

# CHESHIRE EAST COUNCIL CHESHIRE WEST & CHESTER COUNCIL

## SHARED SERVICES JOINT COMMITTEE

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<b>Date of Meeting:</b>	29 November 2013
<b>Report of:</b>	Cheshire East – Chief Operating Officer Cheshire West & Chester – Director of Resources
<b>Subject/Title:</b>	Governance arrangements – CoSocius Limited

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### 1.0 Report Summary

This report outlines the proposed arrangements matters for the governance of CoSocius Limited, its relationship with the Councils and the relationship between Cheshire East and Cheshire West and Chester Councils.

### 2.0 Recommendations.

2.1 To approve the following;

- (a) Draft articles of association for CoSocius Limited as set out in Appendix 1;
- (b) Decisions reserved to the Councils as shareholders as set out in Appendix 2;
- (c) Proposals for the establishment of and composition and terms of reference for the shareholder board as set out in paragraph 10.6 and Appendix 3 ; and
- (d) Heads of terms for the shareholder agreement, contract for services, working capital facility and support services set out in Appendix 4;

2.2 To authorise the S.151 officers within each Council to make minor changes in consultation with their respective monitoring officers.

### 3.0 Reasons for Recommendations

3.1 To enable the Councils to progress the establishment of arrangements for the operation of CoSocius Limited and the apportionment of responsibilities between the Councils and the company.

### 4.0 Wards Affected

4.1 This report relates to Shared Services that operate across both Cheshire East and Cheshire West and Chester so all wards are affected in both Councils.

## **5.0 Local Ward Members**

5.1 This report relates to Shared Services that operate across both CE and CWAC so all wards are affected in both Councils.

## **6.0 Policy Implications including**

6.1 None.

## **7.0 Financial Implications**

7.1 There are no direct financial implications arising from this report.

## **8.0 Legal Implications**

8.1 The legal implications are set out in the body of this report.

## **9.0 Risks**

9.1 Failure to properly document the governance arrangements for delivery of shared services through a company structure will leave both Councils and the Company exposed to risk due to uncertainty. Lack of appropriate governance has been identified by the Audit Commission as a key factor in the failure of partnership working and so is an essential component of this transaction.

## **10.0 Background**

### **10.1 Status of CoSocius Limited**

CoSocius was established as a company limited by shares in September 2013. As a company it is a legal entity, capable of making its own decisions. It can enter into contracts, employ staff, own property and bring court proceedings in its own name. The company currently has two directors, Chris Mann (CEC) and Mark Wynn (CWAC).

### **10.2 The company's constitution**

The following make up the company's constitution;

- The company's articles; and
- Decisions which affect the articles which have to be filed at Companies House, for example a special resolution recording a change of name.

The documents, once registered with Companies House, are available to the public and will be supplemented by the policies and procedures making up the company's internal governance arrangements such as financial schemes of delegation and contract procedure rules.

The company's Articles govern the management and administration of the company. There is no specific format required and Articles can be adapted to suit the company's needs. The current Articles are based on model articles set out in legislation and now require amendment to adapt them to suit the company's and Councils requirements. The draft revised Articles are attached

as **Appendix 1** and incorporate the principles agreed by the Executive Board in July 2013.

The articles can normally be changed by special resolution which requires a 75% majority vote by shareholders and so are not cast in stone. Both Councils would therefore need to agree changes being made.

The Articles are a contract between the company and the shareholders and also between CEC and CWAC as shareholders. The Articles bind the shareholders and it can also rely on them to protect its rights as a shareholder.

If the terms of the Articles are breached, one or more shareholders can take action to enforce them but only where its rights as shareholder are affected.

If approved, the revised Articles will form the basis of discussions with the company and its legal advisers, to be appointed early in 2014.

### 10.3 **Management of the company**

The management structure of CoSocius Ltd will be made up of

- The shareholders (CEC and CWAC)
- The Board of directors (the Board); and
- The company's officers (the company's internal management team)

Directors will manage the day to day business of the company and their remit is set out in the Articles. They will operate through the Board and the Board may in turn assign management responsibilities to individuals who are not on the Board.

Director's duties are set out in the Companies Act 2006 and are owed to the company for the benefit of the shareholders as a whole. It is not therefore a "them and us" situation. The only exception to this is where there is an insolvency situation where directors have a duty to mitigate losses to creditors. The proposed structure for the board of directors is set out in a separate report.

### 10.4 **Role of shareholders**

Shareholders retain ultimate control over the company. As shareholders each Councils liability is limited to the amount of its investment in the Company. Whilst the Councils will be keen to protect their investment, there is a clear division of roles between that of director and that of shareholder. The extent to which the Councils will involve themselves in the management of the company depends on what is provided in the Articles and the Shareholder Agreement.

As a Teckal company the degree of control exercised by shareholders will be more than that in a traditional commercial company – see 10.5 below.

In addition, the shareholders for CoSocius Ltd are local authorities and so are ultimately held to account by elected members and local taxpayers, have a fiduciary duty to ensure the company delivers value for money and that its governance arrangements demonstrate transparency and accountability.

## 10.5 Shareholder control

To operate the CoSocius Ltd as a Teckal company the Councils must as a minimum jointly have “a power of decisive influence over both strategic objectives and significant decisions” of the Company. In addition, the Councils will wish to consider the implications of certain Company activities and shareholder decisions for the Councils' commissioning strategies and general approach to externalisation.

A key way in which the Councils will be able to control the Company is through a list of decisions that the Board of directors must refer to the Councils as shareholders ("**Reserved Decisions**"). Reserved Decisions will only be passed if both Councils vote in favour. The Reserved Decisions will be listed in the shareholders' agreement entered into by the Councils and the Company. A draft Reserved Decision list is attached as **Appendix 2**. Appendix 2 also indicates which of these Decisions is required as a minimum to meet Teckal requirements – and so are a given – and which ones are flexible, together with the rationale for including them.

By way of an example, the appointment and removal of directors and approval of the annual business plan are seen as key controls to comply with Teckal. Pension arrangements are not but the Councils will want to consider the potential financial impact on the Fund of closing access to the LGPS and require the company to defer such a decision to them.

Subject to meeting Teckal requirements, the nature and extent of Reserved Decisions are at the discretion of the Councils who will wish to strike a balance between control and allowing the company sufficient freedom to develop as a commercial entity capable of standing on its own feet.

As the company grows the Councils have the option to reduce the level of control exercised via Reserved Decisions.

## 10.6 Shareholder decision making

Formal decisions on Reserved Decisions will be made at general meetings of the company, attended by a representative of each shareholder Council, who is authorised to vote on behalf of their appointing Council.

Each Council will need to agree how to authorise its representative and how this will operate in practice within their respective constitutional arrangements, with arrangements for a deputy.

Both shareholder Councils must agree Reserved Decisions for a decision to be valid. If they are unable to do so, the deadlock provisions in the Shareholder Agreement will apply. It is in the interests of all parties that the Councils reach a consensus on Reserved Decisions. To help achieve this it is proposed that a shareholder board, comprising the authorised representatives and supported by officers and members is established as a forum to discuss and agree Reserved Decisions.

It is proposed that the Shareholder Board has a wider remit to protect the interests of each Council shareholder by keeping an oversight of the performance of the Company, receiving specified reports and monitoring information and considering the wider impact of decisions regarding the Company – for example on other SLE's established by the Councils and its strategic objectives. This is a separate function to the day to day commissioning of services and contract management.

The authorised representative will have a pivotal role as decision maker on behalf of each Council and it is proposed that this should be an Executive/Cabinet member. It is proposed that advice and support to the authorised representative is provided by the following as part of the Shareholder Board. The Board will meet on a regular basis and the composition and terms of reference will be reviewed after 12 months.

#### **Shareholder Board membership**

- Joint Committee members
- S.151 officers for CEC and CWAC
- Heads of Finance for CEC and CWAC
- Monitoring Officer for CEC and CWAC

Draft terms of reference for the Shareholder Board are attached as **Appendix 3**.

### **10.7 Shareholder Agreement**

Part of the legal documentation to transfer services to CoSocius Ltd will include a Shareholder Agreement, which can deal with additional shareholder rights. The Shareholder Agreement is at its most basic a contract, to which CoSocius, CEC and CWAC will be a party. Whereas the Articles are a public document, a shareholder agreement is private. Changes to a shareholder agreement can be agreed by consent and more easily than changes to the Articles. The agreement can be enforced by those who are a party to it.

The shareholder agreement manages the relationship between the councils and the company and would include deadlock provisions where the parties are unable to reach agreement. However, issues relating to service delivery – price, payment, insurance, service levels etc would be covered by the contract for services, which is a separate legal document.

Key principles for the shareholder agreement are set out in the Heads of Terms paper at Appendix 4 – see paragraph 10.10 below.

### **10.8 Decisions making by directors**

Directors are responsible for the day to day management of the company and operate through the Board by passing board resolutions. Resolutions may be passed at Board meetings or by following a written resolution procedure without a meeting. The Board has wide powers to act and can take any decisions necessary except in relation to those matters which are reserved to the shareholders in the Shareholder Agreement. Certain other decisions are reserved to the shareholder by law (for example a change of company name).

The Board has the power to delegate any of its powers. This can be to an individual or a committee and on such terms and conditions as the Board decide. The Company will set out its day to day schemes of delegation in writing and they will form part of its corporate governance structure.

Corporate governance of the company as whole will be a key issue for the Councils and particularly S.151 officers, who will expect to see schemes of delegation, financial procedure rules and key policies in place before “go-live” as a demonstration of accountability and proper processes and procedures. An outline of the key processes and procedures which the Councils would expect to form part of the Company’s internal governance is included as **Appendix 5**.

#### 10.9 **Additional partners**

If the Councils decide to accept a new partner as shareholder, the Articles will continue to apply to the management and administration of the company with such adaptations as necessary.

A new shareholder could either be “bolted on” to the existing shareholder agreement or the parties could negotiate new terms. The Councils would want to consider issues such as whether a new partner would be admitted as an equal partner so that each has a 1/3 interest in the company and what decisions would require unanimity. Further consideration will be given to these issues as part of the detailed drafting of the Shareholder Agreement.

#### 10.10 **Heads of terms**

In July 2013, the Shared Services Programme Board held a workshop facilitated by Bevan Brittan to discuss the overarching principles of the “deal” between the Councils to establish CoSocius Ltd. This resulted in the paper attached as **Appendix 4** which sets out high level terms for the contract for services and shareholder agreement, the principle of working capital and support services.

Key points to note;

- 5 year contract - unilateral option to break at 3 years and to extend for up to 10 years
- Exclusivity for routine transactions
- Minimum level of development work guaranteed
- First refusal above this level
- Charging based on cost recovery during year 1, moving to a commercial charging model
- Annual business plan review including services and payments
- Unforeseen costs/liabilities to be shared 50/50
- Retention of assets

Approval of these high level terms at this stage will facilitate the detailed work on the legal documentation.

## 11 Conclusion

- 11.1 Approval of the documentation outlined in this report is a major milestone in developing the structure for CoSocius limited, the future relationship between the Councils and their dealings with the company.

## 12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writers:

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### **Background Documents:**

*Cheshire East Cabinet Report – Shared Services – 7<sup>th</sup> October 2008*  
*Cheshire West and Chester Executive Report – Joint Liaison Committee Recommendations: Caretaker and Nominated Councils; Shared Services: Service Delivery Option; Shared Back Office Services – 15<sup>th</sup> October 2009*  
*Cheshire East Cabinet Report – Shared Services – 3<sup>rd</sup> March 2009*  
*Cheshire West and Chester Executive Report – Shared Services – 18<sup>th</sup> March 2009*  
*Cheshire East Cabinet Report – Shared Services – 23<sup>rd</sup> March 2009*  
*Cheshire Shared Services Joint Committee Report – 10<sup>th</sup> June 2009*  
*Cheshire Shared Services Joint Committee Report – 13<sup>th</sup> July 2009*  
*Cheshire Shared Services Joint Committee Report – 3<sup>rd</sup> September 2009*  
*Cheshire Shared Services Joint Committee Report – 30<sup>th</sup> September 2009*  
*Cheshire Shared Services Joint Committee Report – 26<sup>th</sup> October 2009*  
*Cheshire Shared Services Joint Committee Report – 26<sup>th</sup> November 2009*  
*Cheshire Shared Services Joint Committee Report – 3<sup>rd</sup> February 2010*  
*Cheshire Shared Services Joint Committee Report – 12<sup>th</sup> March 2010*  
*Cheshire Shared Services Joint Committee Report – 31<sup>st</sup> March 2010*  
*Cheshire Shared Services Joint Committee Report – 28<sup>th</sup> May 2010*  
*Cheshire Shared Services Joint Committee Report – 16<sup>th</sup> July 2010*  
*Cheshire Shared Services Joint Committee Report – 17 September 2010*  
*Cheshire Shared Services Joint Committee Report – 29 October 2010*  
*Cheshire Shared Services Joint Committee Report – 26<sup>th</sup> November 2010*  
*Cheshire Shared Services Joint Committee Report – 7<sup>th</sup> January 2011*  
*Cheshire Shared Services Joint Committee Report – 25<sup>th</sup> February 2011*  
*Cheshire Shared Services Joint Committee Report – 18<sup>th</sup> March 2011*  
*Cheshire Shared Services Joint Committee Report – 29<sup>th</sup> July 2011*  
*Cheshire Shared Services Joint Committee Report – 30<sup>th</sup> September 2011*  
*Cheshire Shared Services Joint Committee Report – 25<sup>th</sup> November 2011*  
*Cheshire Shared Services Joint Committee Report – 27<sup>th</sup> January 2012*  
*Cheshire Shared Services Joint Committee Report – 18<sup>th</sup> May 2012*  
*Cheshire Shared Services Joint Committee Report – 29<sup>th</sup> June 2012*  
*Cheshire Shared Services Joint Committee Report – 27<sup>th</sup> July 2012*  
*Cheshire Shared Services Joint Committee Report – 31<sup>st</sup> August 2012*  
*Cheshire Shared Services Joint Committee Report – 28<sup>th</sup> September 2012*

*Cheshire Shared Services Joint Committee Report – 30<sup>th</sup> November 2012*  
*Cheshire Shared Services Joint Committee Report – 22<sup>nd</sup> February 2013*  
*Cheshire Shared Services Joint Committee Report – 22<sup>nd</sup> March 2013*  
*Cheshire Shared Services Joint Committee Report – 22<sup>nd</sup> March 2013*  
*Cheshire Shared Services Joint Committee Report – 26th April 2013*  
*Cheshire Shared Services Joint Committee Report – 28th June 2013*  
*Cheshire Shared Services Joint Committee Report – 26th July 2013*  
*Cheshire Shared Services Joint Committee Report – 13<sup>th</sup> September 2013*

*Documents are available for inspection at:*

*Cheshire East Democratic Services*

*Westfields*

*Middlewich Road*

*Sandbach*

*CW11 1HZ*

*or:*

*Cheshire West & Chester Democratic Services*

*HQ Building,*

*Nicholas Street,*

*Chester,*

*CH1 2NP*

**APPENDIX 1**

**THE COMPANIES ACT 2006**

**PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**OF**

**COSOCIUS LIMITED**

1	Defined terms	5
2	Directors' general authority	6
3	Shareholders' reserve power	6
4	Directors may delegate	7
5	Alternate directors	7
6	Committees	8
7	Directors to take decisions collectively	8
8	Unanimous decisions	9
9	Calling a Directors' meeting	9
10	Participation in Directors' meetings	10
11	Quorum for Directors' meetings	10
12	Chairing of Directors' meetings	10
13	Casting vote	11
14	Conflicts of interest – transactions or arrangements with the Company	11
15	Conflicts of interest requiring Board authorisation	12
16	Directors may vote when interested	13
17	Records of decisions to be kept	13
18	Directors' discretion to make further rules	13
19	Appointment of the Secretary	13
20	Methods of appointing Directors	13
21	Termination of Director's appointment	14
22	Directors' remuneration	14
23	Directors' expenses	15
24	Appointment of shareholders	15
25	Liability of shareholders	15
26	Termination of shareholder membership	15
27	All shares to be Fully Paid up	15
28	Powers to issue different classes of share	15
29	Company not bound by less than absolute interests	16
30	Share certificate	16
31	Replacement share certificates	17
32	Share transfers	17
33	Procedure for declaring dividends	17
34	Payment of dividends and other distributions	18
35	No interest on distributions	18
36	Unclaimed distributions	18
37	Non-cash distributions	19
38	Waiver of distributions	19
39	General Meetings	19
40	Annual General Meeting	20
41	Chairing general meetings	20
42	Decision-making by shareholders	20
43	Voting	21
44	Errors and disputes	21
45	Written resolutions	21
46	Proxies	21
47	Notices etc by the shareholders	23
48	Means of communication to be used	23

49	Right to inspect accounts and other records	24
50	Indemnity	24
51	Insurance	24

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# PART 1

## INTERPRETATION AND LIMITATION OF LIABILITY

### 1 Defined terms

1.1 In the Articles, unless the context requires otherwise:

"**Act**" means the Companies Act 2006 and any provisions of the Companies Act 1985 for the time being in force;

"**Articles**" means the Company's Articles of association;

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

"**Board**" means the Board of Directors of the Company;

"**Chair**" has the meaning given in article 12;

"**Chair of the meeting**" has the meaning given in article 12;

"**Clear Days**" in relation to the period of a notice, 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;

"**Company**" means the company governed by these Articles;

"**Conflict**" has the meaning given in article 15;

"**Councils**" means Cheshire West and Chester Council and Cheshire East Council and their statutory successors;

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

"**Distribution Recipient**" has the meaning given in article 34.2;

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

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

"**Fully Paid**" in relation to a share, means that the nominal value and any premium to be paid to the Company in respect of that share have been paid to the Company;

"**Group Company**" means, in relation to a company, a Subsidiary undertaking or parent undertaking of the Company or a Subsidiary undertaking of any parent undertaking of the Company, provided that the definition of "undertaking" in section 1161 of the Companies Act 2006 shall for these purposes also include any person (incorporated or unincorporated) created by statute;

"**Hard Copy Form**" has the meaning given in section 1168 of the Companies Act 2006;

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

"**Non-Executive Director**" has the meaning set out in article 20.2.2;

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

"**Participate**", in relation to a Directors' meeting, has the meaning given in article 10;

**"Permitted Situation"** has the meaning given in article 15.5;

**"Qualifying Person"** means:

- a) an individual who is a shareholder;
- b) a person authorised under section 323 of the Companies Act 2006 (*representation of corporations at meetings*) to act as the representative of a corporation in relation to the meeting; or
- c) a person appointed as proxy of a shareholder in relation to the meeting;

**"Relevant Director"** has the meaning given in article 15.1;

**"Secretary"** means the secretary of the Company appointed in accordance with Article 19;

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

**"Subsidiary"** has the meaning given in section 1159 of the Companies Act 2006; and

**"Writing"** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in Electronic Form or otherwise.

- 1.2 The Articles constituting Schedule 1 to the Companies (Model Articles) Regulations 2008 ('Schedule 1') shall apply to the Company except in so far as they are excluded or varied by these Articles
- 1.3 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Companies Act 2006 as in force on the date when these Articles become binding on the Company.
- 1.4 References to a **"person"** shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality).

## **PART 2**

### **DIRECTORS**

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

##### **2 Directors' general authority**

- 2.1 Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

##### **3 Shareholders' reserve power**

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

#### **4 Directors may delegate**

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

#### **5 Alternate directors**

- 5.1 Subject to article 5.2, any Director (other than a Non-Executive Director) may appoint as an alternate any other person to:
- 5.1.1 exercise that Director's powers; and
  - 5.1.2 carry out that Director's responsibilities
- in relation to the taking of decisions by the Board, in the absence of the alternate's appointor.
- 5.2 The appointment of any alternate Director under this article 5 shall be subject to the prior approval of the shareholders.
- 5.3 Any appointment or removal of an alternate must identify the proposed alternate and be effected by notice in Writing to the Company signed by his appointor, or in any other manner approved by the Board.
- 5.4 An alternate Director may act as alternate Director to more than one Director and has the same rights in relation to any decision of the Board as his appointor.
- 5.5 Except as these Articles specify otherwise, alternate Directors:
- 5.5.1 are deemed for all purposes to be Directors;
  - 5.5.2 are liable for their own acts and omissions;
  - 5.5.3 are subject to the same restrictions as their appointors;
  - 5.5.4 are not deemed to be agents of or for their appointors; and

- 5.5.5 and, in particular (without limitation), each alternate Director shall be entitled to receive notice of all meetings of Board and of all meetings of committees of the Board of which his appointor is a member.
- 5.6 A person who is an alternate Director but not a Director:
  - 5.6.1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's appointor is not participating);
  - 5.6.2 may participate in a unanimous decision of the Directors (but only if his appointor is an eligible Director in relation to that decision, but does not participate); and
  - 5.6.3 shall not be counted as more than one director for the purposes of Articles 5.6.1 and 5.6.2.
- 5.7 A Director who is also an alternate Director is entitled, in the absence of his appointor, to a separate vote on behalf of his appointor, in addition to his own vote on any decision of the Board (provided that his appointor is an eligible Director in relation to that decision), but shall not count as more than one Director for the purposes of determining whether a quorum is present.
- 5.8 An alternate Director is not entitled to receive any remuneration from the Company for serving as an alternate Director.
- 5.9 An alternate Director's appointment as an alternate terminates:
  - 5.9.1 when the alternate's appointor revokes the appointment by notice to the Company in Writing specifying when it is to terminate;
  - 5.9.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a Director;
  - 5.9.3 on the death of the alternate's appointor;
  - 5.9.4 when the alternate's appointor's appointment as a Director terminates; or
  - 5.9.5 when the alternate is removed in accordance with these Articles.

## **6 Committees**

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

## **DECISION-MAKING BY DIRECTORS**

### **7 Directors to take decisions collectively**

- 7.1 Subject to article 13, each Director shall have one (1) vote.

- 7.2 The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision taken accordance with article 8.
- 7.3 If only one (1) Director is eligible to vote on any authorisation required under article 15, the general rule does not apply, and the eligible Director may take decisions in relation to the relevant matter without regard to any of the provisions in the Articles relating to Directors' decision-making.

## **8 Unanimous decisions**

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.

## **9 Calling a Directors' meeting**

- 9.1 Any Director may call a Directors' meeting by giving notice of the meeting to the Directors under article 9.2 or by authorising the Secretary to give such notice.
- 9.2 A Directors' meeting must be called by at least seven (7) Clear Days' notice unless either:
- 9.2.1 the Directors unanimously agree; or
  - 9.2.2 urgent circumstances require shorter notice.
- 9.3 Notice of any Directors' meeting must indicate:
- 9.3.1 its proposed date and time;
  - 9.3.2 where it is to take place;
  - 9.3.3 if it is anticipated that Directors 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;
  - 9.3.4 an agenda specifying in reasonable detail the matters to be raised at the meeting or the committee meeting; and
  - 9.3.5 copies of any papers to be discussed at the meeting or the committee meeting.
- 9.4 Notice of a Directors' meeting must be given to each Director in Writing.

- 9.5 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company not more than seven (7) days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

## **10 Participation in Directors' meetings**

- 10.1 Subject to the Articles, Directors Participate in a Directors' meeting, or part of a Directors' meeting, when:
- 10.1.1 the meeting has been called and takes place in accordance with the Articles, and
  - 10.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 10.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.
- 10.3 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

## **11 Quorum for Directors' meetings**

- 11.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 11.2 Subject always to articles 7 and 11.3, the quorum for the Directors' meetings shall be fifty percent (50%) of Directors which shall include at least one Executive Director.
- 11.3 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision to:
- 11.3.1 to call a general meeting so as to enable the shareholders to appoint further Directors.
- 11.4 If a quorum is not present with half an hour from the time appointed for the meeting or during a meeting a quorum ceases to be present the meeting shall be adjourned to such time and place as the Directors may determine in accordance with these articles.

## **12 Chairing of Directors' meetings**

- 12.1 The shareholders may appoint a Director to chair Board meetings.
- 12.2 The person so appointed for the time being is known as the "**Chair**".
- 12.3 The shareholders may terminate the Chair's appointment at any time.
- 12.4 If the Chair is not participating in a Directors' meeting within ten (10) minutes of the time at which it was to start, the participating Directors must appoint one of themselves to chair it.

### **13 Casting vote**

- 13.1 If the numbers of votes for and against a proposal are equal, the Chair shall have a casting vote.

### **14 Conflicts of interest – transactions or arrangements with the Company**

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

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

14.2.1 may be a party to, or otherwise interested in, any contract with the Company or in which the Company is otherwise interested;

14.2.2 may be a director or other officer of, employed by, a party to any contract with or otherwise interested in the Councils, any Group Company or in any body corporate promoted by the Company, a Group Company or the Councils, or in which the Company, any Group Company or the Councils are interested; and

14.2.3 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor).

- 14.3 For the purposes of this article 14:

14.3.1 a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being a director, officer or employee of the Councils, any Group Company; and

14.3.2 a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any contract in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such contract of the nature and extent so specified.

- 14.4 Where a Director is a director or other officer of, or employed by, the Councils or a Group Company, he:

14.4.1 may in exercising his independent judgment take into account the success of the Councils and other Group Companies as well as the success of the Company; and

14.4.2 shall in the exercise of his duties, where that other Group Company is a parent company, have a duty of confidentiality to the parent company in relation to confidential information of the parent company, but he shall not be restricted by any duty of confidentiality to the Company from providing information to any parent company.

## 15 Conflicts of interest requiring Board authorisation

- 15.1 The Directors may, subject to the quorum and voting requirements set out in the Articles, authorise any matter which would otherwise involve a Director ("**Relevant Director**") breaching his duty under the Act to avoid Conflicts of interest (a "**Conflict**").
- 15.2 Any Director (including the Relevant Director) may propose that the Relevant Director be authorised in relation to any matter the subject of a Conflict. Such proposal and any authority given by the Directors shall be effected in the same way that any other matter may be proposed to and decided upon by the Directors under the provisions of the Articles save that the Relevant Director shall not count towards the quorum nor vote on any resolution giving such authority and save further that if there are insufficient Directors eligible to vote and therefore to form a quorum, article 15.3 will apply.
- 15.3 Where the Directors give authority in relation to a Conflict:
- 15.3.1 the terms of the authority shall be recorded in Writing (but the authority shall be effective whether or not the terms are so recorded); and
- 15.3.2 the Directors may revoke or vary such authority at any time but this will not affect anything done by the Relevant Director prior to such revocation in accordance with the terms of such authority.
- 15.4 A Conflict in relation to a Director arising solely as a result of him or her being a director, officer or employee of the Councils, any Group Company shall be deemed to have been authorised for the purposes of this article 15 and section 175 of the Act.
- 15.5 Where article 15.4 above applies or the Directors otherwise give authority in relation to a Conflict, or where any of the situations referred to in article 14 (a "**Permitted Situation**") applies:
- 15.5.1 the Directors may (whether at the relevant time or subsequently) (i) require that the Relevant Director is excluded from the receipt of information, the participation in discussion and/or the making of decisions (whether at meetings of the Directors or otherwise) related to the Conflict or Permitted Situation; and (ii) impose upon the Relevant Director such other terms for the purpose of dealing with the Conflict as they may determine;
- 15.5.2 the Relevant Director will be obliged to conduct himself in accordance with any terms imposed by the Board in relation to the Conflict or Permitted Situation; and
- 15.5.3 the Directors may provide that where the Relevant Director obtains (otherwise than through his position as a Director of the Company) information that is confidential to a third party, the Director will not be obliged to disclose that information to the Company, or to use or apply the information in relation to the Company's affairs, where to do so would amount to a breach of that confidence.
- 15.6 A Director shall not, by reason of his office or of the fiduciary relationship thereby established, be liable to account to the Company or the shareholders for any remuneration, profit or other benefit realised by reason of his having any type of

interest in a Conflict authorised under this article or in any Permitted Situation and no contract shall be liable to be avoided on the grounds of a Director having any such interest.

## **16 Directors may vote when interested**

A Director shall not be entitled to vote in respect of any matter in which he is interested directly or indirectly and his vote shall not be counted and his presence at the meeting shall not be taken into account in ascertaining whether a quorum is present except where a Director's interest arises as a result of a Director being a director, officer or employee of the Council or any Group Company

16.1 Subject to article 16.3 below, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to Participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.

16.2 If any question as to the right to Participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

## **17 Records of decisions to be kept**

17.1 The Directors must ensure that the Company keeps a record, in Writing, for at least ten (10) years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors.

## **18 Directors' discretion to make further rules**

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

## **APPOINTMENT OF DIRECTORS AND SECRETARY**

### **19 Appointment of the Secretary**

19.1 The shareholders shall appoint (and remove) the Secretary in accordance with the Act.

### **20 Methods of appointing Directors**

20.1 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 by the shareholders.

20.2 The Board of Directors shall be appointed by the shareholders and  
20.3 shall comprise of a minimum of two (2) Directors and the shareholders may decide the maximum of number of Directors from time to time.

20.4 The Board shall include:

20.4.1 up to three (3) Directors who shall be appointed by the shareholders and who shall have suitable experience and skills to provide independent challenge and input into Board decisions (the "**Non-Executive Directors**").

## **21 Termination of Director's appointment**

- 21.1 A person ceases to be a Director as soon as:
- 21.1.1 the shareholders notify the Company that the individual is to be removed as a Director;
  - 21.1.2 that person ceases to be a Director by virtue of any provision of the Act or is prohibited from being a Director by law;
  - 21.1.3 a Bankruptcy order is made against that person;
  - 21.1.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;
  - 21.1.5 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months;
  - 21.1.6 by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or
  - 21.1.7 notification is received by the Company from the Director that the Director is resigning from office, and such resignation has taken effect in accordance with its terms.
- 21.2 One-third of the Non-Executive Directors, or if their number is not three (3) or a multiple of three (3) the number nearest to one-third, shall retire from office at each annual general meeting.
- 21.3 The Non-Executive Directors to retire by rotation under Article 21.2 shall be those who have been longest in office since their last appointment. If any Non-Executive Directors became or were appointed Non-Executive Directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 21.4 If a Director is required to retire at a General Meeting by a provision of the Articles the retirement shall take effect upon the conclusion of the meeting.
- 21.5 Non-Executive Directors shall be eligible for re-appointment to the Board for one (1) further term so that Non-Executive Directors may serve a maximum of two (2) terms.

## **22 Directors' remuneration**

- 22.1 Any remuneration of Directors shall be determined by the shareholders. Directors may undertake any services for the Company that the shareholders decide.
- 22.2 Unless the shareholders decide otherwise, Directors' remuneration accrues from day to day.

- 22.3 Unless the shareholders decide otherwise, Directors are not accountable to the Company for any remuneration which they receive as Directors or other officers or employees of the Company's Subsidiaries or the Councils or of any other body corporate in which the Company is interested.

**23 Directors' expenses**

- 23.1 Any expenses of Directors (and alternate Directors) shall be determined by the shareholders.

**PART 3**

**SHAREHOLDERS, SHARES AND DISTRIBUTIONS**

**SHARES**

**24 Appointment of shareholders**

- 24.1 The subscribers to the Memorandum are the first shareholders of the Company.
- 24.2 No person shall be admitted a shareholder of the Company unless they are approved by the shareholders.
- 24.3 The Directors must keep a register of names and addresses of the shareholders.

**25 Liability of shareholders**

- 25.1 The liability of the shareholders is limited to the amount, if any, unpaid on the shares held by them.

**26 Termination of shareholder membership**

- 26.1 Shareholder membership is terminated if the shareholder resigns by written notice to the Company;

**27 All shares to be Fully Paid up**

- 27.1 No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the Company in consideration for its issue.
- 27.2 This does not apply to shares taken on the formation of the Company by the subscriber to the Company's memorandum.

**28 Powers to issue different classes of share**

- 28.1 Subject to the Articles, but without prejudice to the rights attached to any existing share, the Company may issue shares with such rights or restrictions as may be determined by consent of the shareholders.
- 28.2 The Company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the shareholder, and the Directors may determine the terms, conditions and manner of redemption of any such shares.

**29 Company not bound by less than absolute interests**

29.1 Except as required by law, no person is to be recognised by the Company as holding any share upon any trust, and except as otherwise required by law or the Articles, the Company is not in any way to be bound by or recognise any interest in a share other than the shareholder's absolute ownership of it and all the rights attaching to it.

**30 Share certificate**

30.1 The Company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

30.2 Every certificate must specify:

30.2.1 in respect of how many shares, of what class, it is issued;

30.2.2 the nominal value of those shares;

30.2.3 that the shares are Fully Paid; and

30.2.4 any distinguishing numbers assigned to them.

30.3 No certificate may be issued in respect of shares of more than one class.

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

30.5 Certificates must be executed in accordance with the Act.

## **31 Replacement share certificates**

- 31.1 If a certificate issued in respect of a shareholder's shares is:
- 31.1.1 damaged or defaced, or
  - 31.1.2 said to be lost, stolen or destroyed
- that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.
- 31.2 A shareholder exercising the right to be issued with such a replacement certificate:
- 31.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;
  - 31.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and
  - 31.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the Directors decide.

## **32 Share transfers**

- 32.1 Shares may be transferred by means of an Instrument of transfer in any usual form or any other form approved by the Directors, which is executed by or on behalf of the transferor.
- 32.2 No fee may be charged for registering any Instrument of transfer or other Document relating to or affecting the title to any share.
- 32.3 The Company may retain any Instrument of transfer which is registered.
- 32.4 The transferor remains the shareholder of a share until the transferee's name is entered in the register of shareholders as holder of it.
- 32.5 The Directors may refuse to register the transfer of a share, and if they do so, the Instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

## **DIVIDENDS AND OTHER DISTRIBUTIONS**

### **33 Procedure for declaring dividends**

- 33.1 The Company may by Ordinary Resolution declare dividends, and the Directors may decide to pay interim dividends.
- 33.2 A dividend must not be declared unless the Directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the Directors.
- 33.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 33.4 Unless the shareholders' resolution to declare or Directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be

paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.

- 33.5 If the Company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.
- 33.6 The Directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 33.7 If the Directors act in good faith, they do not incur any liability to the shareholder conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

#### **34 Payment of dividends and other distributions**

- 34.1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:
  - 34.1.1 transfer to a bank or building society account specified by the Distribution Recipient either in Writing or as the Directors may otherwise decide;
  - 34.1.2 sending a cheque made payable to the Distribution Recipient by post to the Distribution Recipient at the Distribution Recipient's registered address (if the Distribution Recipient is a shareholder of the share), or (in any other case) to an address specified by the Distribution Recipient either in Writing or as the Directors may otherwise decide;
  - 34.1.3 sending a cheque made payable to such person by post to such person at such address as the Distribution Recipient has specified either in Writing or as the Directors may otherwise decide; or
  - 34.1.4 any other means of payment as the Directors agree with the Distribution Recipient either in Writing or by such other means as the Directors decide.
- 34.2 In the Articles, the "**Distribution Recipient**" means, in respect of a share in respect of which a dividend or other sum is payable:
  - 34.2.1 the shareholder of the share; or
  - 34.2.2 if the shareholder is no longer entitled to the share by reason of Bankruptcy, or otherwise by operation of law, the transmittee.

#### **35 No interest on distributions**

- 35.1 The Company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:
  - 35.1.1 the terms on which the share was issued, or
  - 35.1.2 the provisions of another agreement between the shareholder of that share and the Company.

#### **36 Unclaimed distributions**

- 36.1 All dividends or other sums which are:
- 36.1.1 payable in respect of shares, and
  - 36.1.2 unclaimed after having been declared or become payable,
- may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed.
- 36.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.
- 36.3 If:
- 36.3.1 twelve (12) years have passed from the date on which a dividend or other sum became due for payment, and
  - 36.3.2 the Distribution Recipient has not claimed it,
- the Distribution Recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company.

### **37 Non-cash distributions**

- 37.1 Subject to the terms of issue of the share in question, the Company may, by Ordinary Resolution on the recommendation of the Directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any Company).
- 37.2 For the purposes of paying a non-cash distribution, the Directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:
- 37.2.1 fixing the value of any assets;
  - 37.2.2 paying cash to any Distribution Recipient on the basis of that value in order to adjust the rights of recipients; and
  - 37.2.3 vesting any assets in trustees.

### **38 Waiver of distributions**

Distribution Recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the Company notice in Writing to that effect.

## **PART 4**

### **DECISION-MAKING BY SHAREHOLDERS**

#### **ORGANISATION OF GENERAL MEETINGS**

### **39 General Meetings**

- 39.1 All general meetings of the shareholders shall be called general meetings.

- 39.2 Notice of a general meeting shall be given in hard copy form, in electronic form or by means of a website, provided that the Company complies with any requirements relating to the giving of notice laid down in the Companies Act 2006.
- 39.3 Notice of a general meeting shall be sent to every shareholder, every Director and any other person required by law to be sent such notice.
- 39.4 Notice of a general meeting shall:
- 39.4.1 state the time, date and place of the meeting;
  - 39.4.2 specify the general nature of the business to be dealt with at the meeting and set out the text of any special resolution to be voted upon at the meeting; and
  - 39.4.3 be accompanied by a proxy form.
- 39.5 The accidental omission to give notice of a general meeting to, or the non-receipt of notice by, any person entitled to receive the notice; or a technical defect in the timing or manner of giving such notice of which the Board is unaware shall not invalidate the proceedings of that meeting.

#### **40 Annual General Meeting**

- 40.1 The shareholders shall hold an annual general meeting each Company financial year.

#### **41 Chairing general meetings**

- 41.1 If the Directors have appointed a Chair, the Chair shall chair general meetings if present and willing to do so.
- 41.2 If the Directors have not appointed a Chair, or if the Chair is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:
- 41.2.1 the Directors present, or
  - 41.2.2 (if no Directors are present), the meeting,
- must appoint a Director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

#### **42 Decision-making by shareholders**

- 42.1 Notice of a general meeting of the Company need not be sent to a Director in his capacity as such and Section 310(1)(b) of the Act shall be excluded accordingly.
- 42.2 No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting unless an authorised representative of each shareholder is present.
- 42.3 Where the Company has one shareholder:
- 42.3.1 any decision that may be taken by the Company in general meeting may be taken by that shareholder solely; and

42.3.2 such a decision is effective as if agreed by the Company in general meeting.

42.4 Where the sole shareholder takes a decision under article 42.3 it must (unless that decision is taken by way of a written resolution) provide the Company with written details of that decision.

42.5 The person chairing a meeting in accordance with this article is referred to as "**the chairman of the meeting**".

#### **43 Voting**

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

43.2 A poll on a resolution may be demanded:

43.2.1 in advance of the general meeting where it is to be put to the vote; or

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

43.3 A poll may be demanded by any Qualifying Person present and entitled to vote on the resolution.

43.4 A demand for a poll may be withdrawn if the poll has not yet been taken and the chair of the meeting consents to the withdrawal. A demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

43.5 Polls must be taken immediately and in such manner as the chair of the meeting directs.

#### **44 Errors and disputes**

44.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid. Any such objection must be referred to the chair of the meeting whose decision is final.

#### **45 Written resolutions**

45.1 A written resolution passed in accordance with the Act is as valid as a resolution actually passed at a general meeting (and for this purpose the written resolution may be set out in more than one Document). A written resolution passed under this Article will lapse if not passed before the end of 28 days beginning with the Circulation Date (as defined in section 290 of the Act).

#### **46 Proxies**

46.1 Content of proxy notices

46.1.1 Proxies may only be validly appointed by a notice in Writing (a **proxy notice**) which:

- 46.1.1.1 states the name and address of the shareholder appointing the proxy;
  - 46.1.1.2 identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;
  - 46.1.1.3 is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the Board may determine; and
  - 46.1.1.4 is delivered to the Company in accordance with these Articles not less than 48 hours before the time appointed for holding the general meeting in relation to which the proxy is appointed and in accordance with any instructions contained in the notice of the general meeting to which they relate (but notwithstanding the foregoing, an appointment of a proxy may be accepted by the Board, in its absolute discretion, at any time prior to the meeting at which the person named in the appointment proposes to vote (or, where a poll is demanded at the meeting, but not taken forthwith, at any time prior to the taking of the poll)).
- 46.1.2 The Company may require proxy notices to be delivered in a particular form and may specify different forms for different purposes.
- 46.1.3 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions, but the Company shall not be obliged to ascertain that any proxy has complied with those or any other instructions given by the appointor and no decision on any resolution shall be vitiated by reason only that any proxy has not done so.
- 46.1.4 On a vote on a resolution on a show of hands or a poll at a meeting, every proxy present who has been duly appointed by one or more shareholders entitled to vote on the resolution has one vote, except that if the proxy has been duly appointed by more than one shareholder entitled to vote on the resolution and:
- 46.1.4.1 has been instructed by one or more of those shareholders to vote for the resolution and by one or more other of those shareholders to vote against it; or
  - 46.1.4.2 has been instructed to vote the same way (either for or against) on the resolution by all of those shareholders except those who have given the proxy discretion as to how to vote on the resolution
- the proxy is entitled to one vote for and one vote against the resolution.
- 46.1.5 Unless a proxy notice indicates otherwise, it must be treated as:

46.1.5.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and

46.1.5.2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

#### 46.2 Delivery of proxy notices

46.2.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company by or on behalf of that person.

46.2.2 An appointment under a proxy notice may be revoked by delivering to the Company a notice in Writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given. A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

46.2.3 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

## PART 5

### ADMINISTRATIVE ARRANGEMENTS

#### 47 Notices etc by the shareholders

47.1 This article applies to:

47.1.1 any notice given to the Company by the shareholders under these Articles; and

47.1.2 any consent given by the shareholders under these Articles.

47.2 Any notice or consent referred to in article 47.1 must be in Writing and sent or supplied to the Company in accordance with this Part 5.

47.3 Any notice or consent by a shareholder must be duly signed by that shareholder.

#### 48 Means of communication to be used

48.1 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 Act 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.

48.2 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.

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

#### **49 Right to inspect accounts and other records**

49.1 The shareholders and their authorised representatives shall have the right on giving to the Company reasonable advance notice, during normal business hours to inspect the books and records of the Company and any Subsidiary of the Company.

### **DIRECTORS' INDEMNITY AND INSURANCE**

#### **50 Indemnity**

50.1 The Company shall indemnify a relevant Director against any liability incurred in that capacity, to the extent permitted by sections 232 to 234 of the Act.

50.2 In this article a 'relevant Director' means any Director or former Director of the Company.

#### **51 Insurance**

51.1 The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any Relevant Director in respect of any relevant loss.

51.2 In this article:

51.2.1 a "**Relevant Director**" means any Director or former Director of the Company or an associated Company;

51.2.2 a "**relevant loss**" means any loss or liability which has been or may be incurred by a Relevant Director in connection with that Director's duties or powers in relation to the Company, any associated Company or any pension fund or employees' share scheme of the Company or associated Company; and

51.2.3 companies are associated if one is a Subsidiary of the other or both are Subsidiaries of the same body corporate.

## APPENDIX 2

### COSOCIUS LIMITED – GOVERNANCE SHAREHOLDER RESERVED MATTERS DRAFT FOR DISCUSSION

Cheshire West and Chester Council and Cheshire East Council ("the **Councils**") are establishing a new shared services company, CoSocius Limited ("the **Company**"). To operate the Company as a Teckal company the Councils must as a minimum jointly have "a power of decisive influence over both strategic objectives and significant decisions" of the Company. In addition, the Councils will wish to consider the implications of certain Company activities and shareholder decisions for the Councils' commissioning strategies and general approach to externalisation.

A key way in which the Councils will be able to control the Company is through a list of decisions that the board of directors must refer to the Councils as shareholders of the Company ("**Reserved Decisions**"). Reserved Decisions would only be passed if both Councils voted in favour. The Reserved Decisions will be listed in the shareholders' agreement entered into by the Councils and the Company.

This paper sets out the proposed Reserved Decisions, the rationale and whether the decision is a requirement for the Teckal procurement exemption.

Formal decisions on Reserved Decisions will be made at general meetings of the Company, attended by a representative of each shareholder Council, who is authorised to vote on behalf of the representative's appointing Council or via written resolution. Each Council will agree how to authorise its representative and should therefore give consideration as to how this will operate in practice within their respective constitutional arrangements.

Both shareholder Councils must agree Reserved Decisions. If they are unable to do so, the deadlock provisions in the shareholder agreement will apply. It is in the interests of all parties that the Councils reach a consensus on Reserved Decisions and it is proposed that a shareholder board, comprising the authorised representatives and supported by officers and members is established as a forum to discuss and agree Reserved Decisions. The Board may also be given a wider remit to protect the interests of each Council shareholder by keeping an oversight of the performance of the Company, receiving specified reports and monitoring information and considering the wider impact of decisions regarding the Company – for example on other SLE's established by the Councils. This is a separate function to the day to day commissioning of services and contract management.

The Reserved Decisions would be reviewed as the Company matures.

No.	Decision	Rationale	Teckal requirement? <sup>1</sup>	NOTES
1.	Appointment and removal of directors	Gives the Councils the right to jointly appoint and remove directors from the Company Board and so ultimate control of operational decision making.	Yes	
2.	Appointment and removal of Company secretary	Not a legal requirement to have a company secretary but given potential pivotal role (see notes) could be a post Councils want control over.	No	
3.	Changing the Articles or the rights attached to any of the shares in the Company	This would be more relevant if there were more shareholders or if one shareholder had 75% of the vote. However, it is sometimes included from the outset to establish a principle.	No	Under company law these decisions would require a shareholder decision anyway, in the case of the articles requiring a 75% majority. As neither Council has a 75% majority it would require consent of both.
4.	Creating a subsidiary or acquiring shares in another company or participating in any joint venture or partnership (incorporated or not)	These actions could potentially have a major impact on the business and financial position of the Company including financial implications and liabilities which shareholders would wish to understand and agree to.	Not necessarily.	Creating a subsidiary (entity majority controlled by the Company) could be material if, for example, used as a vehicle for a corporate joint venture with another party or even if wholly owned if used for hiving off some of the Company's business. Acquiring shares could be significant either as an investment or as a means of structuring a joint venture with another party. The Company becoming involved with external entities could have a

<sup>1</sup> The extent of the Councils' control over the Company would be looked at in the round. This column provides a simple yes / no position on whether it would be recommended to include the relevant decision as a reserved decision in the shareholders' agreement in order to satisfy the Teckal test.

No.	Decision	Rationale	Teckal requirement? <sup>1</sup>	NOTES
				range of implications depending on the nature of the external entity and the nature of the Company's involvement. The Council shareholders would wish to consider these implications and reach agreement on any decisions.
5.	Selling parts of the business	Potentially a major impact on the business and financial position of the Company. Company should be focused on Councils so could only sell if Councils agreed.	Yes	This relates to sale of the Company's business (either in whole or part) as opposed to the sale of any Company shares.
6.	Amalgamating or merging with any other company or business	Potentially a major impact on the business and financial position of the Company. May result in reduced rights for Councils as shareholders and potential disapplication of the Teckal exemption if non-Teckal compliant third party shareholders are admitted.	Yes	'Merging' and 'amalgamating' are overlapping concepts but amalgamating can refer to internal restructuring of companies within a group whereas merger normally refers to two autonomous businesses coming together.
7.	Entering into any new arrangement, contract or transaction with either a capital value over [£250,000] or otherwise a value of over [£50,000] OR contract which is not incidental or ancillary to the primary business of the Company	The intention is to ensure that the Company does not create material liabilities / obligations without the Councils consent.	Sensible to have a certain threshold (in an analogous way to delegated authority in the Councils)	The reference to financial limits should be proportionate and requires review. Separate values could be used for capital contracts to reflect the different values that could constitute material. Consent would not be needed where already provided in the annual business plan.

No.	Decision	Rationale	Teckal requirement? <sup>1</sup>	NOTES
				Thresholds to be confirmed.
8.	Adopting or amending the annual business plan and any [material] in-year changes	A requirement to produce and agree an Annual Business Plan will be a key control from a shareholder perspective.	Yes	
9.	Adopting or amending the 5 year strategic plan	This will be a key document to be agreed with the Councils and should reflect the Councils' strategic commissioning objectives as well as the Company's plans post-incubation period.	No	
10.	Changing the Company's registered office	Councils may wish to control the location of the Company (local ownership, links to community and Councils' policies around local economy etc).	No	
11.	Creating or agreeing to create a charge/security/encumbrance over the Company's assets, shares or income	Potentially a major impact on the business and financial position of the Company. Given the potential materiality sensible for Councils to have control over it.	No	Based on discussions to date, the Company will not hold significant assets in any event – all property and equipment to be leased to the Company for duration of contract.
12.	Adopting or changing remuneration and redundancy policies including: 1) the award of pay increases to employees which in aggregate exceed the percentage rate allowed for pay increases in the latest valuation of the Fund prior to the award of	Changes to remuneration policies will impact on the cost of delivery of the services and LGPS funding. It is also an area that local authorities often want to retain control over given the Company continues to be	No	Wording to be simplified.

No.	Decision	Rationale	Teckal requirement? <sup>1</sup>	NOTES
	<p>the pay increase in question; or</p> <p>2) the award of pay increases to employees which in aggregate exceed any pay increases that the Company is required to make by law (including, for these purposes, pursuant to its obligations arising under, or as a consequence of, the TUPE Regulations, any code of practice and/or any National Joint Council for Local Government Services or Joint Negotiating Committee for Local Council Employees arrangements);</p> <p>3) the award of pay increases to employees which in aggregate exceed any pay increases that the Company is obliged to offer pursuant to the terms and conditions of employment in place as at the Service Transfer Date (including under any collective agreement);</p> <p>4) termination of the employment contract of an employee who is aged 55 or over at the time, by reason of redundancy or in the interests of efficiency or otherwise allowing such employee to retire on those grounds.</p>	owned by the Councils .		
13.	Making changes to pension arrangements for staff.	On the basis of agreement to offer an open pension scheme, accessible to new recruits, changes could impact industrial relations with Trade unions and staff. If LGPS withdrawn then the Councils must ensure legal	No	

No.	Decision	Rationale	Teckal requirement? <sup>1</sup>	NOTES
		<p>obligations to secure pension protection do not leave them at risk of a legal challenge. Also to be viewed as part of each Council's approach to pensions and access for hive-off organisations. Has a material impact on the host Council's pension liability.</p>		
14.	<p>Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent)</p>	<p>A very important right for minority shareholders to ensure company isn't wound up against their wishes.</p>	No	<p>Under company law decision must be agreed by at least 75% majority of shareholders to invoke the shareholders' statutory right to voluntarily wind up a company. On this basis and given only two shareholders this decision could be omitted and left to be governed by statute which would mean both Councils would have to agree.</p>
15.	<p>Remuneration of Directors (including contractual redundancy and performance related pay)</p>	<p>Reputational risk to the Councils if seen to award above sector average pay rises. Also impact on pension fund liabilities.</p>	No	
16.	<p>Approve the admission of further shareholders to the Company and agree any rights or restrictions attached to the shares allocated to them.</p>	<p>Potentially a major impact on the business and financial position of the Company. Potential to dilute Council control and the application of Teckal.</p>	Yes	

No.	Decision	Rationale	Teckal requirement? <sup>1</sup>	NOTES
17.	To appoint and remove the chair of the Board of Directors (except where the chair is absent in which case the board of directors will appoint an alternate chair)	The chair is an influential position as the chair will have a casting vote where there is an equality of votes of the Company board of directors.	No but advisable.	The right to appoint the chair could be alternated between the Councils. However, this may not be acceptable given that the chair is to have a casting vote so would potentially have significant influence over board decisions.
18.	Decide the maximum size of the Board	Linked to the right to appoint and remove directors. Additional control over the Company as the aim is to ensure the level of control exercised by Council appointments required for Teckal is not diluted by additional appointments. May also impact on cost as remuneration package for non-Executive directors. Sits with the right to appoint and remove directors.	No	Assurance that Council appointed directors wouldn't be diluted could be obtained by setting the maximum number of directors in the articles meaning this Reserved Decision wouldn't be required. The Articles specify a minimum of 2 directors and up to three non-executive directors. In any event wider framework of control including right to change articles and require specified action mean it is not material.
19.	To decide what (if any) goods and services directors may provide for the Company	Allows the Councils to regulate services directors can personally provide back to the Company. Important given that funding for the Company is via	No	

No.	Decision	Rationale	Teckal requirement? <sup>1</sup>	NOTES
		the public purse to ensure transparency and accountability.		
20.	Changing the financial year end	Impacts on the ability of the Councils to produce consolidated accounts so significant	No	Year end needs to tie into the Councils' year end from a practical point of view.
21.	Changing the nature of the Company's business or commencing any new business which is not ancillary or incidental to the business.			
22.	Making of any acquisition or disposal of any material assets by the Company. Material for this purpose being set as part of the annual business plan process by the Company and Councils.	Company established for core purpose to provide services back to the Councils and established so as to operate within Teckal. Changing the nature of the business would have a significant impact on this position as well as the risk position of the Company.	Yes	
23.	Making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading) or giving any guarantee (other than in the normal course of trading) or indemnity.		No	
24.	Giving notice of termination of any arrangements, contracts or transactions which are [material] in the nature of the	Public funding for these services should not be used for any other purpose than to	No	

No.	Decision	Rationale	Teckal requirement? <sup>1</sup>	NOTES
	Company's business or materially varying any such arrangements, contracts or transactions	support delivery of the services. Raises state aid issue.		
25.	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the Company	Such action could have a significant impact on the viability of the business.	No	
26.	Changing the Company's auditors	IPR in the Company will have a commercial value	No	May depend on where IPR sit
27.		As a local authority controlled company the auditors must be approved by the Audit Commission and any change should be notified to the Councils together with proposals for replacement auditors.	No	

No.	Decision	Rationale	Teckal requirement? <sup>1</sup>	NOTES

## **APPENDIX 3**

### **SHAREHOLDER BOARD - TERMS OF REFERENCE**

The Shareholder Board shall be responsible for;

- Providing advice and guidance to the Councils authorised representatives in respect of Reserved Decisions
- Maintaining a strategic overview of CoSocius Ltd and its relationship with other council owned alternative delivery vehicles
- Ensuring that the impact of decisions made in respect of CoSocius Ltd on other companies owned by CEC and/or CWAC are properly understood.
- Ensuring the appropriateness of the company's governance arrangements.
- Monitoring compliance with Teckal requirements.
- Progress against the Company's 5 year Strategic Plan.
- Monitoring key success factors
- Monitoring risks

## APPENDIX 4

### CHESHIRE WEST AND CHESTER COUNCIL

### CHESHIRE EAST COUNCIL

### HEADS OF TERMS FOR SHARED SERVICES COMPANY

#### 1 OVERVIEW

- 1.1 Cheshire West and Chester Council (**CWAC**) and Cheshire East Council (**CE**) are establishing a shared services company to deliver ICT, Finance and HR transactional services to the two Councils. This builds on the intra-authority shared services arrangements that the Councils already have in place.
- 1.2 The key documents required to implement this structure will be:
  - 1.2.1 Articles of association for the shared services company (**Shared Co**);
  - 1.2.2 Shareholders' agreement;
  - 1.2.3 Service contract(s) between each Council and Shared Co;
  - 1.2.4 Working capital facility for Shared Co (if required);
  - 1.2.5 Support services buy back contract for Shared Co (if required).
- 1.3 These heads of terms provide an overview of the agreed legal principles for the respective documents. The heads of terms will inform the drafting of the full documents. The heads of terms are not intended to be legally binding.

#### 2 ARTICLES OF ASSOCIATION

- 2.1 A company limited by shares will be used. This will allow maximum flexibility for future options, including alternative ownership structures and distribution of profits.
- 2.2 The substantive provisions around board composition and voting rights will be contained in the shareholders' agreement.
- 2.3 An outline of the Articles

#### 3 SHAREHOLDERS' AGREEMENT

- 3.1 The two Councils will be equal shareholders with 50 per cent of the vote each. Neither Council will be able to pass a majority decision on matters reserved to the shareholders on its own. It is accepted that this means there could be deadlock between shareholders.
- 3.2 It is not intended that the Councils will put equity funding into Shared Co. Shares will be for a nominal amount, e.g. £1. Capital will be provided mainly in the form of loans.
- 3.3 The key role of the shareholders within the constitutional / governance arrangements will be the power to (acting together) appoint and remove the Shared Co board, approve the annual business plan, 5 year strategic plan and retain the right to approve or veto reserved matters. Through these powers the Councils as shareholders will retain overall strategic control over the operation of Shared Co.
- 3.4 There will be a reserved matters list that will set out decisions for the Councils to make or approve. Such decisions would require the consent of both Councils. The Councils will decide internally who will be authorised to make decisions upon behalf of each Council in its capacity as shareholder.

- 3.5 Shared Co may make a profit from providing services to third parties (subject to Teckal requirements). Such profit would either be distributed to the Councils or reinvested into Shared Co as agreed by the Councils. As part of the annual business plan, the Councils would jointly approve a strategy to deal with any surpluses generated during the year.
- 3.6 Agreed principles for new joiners to Shared Co, e.g. voting rights, entitlement to profits etc will be included to ensure clear alignment of expectation on this issue. Mutual agreement to admit additional shareholders.
- 3.7 The proposals for the board of directors must meet the level of control required to comply with Teckal. The Councils will give at least 12 months notice if they wish to sell their share or withdraw from the Shared Co. The remaining Council will have an option to purchase the shareholding and the Agreement will include a methodology for valuation.
- 3.8 There will be detailed provisions for dealing with disagreements and deadlock situations between the Councils.

#### 4 SERVICE CONTRACT

- 4.1 Each Council will award Shared Co a service contract to undertake those ICT, HR and Finance, transactional services (and such other services as may be agreed by the Councils), the majority of which are currently undertaken by ICT, HR and Finance Shared Services (**Commissioned Services**). The Councils will not retain in-house delivery capability for the Commissioned Services and will have purely a commissioning side / contract management function. The service contracts between each Council and Shared Co will be the same in all material terms.
- 4.2 The award of the contract would trigger the transfer of all staff assigned to the Commissioned Services to Shared Co and potentially some staff engaged in providing support to the current shared service. Shared Co would become an admitted body of the Cheshire Pension Fund to enable it to offer its employees on-going access to the LGPS. The Councils [will share equally the] [will apportion] costs associated with admitted body status.
- 4.3 The service contracts will be for 5 years with each Council having a unilateral right to break at 3 years and the option to extend for a further 5 years. As the only shareholders, the Councils would always have the flexibility to agree between themselves to end the arrangements with Shared Co. The key importance for the length of the contract is therefore the certainty that it provides each shareholder about the other shareholder's commitment to the venture.
- 4.4 Shared Co will be granted exclusivity for 'routine transactions' within the scope of the Commissioned Services as defined in the contracts, subject to any exceptions agreed between the Councils. Routine transactions will be specified in the full requirements documentation that will be agreed during commercial contract development and included in the main Service Contract but would include such areas as:
  - Service desk and field engineer support
  - Network support (WAN and LAN) to Council operated buildings.
  - Support of existing and new applications.
  - IPT support
  - Management of HR records
  - Calculation of pay/issue of payslips
  - Central processing of purchase invoices
  - Imprest accounts and P Cards
  - Central issuing of AR invoices
- 4.5 Each Council will agree to purchase a minimum level of development work, to be agreed. Above this level the Shared Co will be given first refusal of any new development work.
- 4.6 . The Councils would be able to change the level and nature of services within agreed parameters around notification and working with Shared Co to manage the changes in demand and consequences for resourcing. If a council changes its volume of business with the Shared Co this

may impact on the unit charge that it pays [ie by adopting a standard commercial approach whereby high volumes = lower unit price. Lower volumes = higher unit price. Councils may be charged different rates if volumes of business with the SLE are different.

- 4.7 The Councils want to move to more of an output basis for commissioning rather than input.
- 4.8 The overarching principle for payment for the Commissioned Services is that services are provided on a cost recovery basis (i.e. the payments do not include a margin). Payment would, initially at least, be on an agreed cost per unit basis or a fixed fee. The cost per unit would be set at the commencement of each service contract and reviewed / revised periodically between the parties. There may be a movement away from cost per unit in the future as parties seek to migrate to more of an output basis for commissioning. Charges will be a mixture of £x per unit consumed eg per payslip, fixed payments eg for supporting a particular application and will not vary depending on actual hours spent. The cost of the Commissioned Services should not exceed current costs for each Council. However, if the Shared Costs able to deliver the Commissioned Service at a lower cost then it will make a profit.
- 4.9 The detail of the services being commissioned and the payments would be reviewed and updated by the Councils on an annual basis through the Annual Business Plan. The obligation to pay would be linked to the agreed services as set out in the annual business plan. The Shared Co to operate open book arrangements.
- 4.10 Unforeseen costs / liability incurred by Shared Co outside of the relevant agreed business plan would be funded by the two Councils on a 50 / 50 basis. Such funding would be provided through a separate credit facility provided by one / both of the Councils with the payment becoming a debt of Shared Co and a cost to be included in subsequent business plans.
- 4.11 Assets required for the delivery of the Commissioned Services would be retained by the relevant Council and licensed to Shared Co. This would include contracts for ICT software / hardware subject to discussions with suppliers about any requirements for novation to Shared Co.
- 4.12 An exit plan would be included providing for the process for a Council to cease commissioning Shared Co to deliver the Commissioned Services (in whole or part). This would include process of identifying staff assigned to relevant function and arrangements for smooth transition of systems and data to the Council / new provider.
- 4.13 There will be a lease from CWAC to Shared Co for premises at Goldsmith House, Chester. This will be on commercial rent for the duration of the services contract.

## **5 WORKING CAPITAL FACILITY**

- 5.1 Shared Co will need to have access to funds to satisfy its debts / liabilities. Where this is not the case there could be an insolvency situation which would require directors of Shared Co to comply with duties under the insolvency regime.
- 5.2 Costs for delivering the Commissioned Services as agreed under the services contract (through annual business plan process) would be funded by the payments from the Councils. The Shared Co will have separate recourse to funds for costs that are not budgeted, e.g. unexpected third party claims or employment liabilities. This could over time come from accumulated reserves / balance sheet primarily built from profits from third party payments for services. Initially there will not be such assets as payments from the Councils are on a cost recovery basis.
- 5.3 The Shared Co will be provided with a working capital facility which will be available for costs not covered by payments under the services contract. This will be on terms to be agreed.

## **6 SUPPORT SERVICES**

- 6.1 Shared Co will need the following support services, provided by the Councils on a buy back basis
  - 6.1.1 Legal
  - 6.1.2 HR

- 6.1.3 Finance –financial management and audit
- 6.1.4 Property
- 6.1.5 Procurement
- 6.1.6 Solutions (FoI/DP/complaints etc) support
- 6.1.7 Company secretarial
- 6.1.8 Insurance
- 6.1.9 ICT strategy

6.1.10 Business Support

together **Support Services.**

- 6.2 Where the Support Services are provided by the Councils on a buy back basis, they will be provided on a cost recovery basis.

## **Appendix 5**

### ***Governance of the company as set out by:***

- Articles of association and certificate of incorporation.
- Structure chart and narrative showing the key accountabilities and relationships
- If not included in the articles terms of reference of the Board and any sub-committees; roles of Board Members and Chief officer :
  - Reference to Nolan principles of standards in public life
  - Composition, role and responsibilities of the Board and its members
  - Composition, role and responsibilities of the Operational Board and its members
  - Sub-committee structure, if any
  - Role of the Council eg S 151, monitoring arrangements, financial regulations and standing orders, buy back
  - Codes of conduct for Board members
  - Expenses and remuneration
  - Obligations to local authority scrutiny
  - Arrangements for the review of governance and operating procedures and policies
  - Annual reporting
  - Financial and contract procedure rules
  - Schemes of delegation
  - Companies House/Acts requirements
  - Arrangements for keeping company records
  - Identity, trademarks branding and stationery
  - Political neutrality
  - Schedule of policies and procedures (including responsible managers and arrangements for review)

### ***Operational policies and procedures***

- Staffing structure chart and portfolio of roles and responsibilities
- Freedom of Information Act policy
- Equality and Diversity policy
- Complaints procedure
- Stakeholder Management Strategy
- Performance and Quality assurance scheme, including key performance indicators
- Contingency and business continuity plan
- Data protection and information handling procedures including any inter-agency protocols
- IT use and security policy
- Workplan
- Environment policy
- File of HR policies and procedures
- Volunteering policy
- Health and Safety Policy