the terms and conditions on which the members have agreed to establish the Company and sets out their respective rights and obligations as its Members.

Agreed terms

1 Interpretation and definitions

1.1 In this Agreement

ALMO means an arm's length management organisation established by a local authority under Section 27 Housing Act 1985;

Annual Membership Fee means the annual membership fee payable in accordance with the Financial Arrangements;

Articles means the articles of association of the Company to be adopted on or before the date of this Agreement, which are substantially in the form set out in Schedule 2, as amended from time to time;

Board means the board of directors of the Company;

Board Meeting means a meeting of the Board;

Board Member means any member for the time being of the Board;

Business means the business of the Company described in clause 4 and such other business as the Members may agree from time to time in writing should be carried on by the Company;

business day means a day other than a Saturday or Sunday or public holiday in England and Wales;

Deed of Adherence means a deed of adherence in substantially the same form as set out in Schedule 1;

Delivery Plan means the delivery plan for the Company in the form set out at Schedule 4 as amended from time to time in accordance with this Agreement;

Financial Arrangements means the arrangements for the Company as set out in Schedule 3 or such other arrangements as are set by the Company from time to time in accordance with this Agreement;

Financial Year means each period from and including 1 April until and including the next following 31 March, **provided that** the first Financial Year under this Agreement shall begin on the date of this Agreement and end on the next following 31 March;

Group means in relation to a body corporate that body corporate and any body corporate which is a parent undertaking of that body corporate or a subsidiary undertaking of that body corporate or of such parent undertaking (as defined in section 1162 Companies Act 2006); and the expression Group Member shall be construed accordingly;

MCG means the Management Core Group established in accordance with clause 6;

Members means the members of the Company at the date of this Agreement and/or any person admitted as a member of the Company in accordance with this Agreement and who enters into a Deed of Adherence agreeing to be bound by the terms of this Agreement;

Nominated Board Member means, in respect of a Member, a Board Member who was nominated for election as a Board Member by that Member in accordance with the Articles, and shall include any Alternate (as such term is defined in the Articles) for that Board Member;

Quarter means each of the periods of three months beginning on 1 April, 1 July, 1 October and 1 January in each Financial Year;

Service Agreement means an agreement between the Company and a Member in substantially the form set out at Schedule 6;

Subsidiary has the meaning given to it in section 271 of the Housing and Regeneration Act 2008;

Surplus means any surplus shown in the audited accounts of the Company from time to time.

- 1.2 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Clause headings in this Agreement are for convenience only and do not affect the construction of any provision.
- 1.4 References to any gender shall include the other genders and references to the singular shall include the plural and vice versa.
- 1.5 Any reference to a person (which for the purposes of this Agreement shall include a firm, unincorporated association, body corporate, government, state or agency of state, any

association or partnership or joint venture (whether or not having a separate legal personality)) shall include its successors in title.

- 1.6 In this Agreement all obligations and liabilities on the part of the Members are (unless expressly stated otherwise) several and accordingly no Member shall be liable for any breach of an obligation under this Agreement by any party other than itself.
- 1.7 Any reference to a document **in the agreed form** shall be a reference to that document in the form agreed and initialled by or on behalf of each of the Members for the purpose of identification.
- 1.8 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to the term or concept which most nearly corresponds to the English legal term in that jurisdiction.

2 **The Delivery Plan**

- 2.1 Each Member shall supply to the Company by the relevant date (as defined in clause 2.15 below) in each year sufficient detail of their procurement programme for the forthcoming 4 year period (which shall include details of products or services intended to be procured via the Company and details of any products or services contemplated by the then current Delivery Plan and intended to be procured otherwise that via the Company) in order for the Company to be able to give adequate consideration to the services which it is able to supply to the Members. At the same time, each Member shall proactively consider which services should be supplied by the Company to it and shall inform the Company of the same.
- 2.2 The Board shall provide to the Members by 1 April of each year an initial draft of the Delivery Plan for the subsequent 4 year period.
- 2.3 The Delivery Plan shall include an action plan setting out the Company's suggested measures that may be taken by the Company or any Member to further improve the services provided by the Company and when considering the draft Delivery Plan each year, each Member shall make suggestions for possible improvements in or development of the services provided by the Company. The Members acknowledge that any measure which may be implemented by the Company may impact on the fees charged by the Company to its Members.
- 2.4 The Members shall each give due consideration to the draft Delivery Plan and, in the spirit of mutual cooperation and the objectives of this Agreement, the parties shall work on an informal basis to settle the Delivery Plan for the subsequent year. If the draft Delivery Plan is accepted by 75% of the Members then the draft Delivery Plan shall form the Delivery Plan for the forthcoming year. For the purposes of this clause 2.4, if a Member shall not have rejected the draft Delivery Plan within 30 days of its delivery pursuant to clause 2.2 then such Member(s) shall be deemed to have accepted the draft Delivery Plan.
- 2.5 If the Delivery Plan is not accepted pursuant to clause 2.4 within 30 days of the provision by the Company of the draft Delivery Plan then the Members will meet with the Company no later than 5 business days after the expiry of such 30 day period to review the draft Delivery Plan in an effort to settle the Delivery Plan for the subsequent year.

- 2.6 If following the expiry of such 5 business day period and the Company and the Members do not settle the Delivery Plan for the subsequent year by way of a resolution passed by 75% of the Members then the Delivery Plan for the subsequent year shall be the then current Delivery Plan with only such modifications as deemed necessary by the Board.
- 2.7 Notwithstanding any other provision of this clause 2, no change to the Delivery Plan may result in a fundamental change to the nature of the business carried out by the Company or increase the contributions to be made to the Company by one or more Members unless that change is adopted or ratified by a resolution of a general meeting of the Company supported by not less than 75% of the total votes exercisable at such meeting by the Members present and entitled to vote with such votes counted in accordance with the Articles.
- 2.8 The parties acknowledge that the Company may from time to time provide services to Members other than those set out in the Delivery Plan and where such services are provided the Company and those Members receiving such services shall agree a system of pricing and payment for such additional services.
- 2.9 Subject to clause 2.8, the Company agrees and undertakes to the Members that its activities shall be devoted to those set out in the Delivery Plan.
- 2.10 In the event that any Member at any time intends to receive from any person other than the Company services similar to those contemplated by the then current Delivery Plan, that Member shall notify the Company of such intentions.
- 2.11 In the event that any Member receives or enters into any agreement under which it may receive from any person other than the Company services similar to those contemplated by the then current Delivery Plan, that Member shall notify the Company that it has done so and shall inform the Company of its future intentions (for the time being) regarding such services.
- 2.12 If in the Company's opinion any matter notified to the Company in accordance with clause 2.10 or 2.11 may reasonably require an amendment to the then current Delivery Plan or the Financial Arrangements, the Company shall notify Members of its opinion and of any amendments it proposes as a result, and the Members shall give due and reasonable consideration to such proposed amendments.
- 2.13 Following any notification by the Company pursuant to clause 2.12, the Delivery Plan and/or the Financial Arrangements may be amended by a resolution of a general meeting of the Company supported by not less than 75% of the total votes exercisable at such meeting by the Members present and entitled to vote with such votes counted in accordance with the Articles.
- 2.14 All information received by the Company pursuant to clause 2.10 or 2.11 shall be treated by the Company as confidential information for the purposes of clause 19 of this Agreement.
- 2.15 In this clause 2, **relevant date** means, in the case of any Member, the date which is twenty-one clear days before the final day of that Member's accounting period for the time being, provided that each Member shall in any event provide the information required by clause 2.1 to the Company no later than 9 March in each Financial Year.

3 **Warranty**

3.1 Each Member at the date of this Agreement warrants and represents to the other Members that it has obtained all necessary governing body and member approvals to authorise the execution, performance and observance of this Agreement.

3.2 Each Member acknowledges that the other Members are entering into this Agreement in reliance upon the warranty in clause 3.1.

4 **The business of the Company**

4.1 The Members acknowledge and agree that unless and until they agree otherwise, the business of the Company shall be to carry on for the benefit of the Members all procurement related matters as described in the Delivery Plan.

4.2 No Member shall be entitled to receive any service from the Company unless there is for the time being a Service Agreement in effect between that Member and the Company.

5 **Conduct of the Company's affairs**

5.1 Each Member shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it, in relation to the Company so as to ensure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement:

5.1.1 the Company is managed in accordance with the objectives and provisions of this Agreement;

5.1.2 the Company performs and complies with all obligations on its part under this Agreement and the Articles; and

5.1.3 no Board Member nor any other person shall have any authority to bind the Company in any way nor to act on its behalf nor to execute or sign any document or instrument on behalf of the Company unless expressly authorised by the Board.

5.2 Notwithstanding any other provision of this Agreement, the Members shall procure that none of the surpluses of the Company shall be available for distribution or distributed by the Company by way of dividend or other distribution to any Member except as may be permitted under the Articles.

5.3 In the second month of each Quarter the Company shall provide a report to all Members setting out the Board's view of the business of the Company during the preceding Quarter, and of the prospects for the Company's business in the current and next following Quarters (the **Quarterly Report**). The Company shall prepare each Quarterly Report in such form as it may from time to time determine but shall act reasonably in considering the views of Members as to the form and content of the Quarterly Report.

6 **The Board and MCG**

6.1 The Board shall be composed as set out in the Articles.

- 6.2 The Company and the Members shall ensure that as of the date of this Agreement the Board shall be composed of the individuals named at Schedule 8. Future Board Members shall be appointed in accordance with the Articles.
- 6.3 Any Member that removes a Board Member in accordance with its rights to do so under the Articles shall indemnify and keep indemnified the Company against any claim in connection with such Board Member's removal from office.
- 6.4 Board Meetings shall be held no less than 4 times in every year and at not more than three monthly intervals, and may be held more frequently. Within two weeks following each Board Meeting the Company shall send to each Member a copy of the minutes of the relevant Board Meeting.
- 6.5 Unless otherwise agreed by all the Board Members, five business days' notice shall be given to each of the Board Members of all Board Meetings. The notice convening a Board Meeting shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting.
- 6.6 Any Nominated Board Member shall be entitled to report back to the Member having nominated him such information relating to the Company that may come into his possession as a Board Member as may be necessary for such Member to monitor its involvement in the Company.
- 6.7 The parties shall ensure that such meetings of the Members and the Board are held as may be necessary to:
- 6.7.1 amend the articles of association of the Company as and when necessary; and
 - 6.7.2 make appointments to the Board;
- 6.8 The post of chairman shall, until the first annual general meeting of the Company, be held by a person appointed from time to time by the Members in accordance with the Articles. Thereafter the chairman shall be elected or appointed by the Board in its absolute discretion, in accordance with the Articles.
- 6.9 The parties declare and agree that the role of the Board shall be to manage the Company's business for the benefit of the Members from time to time and the Company accepts and acknowledges that the Members shall at all times have a power of decisive influence over the strategic objectives and significant decisions of the Company and in this connection it is open to the Members from time to time to pass a resolution in accordance with the Articles directing the Board Members. Subject always to this power of the Members to direct the Board, the Board shall direct the business in accordance with their duties under the Companies Act 2006 in order to deliver the Delivery Plan approved by the Members from time to time in accordance with clause 2 and to comply with this Agreement.
- 6.10 Each Member shall be entitled to appoint one person as their nominee to the MCG (each a **Member's Nominee**) and shall ensure that such nominee represents the strategic asset management responsibilities of that Member and at any time to remove and replace that person by notice in writing to the Company.

- 6.11 The role of the MCG shall be to act as a liaison point between the Members, the Board and the Company's executive officers. In particular the Company will use meetings with the MCG to explain their delivery of the Delivery Plan and the MCG shall be entitled to use the meetings as a means of influencing the strategic objectives and significant decisions of the Company (subject always to the power of the Members to direct the Board in accordance with the Articles).
- 6.12 Meetings of the MCG shall be convened at regular intervals (the interval between meetings to be normally one month but in any event no longer than three months) and shall be attended by executive officers of the Company. An annual meeting shall be convened between the MCG, the Board and the Company's executive officers to be held by the end of July in each year in order for the Board to present the settled Delivery Plan for the next year. All such meetings shall be convened by not less than 14 days' notice to each Member's Nominee. It shall also be open to any Member to call a meeting of the MCG on not less than 14 days' notice such notice to be given by that Member (who shall also convene such meeting) to each Member's Nominee and to the Company. Meetings of the MCG may be held by electronic or virtual means.
- 6.13 For the avoidance of doubt, any decision, resolution, consent or approval of the Members in their capacity as members of the Company (a **Members' Decision**) which is required under any provision of this Agreement or of the Articles, shall be reserved to the Members in their capacity as members of the Company and shall be made or given in accordance with the relevant provisions of this Agreement or of the Articles (as applicable). No Members' Decision may be made by the MCG.

7 **Financial arrangements**

- 7.1 With effect from the date of this Agreement, Members shall be charged and agree to be charged for services provided by the Company in accordance with Schedule 3.
- 7.2 Where any sum is due from one party to another under the Financial Arrangements, such sum shall bear interest at a rate of 5% above the base rate for the time being of [] Bank plc, and shall accrue from day to day.
- 7.3 The parties shall ensure that (subject to the provisions of the Articles) none of the Surpluses shall be distributed by way of dividend, bonus or otherwise but shall instead be used to reduce the amounts payable by Members to the Company or otherwise for the general purposes of the Company.
- 7.4 Subject to clause 8.1, the Financial Arrangements may be further amended from time to time by ordinary resolution of the Members or by resolution of the Board.
- 7.5 All sums payable under this Agreement are exclusive of VAT and such VAT shall be payable in addition to such sums upon receipt of a valid VAT invoice.

8 **Matters requiring the consent of the Members**

- 8.1 The parties shall ensure that any decision or resolution relating to any matter set out in Schedule 5 shall be referred by the Board to a general meeting of Members and shall not be implemented unless approved by a resolution of the Members in general meeting supported by not less than 75% of the total votes exercisable at such meeting by the Members present and entitled to vote and counted in accordance with the Articles.

- 8.2 Notwithstanding clause 8.1, no Member shall be obliged to accept or conform with a resolution of the Board or a resolution of the Members in general meeting (which it has voted against through its authorised representative or by proxy) where that Member can reasonably prove that the relevant resolution is one which has a significant detrimental impact on the governance, administration or constitution of that Member in its own right (as distinct from an impact on that Member purely in its capacity as a member of the Company) including, without limitation:
- 8.2.1 where that Member is required to make any amendment to its internal policies in a manner which is not approved by that Member; or
 - 8.2.2 any matter which would cause a Member (if any) which is a local authority or an ALMO to be in breach of the CIPFA Prudential Code for Capital Finance in Local Authorities and The Local Authorities (Companies) Order 1995 (together with any relevant succeeding and subordinate legislation or regulations); or
 - 8.2.3 any amendment to the Delivery Plan which would have the effect of increasing the contributions to be made to the Company by that Member; or
 - 8.2.4 any matter which would cause or require that Member to act ultra vires.
- 8.3 If at a general meeting of the Members of the Company any Member(s) objects to the passing of a resolution on the grounds set out in clause 8.2 then such resolution shall be deemed not to be passed at that meeting and the relevant member(s) (as the case may be, and hereinafter called the **Affected Party**) shall be allowed sufficient time and not more than 14 days or such other period as the Board may reasonably agree to confirm in writing to the Company whether or not, having considered the terms of the relevant resolution, the Affected Party is willing to comply with that resolution.
- 8.4 If the Affected Party confirms in accordance with clause 8.3 that it will comply with the relevant resolution, then that resolution shall be deemed to have been passed with effect from the date on which the Company receives such confirmation from the Affected Party, and the Company shall notify all Members forthwith that the resolution has taken effect.
- 8.5 If the Affected Party confirms in accordance with clause 8.3 that it is not willing to comply with the terms of the relevant resolution, or if the confirmation required under clause 8.3 is not received by the Company within the requisite period, the following shall apply:
- 8.5.1 the Affected Party shall be deemed to have resigned as a Member of the Company with effect from such date and the Company's Secretary is authorised to notify all of the other Members of this fact on behalf of the Affected Party; and
 - 8.5.2 the Affected Party shall comply with the provisions of clause 13 relating to a Withdrawing Party save that the Affected Party's resignation shall take immediate effect and shall not require notice to be given pursuant to clause 13.1.1.
- 8.6 An objection under clause 8.2 may only be made by a Member where such Member is actually present in person or by proxy at the general meeting of the Members of the Company at which the relevant resolution was proposed for the first time and voted against that resolution. For the avoidance of doubt, an objection shall not be filed by a Member which did not attend the general meeting of the Company at which the relevant

resolution was first proposed, in person or by proxy or did attend such meeting and either voted in favour of the relevant resolution or abstained from voting.

8.7 The parties hereby agree not to use the rights of objection to resolutions as set out in this clause 8 vexatiously or frivolously.

8.8 The Company shall not enter into any transaction which has the effect of or might reasonably be expected to cause a Member which is a local authority or an ALMO (if any) to be in breach of the CIPFA Prudential Code for Capital Finance in Local Authorities without the consent of each Member so affected.

8.9 The Company hereby acknowledges that it will, wherever reasonably requested to do so, ensure the attendance of a suitably qualified member of staff to meetings of the board of management of any Member in order to provide evidence of matters relevant to this Agreement or delivery of services by the Company.

9 **Accounts**

9.1 The Company shall at all times maintain accurate and complete accounting and other financial records in accordance with the requirements of all relevant applicable laws and generally accepted accounting principles applicable in the United Kingdom.

9.2 The Company shall supply each Member with copies of its audited accounts and full audit reports within 3 weeks of completion of the audit process as undertaken by its auditors and by no later than 4 months from the end of the relevant Financial Year.

10 **Rights to information**

The Company shall permit any person designated by a Member in writing, at the requesting Member's expense, to discuss the affairs, finances and accounts of the Company and its subsidiaries (if any) with that Member's officers and other principal executives at any time. All books, records, accounts and documents relating to the business and the affairs of the Company and its subsidiaries (if any) shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as the requesting Member deems appropriate to keep it properly informed about the business and affairs of the Company or to protect its interests as a Member. Any information secured as a consequence of such discussions and examinations shall be kept strictly confidential by the requesting Member.

11 **Statutory responsibilities**

Nothing in this Agreement shall constitute the delegation by any party to any other party or any other person of any of its statutory responsibilities.

12 **Dispute resolution**

12.1 In the event of any dispute between the parties hereto or any of them arising out of or in connection with this Agreement (with the exception of any dispute as referred to in clause 8) the parties to such dispute shall in the first instance use their reasonable endeavours to resolve it amicably between them in accordance with the procedure set out below:

- 12.1.1 **Stage 1:** Representatives of the parties in dispute (being the officers having day to day responsibility of the area which is the subject of the dispute) shall meet within 7 business days. If they are unable to agree a unanimous resolution at such meeting or if there shall be no appropriate officers of each of the parties available to attend such meeting then move to Stage 2;
- 12.1.2 **Stage 2:** The officers of each of the parties having line management responsibility for the parties' representatives having met at Stage 1 or their nominated deputies shall meet within 3 business days. If they are unable to agree a unanimous resolution at such meeting or if there shall be no appropriate officers of each of the parties available to attend such meeting then move to Stage 3;
- 12.1.3 **Stage 3:** Two members of the governing body of each of the parties shall meet within 7 days.
- 12.2 No person may attend any meeting on behalf of a party under clause 12.1 where that person has attended a prior meeting in relation to the same dispute resolution procedure on behalf of any other party.
- 12.3 In the event that such dispute is not resolved in accordance with the above procedure then either party may notify the Company that this is the case. As soon as reasonably practicable following receipt of such notice the Company shall convene a general meeting of the Members in accordance with the Articles. Such general meeting shall decide terms on which the dispute shall be resolved, and the terms so decided shall be final and binding on the parties.
- 13 **Withdrawal and removal of parties**
- 13.1 A Member may (but not otherwise, save with the express consent of all other parties) cease to be a party to this Agreement and cease to be a member of the Company upon satisfaction of all the following conditions:
- 13.1.1 the relevant party (the **Withdrawing Party**) giving twelve months' notice in writing of its intention to cease to be a member of the Company to the Company and all other parties to this Agreement, such notice to expire on 31 March; and
- 13.1.2 satisfaction of any other conditions or stipulations relating to the withdrawal of any party from the Company as determined by the Company in general meeting of the Members from time to time.
- 13.2 The withdrawing Party shall not be entitled to any refund of any amount paid to the Company as a consequence of ceasing to be a party to this Agreement or ceasing to be a member of the Company.
- 13.3 Notwithstanding that the Withdrawing Party shall cease to be a party to this Agreement, the Withdrawing Party shall not be released from any liabilities or rights of action accrued against it under or in connection with this Agreement.
- 13.4 In the event that a Member is removed from membership of the Company in accordance with the Articles, that Member shall forthwith cease to be a party to this Agreement,

without prejudice to any liability which has accrued to that Member under this Agreement as at the date of such withdrawal.

13.5 Any Member(s) may by notice in writing to the Company and all other Members or the Board may by resolution, summon a general meeting of the Company at which shall be proposed a resolution (a **Removal Resolution**) for the removal as a Member of any Member. The notice given by Company summoning the general meeting must be accompanied by a statement from the Board or the relevant Member(s) (as the case may be) giving reasons for the proposal of the Removal Resolution.

13.6 The Removal Resolution shall only be effective if approved in general meeting of the Company by not less than 75% of the total votes exercisable by those parties present and entitled to vote at the general meeting and counted in accordance with the Articles, and for the avoidance of doubt, the Member which is the subject of the Removal Resolution shall not be entitled to vote on the Removal Resolution and be counted in the quorum. In all other respects the conduct of this meeting shall be in accordance with the Articles.

13.7 The parties acknowledge that the provisions of clause 19 shall continue to bind each of them notwithstanding that one or more of them may cease to be party to this Agreement.

13.8 Each Member undertakes that it will not at any time after:

13.8.1 ceasing to be either a party to this Agreement or a member of the Company; or

13.8.2 receiving notice of a proposed Removal Resolution in respect of its own removal as a member (until such time as such Removal Resolution is either withdrawn or proposed at a general meeting and not passed);

enter into any further contracts or issue any further orders under any framework, contract or other arrangement procured or entered into by, through or with the assistance of the Company or be entitled to receive from the Company any of the services contemplated in the then current or any previous Delivery Plan save that a Member may, with the express written agreement of the Company, continue to receive such services insofar as such services relate to contracts or frameworks entered into prior to any of the events referred to in clauses 13.8.1 or 13.8.2 occurring in respect of the Member.

13.9 Any person acting in breach of clause 13.8 shall indemnify and keep indemnified the Company and each of the Members from and against any and all costs, expenses, losses and sums incurred directly or indirectly as a result of such breach.

14 **Intellectual property**

14.1 The Members acknowledge that any and all Intellectual Property Rights created wholly or partially by the Members or by the Company in connection with the Business (the **Business IPRs**) shall automatically belong to the Company. To the extent that they do not vest in the Company automatically, each Member hereby assigns (insofar as permissible by law) and agrees to assign by way of future assignment to the Company absolutely with full title guarantee all right, title and interest in and to the Business IPRs and all materials embodying them for the whole term of such rights together with any and all reversions, extensions or renewals of such rights.

- 14.2 The Company hereby grants to each Member for the time being a non-transferable royalty-free licence without the right to sub-licence to use the Business IPRs (as they may be constituted from time to time) solely to the extent necessary for the purposes of the Business.
- 14.3 All use of the Business IPRs by the Members pursuant to this Agreement, including all goodwill arising from such use, shall accrue solely to the benefit of the Company.
- 14.4 Each Member agrees that it shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge or deal in any other manner with any of its rights under this clause 14.
- 14.5 For the purposes of this clause 14, **Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

15 **Changes in membership of the Company**

- 15.1 Any person who wishes to become a member of the Company (an **Applicant**) shall be required to submit to the Board an application notice containing such information as the Board may consider appropriate **provided always** that each Applicant shall be an ALMO, registered provider of social housing, Local Authority or other Contracting Authority (as such term is defined in Regulation 3 of the Public Contracts Regulations 2006).
- 15.2 The Board shall consider the application notice and if they resolve, subject to compliance with clause 8.1 of this Agreement, that the application be accepted (for the avoidance of doubt such resolution being capable of being passed by electronic means) the Applicant shall on executing a Deed of Adherence and paying any sum due from it on becoming a Member in accordance with the Financial Arrangements in respect of the remaining period of the then current Financial Year be accepted as a member of the Company and its name shall be duly entered into the register of members of the Company.
- 15.3 The parties hereby acknowledge that upon admission a Member of the Company shall be entitled to all of the rights and privileges accorded to such members of the Company under this Agreement and by virtue of the Articles.

16 **Conflict with the Articles**

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles, then it is the intention of the Members that the provisions of this Agreement shall prevail. Accordingly, each Member (so far as each is able) shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall further if necessary arrange (insofar as it is able to do so by the exercise of those rights and powers) for any required amendment to be made to the Articles.

17 **No fetter**

Nothing in this Agreement shall operate to bind the Company to the extent that it constitutes an unlawful fetter on any statutory power of the Company (but this shall not affect the validity of the relevant provision as between the other parties to this Agreement or the respective obligations of such other parties as between themselves under clause 16).

18 **Duration and termination**

18.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Members until the earlier of the following events:

18.1.1 each of the Members agrees in writing to terminate this Agreement;

18.1.2 an effective resolution is passed or a binding order is made for the winding up of the Company;

18.1.3 the number of Members is reduced to one;

provided that this Agreement shall cease to have effect as regards any Member who ceases to be a member of the Company, except for any provisions which are expressed to continue in force thereafter, including without limitation clauses 13.3, 14, 15, 17 and 19.

18.2 Termination of this Agreement pursuant to this clause shall not release any party from any liability which at the time of termination has already accrued to another party or which may accrue after termination of this Agreement in respect of any act or omission prior to such termination.

18.3 Upon termination of this Agreement pursuant to clause 18.1.1, the Members shall do all such acts and things as are necessary to arrange (so far as they are able) (including, without limitation, the holding of an extraordinary general meeting of the Company and the passing of appropriate Member resolutions) for the Company to be wound up.

19 **Confidentiality**

19.1 Each party undertakes that, except as otherwise permitted by this Agreement, it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients or suppliers of any other party which may have come to its knowledge and each party shall use its reasonable endeavours to prevent the publication or disclosure of any such confidential information.

19.2 Each party may disclose other parties' confidential information:

19.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 19; or

19.2.2 with the prior written consent of the other party; or

19.2.3 as may be required by law, court order or any governmental or regulatory authority.

19.3 The Company may disclose confidential information in respect of a Member where such disclosure is reasonably required in connection with the provision by the Company of services to Members or any of them, provided that the Company shall notify any Member within 5 business days after having disclosed any of that Member's confidential information pursuant to this clause 19.3.

19.4 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

19.5 Notwithstanding any other provision of this Agreement, each party will comply at all times with its obligations under the Data Protection Act 1998 and the Freedom of Information Act 2000 and related legislation.

20 **Variation**

20.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of all of the parties.

20.2 Notwithstanding clause 20.1, the Members may at any time vary any provision of this Agreement by giving notice in writing to the Company, if and to the extent that, in the absolute discretion of the Members, such a variation would be necessary in order to:

20.2.1 ensure that the Members exercise over the Company a degree of control which is similar to that which they exercise over their own departments; or

20.2.2 otherwise comply with any requirement stipulated advised or otherwise indicated by the Courts as desirable to exempt agreements between the Company and the Members or any of them from time to time proposed to be entered into between any or all of them from a requirement to seek competitive tenders under European Union law or otherwise.

21 **General**

21.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.

21.2 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy or operate as an election to affirm this Agreement.

21.3 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.

- 21.4 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 21.5 A waiver of a breach of any of the terms of this agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.
- 21.6 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.
- 21.7 If any provision of this Agreement is or becomes illegal, invalid or unenforceable that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement.
- 21.8 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.
- 21.9 Save for a person who enters into a Deed of Adherence pursuant to clause 15 no person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

22 **Assignment**

This Agreement is personal to the parties and no party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

23 **No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24 **Notices**

24.1 Any notice given under this Agreement shall be in writing and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post or email to the address and for the attention of the relevant party set out in Schedule 7 (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:

24.1.1 if delivered personally, at the time of delivery;

24.1.2 in the case of pre-paid recorded delivery or registered post 48 hours from the date of posting;

24.1.3 in the case of email, 24 hours after being sent;

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

24.2 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party set out in Schedule 7 (or as otherwise notified by that party hereunder) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post letter (or as otherwise notified by that party hereunder).

25 **Counterparts**

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

26 **Applicable law**

The parties agree that this Agreement shall be governed by and construed in accordance with English law, and the courts of England and Wales shall have exclusive jurisdiction in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

This agreement has been executed and takes effect on the date stated at the beginning of it.

[Execution clauses]

Schedule 1 (Members Agreement)

Deed Of Adherence

Deed of adherence

dated

[] (the **New Member**) in favour of the persons whose names and addresses are set out in the Schedule to this Deed (the **Continuing Parties**).

Introduction

- 1 This Deed is supplemental to a Members' Agreement dated [] between [] and the Company and to *[insert details of any subsequent Deeds of Adherence or Amendment]*.
- 2 The New Member wishes to become a member of the Company.
- 3 Clause [] of the Members' Agreement provides that no person other than a Member shall become a member of the Company unless he enters into a Deed of Adherence in substantially the form of this Deed.

Agreed terms

- 4 The New Member confirms that it has been given a copy of the Members' Agreement and covenants with the Continuing Parties to observe, perform and be bound by every provision of the Members' Agreement (other than the Excluded Clauses) as if the New Member had been an original party to it.
- 5 In this Deed the Excluded Clauses shall mean clauses *[insert numbers of clauses to be excluded i.e. ones containing a personal obligation]* of the Members' Agreement.
- 6 Unless the context requires otherwise, words and expressions defined in the Members' Agreement shall have the same meanings when used in this Deed.
- 7 This Deed shall be governed by and construed in accordance with English law.

This Deed of Adherence has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule

[Insert names and addresses of Continuing Parties]

Schedule 2 (Members Agreement)

Articles

Schedule 3 (Members Agreement)

Financial Arrangements

1 Annual Membership Fee

- 1.1 Each Member shall pay to the Company an annual fee (the **Annual Membership Fee**).
- 1.2 The Annual Membership Fee shall be payable by each Member on the first business day of each Financial Year.
- 1.3 The Annual Membership Fee payable by each Member in respect of the first Financial Year of this Agreement shall be the sum of:

AMF x (D/365)

where

AMF is £9,500 (nine thousand, five hundred pounds); and

D is the number of days in the period beginning with and including the date of this Agreement and ending with and including 31 March 2013.

- 1.4 The Annual Membership Fee payable by each Member in respect of each future Financial Year of this Agreement shall be incorporated in the Delivery Plan to be agreed in accordance with clause 2 of this Agreement, and shall unless otherwise agreed in accordance with clause 2 be the sum of:
- £9,500 (nine thousand, five hundred pounds).
- 1.5 In the event of any disagreement between the Company and any Member in respect of the Annual Membership Fee, the provisions of clause 12 of this Agreement shall apply to the resolution of such dispute.

2 General

- 2.1 From time to time the Company and the Members may make arrangements for the Company to receive income from other sources.
- 2.2 In making any amendments to these Financial Arrangements, and in making any such arrangements as are referred to in paragraph 2.1 above, the parties will have regard to (amongst other things) the requirements of the law of the European Union in relation to matters of procurement and taxation, and will consider how best to amend these Financial Arrangements and/or how such other arrangements might best be made, given such requirements as in force at the relevant time.

Schedule 4 (Members Agreement)

Initial Delivery Plan

[]

Schedule 5 (Members Agreement)

Matters In Respect Of Which Decisions Must Be Referred To Members In General Meeting

- 1 Any material amendment to the Delivery Plan or the Financial Arrangements, or the making of any material change in the nature of the Business.
- 2 Any amendment to the Articles.
- 3 The establishment or acquisition of any Subsidiary of the Company or the acquisition of or investment in any other company or business.
- 4 The presentation of any petition or the passing of any resolution for the voluntary winding-up of the Company.
- 5 The sale, transfer or disposal of the whole or a substantial part of the Business, or any dilution of the Company's interest in any Subsidiary of the Company.
- 6 The merger or amalgamation of the Company or any Subsidiary of the Company with any other company or the participation in any partnership or joint venture.
- 7 The incurring of any borrowings or other indebtedness (other than normal trade credit) or the giving of any guarantees.
- 8 The entering into any purchase, sale, lease or licence of any freehold or leasehold property (other than in accordance with the Delivery Plan).
- 9 Any material amendment to the accounting policies of the Company or any Subsidiary of the Company.
- 10 Any change of the Company's name, auditors, bankers, accounting reference date or bank mandate.
- 11 Any material amendment to any Service Agreement.
- 12 Any other act or thing which would or might as a consequence have a material adverse effect on the corporate governance, financial strength or reputation of the Company or its ability to perform in accordance with the Delivery Plan.

Schedule 6 (Members Agreement)

Service Agreement

Services Agreement

dated

Parties

- (1) **Eastern Procurement Consortium Limited** (the **Company**); and
(2) [] [] (the **Member**)

Introduction

- (A) The Member is a Member in the Company.
(B) The Company is to provide the Member with services as set out in this Agreement.
(C) The Company and the Member have entered into this Agreement with the intention that the Company will provide the Services to the Member, and the Member will make material use of the Services, for the duration of the term of this Agreement.

Agreed terms

1 Interpretation and pre-existing agreements

1.1 In this Agreement where the context so admits:

The following words and phrases shall bear the following meanings:

Beneficiaries means the Member and any subsidiary of the Member which is Contracting Authority;

Contracting Authority shall have the same meaning as given to it by Regulation 3 of the Public Contracts Regulations 2006 as in force at the date of incorporation of the Company;

Delivery Plan shall have the same meaning as in the Members Agreement;

Fee shall mean the sum (if any) to be paid or procured to be paid by the Member to the Company in accordance with the Financial Arrangements;

Financial Arrangements shall have the same meaning as in the Members Agreement;

Members Agreement shall mean the agreement between the Member, the Company and other parties regarding the membership of the Company and other matters dated [];

Services shall mean the services to be provided by the Company to the Member as set out in the Delivery Plan from time to time;

subsidiary has the meaning given in section 1159 of the Companies Act 2006.

- 1.1.1 Words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations;

1.1.2 Reference to any statutory provisions or instruments shall be deemed to include reference to any such provisions or instruments as from time to time amended, varied, replaced, extended or re-enacted and to any orders or regulations under such provisions;

1.1.3 Reference to a clause or a Schedule shall be deemed to be references to a clause or a schedule to this deed and references to a sub-clause shall be deemed to be references to a sub-clause of the clause in which the reference appears;

1.2 In this Agreement clause headings are included for ease of reference only and shall not affect this Agreement or the interpretation hereof.

2 **Provision of Services**

2.1 The Company will procure works, goods and services in accordance with the Delivery Plan, and will provide the Services to the Member or to such of the Beneficiaries as the Member may from time to time direct.

2.2 The parties shall agree performance targets for the Company's performance of the Services in respect of the works, goods and services to be procured and Services to be provided in each year.

2.3 The parties acknowledge that it is the fundamental purpose of this Agreement that the Company will provide to the Member, and that the Member and/or the Beneficiaries will make material use of, the Services.

3 **Payment**

3.1 The Member hereby confirms its agreement, pursuant to the Members Agreement to pay the Fee on the basis of the Financial Arrangements.

3.2 For the avoidance of doubt all sums payable under this Agreement are exclusive of VAT and other duties or taxes (if any) and such duties or taxes (if any) shall be payable in addition to such sums.

4 **Term of the Agreement**

This Agreement shall continue in full force and effect until:

4.1 this Agreement is determined by either party giving to the other not less than 6 months notice in writing; or

4.2 pursuant to clause 6 or 8; or

4.3 the Member ceases to be a member of the Company.

5 **Duty of Care**

The Company shall have a duty to use the reasonable skill and care of an experienced procurement consultant in providing the Services to the Member.

6 **Default and indemnity**

6.1 The Company shall indemnify and keep indemnified the Member in respect of any and all costs, expenses, losses and other sums incurred by the Member as a result of any breach by the Company of its obligations under this Agreement.

6.2 If either party (the **Defaulting Party**) shall commit a material breach of its obligations under this Agreement or a series of breaches under this Agreement which are together material and such breach(es) (being capable of remedy) shall not have been substantially remedied within 14 days after the other party shall have given the Defaulting Party notice of the breach(es) concerned, the other party may terminate this Agreement by serving not less than 7 days' notice to that effect on the Defaulting Party.

7 **Illegality**

If any provision or term of this Agreement or any part thereof shall become or be declared illegal, void, invalid, or unenforceable for any reason whatsoever, including without limitation by reason of any provision of any legislation or other provisions having the force of law or by reason of any decision of any Court or other body of authority having jurisdiction over the parties to this Agreement including the European Commission and European Court of Justice, such provision or term shall be divisible from this Agreement in the jurisdiction in question provided always that if any such deletion substantially affects or alters the commercial basis or financial viability or practicality of this Agreement the parties shall negotiate in good faith to amend and modify the provisions and terms of this Agreement as may be necessary or desirable in the circumstances.

8 **Force Majeure**

Neither party shall be in breach of this Agreement if there is any total or partial failure of performance by it or its duties or obligations under this Agreement occasioned by act of God, natural disaster, fire, act or intervention of government or state, riot or civil commotion, insurrection or industrial dispute of whatever nature or any other reason beyond the control of either party and if either party is unable to perform its duties or obligations under this Agreement as a direct result of the effect of one of the above reasons that party shall give written notice to the other of the circumstances giving rise to such inability and the operation of this Agreement shall be suspended during the period (and only during the period) in which such circumstances continue. Forthwith upon such circumstances ceasing to exist the party relying upon it shall give written notice to the other of this fact, provided that if the circumstances continue for a period of more than 90 days and substantially affect the commercial basis, financial viability or practicality of this Agreement the party not claiming relief under this clause shall have the right to terminate this Agreement upon giving 30 days' written notice of such termination to the other party.

9 **Confidentiality**

9.1 Both parties hereto agree:

9.1.1 to respect the confidentiality of information concerning any individual or organisation which may from time to time become available to them; and

9.1.2 to comply with the provisions of the Data Protection Act 1998.

10 **Resolution of Disputes**

Any dispute arising out of this Agreement shall be resolved in accordance with the provisions of clause 12 of the Members Agreement.

11 **Notices**

Any Notice to be given hereunder shall be given in accordance with clause 24 of the Members Agreement.

12 **Exclusion of Contracts (Rights Of Third Parties) Act 1999**

12.1 In the event that the Company provides services to any subsidiary of the Member pursuant to this Agreement, that subsidiary shall have the right to enforce the terms of this Agreement as though it were a party to it.

12.2 Save as provided in clause 12.1, a person who is not a party to this Agreement shall not have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement by virtue of the Contracts (Rights of Third Parties Act) 1999.

12.3 This Agreement may be amended by agreement in writing between the Member and the Company, without the consent of any other Beneficiary.

This Agreement has been executed and takes effect on the date stated at the beginning of it.

Execution Page (Services Agreement)

Schedule 7 (Members Agreement)

Service Of Notices

Member	Address	Email
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]

Schedule 8 (Members Agreement)

Board Members

Name	Service address	Nominating Member
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]
[]	[]	[]