

WILTSHIRE COUNCIL

AUDIT COMMITTEE

20th March 2013

SWAP Governance Arrangements

1. Purpose of the report

- 1.1 To request the Council to become a member of the South West Audit Partnership Ltd. (SWAP Ltd.) and to dissolve the current South West Audit Partnership Joint Committee (SWAP).

2. Background

- 2.1 Wiltshire Council entered into partnership with SWAP in November 2011. On joining SWAP the Council adopted and became part of the organisations governance of the partnership. This has been managed through its existing model of a management committee and Board. Wiltshire Council has been represented at these meetings by the Section 151 Officer and the Cabinet Member with responsibility for Finance and Performance.
- 2.2 The current governance arrangements, introduced on the formation of the partnership in 2005, are based on Section 101 of the Local Government Act, 1972. Under this model each partner is bound by a legal agreement between it, the other partners and the Host which is South Somerset District Council.
- 2.3 The Joint Committee model was designed and intended for relatively small partnerships, where a single or limited service could best be delivered by two or three local authorities combining their resources. Within such limitations the model works well and is relatively simple to direct and manage. In 2005 there were only two partners and, at the time, it was only envisaged that two other councils would join. Since 2005, however, the partnership has gradually expanded to the current twelve members. The increased membership has

benefited all partners with greater economies of scale, a wider expertise base and quality and productivity improvements that would not have been possible with a smaller partnership.

2.4 As noted to Councillors on consideration of joining SWAP, the Partnership Board were and have been exploring a number of ways in which the current model might be adapted to meet the current and future needs of the partnership.

2.5 Whilst some progress was made, there remained some fundamental issues that could not be resolved via the current governance model or issues where we were unable to definitively provide a resolution. The principle areas that needed addressing can be summarised as:

- **Partnership Board voting arrangements.** Under the current rules, each partner must be physically present at Board meetings in order for the budget to be set and the accounts to be approved. This involves two meetings a year and if one Councillor fails to turn up then either the budget cannot be approved or the accounts cannot be approved, depending on which meeting it is. With twelve partners the potential for the Board not being quorate is significant. There is no provision for alternate voting arrangements, for example proxy voting, email voting, tele-voting etc.
- **Financial Control.** Whilst the Partnership has overall control of finances, in so far as it decides the annual budget and approves the accounts, the financial operations of the Partnership are conducted under the rules of the Host, South Somerset District Council. This has caused some operational issues for SWAP and I would anticipate further issues arising in the future. It may be possible for the Host to grant total control to the Partnership, which would provide a resolution, but it could rescind that at any time. In fairness to the Host, because under the current governance arrangements the Partnership's accounts are ultimately their responsibility, it is not unreasonable that their rules should apply.
- **Staff Pay, Terms and Conditions.** These remain almost entirely with the Host, particularly with regard to pay, and whilst we may be able to have a

number of variations, tailored to SWAP's needs, we cannot be granted complete control in this area. With SWAP costs being 95% salary based, whilst the Partnership Board can set the budget, it can do nothing with regard to pay. SWAP is intrinsically linked with the Host's pay scheme, removing control from the Partnership of the vast majority of the budget.

- 2.5 There are a number of other, operational, issues of a minor nature that can be resolved by moving to a limited company model. As such the partnership have explored alternative models of delivery. This has included full engagement of each partner organisation. Through consideration a new model is proposed and discussed in this report.

3. The Proposed Governance Model

- 3.1 Having considered a range of alternate possible corporate structures, the conclusion of the Partnership Board is that the most appropriate governance model for SWAP is a company limited by guarantee.
- 3.2 To assist the Partnership Board in ensuring that the future company limited by guarantee has a sustainable structure, taking on board all partners views, a workshop for councillors from all SWAP partners was held on 10th October, 2012.
- 3.3 More than sixty people attended the workshop, representing all the partners, plus representatives from Browne Jacobson (SWAP legal advisors) and Local Partnerships (project advisors) who facilitated the event. The main purpose of the workshop was to gain Councillors' views on what sort of governance arrangements should be employed for the new company.

3.4 The main areas of discussion were:

- The different roles of the Members' Group and the Board of Directors.
- The decision making functions of the Members' Group and the Board of Directors.
- Who should be appointed to the Board?
- Voting rights and voting options, including quorum levels for both the Members' Group and the Board.
- Roles and responsibilities of SWAP management.
- Frequency of meetings for both the Members' Group and the Board.
- Substitute representation options for both the Members' Group and the Board.
- Conflict resolution.
- The strategic future of the partnership.

3.5 The conclusion of the Councillors' workshop, subsequently endorsed by the Partnership Board, was that the following governance structure should be adopted:

Appointees to the Members' Board will be Councillors representing their respective authorities. Appointees to the Board of Directors can be anyone each individual authority chooses, either officer or Councillor.

The Members' Board

3.6 This is, in effect, the equivalent of the current Partnership Board. Each partner would nominate a Councillor to represent them on this Board. It is the supreme authority of the company and would make all decisions relating to strategy, policy, appointment and dismissal of senior management and the admission of new partners.

The Board of Directors

3.7 The Board oversees the implementation of the strategy and policy, as well as ensuring the operational activities of the partnership are achieving the objectives set by the Members’ Board. The Board will be much more ‘hands on’, functioning very much like the current Management Board. Most Board members, in order to be effective, will need a good working understanding of internal audit and risk management. Provision has been made in the articles for other directors to be appointed, including some SWAP management.

3.8 The Partnership Board endorsed the following membership arrangements for the board of directors:

- Two Councillors who would normally be the Chairman and Vice Chairmen of the Members’ Board.
- Twelve officers representing each of the current partners.
- A maximum of three executive officers from SWAP, with at least the Chief Executive being included.

Respective Roles of the two Boards

3.9 Summarised below is an abbreviated list of the responsibilities and powers of the two governing bodies of the new company.

Members’ Board	Board of Directors
<ul style="list-style-type: none"> • Admission of new partners • Approval of the Annual Business Plan • Any changes to the approved Annual Business Plan • Setting of the annual budget • Approval of annual accounts 	<ul style="list-style-type: none"> • Agrees the preliminary budget, for submission to the Member’s Board for approval • Approves all changes to the budget, except in relation to any proposals which would lead to an increase in Member contributions

Members' Board	Board of Directors
<ul style="list-style-type: none"> • Extending or reducing the scope of operations • Appointment or removal of Directors, in accordance with the Articles and the legal agreement • Setting and approving the form and content of the financial regulations • Appoint or remove the Chief Executive or any member of the management team • Change the name of the Company or its registered office • Change the bankers of the Company or open or close any bank accounts • License, assign or otherwise dispose of intellectual property rights owned by the Company • Approves and reviews the annual risk register 	<ul style="list-style-type: none"> • Reviews and approves the annual statement of accounts, prior to submission to the Members' Board • On-going Budget monitoring • Agrees combined audit plan and ensures equity of resource distribution amongst the Members • Agrees any changes to audit plans that impact on the partnership • Approves and reviews annual themed audits to ensure best practice is shared with relevant service heads at each Member • Monitors overall performance against the combined audit plan • Reviews and monitors the risk register to ensure risks are managed in accordance with the requirements of the Members' Board • Approves and monitors terms and conditions of staff

3.10 The new agreement introduces no other changes to the operation of the Internal Audit Service and the latest draft Trading Agreement, Management Agreement and Articles of Association are attached at Appendix 1 and 2 to reflect this. Other than the change to an agreement and board membership noted above at paragraphs 3.6 to 3.9, the only change is the agreement with a limited company there are no other changes proposed.

4. Financial Implications

- 4.1 None. Annual contributions to SWAP will not increase from 2012/13 and no other charges will fall on the Council as a result of the changed governance arrangements.

5. Legal Implications

- 5.1 Council appointees to the positions of Company Directors should observe the appropriate protocol of Wiltshire Council's Constitution that relate to external body appointments.
- 5.2 The company will be a separate legal entity to the councils that currently manage SWAP and that will act to create it. Usually the provision of services by a company to a council will be governed by the European procurement regulations. However, because the company is strategically controlled by, and only by, the SWAP Councils, with the private sector having no share of its ownership then the so-called "Teckal" exemption applies. This means the Councils who own and manage the company can buy its services directly without the need for any tendering activity.

6. Human Resources Implications

- 6.1 Staff were transferred to the Partnership in November 2011. Under these proposals the South West Audit Partnership will change from being a Joint Board to a limited company by guarantee, on 1st April 2013. All existing staff will transfer to the new company under TUPE regulations. Key terms and conditions are protected on transfer and there are no envisaged changes to the terms and conditions of staff as a result of the transfer. Periods of continuous service in local government will count as continuous employment, so any statutory employment rights depending on length of service will be maintained. It is currently envisaged that the all staff will continue to be based in their current location. We are aware the new body has gained admitted body status and as such there is no impact on staff pensions.

6.2 Apart from a change of employer, no other changes that affect staff will take place at the time of transfer. This change affects all staff in the same way. As such there is no implications for the Council.

7. Equalities Implications

7.1 None

8. Environmental and climate change considerations

8.1 None

9. Risk Assessment

9.1 The key risks for the Council relate to additional costs, Director liabilities, partnership viability and procurement. As noted in the Legal comments the procurement risk is deemed low due to the nature of the proposals. There is also reference to this being at nil additional cost in the financial comments. The Directors liability is also limited by the company structure. One of the reasons for the model change is to secure the future viability of the partnership so it is considered that all risks are being mitigated.

10. Recommendations

10.2 That the Cabinet Member with responsibility for Finance and Performance, in consultation with the Audit Committee:

1. Approves the formation of a company limited by guarantee, to replace the existing SWAP Joint Committee.
2. Elects to be a Member¹ of SWAP Ltd. from 1st April, 2013, on the terms and basis set out in the articles of association, deed and service agreement.

¹ In the context of a company, a 'Member' is a local authority. Therefore to avoid confusion, for the purposes of this report, the use of the word 'Member' (with a capital 'M') will refer to a council, whereas a council member will be referred to as 'Councillor'.

3. Agrees to the dissolving of the SWAP Joint Committee at a date to be determined, but not later than 30th June, 2013.
4. Note the separation of responsibilities and the membership profiles of the Members' Board and the Board of Directors, and recommend that the Cabinet Member with responsibility for Finance and Performance (with the Chair of Audit Committee as Deputy), and Section 151 Officer represent the Council on the proposed Members Board and Board of Directors respectively as discussed at paragraphs 3.6 to 3.8 of this report.
5. Notes that the fees for the provision of internal audit services by SWAP Ltd., for the financial year 2013/14, will not increase on the fees paid to SWAP by the council for 2012/13.

11. Conclusions

11.1 This proposal is aimed at assisting the efficient working of the partnership and there are only limited changes to the agreement between the Council and the new limited company.

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Unpublished documents relied upon in the preparation of this Report: None.

Appendices:

- 1 – Agreement for the Provision of Audit Services
- 2 – Draft Members Agreement and Articles of Association

Appendix 1



DATED _____ **2013**

WILTSHIRE COUNCIL (1)

and

SOUTH WEST AUDIT PARTNERSHIP LIMITED (2)

**AGREEMENT FOR
THE PROVISION OF AUDIT SERVICES**

BETWEEN

(1) **WILTSHIRE COUNCIL** (the “Council”)

and

(2) **SOUTH WEST AUDIT PARTNERSHIP LIMITED** (registered number 8215338) whose registered office is at Council Offices, Brympton Way, Yeovil, Somerset, BA20 2HT (“**SWAP**”).

(together the ‘Parties’)

BACKGROUND

- (A) SWAP is a company limited by guarantee and is wholly owned and controlled, as an in-house company, by the Members.
- (B) The Members have established SWAP for the purpose of supplying the services set out in this Agreement to each of them and such other services as they may direct SWAP to carry out from time to time.
- (C) On [x] the Members, being the members of SWAP entered into an agreement (the “Member’s Agreement”) to regulate the conduct, financing, business planning, and governance of SWAP as an in-house company.
- (D) SWAP is considered to be, and acts as internal, dependent and subordinate to the Members, and its primary relationships with them are governed by way of the Members Agreement rather than by way of this Agreement.
- (E) It is intended by all Parties that the funding necessary for SWAP to be able to provide the Services pursuant to this Agreement will be made available by the Members is as set out in the Members Agreement

1 Definitions and Interpretations

1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

‘Audit Charter’ is a formal written document that defines the *purpose, authority, and responsibility* of the Internal Auditing function. The Charter

	establishes the Internal Audit function's position within the organisation; authorises access to records, personnel, and physical properties relevant to the performance of engagements; and defines the scope of work. It also defines the lines of internal audit reporting and responsibility and describes the responsibilities of management.
'Audit Plan'	means the audit plan as defined in clause 5
'Audit Process'	means the process described in the Terms of Reference and the Audit Plan
'Board'	means the board of directors of SWAP as defined in the Members' Agreement
'Bribery Act'	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation
'Client Officer'	means the Council officer from time to time appointed by the Council to act as its representative under this Agreement
'Commencement Date'	means the date of this Agreement
"Confidential Information"	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either

	Party, all personal data and sensitive personal data within the meaning of the DPA and any subordinate legislation of the DPA
‘DPA’	means the Data Protection Act 1998
‘Exempt Information’	means information which either Party determines to be exempt from disclosure under the FOIA
‘External Auditor’	means the person or body appointed to carry out the statutory audit of the council’s financial affairs
‘FOIA’	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance, the Environmental Information Regulations 2004 and/or codes of practice issued by the Information Commissioner in relation to such legislation
‘Funding’	means the proportion of the funding to be paid to SWAP in accordance with the Members’ agreement representing the Council’s contribution to the running costs of SWAP
‘Information’	has the meaning given under section 84 of the Freedom of Information Act 2000
‘Information Request’	has the meaning given in the Freedom of Information Act 2000
“Intellectual	
“Property Rights”	means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names,

moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

‘Internal Audit Standards’	means those standards described in the International Professional Practices Framework of the Institute of Internal Auditors and the Public Sector Internal Auditing Standards
‘Licence’	means the licence referred to in clause 8.3
‘Members’	means the members of SWAP
‘Members’ Agreement’	the contract entered into by the Members and SWAP in relation to the governance of SWAP on or around the date of this Agreement
‘Policies’	means the Council’s policies and procedures as notified to SWAP by the Council in writing from time to time
‘Premises’	means any building owned (by whatever means), controlled or otherwise used by the Council for the purpose of its normal activity;
‘Prohibited Act’	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:<ul style="list-style-type: none">(i) induce that person to perform improperly a relevant function or activity; or

- (ii) reward that person for improper performance of a relevant function or activity.
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

‘Services’	means the services being provided by SWAP to the Council in accordance with the requirements of this Agreement as are more particular identified in clause 4
‘SWAP Representative’	means the representative from time to time appointed by SWAP to act as its representative under this Agreement
‘Terms of Reference	means the document prepared pursuant to clause 4.1
‘Working Days’	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London

2 Overriding Control

SWAP acknowledges that it is a company controlled by the Members jointly and as such the terms of this Agreement (including its Schedules) may, in addition to any other rights to vary the terms of this Agreement, be varied at any time should the Members so determine, provided always that such amendment is jointly and unanimously agreed by the Members in accordance with the terms of the Members Agreement.

3 Council's Obligations

Save as otherwise expressly provided, the obligations of the Council under this Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Council to SWAP.

4 The Provision of the Services

4.1 SWAP will provide the following services with reasonable care and diligence and in accordance with the Policies:

4.1.1 prepare and agree a Terms of Reference, with the Client Officer or such other Council officer as directed by the Client Officer as appropriate, which will be used to produce the standard working papers.

4.1.2 liaise with the Council's external auditors to:

(a) share plans and work co-operatively to ensure best use of audit resources; and

(b) agree a joint audit protocol;

4.1.3 provide its internal audit work in accordance with:

(a) Internal Audit Standards;

(b) with relevant legislation; and

(c) the Council's specific codes and Policies as may be in force from time to time including, (but not exclusively):

- (i) The Council's Constitution
- (ii) Anti Fraud and Corruption Strategy & Response Plan (or equivalent)
- (iii) Public Interest Disclosure Act 1998
- (iv) Staff and Member Codes of Conduct
- (v) Standing Orders and Financial Regulations
- (vi) Disciplinary Codes and Employment Policies
- (vii) IT Security Policy
- (viii) Data Protection Act 1998 (as amended); and
- (ix) Freedom of Information Act 2000 (as amended)

4.1.4 deliver the agreed requirements of the Audit Plan as agreed pursuant to clause 4.5; and

4.1.5 perform the audit and prepare a draft report in accordance with the Audit Process and the Audit Plan.

4.2 As part of every audit undertaken SWAP will prepare a draft report for the Client Officer which, after consultation, will be finalised and submitted to any relevant council officers as agreed with the Client Officer or deemed appropriate by the named site auditor. In addition, final reports will be sent to the External Auditor.

4.3 SWAP shall as part of the final report detailed at clause 5.1 above conduct a customer satisfaction questionnaire and will provide the client officer with copies of all completed questionnaires.

4.4 SWAP will provide a named auditor who will liaise with the Client Officer. In the event that the named auditor is required to be changed for any reason SWAP shall inform the Client Officer of this change immediately and shall provide alternative details as soon as practicable.

- 4.5 The named auditor(s) will review the files and reports produced by SWAP at any point during the Term and report to the Client Officer as it thinks appropriate.

5 The Audit Plan

- 5.1 The audit plan for the Council (the 'Audit Plan') shall be prepared by SWAP in January in each year in consultation with the Client Officer and such other members of senior management at the Council as the Client Officer acting reasonably shall require and shall take account of the following matters:

5.1.1 Operational Audits;

- (a) Annual key risk review of main financial systems in support of external audit opinion;
 - (b) Governance, Fraud and Corruption reviews;
 - (c) IT Audit;
 - (d) Follow-up reviews;
 - (e) Probity and Investigation Work;
 - (f) Support and Advice;
 - (g) Contract Audit;
 - (h) Value for Money Studies; and
 - (i) Control and Risk Self Assessment facilitated workshops, if required.
- 5.2 The Audit Plan and the Audit Process shall be prepared using a method of risk assessment adopted by SWAP, once agreed or determined in accordance with clauses 5.4 below shall be for the period from 1st April to 31 March.
- 5.3 In preparation of the Audit Plan SWAP shall have due regard to any key financial control audit approach and joint protocol developed with the Council's external auditors.
- 5.4 Following its preparation, the Audit Plan shall be submitted to the Client

Officer for agreement or amendment and final approval by the relevant Council Committee, where appropriate.

- 5.5 Where any amendments are proposed by the Client Officer it shall provide those proposed amendments in writing to the SWAP Representative and a meeting shall be convened to agree amendments to the Audit Plan. In the absence of agreement the matter will be referred to dispute resolution under the provisions of clause 14. Once approved the Audit Plan will be the Audit Plan for the period agreed in it.
- 5.6 The Audit Plan shall be reviewed periodically during the year by the Client Officer and SWAP.

6 Performance Reports

- 6.1 SWAP will prepare reports on performance in accordance with the following:
- 6.1.1 An annual report to be presented to the Council's Audit Committee, or its equivalent, in June of each year, or at any other time as agreed with the Client Officer; and
- 6.1.2 Quarterly monitoring report for the Client Officer and the Council's Audit Committee, or its equivalent, on actual performance against the Audit Plan;
- such reports shall be prepared in accordance with any protocols agreed between the Parties.
- 6.2 These reports will be prepared by the Chief Executive or delegated officer and submitted to the Client Officer who shall present them to members or other officers of the Council as appropriate. Representatives from SWAP shall attend any meetings to discuss the said reports and/or present them on behalf of the client, as required.
- 6.3 SWAP shall further prepare summary reports of the audits carried out under the Audit Plan focusing on the key issues arising out of the audit and, in respect of previous audits, any agreed actions which have not been taken by the Client Officer or Service Managers.

7 Liaison/Performance/Monitoring

7.1 SWAP's Chief Executive or delegated Officer shall meet the Client Officer on a quarterly basis, or at such other times as agreed with the Client Officer, to liaise on the following matters:

7.1.1 Progress against the agreed Audit Plan

7.1.2 Agreement of any amendments which may include

- (a) Agreeing extended audit times;
- (b) Rescheduling work; and
- (c) Agreeing the use of the provision for contingencies, and investigation.
- (d) Review of customer satisfaction questionnaire responses

7.1.3 Update on previous audit report recommendations

7.2 Where there are differences that cannot be resolved, or there are grievances by either party in respect of the Audit Plan or any financial arrangements they shall be referred to the Dispute Resolution provisions of Clause 14.

7.3 In addition SWAP's Site Auditor shall formally meet with the Client Officer on a monthly basis or as reasonably required.

7.4 SWAP shall work to achieve the following performance targets

Measure	Target
% Audit Plan achieved	90%
Customer Satisfaction Questionnaire	80% excellent or good responses
Draft report to timetable	85%
Xxx	xxx

8 **Use of premises, equipment, third party products and contracts**

8.1 Premises

8.1.1 The Council will allow to persons duly authorised by SWAP such access to the Premises as is reasonably required for the purpose of providing the Services. Authorisation procedures will be agreed between the Council and SWAP from time to time. SWAP shall use such rights of access for the purpose of providing the Services only. SWAP's right of access will terminate upon termination of this agreement.

8.1.2 SWAP will do nothing which might directly or indirectly cause any breach of the terms of any lease or other terms under which the Council is entitled to occupy the Premises (copies of which terms have been disclosed to SWAP by the Council) and SWAP shall indemnify the Council against all costs, claims, damages and expenses arising from any such breach.

8.1.3 Access to the Premises will be subject to SWAP's compliance with clause 8.1.2 and with any Council's policies notified and the Council reserves the right to exclude any person from the Premises in the event of an actual or threatened breach of clause 8.1.2 or such policies.

8.1.4 To the extent permitted by law, the Council hereby excludes any liability for any injury to persons entering the Premises with SWAP's authorisation or for any loss or damage caused to property brought

onto the Premises by SWAP or such persons.

8.1.5 SWAP hereby indemnifies the Council against all and any damage to the Premises and their contents caused by persons entering the Premises with SWAP's authorisation.

8.2 Equipment

8.2.1 The Council will allow to persons duly authorised by SWAP such use of its equipment as is reasonably required for the purpose of providing the Services. Authorisation procedures will be agreed between the Council and SWAP from time to time. SWAP shall use the equipment for the purpose of providing the Services only.

8.2.2 SWAP shall use any such equipment with all reasonable skill and care and in accordance with best computing practice and hereby indemnifies the Council against all and any damage to the such equipment caused by persons using the same with SWAP's authorisation.

8.3 Licences

8.3.1 The Council hereby grants to SWAP, for the duration of this agreement, a non-exclusive royalty-free licence to use, operate, copy and modify the Council's intellectual property for the purpose only of fulfilling SWAP's obligations under this agreement.

8.3.2 The parties shall co-operate to obtain the consents of third parties to the use by SWAP of any third party software, documentation and other materials ("Third Party Products") (including, without limitation, software and know-how) which:

(a) the Council is permitted to use; and

(b) is required by SWAP for the provision of the Services.

8.3.3 If the Council fails to obtain such consent or if the Council determines that the cost of obtaining such consent is unreasonable, the parties shall co-operate to agree alternative Third Party Products which may replace those in respect of which consent has not been or cannot, except at unreasonable cost, be obtained.

8.3.4 SWAP shall assume all liability to third parties in respect of its use of any Third Party Products in accordance with clause 8.3.2 as from the Commencement Date and shall indemnify the Council against all costs, claims, damages or expenses arising from SWAP's failure to adhere to the terms and conditions of agreements between the Council and such third parties in respect of such Third Party Products.

9 Confidential Information and Freedom of Information

9.1 The Parties shall keep confidential any Confidential Information relating to this Agreement or the Intellectual Property Rights of the Parties and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any Confidential Information relating to the Deed or intellectual property rights of the Parties.

9.2 Clause 9.1 shall not apply to:

9.2.1 Any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement;

9.2.2 Any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;

9.2.3 Any disclosure to enable a determination to be made under the Dispute Resolution procedure in clause 14;

9.2.4 Any disclosure which is required by any law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law, however where a disclosure is to be made pursuant to FOIA the Parties agree that the provisions of clause 9.3 shall apply to any disclosure;

9.2.5 Any disclosure of information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;

9.2.6 Any disclosure by a party to a department, office or agency of the

Government; or

9.2.7 Any disclosure for the purpose of the examination and certification of a party's accounts.

9.3 Where disclosure is permitted under clause 9.1, the Parties shall endeavour to ensure that recipients of the information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Council although the Parties acknowledge that this may not always be possible.

9.4 Freedom of Information:

9.4.1 The Parties recognise that the Parties are subject to the requirements of the FOIA and therefore recognise that information relating to this Agreement may be the subject of an Information Request.

9.4.2 The Parties shall assist each other in complying with their obligations under the FOIA, including but not limited to assistance without charge, in gathering information to respond to an Information Request.

9.4.3 Any Party shall be entitled to disclose any information relating to this Agreement and SWAP in response to an Information Request, save that in respect of any Information Request which is in whole or part a request for Exempt Information in such circumstances the following procedure shall apply:

(a) the Party which receives the Information Request shall circulate the Information Request and shall discuss it with the other Councils;

(b) the Party which receives the Information Request shall in good faith consider any representations raised by the other Councils when deciding whether to disclose Exempt Information; and

9.4.4 The Party which receives the Information Request shall not disclose any Exempt Information beyond the disclosure required by FOIA without the consent of the party to which it relates.

9.4.5 The Parties to this Agreement acknowledge and agree that any decision made by either Party which receives an Information Request as to whether to disclose information relating to this Agreement pursuant to FOIA is solely the decision of that Party. A Party will not be liable to the other Party for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to an Information Request.

10 Data Protection

10.1 For the purposes of this clause 10 the following expressions have the following meanings unless inconsistent with the context:

10.1.1 Data Controller: Shall have the same meaning as set out in the Data Protection Act 1998

10.1.2 Data Processor: Shall have the same meaning as set out in the Data Protection Act 1998

10.1.3 Personal Data: Shall have the same meaning as set out in the Data Protection Act 1998

10.1.4 Process: has the meaning given to it under the DPA but, for the purposes of this agreement, it shall include both manual and automatic processing.

10.2 The Parties shall at all times comply with the DPA, including maintaining a valid and up to date registration or notification under the DPA, covering any data processing to be performed in connection with this Agreement and their responsibilities as data processors and/or data controllers.

10.3 Where SWAP is acting as a Data Processor, the Data Processor shall only undertake processing of Personal Data reasonably required in connection with the operation of this Agreement or in accordance with clause 10.4.

10.4 Unless agreed otherwise in writing by the Parties the Data Processor shall process the Personal Data only in accordance with the Data Controller's

instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by the Data Controller.

10.5 Notwithstanding the general obligation in Clause 10.3 the Data Processor shall ensure that it has in place appropriate technical, organisational and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss, disclosure or destruction of, or damage to, the Personal Data), these measures shall be appropriate to the harm which might result from unauthorised or unlawful processing of the Personal Data, accidental loss, disclosure or destruction of, or damage to, the Personal Data having regard to the nature of the personal data which is to be protected; and

10.5.1 take reasonable steps to ensure the reliability of any employees who have access to the personal data

10.5.2 ensure that all employees required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this contract

10.5.3 take reasonable steps to ensure that none of the SWAP employees publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;

10.5.4 provide the Data Controller with such information as the Data Controller may reasonably require to satisfy itself that the Data Processor is complying with its obligations under the Data Protection Act;

10.5.5 promptly notify the Data Controller of any breach of the security measures required to be put in place pursuant to this clause 10.5; and

10.5.6 ensure it does not knowingly or negligently do or omit to do anything which places the Data Controller in breach of the Data Controller's obligations under the Data Protection Act.

10.5.7 notify the Party (within five Working Days), if it receives:

(a) a request from a Data Subject to have access to that person's

Personal Data;

- (b) or a complaint or request relating to the Party's obligations under the DPA;

10.5.8 provide the Party with full co-operation and assistance in relation to any complaint or request made, including by:

- (a) providing the Party with full details of the complaint or request;
- (b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Party's instructions;
- (c) providing the Party with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Party);
and
- (d) providing the Party with any information requested by the Party;

10.6 The Data Processor shall not transfer any Personal Data to any country or territory outside the European Economic Area unless in accordance with the 8th Data Protection Principle as set out in the DPA.

10.7 The Data Processor may authorise a third party (a "Subcontractor") to process the Personal Data provided that the Subcontractor's contract:

10.7.1 includes terms which are substantially the same as this Clause 10;
and

10.7.2 will terminate automatically on termination of this Agreement for any reason.

10.8 The Data Processor shall not disclose Personal Data to any third parties other than:

10.8.1 in response to a data subject access request;

10.8.2 to employees and contractors to whom such disclosure is necessary in order to comply with their obligations under this Agreement;

10.8.3 to the extent required to comply with a legal obligation;

10.8.4 to the extent necessary for the performance of the Services; or

10.8.5 in accordance with written instruction from the data controller

10.9 The Data Processor shall permit the Data Controller or the Data Controller's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Data Processor's data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Data Controller to enable the Data Controller to verify and/or procure that the Data Processor is in full compliance with its obligations under this agreement and Provide a written description of the technical and organisational methods employed by the Data Processor for processing Personal Data (within the timescales required by the Council).

11 **Financial Arrangements:-**

11.1 The fee for the provision of the Services to the Council shall be the Funding calculated and paid in accordance with the Members' Agreement.

11.2 The Client Officer is responsible for the allocation of and recharge of the internal audit fee within the Council.

12 **The Client Officer:-**

12.1 The Client Officer shall have the following responsibilities:

12.1.1 Approve the annual Audit Plan within a reasonable period of time following its submission and, if considered necessary, to recommend to the Chief Executive as soon as practicable, any significant changes which are required;

12.1.2 Approve any variations to the Audit Plan requested by SWAP;

12.1.3 Monitor the performance of SWAP against the agreed audit plan for the Council;

12.1.4 Receive customer satisfaction questionnaires;

12.1.5 Act as budget holder for the Council;

12.1.6 Authorise payments to SWAP;

12.1.7 Approve and present reports to the Council;

12.1.8 Liaise with the Council's external auditors; and

12.1.9 Agree any response to errors/fraud/corruption/ irregularities revealed by audits carried out by SWAP

Provided that any approval required to be given by the Client Officer shall be at the discretion of the Client Officer and where he is minded not to approve any matter he shall report this to the Chief Executive as soon as practicable.

12.2 In accordance with the Audit Charter and notwithstanding 12.1.1 and 12.1.2 above, the Chief Executive has the right to audit any part of the Council's operations or activities as he sees fit.

12.3 It is envisaged and both Parties will seek to ensure (so far as they are able) with the aim of providing an effective overall audit service that the Council's external auditors will have the following duties and responsibilities:

12.3.1 Review the Audit Plan and liaise with SWAP to minimise any duplication, repetition or overlap and to ensure that the Council receives a comprehensive audit service from both its internal and external providers; and

12.3.2 Provide assurance on the competency of SWAP.

13 **Termination of Agreement**

13.1 This agreement shall take effect on the Commencement Date and shall continue until such time as the Council's withdrawal from or termination of the Members' Agreement takes effect.

13.2 If the Council elects to exercise its right of withdrawal or termination as set out in the Members' Agreement the Chief Executive will make every effort to ensure that the minimum number of audits are in progress and that any audit in progress can be taken over by its successors.

13.3 Termination is without prejudice to any rights or liabilities of either party

which have accrued prior to any termination and the requirements of the Council following any withdrawal under the Members Agreement.

14 **Dispute Resolution**

- 14.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute.
- 14.2 If the dispute cannot be resolved by the Parties pursuant to clause 14.1 the dispute shall be referred to the Board.
- 14.3 In the event that any dispute is not resolved by the Board the Parties shall utilise the dispute resolution procedure set out in the Members' Agreement.
- 14.4 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 14.5 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and Parties shall comply fully with the requirements of the Agreement at all times.

15 **LIMITATION OF LIABILITY**

- 15.1 Nothing in this Agreement shall limit or exclude either Party's liability for:
- 15.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 15.1.2 fraud or fraudulent misrepresentation; or
 - 15.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 15.2 Subject to clause 15.1:
- 15.2.1 SWAP shall under no circumstances whatever be liable to the Council, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with

this agreement; and

15.2.2 SWAP's total liability to the Council in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £500,000.

15.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

15.4 This clause 15 shall survive termination of this agreement.

16 **Discrimination**

16.1 SWAP shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

16.2 SWAP shall take all reasonable steps to secure the observance of clause 15.1 by all servants, employees or agents of the SWAP and all suppliers and sub-contractors employed in performance of this agreement.

17 **Insurance**

17.1 SWAP shall effect and maintain in respect of its potential liabilities under this Agreement:

17.1.1 public liability insurance to a minimum of £10 million ;

17.1.2 professional indemnity insurance to a minimum of £500,000; and

17.1.3 employer's liability insurance to not less than the statutory minimum level of cover

in each case in respect of any one act or occurrence or a series of acts or occurrences arising from one event but with no aggregate limit during any one period of cover and any other insurances as may be required by Law.

18 **Severance**

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

19 **Waiver**

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.

20 **Force Majeure**

Neither Party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.

21 **Assignment**

This agreement and all rights under it may be assigned or transferred by the Council to any successor body at the discretion of the Council who shall give SWAP 21 days notice in writing of any such assignment.

22 **Jurisdiction**

This agreement is made under and shall be governed by English Law.

23 **Third Parties**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement

24 **Notices**

24.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

24.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party to the addresses set out above or such other address notified to the other party in writing. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

25 Prevention of Bribery

25.1 SWAP:

25.1.1 shall not, and shall procure that any of SWAP's officers, employees, agents or sub-contractors shall not, in connection with this Agreement commit a Prohibited Act;

25.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

25.2 The SWAP shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

26 Entire Agreement

26.1 The Agreement together with the Members Agreement and any other constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this

clause shall not exclude liability in respect of any fraudulent misrepresentation.

- 26.2 The Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

This agreement has been entered into on the date stated at the beginning of it.

Signed on behalf of SWAP [NAME OF DIRECTOR],

a director, in the presence of:

.....
[SIGNATURE OF DIRECTOR]
Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS AND OCCUPATION OF WITNESS]

Authorised signatory of [COUNCIL]

Signature of duly authorised officer

.....

Full name (BLOCK CAPITALS)

DATED 2013

DORSET COUNTY COUNCIL	(1)
and	
EAST DEVON DISTRICT COUNCIL	(2)
and	
FOREST OF DEAN DISTRICT COUNCIL	(3)
and	
MENDIP DISTRICT COUNCIL	(4)
and	
SEDGEMOOR DISTRICT COUNCIL	(5)
and	
SOMERSET COUNTY COUNCIL	(6)
and	
SOUTH SOMERSET DISTRICT COUNCIL	(7)
and	
TAUNTON DEANE BOROUGH COUNCIL	(8)
and	
WEST DORSET DISTRICT COUNCIL	(9)
and	
WEST SOMERSET COUNCIL	(10)
and	
WEYMOUTH AND PORTLAND BOROUGH COUNCIL	(11)
and	
WILTSHIRE COUNCIL	(12)
and	
SOUTH WEST AUDIT PARTNERSHIP LIMITED	(13)

**DRAFT MEMBERS AGREEMENT FOR
SOUTH WEST AUDIT PARTNERSHIP LIMITED**

brownejacobson

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APPENDIX A - FIRST BUSINESS PLAN

APPENDIX B - ARTICLES OF ASSOCIATION

BETWEEN

- (3) **DORSET COUNTY COUNCIL** of County Hall, Colliton Park, Dorchester, DT1 1XJ (“DCC”)
- (4) **EAST DEVON DISTRICT COUNCIL** of Council Offices, Knowle, Sidmouth, Devon, EX10 8HL (“EDDC”)
- (5) **FOREST OF DEAN DISTRICT COUNCIL** of Council Offices, High Street, Coleford, Gloucestershire, GL16 8HG (“FDDC”)
- (6) **MENDIP DISTRICT COUNCIL** of Cannards Grave Road, Shepton Mallet, Somerset, BA4 5BT (“MDC”)
- (7) **SEDGEMOOR DISTRICT COUNCIL** of Bridgewater House, King Square, Bridgewater, Somerset, TA6 3AR (“SDC”)
- (8) **SOMERSET COUNTY COUNCIL** of County Hall, Taunton, Somerset, TA1 4DY (“SCC”)
- (9) **SOUTH SOMERSET DISTRICT COUNCIL** of PO Box 25 The Council Offices Brympton Way Yeovil Somerset BA20 2DS (“SSDC”)
- (10) **TAUNTON DEANE BOROUGH COUNCIL** of The Deane House Belvedere Road Taunton Somerset TA1 1HE (“TDBC”)
- (9) **WEST DORSET DISTRICT COUNCIL** of Stratton House, 58-60 High West Street, Dorchester, Dorset, DT1 1UZ (“WDDC”)
- (10) **WEYMOUTH AND PORTLAND BOROUGH COUNCIL** of Council Offices, North Quay, Weymouth, Dorset, DT4 8TA (“WPBC”)
- (11) **WEST SOMERSET COUNCIL** of West Somerset House, Killick Way, Williton, Taunton TA4 4QA (“WSC”)
- (12) **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (“WC”)
(together the “Members”); and
- (13) **SOUTH WEST AUDIT PARTNERSHIP LIMITED** (registered number 8215338) whose registered office is at PO Box 25, 1 Council Offices, Brympton Way, Yeovil, Somerset, BA20 2DS (the “Company”).

BACKGROUND

- (F) The Company was incorporated in England and Wales as a private company limited by guarantee on 14 September 2012 under the Companies Act 2006.

- (G) The Members have set up the Company as an in-house Local Authority Controlled company to assist them in the provision of a shared internal audit, counter fraud and governance related service (as more particularly described in **clause 3** (Business of the Company)).
- (H) The South West Audit Partnership (“**SWAP**”) currently exists as a joint committee between the Members under S101 of the Local Government Act 1972, hosted by South Somerset District Council. The Members consider that the future operation of SWAP by the Company will improve efficiency and SWAP’s management, governance and accounting processes. Following the transfer of SWAP to the Company it is intended that the joint committee be dissolved.
- (I) The Members wish to participate as Members in the Company and have agreed to enter into this Deed for the purpose of regulating their relationship with each other and certain aspects of the affairs of, and their dealings with, the Company.
- (J) The Company has agreed with the Members that it will comply with the terms and conditions of this Deed insofar as they relate to the Company.
- (K) Certain management decisions are reserved to the Members and these are set out in the Schedules to this Deed. The Company is considered by the Members to be an in-house company to each and every one of them for the reasons that, inter alia:
 - (i) the Company is required by the Members to carry out the tasks as set out in the Services Agreements and is limited to the business and objectives as set by the Members from time to time;
 - (ii) the Company is considered to be, and acts as internal, dependent and subordinate to the Members, and its primary relationships with them are governed by way of this constitutional document rather than by way of contract;
 - (iii) the Company’s revenue derives from financial allocations set and controlled by each Member as referred to in **clause 7** of this Deed;
 - (iv) the Company has been established to operate as an instrument and a technical service of the Members and the essential part of its revenue-deriving activities are carried out with the Members.

OPERATIVE CLAUSES

1. DEFINITIONS AND INTERPRETATION

In this Deed:

1.1 the following expressions have the following meanings unless inconsistent with the context:

“Act”	the Companies Act 2006
“Business Plan”	a business plan in a form to be approved by the Members pursuant to clause 8 and setting out the implementation, over a particular Financial Year, of the strategic objectives of the Company in relation to the Business, to include budgets, expenses (including any administrative expenses) and projected financial results for such Financial Year and the first Business Plan is attached to this Deed as part of Appendix A
“Applicable Requirement”	any statute, statutory provision, statutory instrument, subordinate legislation, regulation, standard, bye-law, law, direction, notice, proclamation, order, resolution, rule of court, directive, mandatory code of practice or conduct, guidance or other instrument of requirement, in all cases having the force of law within any national or local jurisdiction issued, declared, passed or given effect to in any manner by HM Parliament, the legislation making institutions of the European Union, any court or other judicial forum, any Commission of Inquiry, local authority, statutory undertaking or relevant authority or any other person or body having such power and any voluntary code of practice or conduct or other requirement which so relates and which the relevant party has elected to comply with in respect of its business generally (to the extent applicable) (including any rules or codes of conduct or best practice statements) or any other requirements relating to this Deed or otherwise in connection with any of the activities to be undertaken by the Company or any Member in connection with this Deed in all cases in force from time to time
“Articles”	the articles of association of the Company in the form set out in Appendix B to be adopted with effect from Completion and references to an Article shall mean a specific article in the Articles
“Board”	the Directors of the Company, or such of those Directors present at a duly convened meeting of the Directors at which a quorum is present in accordance with the Articles

“Business”	the business of the Company as described in clause 3 and/or such other business as the Members may unanimously agree from time to time in writing should be carried on by the Company
“Business Day”	any day (other than a Saturday or Sunday or a bank or public holiday in England and Wales)
“Business Transfer Agreement”	the agreement entered into by SSDC (1) and the Company (2) at Completion for the transfer of the Existing Business from SSDC (as Host Council for the Joint Committee)
“Chief Executive”	such person who is appointed Chief Executive of the Company pursuant to clause 6.1 of this Deed
“Completion”	the performance by the parties of their respective obligations under clause 4
“Confidential Information”	any financial or other information in whatever form in respect of the Company or the Business or the Members (in the case of the Company) or any other Member (in the case of a Member) or any matter subject to or in connection with this Deed
“Director”	any duly appointed director of the Company from time to time
“Encumbrance”	any mortgage, charge, pledge, lien, assignment by way of security, option, refusal, other preferential arrangement, third party right or interest, security interest of any kind or other arrangement having similar effect
“European Procurement Rules”	Public Contract Regulations 2006 as amended from time to time
“Existing Business”	the existing activity carried on by the Joint Committee up to the date of Completion
“Financial Regulations”	the framework of financial controls and standards necessary to achieve the proper administration of the Company's financial affairs as may be approved by the Members from time to time.
“Financial Year”	means the year commencing 1 April and expiring on the subsequent 31 March
“FOIA”	the Freedom of Information Act 2000 and any guidance and codes of practice issued thereunder from time to time by the

	Information Commissioner
“Funding”	as defined in clause 7.1
“Information”	has the meaning given under section 84 of the FOIA
“Initial Funding”	an amount of £[sterling equivalent of €200,000];
“Joint Committee”	means the Joint Committee of which the Members are members and which was established in April 2005 in accordance with the provisions of the South West Partnership Agreement (as amended from time to time)
“Member Default”	any of the matters listed in clause 16.1
“Request for Information”	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations 2004
“Reserved Matter”	any of the individual management decisions reserved to the Members and requiring unanimous consent as listed in Schedule 2
“Services”	the Services provided by the Company to each of the Members pursuant to the Services Agreements (or otherwise)
“Services Agreement”	the agreement between each of the Members and the Company from time to time whereby the Company agrees to provide services to the Members either collectively or separately
“Special Reserved Matter”	any of the individual management decisions reserved to the Members and requiring unanimous consent as listed in Schedule 1
“Subsidiary”	has the meaning given to it by section 1159 of the Act

1.2 references to any statute or statutory provisions will, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute, whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provisions, or re-enacted in such statute or provisions, and to any subsequent statute or the corresponding provisions of any subsequent statute in force at any time prior to the date of this Deed directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders,

regulations, instruments or other subordinate legislation made under the relevant statute or statutory provisions which are in force prior to the date of this Deed;

- 1.3 references to a person or to a third party will be construed so as to include bodies corporate, individuals, unincorporated associations and partnerships;
- 1.4 references to clauses and the Schedules are to clauses of and the Schedules to this Deed;
- 1.5 the Schedules form part of this Deed and will have the same force and effect as if expressly set out in the body of this Deed;
- 1.6 the headings to the clauses of this Deed and to the paragraphs of the Schedules will not affect its construction;
- 1.7 any phrase in this Deed introduced by the term “include”, “including”, “in particular” or any similar expressions will be construed as illustrative and will not limit the sense of the words preceding that term.

2. **CONSIDERATION**

In consideration of the mutual agreements and undertakings set out in this Deed the parties have granted the rights and accepted the obligations in this Deed.

3. **BUSINESS OF THE COMPANY**

The business of the Company is to be the operation of a shared internal audit, counter fraud and governance related service and such other matters as may be agreed between the Members unanimously.

4. **COMPLETION**

Completion shall take place immediately after the execution of this Deed when the parties shall take, or procure to be taken at Board and Members’ meetings of the Company the following steps, to the extent not already taken:

- 4.1 Execution and completion of the Business Transfer Agreement;
- 4.2 the appointment or designation of the following persons as Directors as appropriate:

Name	Appointment or designation
[REDACTED]	Director
[REDACTED]	Director

[REDACTED]	Director
[REDACTED]	Director
[REDACTED]	Director
[REDACTED]	Director
[REDACTED]	Director
[REDACTED]	Director
[REDACTED]	Director
[REDACTED]	Director
[REDACTED]	Director
[REDACTED]	Director

4.3 Execute and complete the Services Agreements;

4.4 the adoption of new Articles of the Company in the form set out in **Appendix B**.

4.5 a resolution will be passed of each member agreeing to dissolve the Joint Committee and each member shall provide evidence of appropriate consent or approval for them becoming a member of the Company.

5. CONDUCT OF THE COMPANY'S AFFAIRS

5.1 Each Member covenants with the other Member that so long as this Deed remains in force and effect it will:

5.1.1 be just and true to the other Member and act in good faith;

5.1.2 as soon as practicable notify the Company of any matters of which it becomes aware which may affect the Company or the Business;

5.1.3 generally do all things necessary to give effect to the terms of this Deed;

5.1.4 take all steps available to it to ensure that any meeting of the Board or any committee of the Board or any general meeting has the necessary quorum throughout; and

5.1.5 take all reasonable steps to ensure that the Company complies with its contractual obligations in relation to the Business.

5.2 Subject to **clause 11** the Chief Executive and Board shall be responsible for the day to day management of the Company in accordance with the Business Plan (but

not otherwise) and without prejudice to the generality of the foregoing shall procure that:

- 5.2.1 save in respect of the Services Agreements which will be on such terms as the Members shall decide the Company shall transact all its business on arm's length terms;
 - 5.2.2 the Company shall maintain, with a well-established and reputable insurer, adequate insurance against all risks usually insured against by companies carrying on the same or a similar business and (without prejudice to the generality of the foregoing) for the full replacement or reinstatement value of all its assets of an insurable nature;
 - 5.2.3 the Company shall keep proper books of account and therein make true and complete entries of all its dealings and transactions of and in relation to the Business;
 - 5.2.4 the Company shall provide each Member at quarterly Board meetings with unaudited management accounts for the preceding financial quarter in a form reasonably acceptable to the Members together with a budget and cashflow forecast for the remaining period of that Financial Year;
 - 5.2.5 the Company shall prepare its accounts in accordance with the Act and in accordance with historical cost convention and with all applicable accounting standards and principles and practices generally acceptable in the United Kingdom; and
 - 5.2.6 the Company shall prepare such accounts in respect of each accounting reference period as are required by statute and procure that such accounts are audited as soon as practicable and in any event not later than 4 months after the end of the relevant accounting reference period.
- 5.3 Where any Director is appointed by a Member pursuant to **Article 9.1** each and every Member shall be deemed to have consented to the Chief Executive (being independent of the members) to approve any personal conflicts of interest which arise solely as a result of that director's connection with the Member appointing him.
- 5.4 The parties acknowledge that the Company is required by the Members to enter into the Services Agreements which set out each Member's requirements for the delivery of services, furthermore the Company acknowledges that each Member's requirements set out in the relevant Services Agreement may change from time to

time and the Company will agree (and each Member will procure that it so agrees) such changes to the Services Agreements as it considers in its absolute discretion are reasonably required by each Member.

- 5.5 If at any time the Company fails to satisfy the tests required for it to be an in-house company for the purposes of the exemption originally set out in Case C-107/98 Teckal Srl v Comune di Viano (the “Exemption”) then the Members shall promptly consider in good faith any amendments or changes which can be made to the Company or its constitution so that it is regarded as an in-house company for the purposes of the Exemption or to decide that they are satisfied that the Company should proceed outside of the Exemption.

6. CHIEF EXECUTIVE

- 6.1 The Members may appoint a Chief Executive on such terms as they may think fit, the first Chief Executive being Gerald Cox.

- 6.2 The Chief Executive will:

6.2.1 be responsible for the day to day management of the Business of the Company within the terms of the Business Plan approved and adopted by the Members;

6.2.2 perform such other duties as may be delegated to the Chief Executive from time to time by the Board;

6.2.3 report to the Board and the Members with such frequency and in such manner as may be required by the Board and the Members respectively;

6.2.4 be responsible for all matters relating to Health and Safety and safeguarding legislation compliance; and

6.2.5 comply with the provisions of **clause 11** and all decisions and directions of the Board.

6.2.6 The Chief Executive will be authorised to sign Company cheques and authorise other payments by the Company in such manner as may be prescribed from time to time in the Financial Regulations.

- 6.3 The Chief Executive will be registered as an Executive Director (as defined in the Articles).

7. FUNDING

- 7.1 The Members acknowledge that the funding being made available to the Company pursuant to this **clause 7** (the “Funding”) is only that funding which is necessary

to fund the delivery of the Services to the Members. Such Funding is not designed to overly compensate the Company. Where the Company makes any substantive profit in any Financial Year it shall be applied in accordance with the provisions of the Business Plan (as provided for in **clause 8.1**) or, as the Members may by resolution agree, to reduce the annual amount payable by Members pursuant to **clause 7.4** in subsequent Financial Years.

- 7.2 All expenditure, other costs and liabilities incurred by the Company in a Financial Year that are not covered by the Funding, fees and charges and other income received by the Company in delivering the Services shall be shared by the Members pro rata to the amounts of the Funding for that Financial Year payable by them pursuant to **clause 7.5** and **7.6**
- 7.3 The delivery of Services to the Members and the provision of the Services to any other clients shall be on the basis of the Services Agreements entered into between the Company and the Members and/or any other client. The Service Agreements relating to the provision of the functions to each of the Members are annexed to this Deed. Save as provided therein the services to be provided there under can be varied at the request of any of the Members subject to the approval of the Board. Any variation to the amounts to be paid under any Service Agreement also require the approval of the Board and the Members.
- 7.4 Each Member shall pay the Company by an quarterly instalments in advance on or prior to 1st April, 1st July, 1st October and 1st January in each Financial Year that part of the Funding set out in **clause 7.5** and **7.6** below such instalments to be paid within 14 days of receipt of an account for the same.
- 7.5 For the period from the 1st April 2013 until 31st March 2014 the total annual amounts payable to the Company by the Members will be as follows:
- 7.5.1 DCC shall pay to the Company the sum of £343,980 (the “DCC annual sum”) on the date hereof;
 - 7.5.2 EDDC shall pay to the Company the sum of £111,880 (the “FDDC annual sum”) on the date hereof;
 - 7.5.3 FDDC shall pay to the Company the sum of £99,960 (the “FDDC annual sum”) on the date hereof;
 - 7.5.4 MDC shall pay to the Company the sum of £147,170 (the “MDC annual sum”) on the date hereof;
 - 7.5.5 SDC shall pay to the Company the sum of £112,770 (the “SDC annual sum”) on the date hereof;

- 7.5.6 SCC shall pay to the Company the sum of £415,160 (the “SCC annual sum”) on the date hereof;
 - 7.5.7 SSDC shall pay the sum of £117,300 (the “SSDC annual sum”) on the date hereof;
 - 7.5.8 TDBC shall pay to the Company the sum of £117,600 (the “TDBC annual sum”) on the date hereof;
 - 7.5.9 WDDC shall pay to the Company the sum £83,850 (the “WDDC annual sum”) on the date hereof;
 - 7.5.10 WSC shall pay to the Company £56,780 (hereinafter called “the WSDC annual sum”) on the date hereof;
 - 7.5.11 WPBC shall pay to the Company £117,400 (the “WPBC annual sum”) on the date hereof; and
 - 7.5.12 WC shall pay to the Company £575,500 (the “WC annual sum”) on the date hereof.
- 7.6 For the financial year commencing on 1st April 2013 and each subsequent financial year thereafter, the DCC annual sum, the EDDC annual sum, the FDDC annual sum, the MDC annual sum, the SDC annual sum, the SCC annual sum, the SSDC annual sum, the TDBC annual sum, the WDDC annual sum, the WSC annual sum, the WPBC annual sum and the WC annual sum may (if the Company, in the reasonable opinion of the Board, is unable to absorb any increased costs within its budgets) be increased by such a percentage as represents the percentage of any increase in the salary costs for any of the staff employed in the discharge of the functions and salary costs shall include any increments paid, annual pay awards, increase in National Insurance contributions and any increased contribution that the Company has to or reasonably decides in its best interests to make to the Somerset County Council Pension Fund.
- 7.7 On the date of this Deed, SSDC shall provide a grant to the Company in the amount of the Initial Funding.
- 7.8 Each Member’s obligations to provide agreed funding are owed to the Company and each other Member on a several basis.

8. BUSINESS PLAN

- 8.1 For each Financial Year the Chief Executive shall, at least 60 days prior to the end of the previous Financial Year prepare a revenue budget and business plan for approval by both the Board and by the Members (the “Business Plan”). The

Business Plan shall be submitted to the Annual General Meeting of the Members for approval and shall be approved by the Members before it becomes effective. The Company shall not incur expenditure in excess of the amounts approved in the Business Plan without the consent of all Members.

8.2 The current Business Plan as agreed between the Members and the Company is attached at **Appendix A** of this Deed.

8.3 The Board only has power to act within the parameters set by the Business Plan and must exercise any discretion given to it to meet objectives laid down for it in the Business Plan unless the Members unanimously agree otherwise.

9. ORGANISATION OF THE BOARD

9.1 Members shall have a right to appoint and remove Directors in accordance with **Article 9**.

9.2 It is intended that any Director appointed by a Member in accordance with **Article 9.1** shall be an officer of that Member, but such intention shall not be binding on the Members who shall have absolute discretion in determining the identity of such appointee.

9.3 If any Member ceases to be a Member then that Member shall:

9.3.1 be deemed to have served notice to remove from office any Directors appointed by it and shall not be entitled to appoint any persons as Directors in their place; and

9.3.2 (if applicable) procure that any Director appointed by it shall resign as an employee of the Company.

9.4 Upon such removal or resignation from the office of Director or termination of employment the said Member will use its best endeavours to procure that any such Director shall deliver to the Company a letter signed as a deed and/or the required statutory form of compromise agreement (at the Company's option) acknowledging that he or she has no claim outstanding for compensation for wrongful dismissal or unfair dismissal or entitlement to any payment for redundancy or in respect of any other moneys or benefits due to him or her from the Company arising out of his or her employment and/or its termination. In any event, the said Member shall be responsible for and shall indemnify the other Members and the Company against any claim (save for unpaid salary and benefits) by such Director for unfair or wrongful dismissal or any other claim whatsoever arising out of such Director's removal from office as a Director and/or the termination of his or her employment.

9.5 Any Member exercising its right under **Article 9.1** to remove a Director shall be responsible for and shall indemnify the other Members and the Company against any claim (save for unpaid salary and benefits due up to the date of their removal) by such Director for unfair or wrongful dismissal or any other claim whatsoever arising out of such removal from office as a Director and/or the termination of his or her employment.

10. **MEETINGS**

10.1 All Board meetings shall be held at a venue reasonably convenient for all the Directors.

10.2 A Board meeting will be held every 3 months unless determined otherwise by the Board.

10.3 The Company shall ensure that:

10.3.1 Members are sent papers for all general meetings of the Company (including but not limited to an agenda and details of any specific resolutions to be put to the meeting) no less than 28 days before the date of such meeting; and

10.3.2 Directors are sent papers for Board meetings (including but not limited to an agenda and details of any specific resolutions to be put to the meeting) not less than 7 days before the date of such meeting.

10.4 Board meetings shall be conducted in accordance with and subject to the provision set out in the Articles.

11. **MATTERS REQUIRING UNANIMOUS AND SPECIAL APPROVAL**

11.1 Notwithstanding any other provisions of this Deed or the Articles, any matter of the Company or the Business which exclusively affects any single Member's ability to attain or fulfil its public-interest objectives in full at all times shall require the consent in writing of such Member.

11.2 Unless:

11.2.1 the Members have been given an opportunity to discuss such matter at a general meeting (being either the annual general meeting of the company or any general meeting called specifically for the purpose of discussing such matter); and

11.2.2 all the Members have agreed to such matter (whether at the general meeting or otherwise in writing (including by email));

the Company will not, and the Members shall exercise their powers in relation to the Company to procure that (save as otherwise provided or contemplated in this Deed) the Company will not undertake those matters set out in **Schedule 1 (“Special Reserved Matters”)**. For the avoidance of doubt it shall not be necessary for each Member to attend such general meeting for such matter to be approved, provided such meeting is quorate and that each Member not in attendance confirms their approval in writing (including by email).

11.3 Unless otherwise agreed by 8 of the Members in general meeting or in writing (including by email) (unless otherwise required by statute), the Company will not, and the Members shall exercise their powers in relation to the Company to procure that (save as otherwise provided or contemplated in this Deed) the Company will not undertake those matters set out in **Schedule 2 (“Reserved Matter”)**.

11.4 Notwithstanding the provisions of **clause 11.2** no new member shall be admitted to the Company without such member entering into a deed of adherence in such form as the Members may reasonably require whereby such new member agrees to be bound by the terms of this Deed.

12. DEADLOCK

12.1 Meaning of Deadlock

For the purposes of this **clause 12** there shall be a Deadlock if:

12.1.1 a matter constituting a Special Reserved Matter or a Reserved Matter has been considered by the Members; and

12.1.2 no resolution has been carried by the Members in relation to the matter because of a failure in the case of a Special Reserved Matter any Member to consent to such resolution or in the case of a Reserved Matter the requisite number of Members consent to such resolution; and

12.1.3 the matter is not resolved within 10 Business Days from the date of the relevant Members meeting or the date of referral to the Members for consent (as appropriate); and

12.1.4 the Members have not unanimously resolved, as a result of the matters referred to above, that the status quo should continue.

12.2 Members’ obligations

In any case of Deadlock each of the Members shall (at the request of any Member) within 15 Business Days of Deadlock having arisen or become apparent, cause its

appointees on the Board to prepare and circulate to the Members and the other Directors a memorandum or other form of statement setting out its position on the matter in respect of which the Deadlock has arisen and its reasons for adopting that position, but on the basis that such memorandum or statement shall always be prepared and delivered on a “without prejudice” basis. Each Member shall then refer the Deadlock to the Chief Executives of each respective Member and such persons shall use all reasonable efforts in the 20 Business Days following such reference to resolve the Deadlock.

12.3 Failure to resolve Deadlock

If a resolution of a Deadlock referred pursuant to **clause 12.2** is not resolved or is not agreed in accordance with that clause (or such longer period as the Members may agree in writing) then:

12.3.1 if the Deadlock relates to a Reserved Matter then the status quo shall prevail; and

12.3.2 if the Deadlock relates to a Special Reserved Matter then the provisions of **clauses 12.4** onwards shall apply.

12.4 In the circumstances referred to in **clause 12.3.2** the Members will attempt to settle it by mediation in accordance with the model mediation procedures (“the Procedures”) published by the Centre for Effective Dispute Resolution, CEDR Solve (“the Service Provider”). To initiate a mediation, a Member must give notice in writing (“the mediation notice”) to the other Member.

12.5 The Members will seek to agree the appointment of a mediator but, failing agreement within 28 days of the service of the mediation notice, any Member may ask the Service Provider to appoint a mediator.

12.6 In the event that there are no Procedures available and/or the Service Provider is unable or unwilling to appoint a mediator, any Member may ask the President of the Law Society of England & Wales (or its successor body) to appoint a mediator and/or to recommend a mediation procedure which the Members shall adopt.

12.7 If the matter in dispute is not resolved within 40 Business Days of the service of the mediation notice then any Member may (but shall not be obliged to) within 15 Business Days after expiry of such period serve notice in writing upon the other Members and the Board that the Board shall, at the earliest practicable date:

12.7.1 convene an extraordinary general meeting of the Company to consider:

12.7.1.1 the matter from which the Deadlock arose;

12.7.1.2 any alternatives available to Members including the resignation of one Member only in order to allow the others to continue as the Members of the Company; and

12.7.2 in the event that at such extraordinary general meeting of the Company all of the Members except one (the “Majority Members”) are in agreement on the matter from which the Deadlock arose, they shall be entitled to serve twelve months notice on the Member not in agreement, and on expiry of that notice that Member shall cease to be a member of the Company.

13. **TERMINATION OF THIS DEED**

13.1 This Deed shall continue in full force and effect from the date hereof until:

13.1.1 all the Members or their successors in title agree in writing to its termination and to the date on which such termination shall take effect;

13.1.2 there is only one Member of the Company; or

13.1.3 the Company goes into liquidation whether voluntary or compulsory (other than for the purpose of an amalgamation or reconstruction approved by all the Members); or

13.1.4 the Company is struck off the register under section 1000 or section 1001 of the Act.

13.2 Without prejudice to any accrued rights and liabilities of any of the Members, the ongoing rights and liabilities of any Member pursuant to this Deed shall cease automatically upon the cessation of its membership of the Company.

13.3 Termination of this Deed pursuant to this **clause 13** shall be without prejudice to any accrued rights and liabilities of any of the Members.

14. **RECORDS, REPORTING CONFIDENTIALITY AND DISCLOSURE**

14.1 **Books and records**

The Company shall:

14.1.1 at all times keep true, accurate and up to date books and records of all the affairs of the Company;

14.1.2 subject to **clause 14.3** at all reasonable times make available to the Members and their duly authorised representatives full and complete

access (including copying facilities) to the books, records, accounts, documents and premises of the Company;

14.1.3 subject to **clause 14.3** supply to each Member such information relating to the Company as it may require and without prejudice to the foregoing shall keep the Members fully and promptly informed as to all material developments regarding the Company's financial and business affairs and promptly notify the Members of any significant event (including without limitation any litigation or arbitration) the outcome of which will or is likely to affect the Company or its Business, finances, assets or affairs; and

14.1.4 keep and maintain for 6 years after the expiry or termination of this Deed full and accurate records and accounts in respect of the operation and management of this Deed, the Business and the Services Agreements.

14.2 Reporting arrangements

14.2.1 Without prejudice to **clause 14.1**, the Board shall arrange for regular reports on the activities of the Company to be submitted to the Members for their consideration and decision as appropriate.

14.2.2 The Members shall ensure that the Directors are given reasonable notice of all meetings held by the Members at which decisions affecting the Business are proposed to be considered and that the Directors are invited to such meetings and are provided with copies of all reports and minutes in respect of the consideration of such matters.

14.3 Confidentiality

14.3.1 Subject to the following provisions, no party shall disclose any Confidential Information (whether verbal, in writing or in electronic form).

14.3.2 Such Confidential Information or any part thereof may only be disclosed to or used by persons such as employees, sub-contractors and agents of a party who need to know the same for the purposes of performing its obligations under this agreement. Each party shall keep the Confidential Information secret and confidential and shall procure that such persons shall comply with substantially similar obligations of confidentiality as set out in this Deed.

- 14.3.3 The restriction on disclosure shall not apply to Confidential Information to the extent that it
- 14.3.3.1 is required to be disclosed by law (including under FOIA) or by any governmental or other regulatory authority acting within the scope of its powers;
 - 14.3.3.2 relates to the outcome of any procurement process in accordance with the European Procurement Rules or government policy on the disclosure of information in relation to contracts awarded by local authorities;
 - 14.3.3.3 is or becomes part of the public domain through no fault of the receiving party;
 - 14.3.3.4 is known to the receiving party prior to the disclosure by the disclosing party without an obligation to keep such Confidential Information confidential;
 - 14.3.3.5 is subsequently furnished by the disclosing party to a third party without restriction on disclosure or use;
 - 14.3.3.6 is subsequently obtained by the receiving party from a third party without breach of any obligation of confidentiality owed to any third party or the disclosing party; or
 - 14.3.3.7 is approved for public release by the disclosing party and the disclosing party shall give prior written notification of such disclosure to the other party where practicable.
- 14.3.4 No party shall use any Confidential Information disclosed to it by any other party, its employees, agents or advisers for any purpose other than for the purpose of this Deed
- 14.3.5 Each party shall use a reasonable standard of care in dealing with the other party's Confidential Information so as to maintain confidentiality and security of the Confidential Information.

14.4 Freedom of Information

- 14.4.1 Each party acknowledges that it and the other parties are subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and each party shall assist and cooperate with the others (at their own expense) to enable the other parties to comply with these Information disclosure obligations.

- 14.4.2 Where a party receives a Request for Information in relation to Information which it is holding on behalf of another party, it shall:-
- (a) transfer the Request for Information to the other party as soon as practicable after receipt and in any event within five Business Days of receiving a Request for Information;
 - (b) provide the other party with a copy of all Information in its possession or power in the form that the other party requires within five Business Days (or such other period as the other party may specify) of a request from the other party; and
 - (c) provide all necessary assistance as reasonably requested by the other party to enable that party to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.
- 14.4.3 Where a party receives a Request for Information which relates to Confidential Information, it shall inform the other parties of the Request for Information as soon as practicable after receipt and in any event within five Business Days of receiving a Request for Information.
- 14.4.4 If any party determines that Information (including Confidential Information) must be disclosed under the FOIA, it shall notify the other parties of that decision at least five Business Days before disclosure.
- 14.4.5 Each party shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:-
- (a) is exempt from disclosure under the FOIA or the Environmental Information Regulations 2004;
 - (b) is to be disclosed in response to a Request for Information.
- 14.4.6 Each party acknowledges that any other party may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA, be obliged under the FOIA or the Environmental Information Regulations 2004 to disclose Information:-
- (c) without consulting with the other parties, or
 - (d) following consultation with the other parties and having taken their views into account.

14.5 Notwithstanding the provisions of **clause 14.3**, but subject to **clause 14.6** each Director (whilst he or she holds that office) will be entitled to make full disclosure to the Member appointing him or her of any information relating to the Company that Member may reasonably require.

14.6 Each party acknowledges that it and the other parties are subject to the requirements of the Data Protection Act 1998 and each party shall assist and cooperate with the others (at their own expense) to enable the other parties to comply with that act.

14.7 **Audit and Access**

The Company shall co-operate fully and in a timely manner with any request from time to time of any auditor (whether internal or external) of any of the Members to provide documents, or to procure the provision of documents, relating to the Company, and to provide, or to procure the provision of, any oral or written explanation relating to the same. In particular, each Member and/or any auditors shall be permitted access to any and all documentation in the possession, custody or control of the Company (who shall procure that any person acting on its behalf (including any sub-contractor) who has such documents and/or any information shall also provide such access. For the avoidance of doubt, this right will include the power to interview staff, sub-contractors, staff of sub-contractors take copies of any and all documentation and have access to and take copies of any computer data held by the Company.

14.8 **Duration**

The provisions of **clauses 14.1.4, 14.3 and 14.4** shall survive any termination of this Deed.

15. **CONTROLLED COMPANY**

The Members acknowledge that the Company will be a local authority controlled company for the purposes of Part V of the Local Government and Housing Act 1989 and the Company shall comply with the publicity and proprietary rules set out therein.

16. **MEMBER DEFAULT**

16.1 The following acts or omissions shall constitute a Member Default of the relevant Member (the “Defaulting Member”):

16.1.1 failure to attend without good reason any general meetings on three consecutive occasions (including an adjourned meeting);

- 16.1.2 failure on 3 consecutive occasions to ensure that at least one of the Member's appointed directors (or their alternate) attends a board meeting and such failures occur without good reason, provided always that notification is given to the Member concerned on each occasion that none of its appointed directors attend a board meeting;
 - 16.1.3 failure to provide its funding payable pursuant to **clause 7** when due; and
 - 16.1.4 any unreasonable act which prevents or materially hinders or disrupts the Company in providing the Services.
- 16.2 Where a Member has committed a Member Default, the Board shall convene a meeting of Members at which such Defaulting Member shall be invited to explain any reasons for such Member Default.
- 16.3 If the other Members accept such reasons, no further action will be taken.
- 16.4 If the other Members do not accept such reasons they may unanimously elect to expel such Defaulting Member whereupon such Defaulting Member's membership shall terminate.
- 16.5 The consequences of an expulsion are as follows:
- 16.5.1 the provision of **clause 9.3** shall apply; and
 - 16.5.2 the provision of **clauses 13.2 and 13.3** shall apply; and
 - 16.5.3 all rights of a Member to membership interests shall be deemed to have been waived by such Member; and
 - 16.5.4 the provision of **clause 18** shall apply

17. **RESIGNATION OF MEMBERS**

A Member may only resign its membership of the Company in accordance with the Articles and by at least 12 months notice and subject to the remainder of obligations in this Deed.

18. **EXIT ARRANGEMENTS**

- 18.1 The parties acknowledge that following:
- 18.1.1 the winding up of the Company;

- 18.1.2 the expiry of a notice served by the Majority Members on one Member in accordance with **clause 12.7**; or
- 18.1.3 the mutual agreement to terminate the Deed pursuant to **clause 13**; or
- 18.1.4 at the expulsion of a Member following a Member Default pursuant to **clause 16**; or
- 18.1.5 at the resignation of a Member pursuant to **clause 17**

(each being an “Exit Event”)

each Member ceasing to be a Member will need to make arrangements for the provision of the Services then carried out by the Company for each Member pursuant to their Services Agreement.

18.2 Following the occurrence of an Exit Event, each party will fully cooperate with one another and will take all reasonable steps so as to facilitate:

- 18.2.1 the orderly transfer of responsibilities for the Services to a successor body or bodies as reasonably directed by each Member so as to ensure, as far as reasonably practicable, the uninterrupted availability of the Services;
- 18.2.2 the identification of staff responsible for the provision of Services to each Member (the “Transferring Staff”);
- 18.2.3 the accurate and timely provision of all information required by the Transfer of Undertakings Protection Employment Regulations 2006 for all of the Transferring Staff;
- 18.2.4 the transfer of Transferring Staff to a successor body or bodies;
- 18.2.5 the transfer of the assets, property and any data of the Company to a successor body or bodies
- 18.2.6 the winding up of the Company where this is necessary.

18.3 Where an Exit Event results in a Member ceasing to be a Member (the “Exiting Member”) where following such cessation there remains at least five Members of the Company, the Exiting Member agrees to pay to the Company, as soon as reasonably practicable following such Exit Event, an amount equal to all costs, expenses, claims, liabilities and losses which the Board, acting reasonably, may

determine arise as a result of such cessation (including, but not limited to and costs associated with the transfer of the Transferring Staff, pension liabilities and costs of redundancies arising as a result of such cessation).

- 18.4 Where an Exit Event results in a Member ceasing to be a Member (the “Exiting Member”) where as a result of such cessation there would be less than five Members of the Company, the provisions of **clause 18.3** shall apply, save that such Member may (but shall not be obliged to) within 15 Business Days of such cessation serve notice in writing upon the other Members and the Board that the Board shall, at the earliest practicable date convene an extraordinary general meeting of the Company to consider any alternatives available to Members including the winding up or other restructuring of the Company (and the Board shall act reasonably in considering such alternatives). In the event that such meeting does not unanimously resolve otherwise, the provisions of **clause 18.3** shall apply.

19. PROPRIETARY/PUBLICITY REQUIREMENTS AND ANNOUNCEMENTS

- 19.1 The Company will comply, and the Members agree to procure that the Company complies, with all Applicable Requirements including those relating to proprietary and publicity requirements.
- 19.2 All announcements, advertisements, circulars or other publications concerning or relating to the subject matter of this Deed or the Company shall be co-ordinated save as expressly stated and/or made by the Company (save as required by law) unless otherwise agreed by the Members or as expressly stated otherwise in this Deed.
- 19.3 The parties consider that the Company is a contracting authority for the purposes of the Public Contracts Regulations 2006 however, should it be held that it is not, the Company will and the Members shall use reasonable endeavours to procure, that the Company will act in accordance with those regulations as if it were a contracting authority.

20. NO PARTNERSHIP OR AGENCY

Nothing in this Deed shall constitute a partnership between the parties hereto or constitute one the agent of another and none of the parties shall do or suffer anything to be done whereby it shall or may be represented that it is the partner or agent of a party hereto (save as aforesaid) unless such party is appointed partner or agent of that other party with the consent in writing of that party.

21. **WAIVER**

The waiver by any party of any default by any other party in the performance of any obligation of such other party under this Deed shall not affect such party's rights in respect of any other default nor any subsequent default of the same or of a different kind nor shall any delay or omission of any party to exercise any right arising from any default, affect or prejudice that party's rights as to the same or any future default.

22. **VARIATION**

Any variation of any term of this Deed shall be in writing duly signed by the Members and the Company.

23. **CONFLICT WITH ARTICLES**

Where the provisions of the Articles conflict with the provisions of this Deed, the Members agree that the provisions of this Deed shall prevail, to the intent that they shall if necessary in any case procure the amendment of the Articles to the extent required to enable the Company and its affairs to be administered as provided herein.

24. **NOTICES**

Subject to the provisions of the Articles regulating certain types of notices:

24.1 Any demand, notice or other communication given or made under or in connection with this Deed will be in writing.

24.2 Any such demand, notice or other communication will, if given or made in accordance with this **clause 24**, be deemed to have been duly given or made as follows:

24.2.1 if sent by prepaid first class post, on the second Business Day after the date of posting; or

24.2.2 if delivered by hand, upon delivery at the address provided for in this **clause 24**; or

24.2.3 if sent by facsimile, on the day of transmission provided that a confirmatory copy is, on the same Business Day that the facsimile is transmitted, sent by pre-paid first class post in the manner provided for in this **clause 24**;

provided however that, if it is delivered by hand or sent by facsimile on a day which is not a Business Day or after 4.00 pm on a Business Day, it will instead be deemed to have been given or made on the next Business Day.

- 24.3 Any such demand, notice or other communication will, in the case of service by post or delivery by hand, be addressed to the recipient at the recipient's address stated in this Deed or at such other address as may from time to time be notified in writing by the recipient to the sender as being the recipient's address for service.
- 24.4 Any such demand, notice or other communication will, in the case of service by facsimile, be sent to the recipient or to any person service on whom (in accordance with the foregoing provisions of this **clause 24**) is deemed to be service on the recipient, using a facsimile number then used by the recipient or (as the case may be) such other person at an address which (in accordance with such provisions) could have been used for service by post.
- 24.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

25. **FAIRNESS CLAUSE**

In the event that any circumstance arises during the term of this Deed which is not within the contemplation of the parties at the date hereof and not provided for in this Deed either expressly or impliedly then the parties agree that such matter shall be dealt with and resolved in such manner as shall operate between them for fairness and, so far as is possible, without detriment to the interests of any of them.

26. **UNLAWFUL FETTER ON THE COMPANY'S STATUTORY POWERS**

- 26.1 Notwithstanding any other provision contained in this Deed no Party (including for the avoidance of doubt the Company) shall be bound by any provision of this Deed to the extent that it would constitute an unlawful fetter on any of their statutory powers, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.
- 26.2 Nothing in this Deed shall be construed:
- 26.2.1 to be a resolution of all the members of the Company in the absence of a properly passed resolution in accordance with the Articles; or

26.2.2 as a fetter on the statutory rights and obligations of a Member (where applicable).

27. COSTS

Each of the parties hereto will pay its own legal costs and expenses incurred in connection with the preparation and any subsequent variation of this Deed.

28. SEVERABILITY

The illegality, invalidity or unenforceability of any clause or part of this Deed will not affect the legality, validity or enforceability of the remainder. If any such clause or part is found by any competent court or authority to be illegal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

29. EXERCISE OF POWERS

29.1 Words denoting an obligation on a party to do any act, matter or thing include, except as otherwise specified, an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit or allow infringement of that restriction.

29.2 Where a Member is required under this Deed to exercise its powers in relation to the Company to procure a particular matter or thing, such obligation shall be deemed to be satisfied by such Member exercising its voting and other rights as a member and ensuring that any Director appointed by it shall procure such matter or thing, subject to the Director acting in accordance with his fiduciary duty to the Company.

30. ENTIRE AGREEMENT

This Deed, the Service Agreements and the Articles constitute the entire contractual relationship between the parties in relation thereto and there are no representations, promises, terms, conditions or obligations between the parties other than those contained or expressly referred to therein. This clause does not restrict liability of either party for representations made fraudulently.

31. ASSIGNMENT

The Members shall not assign nor transfer nor purport to assign nor transfer any of its rights or obligations hereunder (other than to a successor body) without the prior written consent of the other Members.

32. **CONTRACT (RIGHTS OF THIRD PARTIES) ACT**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

33. **LAW AND JURISDICTION**

This Deed shall be governed by and construed in accordance with the laws of England and Wales and each of the parties hereto submits to the exclusive jurisdiction of the English and Welsh Courts.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE 1

Special Reserved Matters

- 1 (Matters which need the consent of all the Members in general meeting or in writing).
- 2 Admit any person as a new member of the Company (save as permitted in this Deed or the Articles).
- 3 Adopt any Business Plan in accordance with **clause 8.2**.
- 4 Alter any of the provisions of the Business Plan, the Articles or any rights attaching to the Membership interests.
- 5 Make any capitalisation, repayment or other distribution of any amount standing to the credit of any reserve of the Company.
- 6 Create any Encumbrance over the whole or any part of the undertaking or assets of the Company.
- 7 Extend its activities outside the scope of the Business or cease to carry on the Business.
- 8 Alter the Company's accounting reference date.
- 9 Approve or sign the annual accounts of the Company.
- 10 Appoint or remove any director of the Company otherwise than in accordance with this Deed or the Articles.
- 11 Agree the form and content of the Financial Regulations or any alteration thereto.
- 12 Enter into any contract to do any of the things referred to in the foregoing paragraphs of this Schedule.
- 13 Save as pursuant to **clause 12**, make any petition or resolution to wind up the Company (or any subsidiary) or any petition for an administration order or any order having similar effect in a different jurisdiction in relation to such company unless, in any case, such Company is at the relevant time insolvent and the Directors reasonably consider (taking into account their fiduciary duties) that it ought to be wound up.

SCHEDULE 2

Reserved Matters

- 1 Otherwise than in accordance with Financial Regulations sell, lease (as lessor), license (as licensor), transfer or otherwise dispose of any of its assets at a total price per transaction exceeding £50,000 otherwise than in the ordinary course of the Business and to the extent provided for in the Business Plan and provided that the aggregate value of such transactions never exceeds £100,000 in any one calendar year.
- 2 Otherwise than in accordance with Financial Regulations purchase, lease (as lessee), license (as licensee) or otherwise acquire any assets at a total cost to the Company per transaction exceeding £50,000 (in the case of a lease, being the total payable over the duration of the lease) otherwise than in the ordinary course of the Business and to the extent provided for in the Business Plan and provided that the aggregate value of such transactions never exceeds £100,000 in any one calendar year.
- 3 Appoint or remove or approve the remuneration of the auditors of the Company.
- 4 Acquire or agree to acquire any freehold or leasehold interest in or licence over land.
- 5 Otherwise than in accordance with Financial Regulations enter into or make any revenue contract with a cost to the Company of more than £50,000 unless provided for in the Business Plan (“a material contract”) and provided that the aggregate value of all Material Contracts (not provided for in the Business Plan) never exceeds £100,000 in any one calendar year.
- 6 Give notice of termination of any material contract or make any material variation or amendment to any such contracts.
- 7 Appoint or remove the Chief Executive or any member of the management team.
- 8 Enter into any contracts or arrangements with any of the Members or Directors or any person with whom any Member or Director is connected, associated or interested (whether as director, consultant, Member or otherwise).
- 9 Provide any services to any person or organisation that is not a Member and/ore enter into any contract in relation to such services.
- 10 Change the name of the Company or its registered office.

- 11 Form any subsidiary of the Company, or acquire any shares in any other company, whether through subscription or transfer, such that the company concerned becomes a subsidiary of the Company.
- 12 Otherwise than in accordance with Financial Regulations enter into any contract which cannot be terminated within a 12 month period and/or under which the liability for such termination could exceed £5,000.
- 13 Give or take any loans, borrowing or credit (other than normal trade credit in the ordinary course of business or any overdraft agreed by the Board of Directors) in excess of £15,000 or cause the aggregate indebtedness of the Company to exceed £20,000, or cause the Company to exceed its overdraft limit as approved by the Directors from time to time.
- 14 Enter into any agreement not in the ordinary course of the Business and/or which is not on an arm's length basis or amend its standard terms of business.
- 15 Give any guarantee, suretyship or indemnity to secure the liabilities of any person or assume the obligations of any person.
- 16 Otherwise than in accordance with Financial Regulations incur any item or series of items of capital expenditure of more than £100,000 unless provided for in the Business Plan.
- 17 Recruit or dismiss any employee (other than Directors to whom paragraph 17 below applies) whose remuneration exceeds £45,000 per annum subject to the aggregate limit set out in paragraph 17 below unless provided for in the Business Plan provided always that any employee who is not a member of the management team may be dismissed for gross misconduct without the prior consent of the Members.
- 18 Pay any fees, remuneration or other emoluments to any Director or vary any such fees, remuneration or emoluments other than salary, benefits and expenses due to any member of the management team in the ordinary course of business. For the avoidance of doubt this paragraph 17 shall not apply to the payment or reimbursement of expenses properly incurred by any Director in the course of carrying out his duties in relation to the Company nor to any indemnity by the Company to which the Director is entitled pursuant to the Articles or under any relevant law.
- 19 Consolidate or amalgamate with any company, association, partnership or legal entity or acquire any business or undertaking of any other person.

- 20 Enter into any joint venture, partnership or profit sharing arrangement with any person.
- 21 Change any of the Company's accounting or reporting practices other than as may be required to comply with applicable accounting standards.
- 22 Enter into any partnership or profit sharing arrangement with any person or create any share option, bonus or other incentive scheme.
- 23 Make any agreement with any revenue authorities or any other taxing authority, or make any claim, disclaimer, election or consent of a material nature for tax purposes in relation to the Company, its business, assets or undertakings.
- 24 Change the bankers of the Company or open or close any bank accounts.
- 25 License, assign or otherwise dispose of intellectual property rights owned by the Company.
- 26 Commence, settle or defend any claim, proceedings or other litigation brought by or against the Company, except in relation to debt collection in the ordinary course of the Business.
- 27 Enter into any contract to do any of the things referred to in the foregoing paragraphs of this Schedule.

THE COMMON SEAL of)
DORSET COUNTY COUNCIL)
was hereunto affixed in the presence of)

THE COMMON SEAL of)
EAST DEVON DISTRICT COUNCIL)
was hereunto affixed in the presence of)

THE COMMON SEAL of)
FOREST OF DEAN DISTRICT COUNCIL)
was hereunto affixed in the presence of)

THE COMMON SEAL of)
MENDIP DISTRICT COUNCIL)
was hereunto affixed in the presence of)

THE COMMON SEAL of)
SEDGEMOOR DISTRICT COUNCIL)
was hereunto affixed in the presence of)

THE COMMON SEAL of)
SOMERSET COUNTY COUNCIL)
was hereunto affixed in the presence of)

THE COMMON SEAL of)
SOUTH SOMERSET DISTRICT COUNCIL)
was hereunto affixed in the presence of)

THE COMMON SEAL of)
TAUNTON SOMERSET DISTRICT COUNCIL)
was hereunto affixed in the presence of)

THE COMMON SEAL of)
WEST DORSET DISTRICT COUNCIL)
was hereunto affixed in the presence of)

THE COMMON SEAL of)
WEST SOMERSET COUNCIL)
was hereunto affixed in the presence of)

THE COMMON SEAL of)
WEYMOUTH AND PORTLAND BOROUGH)
COUNCIL was hereunto affixed in the)
presence of)

THE COMMON SEAL of)
WILTSHIRE COUNCIL)
was hereunto affixed in the presence of)

Executed as a deed by)
SOUTH WEST AUDIT PARTNERSHIP LIMITED)
)
acting by _____, a director)

in the presence of:

Witness signature:

Name:

Address:

Occupation:

APPENDIX A

Business Plan

APPENDIX B

Articles of Associations

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

OF

SOUTH WEST AUDIT PARTNERSHIP LIMITED

(Adopted by special resolution passed on 2013)

INTRODUCTION

1 INTERPRETATION

In these Articles, unless the context otherwise requires:

Act: means the Companies Act 2006;

Appointor: has the meaning given in article 15(1);

Articles: means the company's articles of association for the time being in force;

Business Day: means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;

Chief Executive: any person appointed as the Chief Executive of the Company from time to time;

Conflict: means a situation in which a director has or can have, a direct or indirect interest that conflicts or possibly may conflict, with the interests of the Company;

Eligible Director: means a director who would be entitled to vote on the matter at a meeting of directors (but excluding in relation to the

authorisation of a Conflict pursuant to **Article 7**, any director whose vote is not to be counted in respect of the particular matter);

Executive Director: means a Director appointed in accordance with **Article 9.2.1**;

Initial Directors: means [REDACTED];

Local Authorities Order: means the Local Authorities (Companies) Order 1995;

Local Government Act: means the Local Government Act 1972;

Member: means a member of the Company;

Member Director: means a Director appointed in accordance with **Article 9.2.2** or **9.2.3**;

Model Articles: means the model articles for private companies limited by guarantee contained in Schedule 2 of the Companies (Model Articles) Regulations 2008 (*SI 2008/3229*) as amended prior to the date of adoption of these Articles and reference to a numbered "Model Article" is a reference to that article of the Model Articles; and

Relevant Agreement: any agreement in place between the Members relating to the Company from time to time.

- 1.1 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.
- 1.2 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.3 A reference in these Articles to an "article" is a reference to the relevant article of these Articles unless expressly provided otherwise.

- 1.4 Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of:
- 1.4.1 any subordinate legislation from time to time made under it; and
 - 1.4.2 any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
 - 1.4.3 Any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.5 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by these Articles.
- 1.6 Model Articles 2, 8, 9(1) and (3), 11(2) and (3), 13, 14(1), (2), (3) and (4), 17(2), 22(2), (3), 30(2), 35, 38 and 39 shall not apply to the Company.
- 1.7 Model Article 7 shall be amended by:
- 1.7.1 the insertion of the words "for the time being" at the end of article 7(2)(a); and
 - 1.7.2 the insertion in article 7(2) of the words "(for so long as he remains the sole director)" after the words "and the director may".
- 1.8 Model Article 20 shall be amended by the insertion of the words "(including alternate directors)" before the words "properly incur".

2 GUARANTEE

The liability of each Member is limited to £1, being the amount that each Member undertakes to contribute to the assets of the Company in the event of it being wound up while he is a Member or within one year after he ceases to be a Member, for

- 2.1 payment of the Company's debts and liabilities contracted before he ceases to be a Member,

- 2.2 payment of the costs, charges and expenses of the winding up, and
- 2.3 adjustment of the rights of the contributories among themselves.

DIRECTORS

3 UNANIMOUS DECISIONS

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

4 CALLING A DIRECTORS' MEETING

- 4.1 Any director may call a directors' meeting by giving not less than 14 Business Days' notice of the meeting (or such lesser notice as all the directors may agree) to the directors or by authorising the company secretary (if any) to give such notice.
- 4.2 Notice of a directors' meeting shall be given to each director in writing (including email).
- 4.3 A director who is absent from the UK and who has no registered address in the UK shall not be entitled to notice of the directors' meeting.

5 QUORUM FOR DIRECTORS' MEETINGS

- 5.1 Subject to **article 5.2**, the quorum for the transaction of business at a meeting of directors is the greater of:
 - 5.1.1 2 Eligible Directors; or
 - 5.1.2 two thirds of the Eligible Directors then appointed,

provided that where any have been appointed, at least one Member Director must be present in order to constitute a quorum.

5.2 For the purposes of any meeting (or part of a meeting) held pursuant to **article 7** to authorise a Conflict, if there is only one Eligible Director in office other than the Interested Director(s) (defined in **article 7.1**), the quorum for such meeting (or part of a meeting) shall be one Eligible Director.

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

6 CASTING VOTE

If the numbers of votes for and against a proposal at a meeting of directors are equal, the chairman or other director chairing the meeting shall not have a casting vote.

7 DIRECTORS' CONFLICTS OF INTEREST

7.1 The directors may, in accordance with the requirements set out in this article, authorise any Conflict proposed to them by any director which would, if not authorised, involve a director (an **Interested Director**) breaching his duty under section 175 of the Act to avoid conflicts of interest.

7.2 Any authorisation under this **article 7** shall be effective only if:

7.2.1 to the extent permitted by the Act, the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these Articles or in such other manner as the directors may determine;

7.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director; and

- 7.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's vote had not been counted.
- 7.3 Any authorisation of a Conflict under this **article 7** may (whether at the time of giving the authorisation or subsequently):
- 7.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
- 7.3.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict;
- 7.3.3 provide that the Interested Director shall or shall not be an Eligible Director in respect of any future decision of the directors in relation to any resolution related to the Conflict;
- 7.3.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
- 7.3.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the company) information that is confidential to a third party, he shall not be obliged to disclose that information to the company, or to use it in relation to the company's affairs where to do so would amount to a breach of that confidence; and
- 7.3.6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the directors to the extent they relate to such matters.
- 7.4 Where the directors authorise a Conflict, the Interested Director shall be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict.

- 7.5 The directors may revoke or vary such authorisation at any time, but this shall not affect anything done by the Interested Director prior to such revocation or variation in accordance with the terms of such authorisation.
- 7.6 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors in accordance with these Articles or by the company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.
- 7.7 Subject to sections 177(5) and 177(6) of the Act, a director who is in any way, whether directly or indirectly, interested in a proposed transaction or arrangement with the Company shall declare the nature and extent of his interest to the other directors before the Company enters into the transaction or arrangement in accordance with the Act.
- 7.8 Subject to sections 182(5) and 182(6) of the Act, a director who is in any way, whether directly or indirectly, interested in a transaction or arrangement that has been entered into by the Company shall declare the nature and extent of his interest to the other directors as soon as is reasonably practicable in accordance with the Act, unless the interest has already been declared under **article 7.7**.
- 7.9 Subject, where applicable, to any terms and conditions imposed by the directors in accordance with **article 7.3**, and provided he has declared the nature and extent of his interest in accordance with the requirements of the Act, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the company:
- 7.9.1 may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise (directly or indirectly) interested;
- 7.9.2 shall be an Eligible Director for the purposes of any proposed decision of the directors (or committee of directors) in respect of

such existing or proposed transaction or arrangement in which he is interested;

7.9.3 shall be entitled to vote at a meeting of directors (or of a committee of the directors) or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which he is interested;

7.9.4 may act by himself or his firm in a professional capacity for the company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;

7.9.5 may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the company is otherwise (directly or indirectly) interested; and

7.9.6 shall not, save as he may otherwise agree, be accountable to the company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.

8 RECORDS OF DECISIONS TO BE KEPT

Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in permanent form, so that they may be read with the naked eye.

9 APPOINTMENT AND NUMBER OF DIRECTORS

9.1 Each Member may from time to time by notice in writing appoint one person to be a Director provided that the number of Directors holding office and appointed by any single Member (which for the avoidance of doubt shall

exclude any Member Director) shall not exceed one. Each such Director appointed shall hold office and may at any time be removed from office by notice in writing by the Member which appointed that Director. Any Director appointed pursuant to this Article 9.1 may only be removed from office by the Member which appointed that Director.

9.2 The Directors may, with the consent of 8 of the Members in general meeting or in writing, appoint from time to time as Directors:

9.2.1 the Chief Executive and up to two other employees of the Company involved in the day-to-day management of the business of the Company; and

9.2.2 one additional director being an elected councillor of a Member which is a County Council; and

9.2.3 one additional director being an elected councillor of a Member which is a District Council,

save that such Directors shall not for the purposes of these articles have any right to vote at any Board Meeting although they shall have a right to attend and speak at such Board Meetings.

9.3 Any director appointed pursuant to clause 9.2 shall cease to be a Director upon:

9.3.1 ceasing to be, in the case of an Executive Director, an employee of the Company or, in the case of a Member director, an elected councillor of a Member; or

9.3.2 the direction of at least 8 of the Members of the Company (either in general meeting or in writing) that they should cease to be a Director.

9.4 The first Directors of the Company shall be the Initial Directors.

9.5 Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall not be subject to any maximum but shall not be less than 12.

- 9.6 In the event that any Director appointed by a Member is unable to attend any meetings of the Directors, a Member shall be entitled from time to time to appoint any one person to attend such meetings who shall be entitled to attend any and all such meetings and to speak and place items on the agenda for discussion but shall not be entitled in any circumstances to vote.

10 APPOINTMENT AND REMOVAL OF ALTERNATE DIRECTORS

- 10.1 Any director (other than an alternate director) (**Appointor**) may appoint as an alternate any other director, or any other person approved by resolution of the directors, to:
- 10.1.1 exercise that director's powers; and
 - 10.1.2 carry out that director's responsibilities,
 - 10.1.3 in relation to the taking of decisions by the directors, in the absence of the alternate's Appointor.
- 10.2 Any appointment or removal of an alternate director must be effected by notice in writing to the company signed by the Appointor, or in any other manner approved by the directors.
- 10.3 The notice must:
- 10.3.1 identify the proposed alternate; and
 - 10.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate of the director giving the notice.

11 RIGHTS AND RESPONSIBILITIES OF ALTERNATE DIRECTORS

- 11.1 An alternate director may act as alternate director to more than one director and has the same rights in relation to any decision of the directors as the alternate's Appointor.
- 11.2 Except as the Articles specify otherwise, alternate directors:
- 11.2.1 are deemed for all purposes to be directors;

11.2.2 are liable for their own acts and omissions;

11.2.3 are subject to the same restrictions as their Appointors; and

11.2.4 are not deemed to be agents of or for their Appointors

11.2.5 and, in particular (without limitation), each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his Appointor is a Member.

11.3 A person who is an alternate director but not a director:

11.3.1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's Appointor is not participating);

11.3.2 may participate in a unanimous decision of the directors (but only if his Appointor is an Eligible Director in relation to that decision, but does not participate); and

11.3.3 shall not be counted as more than one director for the purposes of articles 11.3(a) and (b).

11.4 A director who is also an alternate director is entitled, in the absence of his Appointor(s), to a separate vote on behalf of each Appointor, in addition to his own vote on any decision of the directors (provided that an Appointor for whom he exercises a separate vote is an Eligible Director in relation to that decision), but shall not count as more than one director for the purposes of determining whether a quorum is present.

11.5 An alternate director may be paid expenses and may be indemnified by the company to the same extent as if he were a director but shall not be entitled to receive any remuneration from the company for serving as an alternate director except such part (if any) of the remuneration otherwise payable to the alternate's Appointor as the Appointor may by notice in writing to the company from time to time direct.

12 TERMINATION OF ALTERNATE DIRECTORSHIP

An alternate director's appointment as an alternate (in respect of a particular Appointor) terminates:

- 12.1 when the alternate's Appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
- 12.2 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 director;
- 12.3 on the death of the alternate's Appointor; or
- 12.4 when the alternate director's Appointor ceases to be a director for whatever reason.

13 SECRETARY

The directors may appoint any person who is willing to act as the secretary for such term, at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the directors so decide, appoint a replacement, in each case by a decision of the directors.

14 APPLICATION FOR MEMBERSHIP

No person shall become a Member unless he has completed an application for membership in a form approved by the directors from time to time and such appointment has been approved unanimously in writing by the existing Members at the relevant time. A letter shall be sent to each successful applicant confirming their membership of the Company and the details of each successful applicant shall be entered into the Register of Members.

15 TRANSFER OF MEMBERSHIP

- 15.1 A Member may not transfer his membership to another person.
- 15.2 Any successor body to any Member shall automatically be admitted as a Member upon such original Member ceasing to carry on its functions relevant to its membership of the Company.

16 EXPULSION OF MEMBER

- 16.1 A Member shall cease to be a Member in the event of:
- 16.1.1 such Member's resignation, by the giving of written notice to the Company; or
 - 16.1.2 such Member's ceasing to be a Local Authority as defined by section 270(1) of Local Government Act (or any statutory re-enactment thereof);
- unless such step would lead to the Company having no Members.
- 16.2 The membership of any Member may be terminated without his consent on the terms of any Relevant Agreement.

DECISION MAKING BY MEMBERS

17 VOTES OF MEMBERS

- 17.1 Subject to the Act, at any general meeting every Member who is present in person (or by proxy) shall on a show of hands have one vote and every Member present in person (or by proxy) shall on a poll have one vote.
- 17.2 The Members shall exercise all voting rights held by them in relation to the Company so as to procure (insofar as they are able by the exercise of such rights) that:
- 17.2.1 the Company fully complies with any obligations which it may from time to time have pursuant to applicable law, including the Local Government Act, Local Authorities Order and the Acts, including but not limited to:
 - (a) the requirement to state in all relevant documents that the Company is controlled by the relevant Member, as required by the Local Authorities Order;
 - (b) the requirement to obtain any consent to the appointment of the Company's auditor as required by the Local Authorities Order; and
 - (c) the requirement to, until the expiry of the period of four years beginning with the date of the meeting, to make

available for inspection by any Member of the public, a copy of the minutes of any General Meeting of the Company as required by the Local Authorities Order. In accordance with the Local Authorities Order, no copies of minutes are to be made available which include any matter the disclosure of which would be in breach of any enactment, or of any obligation owed to any person; and

17.2.2 the activities of the Company are at all times consistent with the functions which may be performed by the Members in their respective capacities as public sector bodies.

18 POLL VOTES

18.1 A poll may be demanded at any general meeting by any qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.

18.2 Article 30(3) of the Model Articles shall be amended by the insertion of the words "A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made" as a new paragraph at the end of that article.

19 PROXIES

19.1 Article 31(1)(d) of the Model Articles shall be deleted and replaced with the words "is delivered to the company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate".

19.2 Article 31(1) of the Model Articles shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid ,unless the directors, in their discretion, accept the notice at any time before the meeting" as a new paragraph at the end of that article.

20 GENERAL MEETINGS

- 20.1 The Company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it; and not more than 15 months shall elapse between the date of one annual general meeting and that of the next. Provided that so long as the Company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the Directors shall appoint. All general meetings other than annual general meetings shall be called general meetings.
- 20.2 The Directors may call general meetings.
- 20.3 A quorum of a general meeting shall be 8 of Members present in person or by proxy or by duly authorised representative (where appropriate).
- 20.4 If at any time there are not within the United Kingdom sufficient Directors capable of acting to form a quorum, any Director or any two Members may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

ADMINISTRATIVE ARRANGEMENTS

21 MEANS OF COMMUNICATION TO BE USED

- 21.1 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
- 21.1.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five Business Days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);

- 21.1.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
 - 21.1.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
 - 21.1.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.
- 21.2 For the purposes of this article, no account shall be taken of any part of a day that is not a Business Day.
- 21.3 In proving that any notice, document or other information was properly addressed, it shall suffice to show that the notice, document or other information was addressed to an address permitted for the purpose by the Act.

22 INDEMNITY AND INSURANCE

- 22.1 Subject to **article 22.2**, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:
- 22.1.1 each relevant officer shall be indemnified out of the company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer in the actual or purported execution and/or discharge of his duties, or in relation to them, including any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the company's (or any associated company's) affairs; and
 - 22.1.2 the company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any

proceedings or application referred to in **article 22(1)(a)** and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

- 22.2 This article does not authorise any indemnity to the extent that such indemnity would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law and any such indemnity is limited accordingly.
- 22.3 The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant officer in respect of any relevant loss.
- 22.4 In this article:
- 22.4.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
 - 22.4.2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company; and
 - 22.4.3 a "relevant officer" means any director or other officer or former director or other officer of the Company or an associated company, but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).