

## Cabinet

Tuesday 11 December 2018

4.00 pm

Ground Floor Meeting Room G02C - 160 Tooley Street, London  
SE1 2QH

## Supplemental Agenda No. 2

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### Contact

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Date: 6 December 2018

<b>Item No.</b> 7.	<b>Classification:</b> Open	<b>Date:</b> 11 December 2018	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Deputation requests	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Proper Constitutional Officer	

### **RECOMMENDATION**

1. That cabinet considers whether or not to hear a deputation request on behalf of Canada Estate tenants and residents association.

### **BACKGROUND INFORMATION**

2. When considering whether to hear the deputation request, cabinet can decide:
  - To receive the deputation at this meeting or a future meeting; or
  - That the deputation not be received; or
  - To refer the deputation to the most appropriate committee/sub-committee.
3. A deputation shall consist of no more than six people, including its spokesperson. Only one member of the deputation shall be allowed to address the meeting for no longer than five minutes. After this time cabinet members may ask questions of the deputation for up to five minutes. At the conclusion of the questions, the deputation will be shown to the public area where they may listen to the remainder of the open section of the meeting.

### **KEY ISSUES FOR CONSIDERATION**

4. The deadline for receipt of deputation requests for this cabinet meeting was Midnight 5 December 2018. The request was received just after this constitutional deadline.

### **Deputation requests**

#### **Canada Estate Tenants and Residents Association**

5. A deputation request has been submitted on behalf of Canada Estate tenants and residents association. The tenants and residents association state they are concerned about the surveyors report and lack of information in respect of low rise blocks. Further information relating to these concerns will be given by the deputation at the meeting.
6. An item relating to the Canada Water Social Regeneration charter is set out at item 22 of this agenda.

### **Community impact statement**

7. The Southwark Constitution allows for deputations to be made by groups of people resident or working in the borough.

**BACKGROUND DOCUMENTS**

Background Papers	Held At	Contact
Cabinet procedure rule 2.11 on deputations:	160 Tooley Street London SE1 2QH	Paula Thornton 020 7525 4395
<b>Link (copy and paste into browser):</b> <a href="http://moderngov.southwark.gov.uk/documents/s63344/Cabinet%20procedure%20rules_July%202015.pdf">http://moderngov.southwark.gov.uk/documents/s63344/Cabinet%20procedure%20rules_July%202015.pdf</a>		

**APPENDICES**

No.	Title
None	

**AUDIT TRAIL**

<b>Lead Officer</b>	Chidilim Agada, Proper Constitutional Officer		
<b>Report Author</b>	Paula Thornton, Constitutional Officer		
<b>Version</b>	Final		
<b>Dated</b>	6 December 2018		
<b>Key Decision?</b>	No		
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>			
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>	
Director of Law and Democracy	No	No	
Strategic Director of Finance and Governance	No	No	
<b>Cabinet Member</b>	No	No	
<b>Date final report sent to Constitutional Team</b>		6 December 2018	

**ITEM 9 – THE COUNCIL TAX BASE FOR 2019-20****[Amendment to paragraph 24 of the published report]**

~~The council tax collection performance as at 30 November 2018 is 73.8% (30 November 2017 was 70.0%). to be used in the calculation of the council tax base for 2019-20. Performance compared with the same period last year is slightly lower due to the removal of discounts and exemptions over recent months. This process raises the amount collectible; however those amounts only fall due later in the year. This effectively lowers the collection rate over the short term but increases cash collectable in the long term.<sup>1</sup>~~

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<sup>1</sup> The deleted text was based on older data 31 October 2018 with a collection performance of 66.7%. The actual performance figure came in at 73.8%, the text is therefore superfluous.

<b>Item No.</b> 23.	<b>Classification:</b> Open	<b>Date:</b> 11 December 2018	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Capital Letters: Procurement of accommodation for homeless households	
<b>Ward(s) or groups affected:</b>		All wards; homeless households	
<b>Cabinet Member:</b>		Councillor Stephanie Cryan, Housing Management and Modernisation	

## **FOREWORD - COUNCILLOR STEPHANIE CRYAN, CABINET MEMBER FOR HOUSING MANAGEMENT AND MODERNISATION**

The housing crisis and the impact of welfare reform has seen an increase in homelessness in Southwark which is placing significant demand on the council's homelessness service.

In Southwark we have over 2700 households living in temporary accommodation and we have identified a potential overspend of £4.7m in 2019/20 in the costs of providing accommodation. In September cabinet agreed our new Homelessness Strategy which highlighted the importance of working with neighboring boroughs to help both procure and reduce the costs of temporary accommodation.

Southwark has been working with other London Boroughs and with London Councils to create a new central company, Capital Letters, to procure accommodation for homeless households. It is hoped that by working together with a pan London procurement process that we can reduce the competition that currently exists between boroughs for securing accommodation and that we can stabilise costs. In time we also hope to increase both the supply and the quality of accommodation for homeless households.

Participating in the scheme will give the council access to additional government funding which will help alleviate some of the pressures on our budget.

Southwark has long been recognized as a leader in the field of homelessness prevention, selected as a trailblazer by the government for the new Homelessness Reduction Act and chosen to run a training academy for housing professionals across the UK. This proposal cements our growing reputation as a council willing to find new and innovative solutions to one of the most difficult challenges we currently face. More importantly we hope it will make a contribution to accommodating some of our most vulnerable residents and families at the sharp end of the housing crisis.

## **RECOMMENDATIONS**

1. Approves Southwark Council's membership of 'Capital Letters', a new company established by a number of London boroughs to procure and to manage accommodation for homeless households.
2. Note that the company is to be financed at least initially by support grant from the Ministry of Housing, Communities and Local Government (MHCLG) for a period to be confirmed.

3. Note there are two separate levels of membership open to boroughs; 'A Membership' or 'B Membership' (the difference is explained further in paragraphs 19 – 27), and approves the council's involvement as an 'A' member.
4. Note the council's obligations as an A Member would be as follows:
  - To transfer a proportion of the council's procurement and housing management activities to the company; and
  - To transfer sufficient resources to the company to fulfil these activities. The majority of participating boroughs intend to meet this obligation through the secondment of existing posts.
5. Approve that formal incorporation by the Council into the company will be agreed by the Strategic Director for Finance and Governance in consultation with the Strategic Director for Housing and Modernisation and the Cabinet Member for Housing and Modernisation.
6. Notes that a separate 'Gateway 1 Procurement Strategy' report will be presented for approval in due course. This Gateway report would formally authorise the transfer of some procurement activities from the council to Capital Letters.
7. Notes that the gateway report will refer to a small proportion of the council's total procurement activity, at least during the company's first year of operation.
8. Notes the council's participation in the scheme is dependent on the secondment of officers from the Housing & Modernisation department, or the payment of staff in kind, where this is not covered by grant funding and that any decision for officers to undertake a secondment is voluntary.
9. That cabinet notes an evaluation report will be presented to cabinet within the first 12 months of operation, giving cabinet the opportunity to consider the council's continued level of involvement in Capital Letters.

## **BACKGROUND INFORMATION**

10. The revenue monitoring report presented to cabinet in September 2018 set out the considerable pressures on temporary accommodation. The council has identified a potential overspend of £4.7 million in 2019-20.
11. London boroughs previously collaborated to reduce costs in this area through the 'Inter Borough Temporary Accommodation Agreement'. The agreement was approved by the London Councils Leaders' Committee in March 2010. It set maximum prices in each borough to prevent authorities from 'outbidding' one another. The success of this initiative led the MHCLG to provisionally allocate funding for further collaboration.
12. A number of options were put forward for consideration by the London Councils' Leaders Committee and the London Councils' Housing Directors Group. They decided to commission detailed proposals on the creation of a new company to centralise the procurement and management of accommodation for homeless households.
13. The proposals were developed by a working group including representatives

from MHCLG, the Greater London Authority and the 33 boroughs. The umbrella organisation London Councils is providing leadership and administrative support to the project.

14. The company is expected to start operating from June 2019 subject to sufficient boroughs deciding to participate. To date, seven boroughs have received approval from Cabinet or through delegated decision to join Capital Letters as “A” category Members:

- Bexley
- Brent
- Ealing
- Haringey
- Lewisham
- Tower Hamlets
- Waltham Forest

15. A further eight boroughs are known to be seeking or considering approval to join as “A” Members in the coming weeks. These include:

- Barking and Dagenham
- Southwark
- Westminster

## **KEY ISSUES FOR CONSIDERATION**

### **Proposal**

16. The proposal is to create a new company limited by guarantee to procure and manage leased and Private Rented Sector (PRS) accommodation on behalf of London boroughs. The company would initially be supported by a grant from MHCLG.
17. The accommodation procured through the company would be within London boundaries and could be used by boroughs as either temporary or permanent accommodation under a range of statutory duties. The distribution of procured accommodation between the company members and sharing of benefits will need to be formally agreed. Sharing of company costs over and above grant funding both during the initial period of grant funding and beyond will also need to be agreed.
18. The governance arrangements for the company and the business plan for operations will need to be finalised once members are confirmed.

### **Options**

19. There are three options open to the council:

#### Join as an “A” Member

20. “A” Members would transfer a proportion of procurement to the company. The minimum requirement for A Membership is 50% of a council’s yearly leased and PRS procurement. To put this into context, a borough that procured 400 leased/PRS units in 2018/19 would have to procure 200 units through Capital

Letters in 2019/20.

21. "A" Members would also transfer an appropriate resource to procure this number of properties. This resource could be provided by seconding existing procurement staff to the company, or providing equivalent funding to Capital Letters.
22. "A" Members could leave the company with six months written notice. Detailed terms are still to be confirmed.
23. As an "A" Member, the council would have access to the highest possible amount of MHCLG grant funding for this initiative.

#### Join as a "B" Member

24. "B" Members would transfer some procurement to the company but less than the 50% threshold required for "A" Membership.
25. B Members could leave the company with three months written notice.
26. As a B Member, the council would only have access to a proportion of the MHCLG grant.
27. The council would possibly have an opportunity to become an "A" Member at a later date, on terms where details are still to be confirmed.

#### Do not join the company

28. The council could choose not to join the company at this point in time. As with paragraph 27, the council would possibly have an opportunity to join at a later date, although the benefits may not be as strong.
29. "A" Membership' is considered by housing officers to provide the strongest potential benefit to the council, and this is the level of membership that cabinet are being asked to approve.

#### **Company structure and governance**

30. The law firm Trowers & Hamlin have drafted Articles of Association for London Councils and a Members' Agreement. These documents have been included as appendices to this report (Appendices A and B).
31. The company would be established as a company limited by guarantee. This is a common approach for not for profit organisations. There would be no shareholders or dividends and all surpluses would be reinvested in the company. Participating boroughs would be limited liability members.

#### Members' guarantee (extract from the Articles of Association)

*Each Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while they are a Member of the Company or within one year after they cease to be a Member of the Company for payment of the debts and liabilities of the Company contracted before they cease to be a Member of the Company and of the costs charges*



*and expenses of winding up such amount as may be required not exceeding one pound.*

Funding (extract from the Members' Agreement)

*In the event that the Company requires additional finance from time to time, no Member shall be required to provide any such funding or to guarantee or provide any security or accept any other liability with respect to any borrowings by, or loan facilities made available to, the Company.*

32. Capital Letters would be a 'Teckal' company. The company would be controlled by participating authorities but could be awarded contracts and services without the requirement for a competitive tender process involving external parties.
33. Notwithstanding point 32, the council would award services to the company in line with its standard internal procurement processes. A 'Gateway 1 Procurement Strategy' report would follow this Cabinet report, formally authorising the council to transfer a proportion of procurement and housing management activities to the company.
34. The company will be governed by a 'Member Board' and a 'Board of Directors'. The Member Board would consist of Councilors and would meet annually. The Board of Directors would consist of senior officers and would meet quarterly. It is envisioned that A Members would nominate a Director or Senior Officer to the Board. The number of directors and their nomination will need to be confirmed.
35. The two boards would report to the following bodies:
  - MHCLG
  - London Councils Leaders Committee (meets quarterly)
  - Chief Executives London Committee (meets quarterly)
  - London Housing Directors' Group (meets quarterly)
36. A number of additional groups have been established to ensure the company is ready to start operating from June 2019.
  - Steering group
  - Working group of interested boroughs
  - IT sub-group
  - Human Resources sub-group
  - Communications sub-group
37. The council would not be expected to have an involvement in the day-to-day running of the company, in terms of the company's HR, finance, legal or other support functions.
38. The council would be required to notify its insurance provider of the decision to join the company.

## **Resource implications**

### Financial

39. Capital Letters is supported by a grant from MHCLG, allocated from the 'Flexible

Homelessness Support Grant'. £37.8 million has been allocated until 2021-22.

Year	Funding
2018-19	£1.1 million
2019-20	£7 million
2020-21	£12.9 million
2021-22	£16.8 million
Total	£37.8 million

40. The council would continue to be responsible for the cost of placements made through the company, but the grant from MHCLG would be used to subsidise these costs. This subsidy would take two forms:

Incentive payments to landlords (for PRS properties only)

41. It is common for councils to offer an incentive payment for new landlords. This payment can amount to several thousand pounds for each property provided. Capital Letters would subsidise up to £1,500 of this cost (per landlord) on behalf of boroughs.

Leasing top up (for leased properties only)

42. There is often a shortfall between the cost of leasing a property and the amount that can be claimed back through Housing Benefit. Capital Letters would pay a 'top-up fee' of up to approximately £30 per week, per placement, funded from the MHCLG grant.
43. These subsidies will not be paid indefinitely. They are being offered as an incentive to encourage boroughs to join Capital Letters and are expected to be gradually phased out over the first three years of the company's life on a schedule still to be determined as part of their business planning process. It is hoped that authorities would then choose to remain members of the company regardless of subsidies. The council could decide to serve notice and withdraw from the company as and when the subsidies change.
44. There is one other element of the scheme anticipated to deliver financial benefit for participating boroughs. The council recoups the cost of temporary accommodation placements through a subsidy from central government. This subsidy is based on local Housing Benefit rates but is currently capped at 90% of the January 2011 rate. As an external company, Capital Letters would be able to claim 100% of the current rate.
45. The average cost reduction per TA placement is expected to be £53 per week. The table below sets out how this figure has been calculated.:

	In House	Per week Capital Letters	Saving
Average weekly rent	£292	£292	
Average Housing Benefit receivable	-£211	-£234	
Net cost to council	£81	£58	-£23 Additional housing benefit claimed
Grant subsidy (averaged per week)		-£30	-£30 Grant subsidy
Total cost to council	£81	£28	-£53 Average council saving per placement

46. This figure does not account for the contribution to overheads that the council would be required to make, as set out in more detail in paragraph 65. There is

therefore no saving being projected in the council's policy and resourcing strategy for 2019/20, although this will be continually reviewed.

47. The council could also transfer responsibility for housing management to the company but would incur additional fees. These have been provisionally calculated as £30 per unit, per week for rent collection and £46 per unit, per week for management. The council would have to complete a detailed financial analysis before deciding whether to transfer these responsibilities to the company. This financial analysis is expected to form part of the Gateway 1 Procurement Strategy report.

#### Financial Management

48. The council would continue to be responsible for the costs of placements made through the company. The establishment of the company will not alter the fact that a lack of temporary accommodation supply in London means rents are higher than Housing Benefit rates, creating significant shortfalls that councils have to cover.
49. The council would also continue to be responsible for the salaries of any seconded staff, or alternatively have to provide equivalent funding for these posts to the company. The council would also be required to make an additional contribution to the company's overheads.
50. However, the council would have to make those placements and pay those salaries regardless of whether it is a member of Capital Letters. If the council does choose to become a member of Capital Letters then the subsidy from the MHCLG grant and the ability to claim a higher rate of Housing Benefit should result in cost reductions, especially when extrapolated over a significant number of placements.
51. It is difficult to accurately forecast the exact cost reduction because any calculation involves a significant number of assumptions, unknowns and variables. These cost reductions will not have a significant impact on the overspend currently forecasted by the council but should make a positive difference.
52. The council would have to review its position as and when the subsidy rates change.

#### Procurement

53. The council uses various forms of temporary accommodation, including:
  - Nightly paid (short term) agreements with landlords
  - Leased (long-term) agreements with landlords
  - Empty council properties (for example, those awaiting regeneration)
54. The council also procures rented properties from private landlords (PRS). These properties are offered to individuals and families to prevent or relieve their homelessness, negating the need for temporary accommodation.
55. Capital Letters would only procure leased or PRS accommodation, in line with boroughs attempts to limit the prevalence of the more expensive but less secure

nightly paid agreements.

56. This means the majority of procurement will continue to be handled in-house after joining Capital Letters. Paragraphs 57 – 59 set out how the council has arrived at this conclusion.
57. At the end of October 2018, the council had 3,053 households in temporary accommodation. 2,646 of these households were being assisted under homelessness legislation. The majority were accommodated using nightly paid agreements, which fall outside the scope of Capital Letters.
58. In 2017/18, the council acquired approximately 400 units of leased or PRS accommodation. Capital Letters will use the equivalent figure for 2018/19 as a benchmark. If Southwark procures another 400 units in 2018/19 then this would be the benchmark figure. The council would be required to ensure that 50% of this figure – 200 units – is procured through Capital Letters during 2019/20 to fulfil the entry requirements for A Membership.
59. This would constitute a relatively small proportion – approximately seven percent – of the council's total temporary accommodation stock.
60. The full procurement implications would be clarified in the Gateway 1 Procurement Strategy report.

#### Staffing

61. Participating boroughs would have to transfer sufficient resources to Capital Letters to fulfil 50% of their leased/PRS procurement. These resources could be provided by seconding staff, providing funding for new staff or transferring existing contracts with suppliers.
62. The council has a dedicated procurement team in the Housing Solutions service. The team consists of eight posts
  - 3 Procurement Officers (permanent)
  - 3 Procurement Officers (fixed term)
  - 1 Procurement Assistant
  - 1 Procurement Apprentice (fixed term)
63. If the council chose secondment then it would have to transfer an appropriate number of the Procurement Officers to procure approximately 200 placements, assuming this is the benchmark figure for 2018-19. It is thought this would be the equivalent of a maximum of two members of staff but the exact number would be based on a number of variables and cannot be confirmed at this time. The decision to undertake a secondment is voluntary.
64. Alternatively, the council could consider transferring funding to Capital Letters for the company to directly recruit the appropriate number of officers to procure 200 placements. In this scenario, the current team would be unaffected.
65. The council would also be liable for an additional 20% contribution to office overheads, which would cover additional staffing related costs such as travel, IT and training etc. It is not yet confirmed where the new company will be located.

- 66. The council will consult with any affected staff and trade unions in line with its re-organisation procedures.
- 67. It should be noted that the Housing Solutions service is currently going through a staffing restructure.
- 68. London Councils are procuring HR consultancy support for Capital Letters and member boroughs will work together as part of the proposed HR sub-group to ensure consistency of approach on staffing, whether via transfer of staff or funding.

### Policy implications

- 69. The decision to join Capital Letters would support several of the council's existing policies and strategic objectives.
- 70. The Council Plan for 2018 – 2022 sets out the council's vision of a *"fairer future for all"*, and the difficulty of achieving this within the context of having made £227 million of savings since 2010. It says the council will have to *"spend money as if it is from our own pocket"* and *"work with neighbouring boroughs, London Councils and the Mayor of London to achieve our aims and to deliver for residents"*.
- 71. In September 2018 cabinet agreed a new Homelessness Strategy for 2018 – 2022. The strategy sets out the problems associated with the increased use of temporary accommodation. It pledges to *"explore and develop initiatives for London-wide procurement"*, *"increase the number of leased accommodation [units]"*, which offers *"greater stability for households"* and *"expand how we access the landlord market"*. It also restates the council's long-term commitment to *"eliminate bed and breakfast and hostel accommodation"*.
- 72. The Localism Act 2011 enabled councils to discharge their statutory duty to homeless households through the private rented sector. The council has not implemented this policy to date. If the council were to consider private sector discharge at a future date then the accommodation procured by Capital Letters could be used in this capacity.
- 73. The major risks are summarised in the table below.

Risk	Mitigation
a. There are not a sufficient number of officers in the Procurement Team who wish to undertake a secondment to Capital Letters.	The council would have to consider alternative options, including transferring resources to the company in lieu of officers, or even withdrawing from the company as an A Member and reconsidering B Membership or non-participation.

Risk	Mitigation
b. The company does not deliver the required number of properties	<p>The council is proposing to transfer a relatively small portion of procurement to the company; approximately 7% of all temporary accommodation stock as of October 2018.</p> <p>The council could serve six months notice to withdraw from the company.</p>
c. The company encounters financial difficulties	The company will be established as a company limited by guarantee and the council would be a limited liability member.
d. The company has a negative effect on the existing procurement team	The council would consult affected staff and support them throughout the process. The decision to accept a secondment would be voluntary. Managers would be instructed to maintain regular contact with seconded staff. Seconded staff would remain on their Southwark terms and conditions and have the right of return.
e. The council withdraws from the company but loses access to properties and landlords procured through the scheme	This would be discussed with the company's Board of Directors to confirm rights of access. The small percentage of procurement transferred to the company should limit the level of risk.

### Community impact statement

74. The council has a statutory duty to consider the potential positive or negative effects on communities and in particular, groups with protected characteristics.
75. An equality and health impact analysis was prepared for the Homelessness Strategy – which recommended the exploration of London-wide procurement – and was presented to cabinet in September 2018.
76. The analysis identified that certain groups with protected characteristics are more likely to approach the council for support. As a consequence, these groups are disproportionately represented in temporary accommodation. Specifically:
- Black African, Black Caribbean, Asian and Other ethnic groups
  - The 25-44 age group (this group is also more likely to have children)
  - Women
  - Households with children/pregnant women
  - Children
  - Lone parents
  - Low income households.
77. The council has a statutory duty to ensure all temporary accommodation placements are suitable for the applicant and all members of their household. One key aspect of suitability is the location of placements. For example, ensuring placements consider a household's pre-existing links to employment, education and/or support networks.

78. Southwark would not have automatic priority to properties procured by Capital Letters in the borough. Instead, Capital Letters would attempt to place Southwark households “as locally as possible”. The council does not envision that this change will result in any more households being placed outside of the borough and any change is considered reasonable in recognition of three mitigating factors:
- Limited effect – The majority of placements will continue to be made by Southwark’s internal procurement team. As such, the effect will be limited.
  - Suitability rights – Local authorities must ensure any placement is suitable and there is statutory guidance on assessing suitability. The council has a written policy based on this statutory guidance. This policy will continue to apply to all placements, including those made through Capital Letters. Households have the right to a multiple-stage review if they think a placement is not suitable. It is considered unlikely that the council and Capital Letters would be in conflict over the suitability of a placement.
  - Financial constraints – Rising rents combined with static Housing Benefit rates mean it is becoming increasingly difficult to procure temporary accommodation in Southwark and the council will increasingly have to consider out of borough options regardless of whether a placement is made in-house or through Capital Letters. For the same reason it is considered unlikely that Capital Letters would procure in Southwark at any significant scale.

### **Consultation**

79. The proposals have been developed in conjunction with and supported by MHCLG, GLA, London Councils, the 33 London Boroughs, including the London Councils’ Housing Directors Group and London Councils’ Leaders Group.
80. Consultation with affected staff would begin at the earliest opportunity if cabinet approves the council’s participation in Capital Letters. Consultation would be conducted in line with the council’s policies and in discussion with trade unions.
81. Consultation with service users is not planned at this current time. Capital Letters would only procure within London, in areas where the existing Procurement team are already active, meaning there should be minimal effect on service users.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Human Resources**

82. If membership of Capital Letters is agreed, Southwark would be represented on the London-wide HR sub-group for the scheme. Set up and resourcing of the proposed company will require further and more detailed operational work at a London and local level which will inform whether we transfer staff or funding. The sub-group will also look at the wider establishment of the new limited company including recruitment to roles outside of those seconded from member authorities.
83. Within Southwark, there are interdependencies to be addressed around the resourcing and service delivery implications for the existing housing solutions service within housing & modernisation where a reorganisation is under way.

Consultation and discussion would be required with staff and trade unions and would be conducted in line with our established reorganisation procedures.

#### **Director of Law and Democracy**

84. Section 1 Localism Act 2011 provides the council with a 'general power of competence'. This power can be relied upon to establish and participate in Capital Letters.
85. The Council has a duty under Part VII of the Housing Act 1996 ("HA 1996") as amended by the Homelessness Reduction Act 2017, to secure that accommodation is available for eligible applicants who are homeless, in priority need and not intentionally homeless.
86. The duty under section 188 HA 1996 is to provide interim temporary accommodation if the applicant meets the appropriate criteria. Pending a decision that a housing duty is owed, the authority will secure accommodation for their occupation.
87. When a housing duty is accepted under Section 193 of the Housing Act 1996, the housing authority is obliged to provide housing assistance.
88. Section 206 of HA 1996 provides that a housing authority may discharge its housing function under Part VII by, amongst other things, securing that the applicant obtains accommodation from some other person. The accommodation must be suitable accommodation. It is envisaged that joining Capital Letters will secure the availability of more private rented and leased properties, reducing the need to place homeless families in B & B and hotel annexes.
89. Paragraph 31 of this report states that Capital Letters will be a company limited by guarantee and the participating boroughs would be limited liability members.
90. Paragraph 32 states that the company will be Teckal compliant. This means that as a company wholly owned by the participating local authorities it will be exempt from the Public Contracts Regulations 2015 and as such the council can award contracts to Capital Letters without the requirement for a competitive tender process involving external parties. However, the council must ensure compliance with its internal Contract Standing Orders.
91. The draft Articles of Association and Members Agreement will need to be reviewed and agreed by the participating local authorities.
92. Paragraphs 61 to 68 refer to staffing considerations. As the Human Resources concurrent at paragraph 82 sets out, the set up and resourcing of the proposed company will require further and more detailed operational work. Any proposals informed by that work which may affect council staff must be managed under the council's relevant human resources procedures to ensure that the council acts in accordance with employment legislation.

#### **Strategic Director of Finance and Governance**

93. The strategic director of finance and governance notes the risks outlined in para. 73 and notes that membership of the company is limited by guarantee (para. 31)



94. The number of households presenting as homeless is increasing year on year. The cost of temporary accommodation (TA) is forecast to increase by a further £1.5m p.a. over and above the £3.1m cost pressure recorded for the current financial year.
95. Strategic director of finance and governance cannot comment on the efficacy of this initiative compared to the existing sourcing arrangement. Acknowledging it is difficult to forecast the numbers of properties that would be used to prevent households becoming homeless or to place households presently in T.A., any activity that reduces costs, however marginal, should be considered. Para 41 notes that every household in TA placed in a property through this initiative will save £53 per week (£2,500 for a 12 month period) through a combination of government grant and additional housing benefit. Of the £53 per week saving, £23 is sustained as increased housing benefit and £30 p.w. an initial application of government grant. The sustained saving per household would be £1,200 p.a in additional housing benefit. Presently of the forecast 200 additional households pa. Requiring TA, 50% would be placed in the private rented sector. If these additional 100 properties were sourced through this initiative, the annual saving to the council is £120k p.a in additional housing benefit plus any one off saving from government grant.
96. The strategic director of finance and governance notes that the saving will be offset by the contribution to company overheads (para 65). There will be a break-even point for the number of properties that are required in order for a saving to be made from this initiative. This should be considered when finalising the total procurement being transferred to the company to inform whether membership is cost effective.
97. Whilst not all properties might be used for existing households in TA, every household that is prevented from requiring TA will avoid up to £7,500 for a 12 month period.
98. The strategic director of finance and governance notes that the tax implications for the company have been considered within the business plan and governance arrangements. Under section 33 of the Value Added Tax Act 1994, Local Authorities are able to recover VAT on their costs. When finalising staffing, financial and governance arrangements, care must be taken so as not to be exposing company Members to unexpected VAT liabilities.

#### **REASONS FOR URGENCY**

99. Boroughs are required to confirm whether they intend to participate in Capital Letters by the end of December 2018.

#### **REASONS FOR LATENESS**

100. It has not been possible to circulate this paper five clear days in advance of the meeting because requests for amendments and additional information were received close to the original submission deadline.

**BACKGROUND DOCUMENTS**

Background Papers	Held At	Contact
None		

**APPENDICES**

No.	Title
Appendix 1	Articles of Association
Appendix 2	Members Agreement

**AUDIT TRAIL**

<b>Cabinet Member</b>	Councillor Stephanie Cryan, Housing Management and Modernisation		
<b>Lead Officer</b>	Michael Scorer, Strategic Director of Housing and Modernisation		
<b>Report Author</b>	Sean Backhurst, Service Development Manager		
<b>Version</b>	Final		
<b>Dated</b>	6 December 2018		
<b>Key Decision?</b>	Yes		
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>			
<b>Officer Title</b>		<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Democracy		Yes	Yes
Strategic Director of Finance and Governance		Yes	Yes
Head of Human Resources		Yes	Yes
<b>Cabinet Member</b>		Yes	Yes
<b>Date final report sent to Constitutional Team</b>			6 December 2018

dated

2018

**APPENDIX 1**

**[CAPITAL LETTERS] LIMITED**

## **Articles of Association**

Company number: [ TBC ]

**trowers & hamlins**

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## The Companies Act 2006

### Company limited by guarantee and not having a share capital

#### Articles of Association

of

[CAPITAL LETTERS] LIMITED

#### 1 Interpretation and definitions

In these Articles unless the context otherwise requires:

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

**Articles** means these Articles of Association;

**Board** means the board of Directors of the Company from time to time;

**Chair** means the chair of the Board appointed pursuant to Article 21.10.1 or in his absence any vice or deputy chair appointed pursuant to Article 21.10.3;

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

**Committee** means any committee constituted under the provisions of these Articles;

**Conflict of interest** has the meaning given in Articles 21.9.1 and 21.9.2;

**"A" Director** means a Director appointed by an "A" Member in accordance with article 21.1.2 from time to time;

**"B" Director** means a Director nominated by a "B" Member in accordance with article 21.1.3 and appointed in accordance with article 21.1.4 from time to time;

**"C" Director** means a Director appointed in accordance with article 21.1.5 from time to time;

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

**electronic form** and **electronic** means have the meaning given in section 1168 of the Companies Act 2006;

**financial year** means the year commencing 1 April and expiring on the subsequent 31 March;

**"A" Members** means the Members of the Company designated as "A" Members in accordance with Article 12 from time to time;

**"B" Members** means the Members of the Company designated as "B" Members in accordance with Article 12 from time to time;

**Local Authority** means a local authority in England or Wales as defined in section 270 of the Local Government Act 1972;

**Member** means a person whose name is entered in the Register of Members of the Company and including both "A" Members and "B" Members and **Members** and **Membership** shall be construed accordingly;

**Members Agreement** means the agreement entered into between the Members to regulate their relationship as Members of the Company;

**Ordinary Resolution** has the meaning given in section 282 of the Companies Act 2006;

**Public Body** means a body governed by public law as defined in the Public Contracts Regulations and **Public Bodies** and **Non-Public Bodies** shall be construed accordingly;

**Public Contracts Regulations** means Public Contracts Regulations 2015 and any statutory modification or re-enactment thereof for the time being in force;

**Special Resolution** has the meaning given in section 283 of the Companies Act 2006;

**Subsidiary** has the meaning given by section 1159 of the Act;

**the United Kingdom** means Great Britain and Northern Ireland; and

**Voting Representative** means the individual appointed by each Member to attend, speak and vote at general meetings on its behalf in accordance with Article 12.8.

## 2 **Interpretation**

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

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

## 3 **Model Articles**

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

## 4 **Name**

The name of the company is [Capital Letters] Limited (the **Company**).

## 5 **Registered office**

The Company's registered office is to be located in England and Wales.

## 6 **Objects**

### 6.1 The objects of the Company shall be:

6.1.1 to procure accommodation for homeless households and those at risk of homelessness by providing services in connection therewith to:

(a) the "A" Members; and

(b) to any other customers (including "B" Members) as considered appropriate by the Members from time to time provided that any services to non-Members shall always remain incidental to the primary aim of providing services to the Members and do not account for more than 20% of the turnover of the Company in any financial year (or such other percentage of turnover as may be permitted by law from time to time) at all times as set out in Regulation 12 of the Public Contract Regulations;

6.1.2 to undertake the management of accommodation for homeless households and those at risk of homelessness; and

6.1.3 to provide such other services and undertake such other functions as are agreed by the Members from time to time.

6.2 The Company is not established or conducted for private gain and any surplus or assets are used principally for the benefit of the community. Its purpose shall be to fulfil its objects and whilst it is not a charity it will carry out its activities with charitable, benevolent and philanthropic aims in mind.

## 7 **Powers**

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

7.2 The Members may, by Special Resolution, direct the Directors to take, or refrain from taking, specified action provided that no such Special Resolution invalidates anything which the Directors have done before the passing of Special Resolution.

7.3 Without limiting the powers described in Article 7.1 the Company shall have the power:

7.3.1 to purchase and maintain insurance for the benefit of any persons who are or were at any time Directors, officers or employees of the Company or any other company which is a Subsidiary or Subsidiary undertaking of the Company or in which the Company has any interest, whether direct or indirect, or who are or were at any time trustees of any pension fund in which any employee of the Company or of any other such company or Subsidiary undertaking are or have been interested, indemnifying such persons against liability for negligence,

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

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

## **8 Application of income and property**

- 8.1 The income and property of the Company shall be applied solely in promoting the Company's objects.
- 8.2 No distribution shall be paid or capital otherwise returned to the Members in cash or otherwise other than
  - 8.2.1 the payment in good faith:



- (a) of reasonable and proper remuneration (including pensions, contributory pension payments, payment of premiums to pension policies and terminal grants and gratuities) to any officer or employee of the Company in return for any services rendered to the Company;
- (b) of fees, remuneration or other benefit in money or money's worth to a company or other body corporate of which a Director may be a Member holding not more than 2% of the share capital and controlling not more than 2% of the voting rights at general meetings of such company or body corporate;
- (c) to any Director of reasonable out-of-pocket expenses;
- (d) of reasonable and proper remuneration to any Director who is not an employee of the Company in return for any services rendered to the Company;
- (e) of reasonable and proper rent for premises demised or let by any Member;
- (f) of reasonable and proper interest on money lent by any Member;
- (g) of any indemnities to Directors or other officers of the Company under Article 24.1 and any premium in relation to insurance in respect of liabilities of Directors and other officers of the Company in accordance with Article 24.2; or
- (h) subject to prior approval of all Members, to Members (and any former Member(s) which contributed to a distributable surplus within the preceding five years) of any surplus of the Company.

## 9 **Limited liability**

The liability of the Members is limited.

## 10 **Members' guarantee**

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

## 11 **Winding up**

If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and liabilities any property whatsoever such property shall be divided between the Members (whose names appear in the register of Members at the date of winding up or dissolution) and any former Member(s) which contributed to the surplus within the five years preceding such winding up or dissolution. The division shall be proportionate to the total contribution to such surplus by each Member or former Member (based on a

reasonable relationship between the former Member(s) contribution and the distributable surplus) prior to the date of winding up or dissolution. For the purposes of this Article a certificate in writing signed by the duly appointed auditors for the time being of the Company as to the proportions in which any property is to be divided will be sufficient.

## 12 **Admission of Members and cessation of Membership**

12.1 The Members of the Company shall be divided into "A" Members and "B" Members. "A" Members and "B" Members will have the rights as specified in these Articles.

12.2 The subscribers shall be the first Members of the Company and shall be designated as "A" Members.

12.3 The Members may admit any other Public Body to Membership on receiving:

12.3.1 a written application confirming that it agrees to be bound by the provisions of the Articles; and

12.3.2 where a Members' Agreement has been entered into, a signed deed of adherence to the Members' Agreement

from any such body.

12.4 A Member admitted under article 12.3 above shall be designated as an "A" Member or a "B" Member by the "A" Members upon admission.

12.5 A Public Body shall only be admitted as an "A" Member if they agree to ensure that at least 50% of the total procurement for that body of dwellings to support the discharge of that body's statutory responsibilities for homeless households or those at risk of homelessness (excluding nightly paid properties or properties outside of the London area) is to be procured by the Company.

12.6 A Public Body admitted to Membership who does not agree as per article 12.5 but will receive services from the Company will be admitted as a "B" Member.

12.7 The rights powers and obligations of each Member under these Articles shall take effect on the admission of that organisation to Membership.

12.8 Each Member shall nominate a person to act as its representative in the manner provided in Section 323 of the Act. Such representative shall have the right on behalf of the Member to attend meetings of the Company and vote thereat and to exercise all rights of Membership on behalf of the Member. The relevant Member may by written notice to the Company revoke the nomination of such representative and may nominate another representative in his place.

12.9 The rights of each Member shall be personal and shall not be transferable and shall be exercisable only by the Member or its Voting Representative.

12.10 Membership shall not be transferrable.

12.11 An "A" Member shall cease to be a Member of the Company if (i) it serves no less than six months' written notice to do so or (ii) is removed or expelled for any reason by ordinary resolution of the Members passed at a General Meeting or under any agreement entered

into between the Members from time to time and (iii) if at any time the Member ceases to be a Public Body or (iv) otherwise in connection with these Articles and the noting of the cessation of Membership in the Company's register of Members shall be conclusive in this regard

- 12.12 A "B" Member shall cease to be a Member of the Company if (i) it serves no less than six months' written notice to do so or (ii) is removed or expelled for any reason by ordinary resolution of the Members passed at a General Meeting or under any agreement entered into between the Members from time to time and (iii) if at any time the Member ceases to be a Public Body or (iv) otherwise in connection with these Articles and the noting of the cessation of Membership in the Company's register of Members shall be conclusive in this regard.
- 12.13 At the end of each financial year, the "A" Members shall each confirm to the Company (in a form that shall be agreed by the "A" Members from time to time) the percentage of its total procurement for that "A" Member of dwellings to support the discharge of its statutory responsibilities for homeless households or those at risk of homelessness (excluding nightly paid properties or properties outside of the London area) that was undertaken via the Company that financial year. In the event that this percentage is less than 50% the "A" Members have, at their discretion, the ability to terminate the "A" Member's Membership in accordance with article 12.14.
- 12.14 The decision to terminate an "A" Member's Membership in accordance with article 12.13 shall be taken at a meeting of the "A" Members (i) called on no less than 7 clear days' notice; (ii) attended in person or by proxy by at least 50% of the "A" Members (excluding the "A" Member whose Membership is being considered for termination); and (iii) made by no less than 50% of the total "A" Members excluding the "A" Member whose membership is being considered for termination.
- 12.15 In the event that an "A" Member's Membership is terminated pursuant to article 12.14 the Membership shall terminate immediately upon the decision having been taken.
- 12.16 In the event that an "A" Member's Membership is terminated in accordance with article 12.12 that Member may be re-admitted to the Membership of the Company as a "B" Member, subject to compliance with article 12.3 and 12.6.

### 13 **General meetings and resolutions**

- 13.1 The Company shall once in every calendar year hold a general meeting which for the purposes of these Articles shall be called the annual general meeting. The Directors may call general meetings and on the requisition of any two or more "A" Members shall forthwith proceed to convene a general meeting as required pursuant to the provisions of Section 304 of the Act.
- 13.2 Any general meeting not called on the requisition of a Member pursuant to Article 13 shall be called by at least twenty-one Clear Days' notice or by shorter notice if it is so agreed by not less than 75% of the "A" Members. The notice shall specify the time and place of the meeting, the general nature of the business to be transacted and if it is anticipated that Members participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting. The notice shall be given to all Members and to the Directors and to the Company's auditors.

- 13.3 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at that meeting.
- 13.4 A Director shall be entitled to attend and speak at any general meeting.
- 13.5 The Chair of the meeting may permit other persons who are not Members of the Company to attend and speak at a general meeting.
- 13.6 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 13.7 A person is able to exercise the right to vote at a general meeting when:
- 13.7.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
  - 13.7.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all other persons attending the meeting.
- 13.8 The Directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 13.9 In determining attendance at a general meeting, it is immaterial whether any two or more Members attending it are in the same place as each other.
- 13.10 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.
- 13.11 No business shall be transacted at any general meeting unless a quorum is present. 50% of all Members present by their Voting Representative or by proxy including no less than two "A" Members shall be a quorum.
- 13.12 If a quorum is not present within half an hour from the time appointed for a general meeting it shall stand adjourned to the same day in the next week at the same time and place or to such later day and time and/or other place as the "A" Members present decide.
- 13.13 If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Members present shall constitute a quorum.
- 13.14 An entry in the minutes of any general meeting stating that a resolution has been passed or not passed shall be conclusive evidence of the fact.
- 14 **Chair at General Meetings**
- 14.1 The Chair or in his absence some other Director who is present and nominated by the Members shall Chair the meeting. If neither the Chair or such Director is present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act, the Members present shall elect another Director who is present to be the Chair and, if there is only one Director present and willing to act, he shall be the Chair. If no Director is present

within fifteen minutes after the time appointed for holding the meeting or is willing to act as Chair the Members present shall elect one of their number to be the Chair.

## 15 **Adjournments**

- 15.1 The Chair may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the original meeting. It shall not be necessary to give notice of the adjourned meeting unless it is adjourned for fourteen days or more when at least seven Clear Days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted.
- 15.2 The Chair may also, without the consent of the meeting, adjourn the meeting (whether or not it has commenced or is quorate) either to a time and place to be determined pursuant to Article 15.3 or to such other time and place as he may decide if the unruly conduct of persons attending the meeting is preventing the orderly holding or continuance of the meeting.
- 15.3 When a meeting is adjourned pursuant to Article 15.2 without a decision to a new time and place, the time and place for the adjourned meeting shall be fixed by the Board. It shall not be necessary to give any notice of the adjourned meeting unless it is adjourned for fourteen days or more when at least seven Clear Days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted.

## 16 **Votes of Members**

- 16.1 A resolution put to the vote of a meeting shall be decided on a show of hands unless a poll is demanded either before the meeting or on the declaration of the result of the show of hands. Subject to the provisions of the Act, a poll may be demanded:-
- 16.1.1 by the Chair; or
- 16.1.2 by any Member having the right to vote at the meeting;
- 16.1.3 and a demand by a person as proxy for a Member shall be the same as a demand by a Member.
- 16.2 On a show of hands every Member present by its Voting Representative shall have one vote. On a poll every Member present by its Voting Representative or by proxy shall have one vote.
- 16.3 In the case of an equality of votes, whether on a show of hands or on a poll, the Chair shall not have a casting vote.
- 16.4 Unless a poll is demanded, a declaration by the Chair that a resolution has been passed or not passed unanimously, or by a particular majority, or passed, or not passed by a particular majority shall be final and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- 16.5 A demand for a poll may be withdrawn before the poll is taken but only with the consent of the Chair. A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
- 16.6 A poll shall be taken immediately. The results of the poll shall be the resolution of the meeting at which the poll was demanded.
- 16.7 No objection shall be raised to the qualification of any vote except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the Chair whose decision shall be final.

## 17 **Written Resolutions**

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

## 18 **Reserved Matters**

Notwithstanding the provisions of Articles 16 to 17 inclusive, all resolutions that relate to a matter described in the Members' Agreement as a reserved matter or equivalent shall be passed by no less than 75% of the "A" Members. "B" Members shall not have a right to vote in a resolution that relates to a matter described in the Members' Agreement as a reserved matter or equivalent.

## 19 **Appointment of Proxies**

- 19.1 An appointment of a proxy shall be in writing, signed by or on behalf of the appointor and shall be in the following form (or in any other form which the Board may approve):-

*[Name of the Company]*

I/We,

being a ["A"] ["B"] Member/Members of the above-named Company, hereby appoint

of

or, failing him,

of \_\_\_\_\_, as my/our proxy to vote in my/our name(s) and on my/our behalf at the annual/extraordinary general meeting of the Company to be

held on \_\_\_\_\_, and at any adjournment thereof.

Signed .....

Date .....

- 19.2 Where it is desired to afford Members an opportunity of instructing the proxy how he shall act the document appointing a proxy shall be in the following form (or any other form which the Board may approve):

*[Name of the Company]*

I/We

being a ["A"] ["B"] Member/Members of the above-named Company, hereby appoint

of

or, failing him,

of \_\_\_\_\_, as my/our proxy to vote in  
my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the Company

to be held on \_\_\_\_\_, and at any adjournment  
thereof.

This form is to be used in respect of the resolutions mentioned below as follows:-

Resolution Number 1 \*for \*against Resolution Number 2 \*for \*against

\*strike out whichever is not desired

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed.....

Date .....

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

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

## 20 **Amendments to resolutions**

20.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if –

20.1.1 notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the Chair of the meeting may determine), and

20.1.2 the proposed amendment in the reasonable opinion of the Chair of the meeting:

(a) does not, materially alter the scope of the resolution

- (b) is no more onerous on the company and
- (c) does not have the effect of negating the substantive resolution.

20.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution if –

- 20.2.1 the Chair of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
- 20.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

20.3 If the Chair of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chair's error does not invalidate the vote on that resolution.

## 21 **Directors**

### 21.1 **Methods of appointing Directors**

- 21.1.1 The number of Directors at any time shall be no less than three and no more than twelve.
- 21.1.2 Subject to Article 21.1.6 each "A" Member shall be entitled to appoint one Director each (the **"A" Directors**).
- 21.1.3 Subject to Article 21.1.6 each "B" Member shall not be entitled to appoint a Director but may nominate to the "A" Members for consideration in accordance with article 21.1.3.
- 21.1.4 The "A" Members shall be entitled to jointly appoint one or more Directors who may be nominated by a "B" Member (the **"B" Directors**) in accordance with a policy set by the A Members from time to time. Any appointment under this Article shall be made by giving notice signed by all of the "A" Members in question to the Company.
- 21.1.5 The "A" Members shall be entitled to jointly appoint one or more Directors who may be independent of all Members (the **"C" Directors**) in accordance with a policy set by the A Members from time to time. Any appointment under this Article shall be made by giving notice signed by all of the "A" Members in question to the Company.
- 21.1.6 If at any time the number of Members exceeds twelve the Members together will by Ordinary Resolution agree (and send notice of the same to the Company) who will be the Directors so that there shall be no more than twelve Directors including any C Directors appointed under Article 21.2.5. The method for agreeing the Directors in these circumstances shall be in accordance with such Director's appointment policy as may be agreed by Members from time to time.

### 21.2 **Disqualification of and cessation of office for Directors**



21.2.1 A person shall be ineligible for appointment to the Board and if already appointed shall immediately cease to be a Director if the relevant individual:

- (a) ceases to be a Director by virtue of any provision of the Act or becomes prohibited by law from being a company director; or
- (b) is or becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (c) a registered medical practitioner who is treating the Director gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months; or
- (d) resigns his office by written notice to the Company; or
- (e) is removed from office by the Member that appointed him by giving notice signed by the relevant Member to Company; or
- (f) Other than a Director appointed in accordance with Article 21.1.1 above, is removed from office by a resolution of or written notice signed by not less than three quarters of all the other Members from time to time; or
- (g) Other than a Director appointed in accordance with Article 21.1.1 above, has been absent without permission of the Board from three consecutive meetings of the Board (including meetings of any Committee of which that Director is a member) and the Board resolves that his office be vacated; or
- (h) is an "A" Director and the "A" Member ceases to be an "A" Member of the Company;
- (i) is "B" Director and the "B" Member ceases to be a "B" Member of the Company
- (j) an "A" Member that appointed any Director notifies the Company that the individual is to be removed as a Director;
- (k) is an employee of the Company or of a Member of the Company, or of a Subsidiary or associate of the Company or of a Member, and at any time ceases to be so employed;
- (l) is not included in the list notified pursuant to Article 21.1.6.

21.2.2 It is agreed that in the case of a Director appointed in accordance with Article 21.1.1 above, the Members shall in respect of the circumstances set out in Article 21.2.1(f) and the Board in respect of Article 21.2.1(g) be entitled to notify the Member which appointed the Director in question of the reasons and/or circumstance which they consider sufficient for that Director to be removed from office.

### 21.3 Powers of the Board

21.3.1 Subject to:

- (a) the provisions of the Act;
- (b) any resolution from time to time of the Members in accordance with these Articles; and
- (c) these Articles;

the business of the Company shall be managed by the Board who may exercise all the powers of the Company. No alteration of these Articles and no resolution of the Members shall invalidate any prior act of the Board which would have been valid if that alteration or resolution had not been made. The powers given by this Article 21.3.1 shall not be limited by any special power given to the Board by these Articles and a meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.

**21.4 Delegation of Directors' powers**

21.4.1 The Board may delegate in writing any of its powers to any Committee consisting of two or more Directors together with such other persons as the Board sees fit.

21.4.2 The Board may delegate in writing to a Director or to any officer such of their powers as they consider desirable to be exercised by such person. Any such delegation may be made subject to any conditions the Board may impose and either collaterally with or to the exclusion of its own powers and may be revoked or altered. Subject to any such conditions the proceedings of any Committee shall be governed by the provision of these Articles insofar as they apply to proceedings of the Board.

**21.5 Alternate Directors**

No Director shall be entitled to appoint any person as an alternate Director.

**21.6 Directors' expenses**

21.6.1 Directors may be paid all expenses reasonably and properly incurred by them in connection with their attendance at meetings of the Board or committees of the Board or general meetings of the Company or otherwise in connection with the discharge of their duties and such other sums as may be determined by the Members of the Company.

21.6.2 Where any Director is an elected member of a local authority that is a Member then such a Director may only be paid such fees and/or expenses as are permitted by the Local Authorities (Companies) Order 1995.

21.6.3 Where any Director is an officer of a local authority that is a Member then they may only claim expenses from their local authority and not from the Company and shall not be entitled to any fee from the Company.

**21.7 Directors' appointments and interests**

A Director may not have any financial interest personally or as a Member of a firm or as a director or senior employee (being an employee with managerial status) or in any contract or other transaction of the Company unless it is permitted by these Articles.

## 21.8 **Proceedings of Directors**

- 21.8.1 Subject to these Articles the Board may regulate their proceedings as they think fit.
- 21.8.2 Subject to the articles, Directors participate in a Directors' meeting, or part of a Directors' meeting, when:
- (a) The meeting has been called and takes place in accordance with the articles, and
  - (b) They can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 21.8.3 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.
- 21.8.4 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.
- 21.8.5 The Board shall hold at least four meetings a year. Meetings called under this Article shall be convened on not less than fourteen Clear Days' notice.
- 21.8.6 Any Directors may, by notice in writing given to the Company, requisition a meeting of the Board. In such circumstances it shall be the duty of the Company to convene such a meeting as soon as is reasonably practicable.
- 21.8.7 The quorum for the transaction of business of the directors shall no less than 50% of the total number of Directors and shall include no less than two Directors appointed by an "A" Member.
- 21.8.8 If the total number of Directors for the time being is less than the quorum required, the directors must not take any decision other than a decision:
- (a) to appoint such number of further directors as are required to make up the quorum required; or
  - (b) to call a general meeting so as to enable the members to appoint further directors. If a quorum is not present within half an hour from the time appointed for a Board meeting the Board meeting shall if requested by a majority of those Directors present be adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors present may determine.
- 21.8.9 If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the adjourned meeting then the adjourned meetings shall if requested by a majority of those Directors present be adjourned to the same

day in the next week at the same time and place or to such other day and at such other time and place as the Directors present may determine.

- 21.8.10 If at the meeting adjourned pursuant to Article 21.8.9 a quorum is not present within half an hour from the time appointed for the adjourned meeting then notwithstanding Article 21.8.6 at least two "A" Directors present shall constitute a quorum.
- 21.8.11 Save as expressly provided in these Articles questions arising at a Board meeting shall be decided by a majority of votes and each Director present in person shall be entitled to one vote. In the case of an equality of votes at any Board meeting the Chair shall not have a second or casting vote.
- 21.8.12 The Board may invite such person as it deems appropriate to attend and (if appropriate) speak at Board meetings. Any such invitation may be made on such terms as the Board may determine and may be revoked at any time. Provided that such attendees shall not be Directors and may not vote on any matter discussed by the Board.

## 21.9 **Conflicts of interest**

- 21.9.1 Any Director having an interest in any arrangement between the Company and another person or body shall before the matter is discussed by the Board or any Committee of which they are a Member disclose that interest to the meeting
- 21.9.2 Unless the interest is of the type specified in Articles 21.9.3 or 21.9.4 the Director concerned shall not remain present during the discussion of that item unless requested to do so by the remaining Members of the Board or Committee of the Board. Unless permitted by Articles 21.9.3 or 21.9.4 the Director concerned may not vote on the matter in question but no decision of the Board or any Committee of the Board shall be invalidated by the subsequent discovery of an interest which should have been declared.
- 21.9.3 A Director may remain present during the discussion and may vote on the matter under discussion where the interest arises only by virtue of the fact that:
  - (a) the Director is a director or other officer of a company or body which is a Subsidiary undertaking of the Company as such term is defined in Section 1162 of the 2006 Act; or
  - (b) the Director is a director or other officer of a company or body which is a Member of the Company.
- 21.9.4 A Director shall not be treated as having an interest:
  - (a) of which the Director has no knowledge and of which it is unreasonable to expect him to have knowledge;
  - (b) in the establishment of a policy in respect of Director expenses or in any resolution relating to the remuneration of Directors.

- 21.9.5 For the purposes of section 175 of the Act, the Directors shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the Act. Any reference in these Articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.
- 21.9.6 Authorisation of a matter under Article 21.9.5 shall be effective only if:
- (a) the matter in question shall have been proposed in writing for consideration by the Directors, or in such other manner as the Directors may determine;
  - (b) any requirement as to the quorum at the meeting of the Directors at which the matter is considered is met without counting the Director in question and any other interested Directors (together the Interested Directors); and
  - (c) the matter was agreed to without the Interested Directors voting or would have been agreed to if the votes of the Interested Directors had not been counted.
- 21.9.7 Unless otherwise determined by the Directors (excluding the Interested Directors), any authorisation of a matter under Article 21.9.5 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 21.9.8 Any authorisation of a matter under Article 21.9.5 shall be on such terms and/or conditions as the Directors (excluding the Interested Directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the Directors (excluding the Interested Directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the Interested Directors from all information and discussion of the matter in question. A Director shall comply with any obligations imposed on him by the Directors (excluding the Interested Directors) pursuant to any such authorisation.
- 21.9.9 If a Director receives or has received any information otherwise than by virtue of his position as a Director and in respect of which he owes a duty of confidentiality to another person, the Director is under no obligation to:
- (a) disclose any such information to the Company, the Directors or any other Director or employee of the Company; or
  - (b) use or apply any such information in connection with the performance of his duties as a Director;
  - (c) provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the Director of the duty to avoid conflicts of interest set out in section 175 of the Act, this Article shall apply only if

such situation or relationship has been authorised by the Directors under Article 21.9.5.

- 21.9.10 A Director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the directors under Article 21.9.5 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.
- 21.9.11 All acts done by the Board or by a Committee of the Board or by a person acting as a Director shall notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Director or that any Director was disqualified from holding office or had vacated office or was not entitled to vote be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote.
- 21.9.12 If a question arises at a meeting of the Board as to the right of a Director to vote the question may before the conclusion of the meeting be referred to the Chair or in his absence the Chair of the meeting and his ruling shall be final and conclusive.

## 21.10 **Appointment of Chair of the Board**

- 21.10.1 As soon as practicable after incorporation, and thereafter immediately prior to the conclusion of each annual general meeting the "A" Members shall by ordinary resolution appoint one of the Board to be the Chair of the Board (who shall not be a "B" Director) to hold office until he is either reappointed or until another Chair of the Board is appointed or removed by ordinary resolution of the "A" Members.
- 21.10.2 The Director so appointed as Chair shall preside at every meeting of the Board at which he is present. If there is no Director holding that office or if the Director holding it is not present within five minutes after the time appointed for the meeting the Directors present may appoint one of their number to be Chair of the meeting.
- 21.10.3 The Board may appoint a vice or deputy Chair to act in the absence of the Chair on such terms as the Board shall think fit.

## 21.11 **Written resolutions of the Board**

- 21.11.1 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.
- 21.11.2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible Director or to which each eligible Director has otherwise indicated agreement in writing.
- 21.11.3 References in this Article to eligible Directors are to Directors who would have been entitled to vote on the matter had it been proposed as a resolution at a Directors' meeting.

- 21.11.4 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.

**21.12 Records of decisions to be kept**

The Directors must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors and of all proceedings at meetings of the Company

**22 Means of communication to be used**

- 22.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.

- 22.2 Subject to the articles, any notice or document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or documents for the time being.

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

**23 Notices**

- 23.1 Any notice to be given to or by any person pursuant to these Articles shall be in writing.

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

- 23.3 The Members present by their Voting Representative at any meeting of the Company shall be deemed to have received notice of the meeting and where requisite of the purposes for which it was called.

- 23.4 Proof that an envelope containing a notice was properly addressed prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted, or 24 hours after being sent by electronic means or delivered by hand to the relevant address, or on being handed to a Member's Voting Representative or Director personally, or as soon as the Member or Director acknowledges actual receipt.

**24 Indemnity**

- 24.1 Every Director or other officer of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto including any liability incurred by him in defending any proceedings whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under

Section 1157 of the Act in which relief is granted to him and no Director or other officer shall be liable for any loss damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto provided that this Article 24.1 shall only have effect in so far as its provisions are not avoided by Section 232 of the Act.

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





**dated**

**2018**

**APPENDIX 2**

**(1)** [ ]

and

**(2)** [ ]

and

**(3)** [ ]

and

**(4)** [ ]

**Members' Agreement for [Capital Letters] Limited**

**trowers & hamlins**

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## Members' Agreement

dated 2018

### Parties

- (1) [ ] of (1) [ ] (**Member 1**);
- (2) [ ] of (1) [ ] (**Member 2**);
- (3) [ ] of (1) [ ] (**Member 3**);
- (4) [ ] of (1) [ ] (**Member 4**);

and

- (5) **[Capital Letters] Limited** (registered number [ ] whose registered office is at [ ] (**the Company**))

### Introduction

- (A) The Company was incorporated in England and Wales as a private company limited by guarantee on [ ] under the Companies Act 2006.
- (B) The Company is a *Teckal* company fulfilling the conditions set out in Regulation 12(4) of the Public Contracts Regulations 2015. The Company is subject to management supervision by the Members in the terms set out in this Deed. As such, the Company is a body governed by public law as defined in the Public Contracts Regulations 2015.
- (C) The Members have established the Company as a vehicle through which services are delivered to the "A" Members; and to any other customers (including "B" Members) as considered appropriate by the Members from time to time provided that any services to non-Members shall always remain incidental to the primary aim of providing services to the Members and shall not exceed the threshold as set out in Regulation 12 of the Public Contract Regulations at all times.
- (D) The Members are local authorities exercising their powers under section 1 Localism Act 2011 when establishing the Company.
- (E) 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 the Company as provided herein.
- (F) 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.
- (G) Critical management decisions are reserved to the Members and these are set out in Schedule 1 to this Deed.

## Agreed terms

### 1 Definitions and Interpretation

In this Deed:

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

**Act** means the Companies Act 2006;

**Annual Business Plan** means a business plan in a form to be approved by the Members setting out the implementation, over a particular Financial Year, of the strategic objectives of the Company in relation to the Business as described in the Service Plans, to include budgets, expenses (including any administrative expenses) and projected financial results for such Financial Year;

**Application for Membership and Deed of Adherence** means an application for membership of the Company and deed of adherence to this Deed in the form set out at Schedule 2;

**Articles** means the articles of association of the Company as adopted (as may be amended from time to time);

**Board** means 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** means the business of the Company (including any Subsidiaries) as described in clause 4 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** means any day (other than a Saturday or Sunday) or a bank or public holiday in England and Wales;

**Completion** means the performance by the parties of their respective obligations under clause 5;

**Confidential Information** means any financial or other information 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;

**Deed of Adherence** means a deed of adherence to this Deed in the form set out at Schedule 2 or such other form as the Members may prescribe;

**"A" Director** means a Director appointed by an "A" Member in accordance with article 21.1.2 from time to time;

**"B" Director** means a Director nominated by a "B" Member in accordance with article 21.1.3 and appointed in accordance with article 21.1.4 from time to time;

**"C" Director** means a Director appointed in accordance with article 21.1.5 from time to time;

**Director** means any duly appointed director of the Company from time to time;

**Encumbrance** means 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;

**Financial Year** means the year commencing 1 April and expiring on the subsequent 31 March;

**FOIA** means the Freedom of Information Act 2000;

**Information** has the meaning given under section 84 of the FOIA;

**Lease Assignment Documents** means the assignment documents assigning leases held by a Member to the Company.

**London Councils** means the cross-party organisation that represents that represents London's 32 local authorities;

**"A" Members** means the Members of the Company designated as "A" Members in accordance with the Articles from time to time;

**"B" Members** means the Members of the Company designated as "B" Members in accordance with the Articles from time to time;

**Member(s)** means the "A" Members and the "B" Members and any other body or person admitted to Membership by consent of the Members and designated as an "A" Member or a "B" Member from time to time in accordance with the Articles and this Deed;

**Members' Representative Board** means a board comprising the Voting Representatives as described in clause 3;

**Nominated Director** means a Director appointed pursuant to Clause **Error! Reference source not found.** of this Agreement;

**Normal Trade Credit** means the credit which arises when a supplier of goods and/or services allows the Company to pay for those goods and/or services at a date which is later than the date upon which they are supplied to the Company;

**Operational Date** means the date upon which the Company commences the provision of the Services;

**Ordinary Resolution** has the meaning given to it by section 282 of the Act;

**Project Documents** means the documents agreed between the Members relating to the operation and funding of the Company including (as applicable) the Service Level Agreement, [the Secondment Agreement] [and the Lease Assignment Documents];

**Public Body** means a body governed by public law as defined in the Public Contracts Regulations and **Public Bodies** and **Non-Public Bodies** shall be construed accordingly

**Public Contracts Regulations** means Public Contracts Regulations 2015 and any statutory modification or re-enactment thereof for the time being in force;

**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** means any of the individual management decisions reserved to the Members and requiring the percentage approval listed in Schedule 1;

**[Secondment Agreement** means the agreement between the Member and the Company for the secondment of employees from the Member to the Company]

**Services** means the services that make up the Business of the Company to be delivered by the Company under any Service Level Agreement;

**Service Level Agreement** means a service level agreement made between any Member and the Company for the delivery of Services;

**[Service Plan** means the plan agreed on a rolling three year basis between the Company and each Member detailing the Services]; and

**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 persons will be construed so as to include bodies corporate, unincorporated associations and partnerships;
- 1.4 references to clauses, Schedules and Annexures are to clauses of and the Schedules and Annexures 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 which 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 **Delegated Authority**

- 3.1 Each Member shall nominate one individual (**Voting Representative** as defined in the Articles) to represent that Member at general meetings of the Members, to cast the membership vote and to sign any resolution in writing on behalf of that Member (acting at all times within the bounds of the delegated authority and in accordance with the instructions of the appointing Member in respect of any such resolution).
- 3.2 Delegated authority shall be in writing in agreed form and served upon the Company.
- 3.3 A Member may change its Voting Representative from time to time provided that any change shall not take effect until notice has been duly served in writing on the Company.
- 3.4 The other Members, the Directors and the Company shall have the right to rely on any action taken by a notified Voting Representative acting within his delegated authority.
- 3.5 The following persons shall be the initial Voting Representatives for each Member on and from Completion:
- 3.5.1 [Member 1]: [ ];
- 3.5.2 [Member 2]: [ ];
- 3.5.3 [Member 3]: [ ]; and
- 3.5.4 [Member 4]: [ ].

### 4 **Business Of The Company**

- 4.1 The Business of the Company is:
- 4.1.1 to procure accommodation for homeless households and those at risk of homelessness by providing services in connection therewith to:
- (a) the "A" Members; and
- (b) to any other customers (including "B" Members) as considered appropriate by the Members from time to time provided that any services to non-Members shall always remain incidental to the primary aim of providing services to the Members and do not account for more than 20% of the turnover of the Company in any financial year (or such other percentage of turnover as may be permitted by law from time to time) at all times as set out in Regulation 12 of the Public Contract Regulations;
- 4.1.2 to undertake the management of accommodation for homeless households and those at risk of homelessness; and
- 4.1.3 to provide such other services and undertake such other functions as are agreed by the Members from time to time.

## 5 Completion

5.1 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:

5.1.1 the appointment or designation of the following persons as Directors as appropriate:

Name	Appointment or designation
[	]
[	]
[	]
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5.1.2 the adoption of the agreed form articles of association as the Company's Articles.

5.2 Not later than the Operational Date the relevant Members and the Company shall enter into such of the Project Documents as each relevant Member considers necessary.

## 6 Conduct Of The Company's Affairs

6.1 Each Member covenants with the other Members that so long as this Deed remains in force and effect it will so far as it is reasonable for it to do so:

6.1.1 be just and true to the other Members and act in good faith;

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

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

6.1.4 take all steps available to it to ensure that it is represented at meetings of the Board or any committee of the Board or general meetings has the necessary quorum throughout;

6.1.5 consider the Company as a potential supplier for all activities that form part of the Business;

6.1.6 for each "A" Member, provide the Company [by no later than [30] days following the end of each financial year] with a report in writing on the percentage of that "A" Member's total procurement of dwellings to support the discharge of their statutory responsibilities for homeless households (or those at risk of homelessness) that has been undertaken for it via the Company in that preceding financial year; and



- 6.1.7 keep the Company fully informed of its activities that are relevant to the Business and of any plans it may have to enter into a material contract with a third party for services that are similar to the Services or any of part of them.
- 6.2 Subject to clause 12 the Board shall be responsible for the day to day management of the Company in accordance with the Annual Business Plan and without prejudice to the generality of the foregoing shall:
  - 6.2.1 transact all its business on arm's length terms;
  - 6.2.2 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;
  - 6.2.3 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;
  - 6.2.4 prepare its accounts in accordance with the Act and in accordance with all applicable accounting standards and principles and practices generally acceptable in the United Kingdom;
  - 6.2.5 prepare such accounts in respect of each accounting reference period as are required by statute and procure that such accounts are audited (where required) as soon as practicable and in any event not later than four months after the end of the relevant accounting reference period; and
  - 6.2.6 within 6 weeks after the end of each quarter (the first quarter starting on the date of this Deed), prepare quarterly management accounts (including once the first six months have elapsed budget forecasts by comparison to their respective business plans).
- 6.3 Any surpluses generated from providing Services to both Members and any third parties shall be applied solely in promoting the Company's objects.
- 6.4 Nothing in this Deed shall prevent the Company from providing services to non-members, provided that:
  - 6.4.1 this does not impact on the Company's ability to provide the Services to any Member; and
  - 6.4.2 the services to non-members do not account for more than 20% of the turnover of the Company in any financial year (or such other percentage of turnover as may be permitted by law from time to time) so as to ensure the Company remains classified as a jointly controlled Teckal company pursuant to Regulation 12 of the Public Contract Regulations 2015.
- 6.5 In the event that the Company is dissolved any capital and assets available for distribution shall be divided between the Members and any former Member(s) in accordance with the provisions of the Articles.

- 6.6 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company with any members, officers and executives at any time. All books, records, accounts and documents relating to the business and the affairs of the Company shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the relevant Member properly informed about the business and affairs of the Company or to protect its interests as a Member. Any confidential information secured as a consequence of such discussions and examinations shall be kept confidential by the requesting Member and its designated officers and executives in accordance with the terms of clause 17.

## **7 Member Rights**

- 7.1 Each Member shall have the right to cast one vote on any Member resolution (at a general meeting or in writing).
- 7.2 The Service Level Agreement will set out the different provisions applicable to A Members and B Members. This will include the ability for only the A Members to receive the benefit of subsidy from the Company to contribute towards the payment of landlord incentives or to top up lease rents.

## **8 Funding**

- 8.1 The Company will be funded through a combination of payment from tenants in respect of delivery of Services, payment from Members contracting with the Company for delivery of Services, payment from Government through grant payment.
- 8.2 [Individual costs associated with delivery of Services in accordance with any contractual arrangements with the Members will be borne by the relevant Members.
- 8.3 Any additional operating costs (including applicable profit margin) will be attributed to the relevant Member where possible. Any such costs which cannot be directly allocated to a relevant Member will be apportioned according to the economic/service benefit derived by the relevant Members.
- 8.4 Any operational savings will be attributed to the relevant Member where possible. Any savings which cannot be directly allocated to a relevant Member will be apportioned according to the economic/service benefit derived by the relevant Members except for an amount which will be retained by the company for future development or asset replacement as agreed by the Board.
- 8.5 For the avoidance of doubt, the reference to costs in clauses 8.2 to 8.4 includes any applicable profit margin of the Company from time to time and the parties confirm that the charging arrangements are not intended to amount to an exact reimbursement of costs overall.]
- 8.6 Without prejudice to the provisions of clauses 8.1 to 8.5 above, the Company and the Business shall be financed by such sources as specified in the Annual Business Plan.
- 8.7 In the event that the Company requires additional finance from time to time, no Member shall be required to provide any such funding or to guarantee or provide any security or accept any other liability with respect to any borrowings by, or loan facilities made

available to, the Company. Any requests for additional funding shall be considered in good faith by the Board and the Members on a case by case basis.

## 9 **Annual Business Plan**

9.1 The first Annual Business Plan shall be agreed between the "A" Members and the Company not later than the Operational Date.

9.2 For each subsequent Financial Year:

9.2.1 the Company will (not less than 90 days prior to the beginning of such Financial Year) provide each "A" Member with a draft Service Plan for consideration and the Company will (not less than 30 days prior to the beginning of such Financial Year) agree a Service Plan with each "A" Member; and

9.2.2 the Board will (not less than 60 days prior to the beginning of such Financial Year) cause to be prepared a draft Annual Business Plan for such Financial Year for Board approval.

9.3 Where approval is required from the "A" Members in accordance with clause 9.2, the "A" Members will, not later than 30 days before the beginning of each Financial Year, consider and seek to unanimously reaffirm the draft Annual Business Plan. If the "A" Members cannot agree the draft Annual Business Plan then, notwithstanding that this matter is a Deadlock for the purposes of clause 13, the last approved version of the Annual Business Plan shall remain in full force and effect until such time that a plan is agreed by no less than 76% of the "A" Members or the matter is resolved pursuant to the provisions of clause 13 and the last approved version of the Annual Business Plan shall continue to apply to the Business and the Company for the next Financial Year.

9.4 The "A" Members may consult with the "B" Members and London Councils (in any way that may be determined by the "A" Members from time to time) on the content of the Annual Business Plan to seek their views and comments. For the avoidance of doubt "B" Members and London Councils do not have the ability to approve or reject any aspect of the Annual Business Plan and their role shall be advisory only.

## 10 **Organisation of the Board**

10.1 If any "A" Member ceases to be a Member then that "A" Member shall be deemed to have served notice to remove from office any "A" Director appointed by it and shall not be entitled to appoint any "A" Director in their place.

10.2 If any "B" Member ceases to be a Member then that "B" Member shall be deemed to have served notice to remove from office any "B" Director appointed by the "A" Members following nomination by the "B" Member and shall not be entitled to nominate a "B" Director in their place.

10.3 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.

10.4 Any Member exercising its right under the Company's Articles 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.

10.5 The Board may in its absolute discretion create sub-committees and delegate such responsibilities as it sees fit provided always that the provisions of clause 13 shall always apply.

10.6 Subject to clause 10.7, the Board shall have a Chairman, who shall be appointed in accordance with article 21.9, article 21.10 and Schedule 1.

10.7 If a Chairman is unable to attend any meeting of the Board, the alternate appointed by the Board shall act in his place.

10.8 This clause 10 shall also apply to any Director who is also a director of any Subsidiary.

## 11 **Board and Meetings**

11.1 The Board shall be composed as set out in the Articles and shall comprise directors appointed in accordance with the provisions set out below in this clause 11.

### 11.2 **Appointment and Removal of Directors**

11.2.1 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed to be a Director.

11.2.2 Directors shall be designated as "A" Directors, "B" Directors or "C" Directors in accordance with article 21.1 of the Articles.

11.3 All Board meetings shall be held at a venue reasonably convenient for all the Directors (including, for the avoidance of doubt, by video-conference or other virtual means).

11.4 A Board meeting will be held at least four times in each calendar year, with no more than four months between each meeting.

11.5 The Company shall ensure that:

11.5.1 each Director is sent papers (which may be sent by electronic means if agreed) for Board meetings (including but not limited to an agenda and details of any specific resolutions to be put to the meeting) no less than five Business Days before the date of such meeting.

11.6.3 Any Member which requests the Company to do so:

- (a) is sent papers (which may be sent by electronic means if agreed) for all Board and 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 five Business Days before the date of such meeting;
- (b) is sent all draft minutes within fourteen Business Days of the Board or general meeting; and
- (c) is permitted to send a representative (who may be a councillor) to speak on a matter of business at Board meetings subject to seeking the prior written permission of the Chair of the Board.

## 12 **Reserved Matters**

12.1 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 without the consent of the requisite percentage of "A" Members set out in Schedule 1.

12.2 Clause 12.1 shall also apply to any Subsidiary of the Company.

12.3 Notwithstanding any other provision of this Deed or the Articles, no new member (irrespective of whether they are admitted as an "A" Member or a "B" Member) shall be admitted to the Company without such member entering into a Deed of Adherence whereby such new member agrees to be bound by the terms of this Deed.

## 12.4 **Unanimous Decision Making**

12.4.1 The Members agree that no changes will be made that would be detrimental to one or more of the Members even if of benefit to others and that the Members shall work collaboratively to seek the agreement of all of the Members and the Members further agree their respective Voting Representatives will informally meet with representatives of the Board or the Directors as necessary to consider and discuss strategic areas of Company Business at a Members' Representative Board.

12.4.2 Where a potential Reserved Matter decision or any item for discussion has the potential to be detrimental to one or more of the Members the matter shall first be considered by the informal meeting of the Voting Representatives at a Members' Representative Board.

12.4.3 If having considered the proposed resolution or the item for discussion the Voting Representatives or any of them are of the opinion that it is unlikely to be passed unanimously at a general meeting (or in writing) they may notify the person or body which has proposed the resolution or item of their concerns, and the reasons for them, and require them, within such time as is reasonable in the circumstances, to formulate an alternative proposal or proposals which address the concerns and submit them to a meeting of the Members' Representative Board to be held within such time as is reasonable in the circumstances following receipt of the alternative proposals (or such later meeting of the Members' Representative Board as shall be agreed) for further consideration.

12.4.4 The Members' Representative Board shall consider the alternative proposal or proposals submitted to them and notify the person or body proposing the Resolution of any further concerns, and the reasons for them, which they have.

12.4.5 The person or body requiring the resolution shall then finalise the wording of the resolution on the Reserved Matter or item for decision to be put to the vote at a general meeting of the company (or in writing) having due regard to the comments made by the Members' Representative Board.

## 13 **Deadlock**

### 13.1 **Meaning of Deadlock**

For the purposes of this clause 13 there shall be a Deadlock if:

13.1.1 a matter constituting a Reserved Matter has been considered by the Members; and

13.1.2 no resolution has been carried by the Members in relation to the matter because of a failure of any Member to consent to such resolution; and

13.1.3 the matter is not resolved within ten (10) Business Days from the date of the relevant general meeting or the end of the period for approval of a written resolution circulated to the Members for consent (as appropriate).

### 13.2 **Members' obligations**

In any case of Deadlock each of the Members shall (at the request of any Member) within fifteen (15) Business Days of Deadlock having arisen or become apparent, cause the Chairman of 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 its Head of Paid Service and such persons shall use all reasonable efforts in the 20 Business Days following such reference to resolve the Deadlock.

### 13.3 **Failure to resolve Deadlock**

If a resolution of a Deadlock referred pursuant to clause 13.2 is not resolved or is not agreed in accordance with that clause (or such longer period as the Members may agree in writing) the status quo shall prevail unless the Directors resolve that to do so would be detrimental to the proper conduct of the Business in which instance the provisions of clauses 13.4 to 13.7 shall apply.

13.4 The Board shall serve written notice on the Members requiring them to attempt to settle the dispute by mediation (such notice to be served within seven Business Days of the Board meeting at which the decision was passed). On receipt of such notice from the Board the Members will attempt to settle the dispute by mediation in accordance with the model mediation procedures (the **Procedures**) published by the Centre for Effective Dispute Resolution, CEDR Solve (**CEDR**). To initiate mediation, a Member must give notice in writing (**Mediation Notice**) to the other Members.

- 13.5 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 CEDR to appoint a mediator.
- 13.6 In the event that there are no Procedures available and CEDR 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 to recommend a mediation procedure which the Members shall adopt.
- 13.7 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 fifteen (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:

13.7.1 make or concur in the making of a statutory declaration in the terms mentioned in section 89 of the Insolvency Act 1986 (if the state of the Company's affairs permits the making of such a declaration); and

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

- (a) the matter from which the Deadlock arose; and
- (b) the passing of a special or extraordinary resolution to place the Company in members' voluntary winding-up (if such a declaration has been made in accordance with clause 13.7.1) or (in any other case) in creditors' voluntary winding-up;

such meeting or meetings to be held within five weeks after either the making of any declaration made in pursuance of clause 13.7.1 or (where the state of the Company's affairs does not admit to the making of such a declaration as is mentioned in clause 13.7.1) convene a meeting of the Company's creditors in accordance with section 98 of the Insolvency Act 1986.

## 14 Intellectual property

14.1 The Members and the Company acknowledge that:

14.1.1 any and all Intellectual Property Rights created wholly by the Company in connection with the Business (the **Business IPRs**) shall automatically belong to the Company.

14.1.2 any and all Intellectual Property Rights created by the Members in connection with the Business (the **Member IPRs**) shall belong to the Member who created them.

14.2 The Company hereby grants to each Member for the time being and for the duration of their Membership of the Company a non-transferable royalty-free licence to use the Business IPRs (as they may be constituted from time to time) to the extent necessary for the purposes of the Business. The Members hereby grant to the Company a non-transferable royalty-free licence (without the right to grant sub-licences) to use the Member IPRs (as they may be constituted from time to time) solely to the extent necessary for the purposes of the Business.

- 14.3 All use of the Business IPRs by the Members pursuant to this Deed, including all goodwill arising from such use, shall accrue solely to the benefit of the Company. All use of Member IPRs by the Company pursuant to this Deed, including all goodwill arising from such use, shall accrue solely to the benefit of the respective Member.
- 14.4 The Company and each Member agree that they shall not, without the prior written consent of the other parties to this Deed, assign, transfer, mortgage, charge or deal in any other manner with any of their rights under this clause 14.
- 14.5 For the purposes of this clause 14, **Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 15 Withdrawal and Removal of Members**
- 15.1 An "A" Member may cease to be a party to this Deed and cease to be a member of the Company upon giving not less than six months' notice in writing to the Company and the other Members.
- 15.2 A "B" Member may cease to be a party to this Deed and cease to be a member of the Company upon giving not less than three months' notice in writing to the Company and the other Members.
- 15.3 In accordance with clause 6.1.6, at the end of each financial year, the "A" Members shall confirm to the Company the percentage of its total procurement for that "A" Member of dwellings to support the discharge of its statutory responsibilities for homeless households or those at risk of homelessness (excluding nightly paid properties or properties outside of the London area) that was undertaken via the Company that financial year. In the event that this percentage is less than 50% the "A" Members have the discretion to terminate the "A" Member's Membership in accordance with the procedure set out in article 12.14.
- 15.4 For the purposes of the calculation of the percentage referenced in clause 15.3 above, this will be calculated from the date of entry as an "A" Member to the end of that financial year for the initial year of membership, and subsequently shall be calculated every full financial year.
- 15.5 Subject to compliance with the provisions of articles 12.3 and 12.6 of the Articles, in the event that an "A" Member's Membership is terminated in accordance with clause 15.3, the "A" Member may be re-admitted to the Membership of the Company as a "B" Member.
- 15.6 Any Member may cease to be a party to this Deed and cease to be a member of the Company upon giving not less than twelve months' notice in writing to the Company and the other Members.



- 15.7 With the exception of any money reimbursed to a Member under clause 6.5, a Member shall not be entitled to any refund of any amount paid to the Company as a consequence of ceasing to be a party to this Deed or ceasing to be a member of the Company.
- 15.8 On the withdrawal of a Member, their Service Level Agreement will, unless otherwise agreed, be deemed to have been terminated on the date of withdrawal except as otherwise agreed by the withdrawing Member and the Company.
- 15.9 Notwithstanding that a Member shall cease to be a party to this Deed, it shall not be released from any liabilities or rights of action accrued against it under or in connection with this Deed up to the date of its ceasing to be a party and that Member shall continue to be bound by those provisions of this Deed which are expressed to continue following termination of this Deed. The Deed shall continue in force in relation to the remaining parties including any party having entered into a Deed of Adherence.
- 15.10 A Member (the Defaulting Member) shall cease to be a Member in the event that:
- 15.10.1 it commits a serious breach of this Deed; or
- 15.10.2 it persistently breaches this Deed; and
- the breach (if capable of remedy) is not rectified within 20 Business Days of written notice having been given to the Defaulting Member requiring it to rectify such breach or breaches and the remaining Members agree by majority vote at a duly convened general meeting or in writing that the Defaulting Member's membership shall cease.

## 16 **Termination Of This Deed**

- 16.1 This Deed shall continue in full force and effect from the date hereof until:
- 16.1.1 all the Members or their successors in title agree in writing to its termination;
- 16.1.2 there is only one Member of the Company; or
- 16.1.3 the Company goes into liquidation whether voluntary or compulsory (other than for the purpose of an amalgamation or reconstruction approved by all the Members).
- 16.2 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 his or its membership of the Company.
- 16.3 Termination of this Deed pursuant to this clause 16 shall be without prejudice to any accrued rights and liabilities of any of the Members.

## 17 **Confidentiality**

Each of the parties hereto shall hold in confidence and shall not and shall procure (where applicable) that its employees, agents and contractors shall not without the written consent of the other parties (such consent not to be unreasonably withheld) or as required by any other provision of law divulge to any third party any Confidential Information or use any such information other than for the purposes anticipated by this Deed provided that the

provisions of this clause 17 shall not apply to information which may properly come into the public domain through no fault of the party so restricted.

## 18 **Freedom Of Information**

- 18.1 Clause 17 shall not apply where a party has obtained the written consent of the other parties (such consent not to be unreasonably withheld) to divulge or use any Confidential Information or where Confidential Information is required to be disclosed by any law or statutory or regulatory obligation including without limitation the FOIA and the Environmental Information Regulations 2004 (but only to the extent of such law or statutory or regulatory obligation).
- 18.2 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.
- 18.3 Where a party receives a Request for Information in relation to Information which it is holding on behalf of another party, it shall:
- 18.3.1 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;
  - 18.3.2 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
  - 18.3.3 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.
- 18.4 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.
- 18.5 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.
- 18.6 Each party shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:
- 18.6.1 is exempt from disclosure under the FOIA or the Environmental Information Regulations 2004;
  - 18.6.2 is to be disclosed in response to a Request for Information.
- 18.7 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 Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations 2004 to disclose Information:

18.7.1 without consulting with the other parties, or

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

18.8 Notwithstanding the provisions of clause 17 each Nominated Director (whilst he holds that office) will be entitled to make full disclosure to the Member appointing him of any information relating to the Company which that Member may reasonably require.

## 19 **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.

## 20 **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.

## 21 **Variation**

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

## 22 **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.

## 23 **Notices**

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

23.2 Any such demand, notice or other communication will, if given or made in accordance with this clause 23, be deemed to have been duly given or made as follows:

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

23.2.2 if delivered by hand, upon delivery at the address provided for in this clause 23,

provided however that, if it is delivered by hand 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.

23.3 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 his Deed of Adherence 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.

23.4 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.

## 24 **Costs**

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

## 25 **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.

## 26 **Exercise of powers**

26.1 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.

26.2 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 Nominated Director appointed by it shall procure such matter or thing, subject to the Director acting in accordance with his fiduciary duty to the Company.

## 27 **Entire Agreement**

This Deed and the documents referred to in it, the Annexures to this Deed 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, implied or otherwise, other than those contained or expressly referred to therein. This clause does not restrict liability of either party for fraudulent misrepresentations.

## 28 **Assignment**

The Members shall not assign nor transfer nor purport to assign nor transfer any of their rights or obligations hereunder (other than to a successor body).

29      **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.

30      **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 and takes effect on the date stated at the beginning of this Deed.

## Schedule 1

### Reserved Matters

Matters that require seventy-five percent (75%) approval by the "A" Members at a duly convened general meeting or in writing:

1	Permitting the admission of any additional Members of the Company.
2	Adopting or amending the Annual Business Plan in respect of each Financial Year.
3	Forming any Subsidiary or acquiring membership or shares in any other company or participating in any partnership or joint venture (incorporated or not).
4	Amalgamating or merging with any other company or business undertaking.
5	Entering into any arrangement, contract or transaction with either a capital or revenue value over [£500,000] which is not included in the current approved Business Plan.
6	Agreeing the appointment and the appointment terms (including any remuneration terms) of all Directors of the Company Directors.
7	Agreeing any remuneration terms for Directors.
8	Appointing or removing the chair of the Company.
9	Making any petition or resolution to wind up the Company or any Subsidiary.
10	Making any amendment to the Articles or any Subsidiary articles of association, including (without limitation) any rights of the Members.
11	Giving any guarantee to secure the liabilities of any person.
12	Creating any Encumbrance over the whole or any part of the Company or assets of any Subsidiary company.
13	Giving or taking any loans, borrowing or credit (other than Normal Trade Credit in the ordinary course of business) save as specifically provided for in the Annual Business Plan.
14	Any acquisitions, assimilations or asset transfers by or to the Company other than those approved in the Annual Business Plan.
15	The approval of any redundancy of any employees or the approval of any redundancy policy under which the Board will be authorised to make employees of the Company redundant.

16	Establishing any pension scheme in respect of Company employees or the alteration of any pension scheme or arrangements operated by the Company.
17	Any decisions relating to the strategic objectives of the Company (to the extent that these are not in any case reflected by the Company's Annual Business Plan).
18	Creating or granting any encumbrance over the whole or any part of the Company or its business, undertaking or assets other than liens arising in the normal course of business.

## Schedule 2

### Deed of Adherence

#### Application for Membership and Deed of Adherence

dated

#### Parties

- (6) [ ] of (1) [ ] (**Member 1**);
- (7) [ ] of (1) [ ] (**Member 2**);
- (8) [ ] of (1) [ ] (**Member 3**);
- (9) [ ] of (1) [ ] (**Member 4**)

Together the **Continuing Members**

and

- (10) **[Capital Letters] Limited** (registered number [ ] whose registered office is at [ ] (**the Company**))
- (11) **[name of new member]** of [address] (**New Member**).

#### Introduction

- (A) The Continuing Members and the Company are party to an agreement dated ..... 2018 (**Members Agreement**) which regulates their membership of the Company and sets out their respective rights and obligations as Members.
- (B) The New Member wishes to become a Member in accordance with the Company's Articles and the Members Agreement.

#### Agreed terms

- 1 Words and expressions used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in the Members Agreement. The **Effective Date** means the date of this Deed.
- 2 The New Member hereby applies to be a Member of the Company in accordance with the Articles and the Members Agreement.
- 3 The New Member confirms that he/she has been supplied with a copy of the Members Agreement and Articles.
- 4 The New Member confirms that he/she has been designated as an ["A" Member / a "B" Member] in accordance with the Members Agreement and the Articles.
- 5 The Company, the New Member and each of the Continuing Members undertake with each other that, from the Effective Date, the New Member shall be admitted to the



Company as a Member and shall assume all of the rights under the Members Agreement granted to the Members and shall observe, perform and be bound by the provisions of the Members Agreement and Articles as though the New Member was an original party to the Members Agreement.

- 6 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 7 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

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

#### **INSERT MEMBER EXECUTION CLAUSES**

**THE COMMON SEAL** of )

[ ] )

was hereunto affixed )

in the presence of: )

Authorised Signatory

executed as a deed by the )

**New Member** (acting )

)

)

in the presence of: ) Signature

witness signature:

name:

address:

occupation:

executed as a deed by **[Capital Letters] Limited** )

acting by *[name of director]*, a director )

in the presence of: ) Director

witness signature:

name:

address:

occupation:

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

#### INSERT MEMBER EXECUTION CLAUSES

THE COMMON SEAL of )

[ ] )

was hereunto affixed )

in the presence of: )

Authorised Signatory

executed as a deed by **[Capital Letters] Limited** )

acting by **[name of director]**, a director )

in the presence of: ) Director

witness signature:

name:

address:

occupation:

<b>Item No.</b> 24.	<b>Classification:</b> Open	<b>Date:</b> 11 December 2018	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Commercial Property Portfolio: Addition of Income Generating Asset	
<b>Ward(s) or groups affected:</b>		All	
<b>Cabinet Member:</b>		Councillor Victoria Mills, Cabinet Member for Finance, Performance & Brexit	

### **FOREWORD – COUNCILLOR VICTORIA MILLS, CABINET MEMBER FOR FINANCE, PERFORMANCE & BREXIT**

In the last financial year the total income receivable from the council's commercial property portfolio was £13.6 million per annum. This is a vital source of income which supports our highly valued public services in this period of decreasing government funding.

However, as a number of sites have been either sold to help finance the capital programme or redeveloped to deliver new council homes, there have been losses to the council's income from the commercial property portfolio. In response, during 2017, the council purchased four properties in the borough with an established rental income of £2.18 million per annum.

A further opportunity has now arisen to add to our portfolio by acquiring another commercial property in the borough. Having carefully assessed the capital value, income yield, financing costs and risks I am recommending the cabinet approves the purchase of this asset.

### **RECOMMENDATIONS**

1. That Cabinet shall:
  - 1) Note the circumstances leading to the proposed acquisition of the freehold interests, and actions and investment due diligence being undertaken by officers and their advisors;
  - 2) Approve the acquisition of the freehold interest in the property and all associated costs
  - 3) Note the fees & costs of approx. 6.8% of the purchase price (professional fees, Stamp Duty Land Tax and VAT) associated with the process leading to completion of the purchase;
  - 4) Delegate to the chief executive, advised by and in consultation with the strategic director of finance and governance and head of property, authority to:

- a. Complete the purchase of the freehold interest in the asset
- b. Agree detailed transactional terms pursuant to the Heads of Terms;
- c. Agree the financing structure to be adopted to fund the acquisition of the assets.

## **BACKGROUND INFORMATION**

### **Income from the commercial portfolio**

- 2. Rent from commercial property assets is a crucial funding source for council services. The nature, management and performance of the council's portfolio has been extensively reviewed over recent months; culminating in cabinet giving its approval for a new asset management plan for commercial property in December 2016.
- 3. During the year 2016/17 total income receivable from the portfolio had declined to £11.65 million per annum exclusive. This represented a £2 million per annum shortfall compared to the figure of £13.65 million in charge as recently as 2013-14.
- 4. Therefore, revenues had fallen by approximately 15%, despite continuing improvement in the underlying rents obtainable from individual assets; and at a time when other service funding streams have also seen overall reductions.
- 5. Inevitably the cause has been the release of assets in to other initiatives; to generate capital receipts, or otherwise into regeneration, Southwark Regeneration in Partnership Programme and Direct Delivery schemes to deliver a range of corporate priorities, particularly new homes. We anticipate other significant losses in the short to medium term.
- 6. Although a limited number of new income generating assets may be created through regeneration, appreciating that it is not the primary objective of these programmes to provide new commercial properties, officers have looked for other opportunities to replenish the diminishing asset base and incomes derived from it.

## **KEY ISSUES FOR CONSIDERATION**

### **Initial Intervention**

- 7. At its meeting of 21 March 2017 cabinet approved the acquisition of 9 Holyrood Street, Shand House and 22 Shand Street, a small portfolio of three freehold, multi-let office/studio buildings situated close to 160 Tooley Street. The acquisition was completed in April 2017, providing the council with an established income stream of an additional £1.78 million per annum, with growth opportunities and a commercial yield significantly above the level of interest available from money on deposit.
- 8. Subsequently, in July 2017 cabinet approved the purchase of 7 Holyrood Street, a multi-let office building and development site comprising 12,900 sq ft generating an additional annual rent of £406,000 for the portfolio.
- 9. In so doing these transactions replaced poorer quality assets released into other initiatives with significantly better ones in investment terms.

10. The proposed purchase would provide a significant commercial return to the council as part of its property portfolio. The rationale for the council to invest largely follows that for the 2017 Shand Street and Holyrood Street acquisitions.

### **Sale process**

11. The council's subject to contract offer for the property has been accepted by the vendor. This is subject to formal approvals, and subject to exchange of legally binding contracts and simultaneous completion on or before the 19 December 2018. The vendor has issued completed Heads of Terms and the council and seller have entered in to a period of exclusivity to enable completion of the transaction within the timescale specified, if cabinet is agreeable.

### **Financial due diligence and the council's bid**

12. The investment opportunity and viable bid level has been reviewed by independent property advisors, who specialise in the acquisition and disposal of Investment property, and who have successfully advised the council in other transactions including the acquisition of the Shand Street / Holyrood Street portfolio in 2017.
13. The bid is supported by investment valuations undertaken by GVA in accordance with the requirements of the Royal Institution of Chartered Surveyors Valuation Professional Standards ("the Red Book").
14. Due diligence work including legal and building survey reports is underway.

### **Community impact statement**

15. In formulating the recommendations of this report the potential impact on the Community has been taken into account, including people identified as having protected characteristics. No specific equality implications have been identified in relation to this report.

### **Policy implications**

16. The holding of investment property to generate income, which in turn is used to fund council services pursuant to agreed policies, is consistent with the new Asset Management Plan for commercial property agreed by Cabinet in December 2016.

### **Financial Implications**

17. The cost of this proposed acquisition, for a purchase price and associated taxation costs and professional fees, is to be fully financed by capital receipts. The current rental income generated by this property will be utilised to support the council's revenue budget commitments.

### **Consultation**

18. In view of confidentiality requirements and commercial sensitivity in relation to this as yet uncompleted transaction, external consultation has not been undertaken. Internal consultation has taken place with all relevant departments, including the

provision of advice from director of law and democracy and strategic director of finance and governance.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

19. The report refers to the decision of cabinet in March 2017 to authorise the acquisition of the freehold of three office / studio buildings along Shand Street in order to replenish some of the income stream from property investments which has been declining in recent times. In July 2017, cabinet authorised the purchase of an additional and adjoining site at 7 Holyrood Street.
20. The subject matter of this report is a further commercial property.
21. Approval of cabinet is therefore required in accordance with Part 3C of the constitution.
22. Section 120(1), Local Government Act 1972 provides Local Authorities with the power to acquire any land by agreement for the purposes of (a) any of its statutory functions or (b) for the benefit, improvement or development of its area. Cabinet Members may therefore make the recommendations as set out in paragraph 1 of this report if they consider this to be appropriate.
23. In view of the urgency to progress with the purchase of this site in order to avoid the current owner proceeding with another potential purchaser, external legal advisers have been appointed to act on behalf of the council. Significant improvements to the site have been undertaken in the last couple of years and some reassurance that these works have been carried out competently will be expected. It is noted that the council will be expected to proceed to exchange of contracts (and therefore a legal commitment to proceed to completion of the acquisition) by 19 December 2018.

### **Strategic Director of Finance and Governance**

24. The proposed commercial property acquisition is to be financed in full by use of capital receipts, in part from the council's share from the development of land at Potter's Field.
25. As set out in the main body of the report the acquisition will provide significant ongoing commercial income which can be utilised to support council revenue budget commitments.
26. The use of capital receipts to finance this acquisition creates an opportunity cost, as capital receipts could have been used to finance other council capital expenditure and therefore to reduce the overall borrowing requirement for the council. It is expected that the income generated by this property over the long term is to be substantially greater than any savings that would arise from reduced debt financing costs.
27. For the 2017-18 financial year the council earned gross investment income from investment properties of £13.6m and the total value of investment property assets at 31 March 2018 was £232.4m, which equated to 1.1% of total council revenue and 5.8% of total net assets. The overall exposure to investment property and

reliance on investment property income to support revenue budget spending remains low.

28. The proposed acquisition is in compliance with the requirements of the 2017 CIPFA Prudential Code for Capital Finance.
29. Any such property investment exposes the council to potential risks. The investment case for this acquisition is underpinned by specialist advice, received from GVA and consideration of such risks have been accounted for within the offer price. This investment should provide the council with long term, stable and sustainable income to support council operations.
30. Upon completion of this proposed acquisition; the revenue budget implications will be fully incorporated within the Policy and Resources Strategy for 2019-20.

#### **REASONS FOR URGENCY**

31. The vendor has stipulated a timeframe that requires cabinet approval on 11 December and completion of legal formalities by 19 December, therefore the proposal cannot be deferred to the next cabinet meeting. Failure to meet the timeframe will result in the vendor withdrawing from the transaction and the investment opportunity being lost to the council.

#### **REASONS FOR LATENESS**

32. It has not been possible to circulate five clear days in advance of the meeting because we were waiting for key information.

#### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
None		

#### **APPENDICES**

<b>No.</b>	<b>Title</b>
None	



**AUDIT TRAIL**

Cabinet Member	Councillor Victoria Mills, Finance, Performance & Brexit		
Lead Officer	Eleanor Kelly, Chief Executive		
Report Author	Adrian Sancroft, Principal Surveyor		
Version	Final		
Dated	6 December 2018		
Key Decision?	Yes		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title		Comments Sought	Comments Included
Director of Law and Democracy		Yes	Yes
Strategic Director of Finance and Governance		Yes	Yes
Cabinet Member		Yes	Yes
Date final report sent to Constitutional Team			4 December 2018

**CABINET AGENDA DISTRIBUTION LIST (OPEN)****MUNICIPAL YEAR 2018-19**

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Paula Thornton Tel: 020 7525 4395

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