

**Open Report on behalf of Andrew Crookham  
Executive Director - Resources**

Report to:	<b>Overview and Scrutiny Management Board</b>
Date:	<b>19 December 2019</b>
Subject:	<b>Legal Services Lincolnshire</b>

**Summary:**

This report invites the Overview and Scrutiny Management Board to consider a report on Legal Services Lincolnshire which is being presented to the Executive on 7 January 2020. The views of the Board will be reported to the Executive as part of its consideration of this item.

**Actions Required:**

The Overview and Scrutiny Management Board is invited to

- 1) consider the attached report and to determine whether the Board supports the recommendation(s) to the Executive as set out in the report.
- 2) agree any additional comments to be passed to the Executive in relation to this item.

## **1. Background**

The Executive is due to consider a report on Legal Services Lincolnshire on 7 January 2020. The report is attached at Appendix 1.

## **2. Conclusion**

Following consideration of the attached report, the Board is requested to consider whether it supports the recommendation(s) in the report and whether it wishes to make any additional comments to the Executive. Comments from the Board will be reported to the Executive.

### 3. Consultation

#### a) Have Risks and Impact Analysis been carried out?

See attached report.

#### b) Risks and Impact Analysis

See attached report.

### 4. Appendices

These are listed below and attached at the back of the report	
Appendix 1	Report on Legal Services Lincolnshire to be presented to the Executive on 7 January 2020.

### 5. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by David Coleman, Chief Legal Officer, who can be contacted on 01522 552134 or [david.coleman@lincolnshire.gov.uk](mailto:david.coleman@lincolnshire.gov.uk).

**Open Report on behalf of Andrew Crookham  
Executive Director - Resources**

Report to:	<b>Executive</b>
Date:	<b>07 January 2020</b>
Subject:	<b>Formation of a Company for Legal Services</b>
Decision Reference:	<b>I018865</b>
Key decision?	<b>No</b>

**Summary:**

This report seeks approval for the final form and constitution of a company wholly owned by the County Council with the object of the company being licensed by the Solicitors Regulation Authority for the purpose of providing legal advice and services.

The report appends and seeks approval for the accompanying legal documentation; the provision of financial support to the company; the nomination of directors of the company and the appointment of a representative to exercise the Council's powers as owner of the company.

**Recommendation(s):**

That the Executive:-

- 1) approves the Articles of Association and Shareholders Agreement attached at Appendix A as the constitution and legal documentation relating to the establishment of a company wholly owned by the County Council with the object of the company being licensed by the Solicitors Regulation Authority for the purpose of providing legal advice and services;
- 2) appoints David Coleman Chief Legal Officer; Andrew Crookham, Executive Director - Resources and James Drury, Executive Director - Commercial as Directors of the company;
- 3) appoints Cllr B Young, Executive Councillor for Community Safety and People Management as the member representative of the company and delegates to Councillor Young, authority to take decisions in exercise of the Council's powers in relation to the company;

- 4) approves the making available of a cash flow facility of £30,000 to the company; and
- 5) delegates to the Chief Legal Officer in consultation with the Executive Councillor for Community Safety and People Management authority to take all necessary procedural steps to establish the company to include amendments to the documentation to the extent necessary to meet Solicitors Regulation Authority requirements and to determine the final terms and the entering into of the cash flow facility.

**Alternatives Considered:**

- |    |  |
|----|--|
| 1. | <p>Not to approve the constitutional documents or the proposed appointments.</p> <p>The company could not proceed at this stage and revised proposals would need to be brought forward. This would impact on the ability of the in-house legal team to carry out work for its partner's companies and other third parties.</p> |
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**Reasons for Recommendation:**

The proposal will allow the Council to proceed to establish an Alternative Business Structure. This will in turn allow Legal Services Lincolnshire to continue to provide services to its partner Councils when they deliver services through new structures such as companies without risk of it acting contrary to the requirements of the Solicitors Regulation Authority as our professional regulator.

The proposal would also allow Legal Services Lincolnshire to provide services more widely in the future as opportunity arises and capacity allows.

**1. Background**

**Introduction**

- 1 Legal Services Lincolnshire (LSL) is a shared service between the County Council, Boston Borough Council, East Lindsey District Council, North Kesteven District Council, South Holland District Council and West Lindsey District Council. It was created in 2008 and has been operating on a trading basis since 2010. The service is hosted by the County Council and all staff within the service are employees of the County Council.

- 2 The vast majority of LSL's work is carried out for the County Council and District Partners although some work, worth approximately £150,000 per annum, is carried out for other external public bodies. Any surplus achieved over and above the costs of the service is distributed back to the partners. There may be opportunities to pursue other external work in future.
- 3 Solicitors are regulated by the Solicitors Regulation Authority (SRA) and that regulation can impact at two levels. At the level of the individual, all solicitors are required to comply with professional codes of conduct. In addition an entity which provides legal services to the public or a section of the public is required to be authorised by the SRA and is regulated by the SRA as an entity.
- 4 As partner councils explore different ways of delivering services, especially through companies, LSL must have regard to the regulatory framework governing it and its solicitors. Guidance issued by the SRA concerning when an in-house team may be required to be licensed as an entity suggests there may be limits to LSL's ability to continue providing services to our partners when they act through other entities such as companies.
- 5 As a result of these considerations the Executive received at its meeting on 8 May 2019 a proposal for the creation of an alternative business structure (ABS) which would overcome these regulatory concerns and allow LSL to follow its partners work regardless of how they choose to deliver it and to pursue other external work as it arises within a robust regulatory framework.
- 6 An ABS is a solicitor's firm, generally organised as a limited company, licensed by the SRA, to provide legal services to the public where the owners of the business include individuals or entities that are not themselves qualified solicitors. Under the proposal the Council would establish a wholly owned Council company which would seek a licence to provide legal services to the public.
- 7 The report to Executive on 8 May 2019 set out the drivers for the proposal, the options and a proposed model for the operation of the company. A copy of the report is referred to in the background papers section of this report, but the substance of the report is summarised in paragraphs 8 and 9 below.
- 8 The principal driver was the need to manage regulatory risks and enable the Council's in-house teams to continue to provide services to their existing customers as those customers find new ways of delivering their services, especially through companies that LSL cannot readily act for because of regulatory restrictions. At the same time an ABS would allow LSL to provide their service to a wider range of clients which may enable it to increase the income it achieves to support the budget positions of the partner councils.

- 9 On the basis of an options appraisal it was recommended that the Council pursue the establishment of an ABS alongside the in-house trading unit to act for non-partner clients. Staff would be made available to the ABS where necessary to work for clients who can only be provided with services through the ABS. It was identified that this would provide a solution to the regulatory risks of acting for other partner-created entities and enable LSL to manage the wider regulatory risks around existing partners pursuing their activities through new structures and ways of working. This would secure existing income and potentially enable the attraction of additional income from partners. The solution was also seen as scalable, forming a basis on which the Council could pursue wider trading activity where appropriate.
- 10 The Executive approved in principle the formation of a company but reserved to itself following further consideration by the Overview and Scrutiny Management Board approval of the constitution and legal documentation relating to the company, any financial contribution required by the company and the appointment of directors of the company.

### **Establishing a Company**

- 11 Although the Council will be the sole owner of the proposed ABS, it is not the Council but the company which must apply to the ABS for a licence to provide legal services. The establishment of a company is therefore the first stage in progressing this matter.
- 12 Attached at Appendix A is a draft of Articles of Association of the Company. These are fairly standard Articles with few issues of principle involved. They have been developed with a view to addressing the issues that are likely to be of concern to the SRA.
- 13 Following feedback from both the Overview and Scrutiny Management Board and the Executive in May 2019 three Directors of the company are proposed.
- 14 Further provisions of note include:-
- Decision-making by the Directors is either by majority vote or by consensus. Although the day to day running of the company under the Articles sits with the Directors this is subject to the requirement for the Council's consent to decisions concerning reserved matters discussed below under the Shareholders Agreement;
  - The Council has the right to appoint and remove Directors
  - A Director can appoint an alternate Director to exercise their powers as Director in their absence but only with approval of the Council as shareholder

15 Attached at Appendix B is a draft Shareholders Agreement which regulates the relationship between the Council as sole owner and the company itself. The following points should be noted:-

- The business of the company will be to carry on business as a legal services provider, providing services to the wider public sector. Any change to this definition of the business of the company is a reserved matter under the Shareholders Agreement and therefore cannot happen without the consent of the County Council as the owner of the company
- The County Council can nominate and appoint any person as Director of the company and require the removal of any such person by the giving of notice to the Board of Directors
- Management of the company's affairs will be by reference to an annual Business Plan which must be approved by the Council as owner of the company. The Business Plan includes an approved budget. As long as the Directors are acting in accordance with the Business Plan in the day to day running of the company they do not require the Council's consent to individual decisions.
- Other decisions are reserved to the Council as owner of the company and the Directors cannot take any such decision or take any steps to implement any such matter without the prior written consent of the Council.
- The list of reserved matters is contained within Schedule 6 of the Shareholder's Agreement. This is the same list as was appended to the Report to Executive dated 8 May 2019.
- The Council is required to appoint a representative to act in the name of the Council for all purposes connected with the company. That individual will be responsible for deciding whether to consent to any of the matters referred to as a reserved matter. This is the role that it is proposed be fulfilled by Cllr Young under recommendation 3 of the Report
- The company is required to provide information to the Council including the audited accounts of the company, quarterly performance reports, cash flow statements and cash flow forecasts and such reasonable other financial and management information or reports relating to the company as the Council may request from time to time. The company will report to the appropriate Scrutiny Committee (currently Overview and Scrutiny Management Board) on an annual basis.

16 Although the Council has had discussions with the SRA concerning the granting of a licence to provide legal services the detailed application and vetting process cannot commence until the company is formed. There may, during that process, be a need to amend either the Articles of Association or Shareholders Agreement to meet SRA requirements. These will be a matter for Councillor Barry Young as the Council's representative in relation to the company.

- 17 As set out above it is proposed that there will be three Directors of the company. To meet regulatory requirements one of these will also be the Compliance Officer for Legal Practice (COLP). It is proposed that this be the Chief Legal Officer. One of the other Directors will need to be a suitable person with the necessary financial background to act as the Compliance Officer for Finance and Administration (COFA). It is proposed that this be Andrew Crookham, the Executive Director for Resources. Following discussions with LSL's District Council partners the third Director will also be a County Council appointment and it is proposed that this be James Drury, Executive Councillor - Commercial.
- 18 The County Council will exercise its powers as owner of the company including in respect of the reserved matters referred to in paragraph 15 above through a representative to which it will delegate authority to make decisions in exercise of powers it has as owner of the company. This is an important role as far the SRA are concerned who will need to approve the individual given the influence they will exercise over the company. It is proposed that this is Councillor Barry Young, the Executive Councillor for Public Protection and People Management.
- 19 Given that the County Council will be the sole owner of the company it will be a regulated company within the meaning of the Local Authorities (Companies) Order 1995 and Part V of the Local Government and Housing Act 1989. This requires such companies to comply with certain administrative responsibilities relating, for example to the identification of the County Council as owner of the company on its letter head, the provision of information, the appointment of auditors and the remuneration of directors. These requirements will be complied with.
- 20 Financially, the ABS is expected to require very little funding from the Council. This is because the ABS itself is envisaged as having no employment costs although it will need to arrange its own professional indemnity insurance cover and will need to pay its way in relation to any property or support services costs to ensure that there is no State Aid. The initial costs of set up which are estimated to be in the region of £20,000, will be met out of the shared service reserve.
- 21 The principal ongoing funding issue for the ABS is likely to be cash flow caused by any issues with recovery of fees from its clients. Liaison with another County Council that has established an ABS on a similar basis to that proposed by the Council suggests that they would have benefitted from the provision of a cash flow facility to manage the difference between expenditure by the ABS and receipt of income. While this can be managed to some extent by aligning the timings of payments in and out there are some payments, particularly of VAT, which have to be made at specified times and which can cause cash flow issues.
- 22 An assessment has been carried out into the amount required and it is considered that a cash flow facility of £30,000 would be sufficient to support the company in the early stages.

## 2. Legal Issues:

### Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- \* eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- \* advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- \* foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- \* remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- \* take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
- \* encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

The proposal in this report is not considered to have any implications for equality and diversity.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

The proposal in this report has no direct impact on the Joint Health and Wellbeing Strategy.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

The proposal in this report has no direct impact on crime and disorder matters.

**3. Conclusion**

At its meeting on 8 May 2019 the Executive approved in principle the establishment of a legal services company with a view to it being licensed by the Solicitors Regulation Authority to provide legal services.

This report seeks final approval to the form of the company the appointment of Directors and a council representative and the approval of financial support to the company in the form of a cash flow facility.

**4. Legal Comments:**

The Council has power under section 1 of the Localism Act 2011 to provide legal services as envisaged but must do so through a company if it is acting for a commercial purpose.

The more detailed legal issues to be taken into account in reaching a decision are referred to in the report.

The decision is consistent with the Policy Framework and within the remit of the Executive.

## 5. Resource Comments:

Establishing an ABS company as per the report recommendation will have little direct impact on the budgets of the Council.

Costs of set up estimated at £20,000 and a cash flow facility of £30,000 can be met from the legal shared services reserve

Implications for financial administration and accounting of the company will need to be kept under review as implementation progresses in accordance with SRA licence requirements.

## 6. Consultation

### a) Has Local Member Been Consulted?

N/A

### b) Has Executive Councillor Been Consulted?

Yes

### c) Scrutiny Comments

The decision will be considered by the Overview and Scrutiny Management Board at its meeting on 19 December 2019 and the comments of the Board will be reported to the Executive.

### d) Have Risks and Impact Analysis been carried out?

Yes

### e) Risks and Impact Analysis

See the body of the report

## 7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Draft Articles of Association
Appendix B	Draft Shareholders Agreement

## 8. Background Papers

Background Paper	Where it can be viewed
Report to Executive dated 8 May 2019 entitled "Formation of a Company for Legal Services"	Democratic Services

This report was written by David Coleman, Chief Legal Officer, who can be contacted on 01522 552134 or [david.coleman@lincolnshire.gov.uk](mailto:david.coleman@lincolnshire.gov.uk)

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

[[ ] LIMITED]

INTRODUCTION

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Articles

**Act** means the Companies Act 2006

**Appointor** has the meaning given in article 0

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

**Business Day** means any day other than a Saturday, Sunday or public holiday in England on which banks in London are open for business

**Controlling Member** means Lincolnshire County Council

**Eligible Director** has the meaning given in article 0

**Model Articles** means the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (*SI 2008/3229*) as amended prior to the date of adoption of these Articles.

1.2 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.

1.3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.

1.4 A reference in these Articles to an "article" is a reference to the relevant article of these Articles unless expressly provided otherwise.

1.5 Unless expressly provided otherwise, a reference to a statute or statutory provision is a reference to it as it is in force on the date when these Articles become binding on the company.

1.6 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date on which these Articles become binding on the company under that statute or statutory provision.

1.7 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.8 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

- 1.9 The Model Articles shall apply to the company, except in so far as they are modified or excluded by, or are inconsistent with, these Articles.
- 1.10 Articles 7, 8, 9(1), 11, 13, 14, 15, 17, 18, 44(2) and 52 of the Model Articles shall not apply to the company.
- 1.11 Article 20 of the Model Articles shall be amended by the insertion of the words "(including alternate directors)" before the words "properly incur".
- 1.12 In article 25(2)(c) of the Model Articles, the words "evidence, indemnity and the payment of a reasonable fee" shall be deleted and replaced with the words "evidence and indemnity".
- 1.13 Article 29 of the Model Articles shall be amended by the insertion of the words ", or the name of any person(s) named as the transferee(s) in an instrument of transfer executed under article 28(2) of the Model Articles," after the words "the transmittee's name".
- 1.14 Articles 31(1)(a) to (c) (inclusive) of the Model Articles shall be amended by the deletion, in each case, of the words "either" and "or as the directors may otherwise decide". Article 31(d) of the Model Articles shall be amended by the deletion of the words "either" and "or by such other means as the directors decide".

## **DIRECTORS**

### **2 DIRECTORS TO TAKE DECISIONS COLLECTIVELY**

- 2.1 The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 0.
- 2.2 If:
  - 2.2.1 the company only has one director for the time being; and
  - 2.2.2 no provision of the Articles requires it to have more than one director,

then the general rule does not apply and the director may (for so long as he remains the sole director) take decisions without regard to any of the provisions of the Articles relating to directors' decision-making.

### **3 UNANIMOUS DECISIONS**

- 3.1 A decision of the directors is taken in accordance with this article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.
- 3.2 Such a decision may take the form of a resolution in writing, where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing.
- 3.3 References in the Articles 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 (but excluding any director whose vote is not to be counted in respect of that particular matter).
- 3.4 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.

### **4 CALLING A DIRECTORS' MEETING**

- 4.1 Any director may call a directors' meeting by giving not less than three Business Days' notice of the meeting (or such lesser notice as all the directors may agree) to the directors.

## **5 QUORUM FOR DIRECTORS' MEETINGS**

- 5.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on except a proposal to call another meeting.
- 5.2 The quorum for directors' meetings may be fixed from time to time by a decision of the directors and unless otherwise fixed it is two provided that:
- 5.2.1 if and so long as there is only one director the quorum shall be one; and
- 5.2.2 for the purposes of any meeting held pursuant to article 0 to authorise a director's conflict, if there is only one director besides the director concerned and directors with a similar interest, the quorum shall be one.
- 5.3 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:
- 5.3.1 to appoint further directors; or
- 5.3.2 to call a general meeting so as to enable the members to appoint further directors.

## **6 CASTING VOTE**

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

## **7 DIRECTORS' CONFLICTS OF INTEREST**

- 7.1 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 transaction or arrangement 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 transaction of the nature and extent so specified, and an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.
- 7.2 The directors may, if the quorum and voting requirements set out below are satisfied, authorise any matter that would otherwise involve a director breaching his duty under the Act to avoid conflicts of interest, and any director (including the director concerned) may propose that the director concerned be authorised in relation to any matter the subject of such a conflict provided that:
- 7.2.1 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 resolved upon by the directors under the provisions of the Articles, except that the director concerned and any other director with a similar interest:
- (a) shall not be counted for quorum purposes as participating in the decision-making process while the conflict is under consideration;
- (b) may, if the other directors so decide, be excluded from participating in the decision-making process while the conflict is under consideration; and
- (c) shall not vote on any resolution authorising the conflict except that, if any such director does vote, the resolution will still be valid if it would have been agreed to if his votes had not been counted; and
- 7.2.2 where the directors give authority in relation to such a conflict:
- (a) they may (whether at the time of giving the authority or at any time or times subsequently) impose such terms upon the director concerned and any other

director with a similar interest as they may determine, including, without limitation, the exclusion of that director and any other director with a similar interest from the receipt of information, or participation in any decision-making or discussion (whether at meetings of the directors or otherwise) related to the conflict;

- (b) the director concerned and any other director with a similar interest will be obliged to conduct himself in accordance with any terms imposed from time to time by the directors in relation to the conflict but will not be in breach of his duties as a director by reason of his doing so;
- (c) the authority may provide that, where the director concerned and any other director with a similar interest obtains information that is confidential to a third party, the director will not be obliged to disclose that information to the company, or to use the information in relation to the company's affairs, where to do so would amount to a breach of that confidence;
- (d) the authority may also provide that the director concerned or any other director with a similar interest shall not be accountable to the company for any benefit that he receives as a result of the conflict;
- (e) the receipt by the director concerned or any other director with a similar interest of any remuneration or benefit as a result of the conflict shall not constitute a breach of the duty under the Act not to accept benefits from third parties;
- (f) 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
- (g) the directors may withdraw such authority at any time.

7.3 Subject to article 7.4, 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 chairman, whose ruling in relation to any director other than the chairman is to be final and conclusive.

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

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

8.1 The directors must ensure that the company keeps a record in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

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

## **9 NUMBER OF DIRECTORS**

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

## **10 APPOINTMENT AND REMOVAL OF DIRECTORS**

10.1 The Controlling Member may at any time by notice in writing to the company:

10.1.1 appoint any person or persons as a director or directors of the company; and

10.1.2 remove any director or directors from office.

- 10.2 Any appointment or removal pursuant to article 0 shall take effect when it is delivered to the registered office of the company or, if it is produced at a meeting of the directors, when it is so produced or, if sent by electronic means to an address generally used by the company, when it is sent such removal shall be without prejudice to any claim that a director may have under any contract between him and the company. If the company has no directors and, by virtue of death or bankruptcy, no member is capable of acting, the transmittee of the last member to have died or to have had a bankruptcy order made against him has the right, by notice in writing, to appoint a person to be a director.

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

- 11.1 A person ceases to be a director as soon as:
- 11.1.1 that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;
  - 11.1.2 a bankruptcy order is made against that person;
  - 11.1.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;
  - 11.1.4 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;
  - 11.1.5 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;
  - 11.1.6 notification of the director's removal is received by the company from the Controlling Member pursuant to article 0; or
  - 11.1.7 he is otherwise duly removed from office.

## **12 APPOINTMENT AND REMOVAL OF ALTERNATE DIRECTORS**

- 12.1 Subject to shareholder approval, any director (**Appointor**) may appoint as an alternate any other director, or any other person approved by resolution of the directors, to
- 12.1.1 exercise that director's powers; and
  - 12.1.2 carry out that director's responsibilities,
- in relation to the taking of decisions by the directors, in the absence of the alternate's Appointor.
- 12.2 Any appointment or removal of an alternate must be effected by notice in writing to the company signed by the Appointor, or in any other manner approved by the directors.
- 12.3 The notice must:
- 12.3.1 identify the proposed alternate; and
  - 12.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

### **13 RIGHTS AND RESPONSIBILITIES OF ALTERNATE DIRECTORS**

- 13.1 Subject to shareholder approval, an alternate director may act as alternate director to more than one director and has the same rights in relation to any decision of the directors as the alternate's Appointor.
- 13.2 Except as the Articles specify otherwise, alternate directors:
- 13.2.1 are deemed for all purposes to be directors;
  - 13.2.2 are liable for their own acts and omissions;
  - 13.2.3 are subject to the same restrictions as their Appointors; and
  - 13.2.4 are not deemed to be agents of or for their Appointors.

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

- 13.3 A person who is an alternate director but not a director:
- 13.3.1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's Appointor is not participating);
  - 13.3.2 may participate in a unanimous decision of the directors (but only if his Appointor is an Eligible Director in relation to that decision, but does not participate); and
  - 13.3.3 shall not be counted as more than one director for the purposes of article 0 and article 0.
- 13.4 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 directors (provided that his Appointor is an Eligible Director in relation to that decision).
- 13.5 An alternate director may be paid expenses and may be indemnified by the company to the same extent as his Appointor but shall not be entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's Appointor's remuneration as the Appointor may direct by notice in writing made to the company.

### **14 TERMINATION OF ALTERNATE DIRECTORSHIP**

- 14.1 An alternate director's appointment as an alternate terminates:
- 14.1.1 when the alternate's Appointor revokes the appointment by notice to the company in writing specifying when it is to terminate; or
  - 14.1.2 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; or
  - 14.1.3 on the death of the alternate's Appointor; or
  - 14.1.4 when the alternate's Appointor's appointment as a director terminates; or
  - 14.1.5 when the shareholder withdraws its approval to the alternate acting as alternate director.

## **SHARES**

### **DECISION MAKING BY SHAREHOLDERS**

#### **15 POLL VOTES**

- 15.1 A poll may be demanded at any general meeting by any qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.
- 15.2 Article 44(3) of the Model Articles shall be amended by the insertion of the words "A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made" as a new paragraph at the end of that article.

#### **16 PROXIES**

- 16.1 Article 45(1)(d) of the Model Articles shall be deleted and replaced with the words "is delivered to the company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate".
- 16.2 Article 45(1) of the Model Articles shall be amended by the insertion of the following words as a new paragraph at the end of that article "and a proxy notice which is not delivered in such manner shall be invalid, unless the directors, in their discretion, accept the notice at any time before the meeting".

### **ADMINISTRATIVE ARRANGEMENTS**

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

- 17.1 Subject to article 0, any notice, document or other information shall be deemed served on, or delivered to, the intended recipient:
- 17.1.1 if delivered by hand, on signature of a delivery receipt or at the time the notice, document or other information is left at the address; or
  - 17.1.2 if sent by pre-paid United Kingdom first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the second Business Day after posting; or
  - 17.1.3 if sent by pre-paid airmail to an address outside the country from which it is sent, at 9.00 am on the fifth Business Day after posting; or
  - 17.1.4 if sent by reputable international overnight courier to an address outside the country from which it is sent, on signature of a delivery receipt or at the time the notice, document or other information is left at the address; or
  - 17.1.5 if sent or supplied by email, one hour after the notice, document or information was sent or supplied; or
  - 17.1.6 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website; or
  - 17.1.7 if deemed receipt under the previous paragraphs of this article 0 would occur outside business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), at 9.00 am on the day when business next starts in the place of deemed receipt For the purposes of this article, all references to time are to local time in the place of deemed receipt.
- 17.2 To prove service, it is sufficient to prove that:

- 17.2.1 if delivered by hand or by reputable international overnight courier, the notice was delivered to the correct address; or
- 17.2.2 if sent by post or by airmail, the envelope containing the notice was properly addressed, paid for and posted; or
- 17.2.3 if sent by email, the notice was properly addressed and sent to the email address of the recipient.

## 18 INDEMNITY

18.1 Subject to article 0 and shareholder approval, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

18.1.1 each relevant officer shall be indemnified out of the company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:

- (a) in the actual or purported execution and/or discharge of his duties, or in relation to them; and
- (b) in relation to the company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the company's (or any associated company's) affairs, and

18.1.2 the company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 0 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

18.2 This article does not authorise any indemnity which:

18.2.1 would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law; and/or

18.2.2 relates to loss or damage or other legal expenses arising from:

- (a) fraud, dishonesty or a criminal offence, or other deliberate wrongdoing or recklessness on the part of the relevant officer;
- (b) liability in respect of losses certified by the company's external auditor as caused by wilful misconduct on the part of the relevant officer or where unlawful expenditure has been knowingly or recklessly authorised by the relevant officer, and/or
- (c) circumstances in which the relevant officer has not acted in good faith.

18.3 In this article:

18.3.1 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and

18.3.2 a **relevant officer** means any director or other officer or former director or other officer of the company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act), but excluding in each case any person engaged by the company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).

## 19 INSURANCE

19.1 Subject to member approval, the directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant officer in respect of any relevant loss.

19.2 In this article:

19.2.1 a **relevant officer** means any director or other officer or former director or other officer of the company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act), but excluding in each case any person engaged by the company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor);

19.2.2 a **relevant loss** means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company, provided always that the relevant officer has acted in good faith and/or such loss has not arisen as a result of fraud, dishonesty or a criminal offence, or other deliberate wrongdoing or recklessness on the part of the relevant officer; and

19.2.3 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate.



**Dated**

**2019**

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**LINCOLNSHIRE COUNTY COUNCIL**

**[[ ] LIMITED]**

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**SHAREHOLDER'S AGREEMENT**

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© Bevan Brittan LLP

Toronto Square – 7<sup>th</sup> Floor | Toronto Street | Leeds LS1 2HJ  
T 0370 194 1000 F 0370 194 5465

Fleet Place House | 2 Fleet Place | Holborn Viaduct | London EC4M 7RF  
T 0370 194 1000 F 0370 194 7800

Kings Orchard | 1 Queen Street | Bristol BS2 0HQ  
T 0370 194 1000 F 0370 194 1001

Interchange Place | Edmund Street | Birmingham B3 2TA  
T 0370 194 1000 F 0370 194 5001

[www.bevanbrittan.com](http://www.bevanbrittan.com)

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**PARTIES**

- (1) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, LN1 1YL (**LCC**)
- (2) **[ [ ] LIMITED]**, a company registered in England, (Company No. *[insert number]*) whose registered office is at County Offices, Newland, Lincoln, LN1 1YL (the **Company**)

**BACKGROUND**

- (A) LCC has agreed to enter into this Agreement pursuant to its powers contained in section 1 of the Localism Act 2010 and section 111 of the Local Government Act 1972 in order to enable the Company to carry out the Business.
- (B) The parties have decided to enter into this Agreement to regulate the manner in which the Company is to be managed.

**AGREED TERMS**

**1 DEFINITIONS AND INTERPRETATION**

This Agreement shall be interpreted according to the provisions of Schedule 1 (*Definitions and Interpretation*).

**2 COMPLETION**

2.1 Completion shall take place immediately upon the execution of this Agreement by each of the parties when the parties shall take or procure to be taken the following steps either by themselves or at meetings of the Board or of the shareholder (as appropriate) to the extent not already taken:

2.1.1 the parties shall procure that the necessary Board and/or shareholder resolutions in respect of the Company are passed to adopt the Articles with immediate effect;

2.1.2 the following subscriptions have been made in the capital of the Company:

<b>Party</b>	<b>Number of Ordinary Shares</b>	<b>Total Subscription</b>
LCC	1	£1

whereupon the Company shall deliver the relevant definitive share certificate in relation to the allotment of the Shares pursuant to this clause 2.1.2 and shall insert the names of the allottees in the Company's register of members.

**3 THE BUSINESS OF THE COMPANY**

3.1 The business of the Company shall be:

3.1.1 To carry on business as a legal services provider regulated by the Solicitor's Regulation Authority to provide services to any public authority as defined in section 3 Freedom of Information Act 2000, any of the Lincolnshire District Councils and any corporate bodies in which those councils are involved as owner or at board level and any companies owned by the wider public sector as defined in section 6 Freedom of Information Act 2000; and

3.1.2 to do all such other things as are incidental to or conducive to the attainment of the above objects.

## 4 THE BOARD

### *Composition of the Board and the right to appoint Directors*

- 4.1 LCC shall be entitled, in accordance with the Articles, to nominate and appoint (and the Company shall procure that such persons are appointed by Board resolution) any person or persons as Directors (including alternate Directors) and to require the removal of such persons from office by notice to the Board.
- 4.2 The persons nominated and appointed by the parties to act as the initial directors for the purposes of clause 4.1 are as set out in Schedule 2.
- 4.3 Any Director who is not an employee of the Company shall be appointed upon the terms and conditions set out in Schedule 3 or, subject to clause 5.2, upon such other terms as the Board may agree from time to time.
- 4.4 LCC shall in addition be entitled, in accordance with the Articles, to nominate and appoint persons as alternate Directors and to replace such persons as alternate Directors.

### *Removal of and changes to nominated Directors*

- 4.5 If LCC elects to remove any person nominated by it as a Director (an **Outgoing Director**) then it shall procure that the Outgoing Director vacates office without claim to the Company for loss of office or otherwise and shall indemnify the Company against all losses, liabilities and costs which the Company may incur arising out of, or in connection with, any claim by the Outgoing Director for wrongful or unfair dismissal or redundancy or other loss arising out of such Director's removal or loss of office.
- 4.6 The indemnity under clause 4.5 shall not apply where such claim has arisen as a result of any actions directly taken by the Company or any actions that the Company omitted to take that it should reasonably have taken.

## 5 MANAGEMENT OF THE COMPANY'S AFFAIRS

### *The Company's Business*

- 5.1 At all times during the term of this Agreement:
- 5.1.1 the business of the Company will consist exclusively of the Business;
- 5.1.2 with the exception of those matters requiring LCC consent pursuant to clause 5.2, all the business of the Company, other than routine day-to-day business, shall be the responsibility of the Directors;
- 5.1.3 the Directors may delegate in accordance with the Articles to such persons as they consider appropriate but they must properly monitor the conduct of such persons and ensure that they receive regular information from time to time in a form and at intervals as they may agree;
- 5.1.4 the Company will conduct its Business and affairs in a proper and efficient manner and in accordance with the current Business Plan as adapted from time to time;
- 5.1.5 the Company shall act in a way that does not knowingly create any employment-related liabilities for LCC;
- 5.1.6 the Company shall act in a way which is compatible with LCC's aims, objectives and statutory duties and shall not enter into agreements with third parties which could harm the commercial interests or reputation of LCC;

- 5.1.7 the Company shall not carry out any activity which would or could render the holding of Shares by LCC unlawful provided that where a proposed change of law would render such shareholding unlawful, LCC will use its reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares;
- 5.1.8 LCC will (subject to any legal obligation of disclosure under freedom of information legislation or otherwise) maintain strict confidentiality over the affairs of the Company, in particular its commercial affairs and trade secrets; and
- 5.1.9 the Company will conduct its Business and affairs in a manner that does not involve sponsorship, advertisement or other direct involvement by any organisation, entity or person engaged, or with substantial interest in: the production or sale of products containing or derived from tobacco, alcohol, unhealthy foods and/or unhealthy beverages; or the manufacture or sale of arms and weapons; or religious, political or cultural groups; or the dissemination of nudity and body images.
- 5.2 Except as set out in clause 5.3, insofar as a matter is a LCC Consent Matter, the Company shall not make any decision in relation to or undertake any action to implement an LCC Consent Matter except with the prior written consent of LCC and LCC shall use its rights and powers to procure, so far as it is able, that no such matter is carried out unless the required consent has been given.
- 5.3 Clause 5.2 shall not apply in connection with any decision of action relating to a LCC Consent Matter:
- 5.3.1 provided for in the Business Plan from time to time; or
- 5.3.2 which has been properly delegated in accordance with this Agreement or the Articles to the Board or to a particular person or committee; or
- 5.3.3 to the extent the same decision has been taken by LCC in accordance with any other agreement between LCC and the Company.

*Code of ethics*

- 5.4 The parties acknowledge that the Company will be legally responsible for the delivery of services to bodies external to LCC which has the potential to impact on LCC's reputation and therefore the parties agree to abide by the principles set out in Schedule 4.

*LCC Representative*

- 5.5 LCC shall appoint the LCC Representative to act in the name of LCC for all purposes connected with this Agreement and confirm the identity of the LCC Representative to the Company by notice in writing.
- 5.6 In the event that LCC intends to replace any individual acting as an LCC Representative, it shall inform the Company in writing of its intention to do so together with the details of a new LCC Representative and when the replacement is to take effect.
- 5.7 Any notice, information, instruction or other communication given to the LCC Representative by the Company shall be deemed to have been given to LCC. Any notice, information, instruction or other communication given by the LCC Representative to the Company shall be deemed to have been duly authorised by the LCC.

**6 BUDGETING, BUSINESS PLANNING AND FINANCIAL MATTERS**

*The Business Plan (including the Annual Budget)*

- 6.1 No earlier than [four months] and no later than [two months] before the end of each year of the Company, the Company will prepare and circulate to LCC a draft of the proposed business plan for the next year (**Draft Business Plan**). The Draft Business Plan (with such amendments as are

agreed to it) will become the Business Plan following approval to it by the Board (**Business Plan**), which shall be updated on an annual basis with the approval of the Board, subject always to clause 5.2.

- 6.2 The Annual Budget for each financial year shall form part of the Business Plan. The Annual Budget shall be reviewed by the Board quarterly

#### *Funding*

- 6.3 LCC shall use all reasonable endeavours to procure that additional working capital requirements of the Company shall be satisfied as far as practicable from external sources on the most favourable terms reasonably obtainable but on the basis that:

6.3.1 such financing shall be obtained in accordance with the Business Plan or as otherwise determined by LCC; and

6.3.2 unless otherwise agreed by LCC, LCC shall not be obliged to give any guarantee or security in respect of such financing.

#### *Dividends*

- 6.4 The Company shall, subject to:

6.4.1 clause 5.2; and

6.4.2 the working capital and other financial requirements of the Company,

distribute such amounts lawfully available for distribution by the Company to LCC by way of dividend on the Shares, provided always that LCC may determine, in its sole discretion, that all or some of such sums shall be retained by the Company for investment purposes.

#### *Provision of information to LCC*

- 6.5

6.5.1 The Company shall supply LCC with the following information:

- (a) the audited accounts of the Company and its subsidiaries for each financial year as soon as practicable and, at the latest, by four months after the end of that financial year;
- (b) quarterly performance reports, cash flow statements and cash flow forecasts for the Company;
- (c) such reasonable other financial or management information or reports relating to the Company or its subsidiaries as any shareholder may reasonably request from time to time whether required by law or not;
- (d) an annual report to the appropriate LCC Scrutiny Committee on the business and activities of the Company; and
- (e) a report or such other reasonable notice in the event that the financial or other performance of the Company presents a significant risk to LCC.

6.5.2 Notwithstanding the provisions of clause 11.1:

- (a) LCC being a local authority may disclose information received from the Company, any of its subsidiaries or a Director, as is required by any law or internal rule or regulation of a shareholder; and

- (b) the Company shall permit all records referred to in clause 6.5 to be examined and copied from time to time by the LCC's auditor and its representatives and/or the Company's auditors.

## **7 POLICIES AND PROCEDURES**

7.1 In respect of policies and procedures of the Company:

7.1.1 the Company shall so far as reasonably practicable adopt all best practice recommendations in regard to its market and adopt LCC's policies and procedures in relation to these matters having regard to the local conditions and the operation of LCC; and

7.1.2 such policies and procedures shall be approved by the Board.

7.2 The Board shall adopt and apply an agreed policy as to how conflicts of interest are to be dealt with both in recruitment and in carrying out its Business.

## **8 WARRANTIES**

8.1 LCC warrants and represents to the Company at the date of execution that:

8.1.1 it has the power to enter into and to exercise its rights and perform its obligations under this Agreement and the Articles and each such document will when executed constitute, legal, binding and enforceable obligations on it;

8.1.2 it has taken all necessary action to authorise the execution of and the performance of its obligations under this Agreement and the Articles;

8.1.3 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Agreement and the Articles;

8.1.4 it is not subject to any contractual obligation, compliance with which will be likely to have a material adverse effect on its ability to perform its obligations under this Agreement and the Articles.

## **9 TERMINATION**

9.1 Subject to clauses 9.2 and 9.3, this Agreement may be terminated by LCC serving no less than [six months'] written notice on the Company.

9.2 LCC may terminate this Agreement immediately where required in accordance with any applicable laws and regulations.

9.3 LCC shall, on the fifth anniversary of the date of this Agreement, or at such other times as determined by LCC, review the requirement for this Agreement.

9.4 Termination of this Agreement shall not affect any accrued rights or liabilities of any person or any liability or obligation arising under or pursuant to this Agreement or any other agreement or arrangement between any of the parties hereto or, except where this Agreement expressly provides to the contrary, affect the provisions of:

9.4.1 clause 1 (*Definitions and Interpretation*);

9.4.2 this clause 9 (*Termination*);

9.4.3 clause 11 (*Confidentiality*);

- 9.4.4 clause 12 (*Freedom of information*);
- 9.4.5 clause 14 (*Costs*);
- 9.4.6 clause 16 (*Assignment*);
- 9.4.7 clause 17 (*Entire agreement*);
- 9.4.8 clause 18 (*Notices*);
- 9.4.9 clause 20 (*Waiver*);
- 9.4.10 clause 21 (*Severability*);
- 9.4.11 clause 22 (*No partnership or agency*);
- 9.4.12 clause 23 (*Variation*);
- 9.4.13 clause 24 (*Conflict with the Articles*); and
- 9.4.14 clause 25 (*Governing law and jurisdiction*).

## **10 WINDING UP**

- 10.1 If LCC passes a resolution pursuant to this Agreement or otherwise to wind up the Company by way of a members' voluntary winding-up it shall procure that the liquidator is a member of the Institute of Chartered Accountants in England and Wales.
- 10.2 Except to the extent each party has contractual obligations to the contrary, LCC shall prove in the winding-up of the Company to the maximum extent permitted by law for all sums due or to fall due to it from the Company and shall exercise all rights of set-off and generally do all such other acts and things as may be available to it in order to obtain the maximum receipts and recoveries.

## **11 CONFIDENTIALITY**

- 11.1 During the term of this Agreement and after termination or expiry of the Agreement for any reason whatsoever, the Receiving Party (as defined in clause 11.5) shall:
  - 11.1.1 keep Confidential Information (as defined in clause 11.5) confidential;
  - 11.1.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party (as defined in clause 11.5) or in accordance with clauses 11.2 to 11.4; and
  - 11.1.3 not use Confidential Information for any purpose other than the performance of its obligations under this Agreement.
- 11.2 During the term of this Agreement, the Receiving Party may disclose Confidential Information to its employees, contractors, sub-contractors, agents and advisers under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Agreement, and may disclose Confidential Information to prospective shareholders of the Company or prospective purchasers of its assets under conditions of confidentiality. In each case the permitted recipient of such Confidential Information shall be known as a **Recipient**.
- 11.3 The Receiving Party shall so far as practicable procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient were a party to this Agreement.

- 11.4 The obligations contained in clauses 11.2 to 11.3 shall not apply to any Confidential Information which:
- 11.4.1 is at the date of this Agreement in, or at any time after the date of this Agreement comes into, the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;
  - 11.4.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party;
  - 11.4.3 subsequently comes lawfully into the possession of the Receiving Party from a third party; or
  - 11.4.4 is required by law or a regulatory authority or body or any Government Department to be disclosed.
- 11.5 For the purposes of this clause 11, **Confidential Information** means all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party (the **Disclosing Party**) to another party (**Receiving Party**) whether before or after the date of this Agreement including, without limitation, any information relating to the Disclosing Party's, operations, processes, plans or intentions, know-how, design rights, trade secrets, market opportunities and business affairs.

## 12 FREEDOM OF INFORMATION

- 12.1 The Company acknowledges that LCC is subject to the requirements of the FOIA and the Environmental Information Regulations and the Company shall facilitate LCC's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clauses 12.2 to 12.7 (inclusive) below. For the purpose of clauses 12.2 to 12.7 (inclusive) only, **Information** has the meaning given under Section 84 of the FOIA.
- 12.2 Where LCC receives a Request for Information in relation to Information that the Company is holding on its behalf LCC shall transfer to the Company such Request for Information that it receives as soon as practicable and in any event within two Business Days of receiving a Request for Information and the Company shall:
- 12.2.1 provide LCC with a copy of all such Information in the form that LCC requires within ten Business Days (or such other period as LCC may specify) of the request; and
  - 12.2.2 provide all necessary assistance as reasonably requested by LCC in connection with any such Information, to enable LCC to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Regulations.
- 12.3 LCC shall be responsible for determining at its absolute discretion:
- 12.3.1 whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
  - 12.3.2 whether the Information is to be disclosed in response to a Request for Information,
  - 12.3.3 and in no event shall the Company respond directly to a Request for Information unless expressly authorised to do so by LCC.
- 12.4 The Company acknowledges that LCC may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information:

12.4.1 without consulting with the Company; or

12.4.2 following consultation with the Company and having taken the Company's views into account.

12.5 The Company shall ensure that all Information held on behalf of LCC is retained for disclosure and shall permit LCC to inspect such Information as requested from time to time.

12.6 The Company shall transfer to LCC any Request for Information received by the Company as soon as practicable and in any event within two Business Days of receiving it.

12.7 The Company acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that LCC may nevertheless be obliged to disclose Confidential Information in accordance with clause 12.4 above.

### **13 FURTHER ASSURANCE**

13.1 Each party will:

13.1.1 execute any document and do any thing; and

13.1.2 use all reasonable endeavours to procure that any third party (where necessary) executes any deed or document and does any thing,

reasonably necessary to implement the terms of this Agreement.

### **14 COSTS**

14.1 Each party shall bear its own costs in relation to the drafting, negotiating and implementation of this Agreement.

### **15 INSURANCE**

15.1 The Company shall take out and maintain with reputable insurers all insurances required to be maintained by law and such other prudent insurances against such risks as are normally insured against by businesses carrying on activities similar to those of the Company and (without prejudice to the generality of the foregoing) shall insure its assets of an insurable nature for their full replacement or reinstatement value.

15.2 The Company shall take out and maintain appropriate directors and officers liability insurance, subject always to clause 5.2.

### **16 ASSIGNMENT**

16.1 This Agreement, shall be binding on, and shall enure to the benefit of, each of the parties and their respective successors.

16.2 No party shall assign, transfer, sub contract or otherwise dispose of any interest in this Agreement without the consent of the other party.

### **17 ENTIRE AGREEMENT**

17.1 This Agreement and the documents referred to in it (including the Articles) constitute the entire agreement between the parties relating to its/their subject matter and supersede all previous agreements between the parties relating to such matters.

## **18 NOTICES**

- 18.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post or by hand, leaving the same at the addresses set out at the start of the Agreement.
- 18.2 Any party to this Agreement may change its nominated address by prior notice to the other parties.
- 18.3 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery.

## **19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 19.1 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

## **20 WAIVER**

- 20.1 Any relaxation, forbearance, indulgence or delay (together indulgence) of any party in exercising any right shall not unless made in writing, be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).

## **21 SEVERABILITY**

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

## **22 NO PARTNERSHIP OR AGENCY**

- 22.1 Nothing in this Agreement shall be construed as creating a partnership.
- 22.2 No party shall be deemed to be, an agent of any other party and no party shall hold itself out as having authority or power to bind any other party in any way.

## **23 VARIATION**

- 23.1 This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of the parties.

## **24 CONFLICT WITH THE ARTICLES**

- 24.1 If any provision of this Agreement is inconsistent with a provision of the Articles, then the terms of this Agreement shall prevail and the parties agree to procure the making of any amendment to the Articles as soon as reasonably practicable which is required in order to make the Articles consistent with the provisions of this Agreement.

## **25 GOVERNING LAW AND JURISDICTION**

- 25.1 This Agreement shall be considered as a contract made in England and Wales and shall be subject to the laws of England and Wales.
- 25.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

**Executed as a deed** by the parties or their duly authorised representatives on the date of this Agreement

The common seal of )  
**Lincolnshire County Council** )  
was hereunto affixed in the presence )  
of: )

Seal

.....  
Authorised officer

Executed and delivered as a DEED by )  
**[LINCOLNSHIRE LEGAL SERVICES** )  
**TRADING LIMITED]** )  
acting by its duly authorised signatories: )

.....  
.....

## SCHEDULE 1 - DEFINITIONS AND INTERPRETATION

### 1 Definitions

1.1 In this Agreement, unless the context otherwise requires:

**Annual Budget** means the annual budget forming part of the Business Plan

**Articles** means the articles of association of the Company set out in Schedule 4 as amended from time to time

**Board** means the board of directors of the Company for the time being

**Business** means the business of the Company as described in clause 3 and all matters reasonably ancillary to any such matters

**Business Day** means a day other than a Saturday, Sunday or a bank holiday in England

**Business Plan** means the plan referred to in clause 6.1 as the same may be varied or updated from time to time in accordance with the provisions of clause 6

**Confidential Information** has the meaning given in clause 11.5

**Director** means a director of the Company for the time being

**Disclosing Party** has the meaning given in clause 11.5

**Environmental Information Regulations** means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such ;legislation

**Indebtedness** means any obligation for the payment or repayment of money, whether joint or several, actual or contingent, in respect of:

- (a) moneys borrowed or raised (including the capitalised value of obligations under financial leases and hire purchase agreements and deposits), debit balances at bank accounts and interest and other charges thereon or in respect thereof;
- (b) any liability under any debenture, bond, note, loan stock, commercial paper or other security or under acceptance or documentary credit, bill discounting or note purchase facilities;
- (c) any liability in respect of the deferred acquisition cost of property, assets or services to the extent payable after the time of acquisition or possession thereof by the party liable;
- (d) any guarantee, indemnity or other assurance against financial loss in respect of any of the indebtedness specified in this definition;
- (e) any cost or liability under any interest rate or currency hedging agreement; and
- (f) any other transaction having the commercial effect of the borrowing or raising of money

**LCC Consent Matter** means the matters specified in Schedule 6

**LCC Representative** means the person appointed as LCC's representative in accordance with clause 5

**Outgoing Director** has the meaning given in clause 4.5

**Receiving Party** has the meaning given in clause 11.5

**Recipient** has the meaning given in clause 11.2

**Request for Information** shall have the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations

**Shares** means issued shares in the capital of Company of any class

## **2 Interpretation**

2.1 This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

2.1.1 Headings are included for convenience only and shall not affect the interpretation of this Agreement.

2.1.2 Except where the context expressly requires otherwise, references to clauses, paragraphs, sub paragraphs, parts and Schedules are references to clauses, paragraphs, sub paragraphs and parts of and Schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement.

2.1.3 The Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules.

2.1.4 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.

2.1.5 Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.

2.1.6 The language of this Agreement is English. All correspondence, notices, and information shall be in English.

2.1.7 References to any law are to be construed as references to that law as from time to time amended or to any law from time to time replacing, extending, consolidating or amending the same.

2.1.8 References to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.

2.1.9 The words in this Agreement shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.

2.1.10 Reference to **parties** means the parties to this Agreement and references to a **party** mean one of the parties to this Agreement.

- 2.1.11 In construing this Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word other or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.1.12 Reference to a document being in **Agreed Form** is a reference to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf.
- 2.1.13 Where this Agreement states that an obligation shall be performed **no later than** or **within** or **by** a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event, the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
- 2.1.14 A reference to a **subsidiary** or **holding company** is to be construed in accordance with section 1159 of the Companies Act 2006.
- 2.2 In the event of conflict between the terms of this Agreement and the Articles, the terms of this Agreement shall prevail and, in the event of such conflict, the parties shall procure such modification to the Articles as shall be necessary to remedy such conflict.

## SCHEDULE 2- DETAILS OF THE COMPANY

**Name:** [LINCOLNSHIRE LEGAL SERVICES TRADING LIMITED]

**Registered Office:** County Offices, Newland, Lincoln, LN1 1YL

**Registered Number:** [insert number]

**Shareholders:**

Shareholdings	Number and Class of Share
Lincolnshire County Council	1 Ordinary

**Directors:** [insert name of director]  
[insert name of director]

### SCHEDULE 3 - LETTER OF APPOINTMENT OF A NOMINATED DIRECTOR<sup>1</sup>

[on the headed notepaper of the Company]

[name and address of nominated Director]

[Date]

Dear

**[LINCOLNSHIRE LEGAL SERVICES TRADING LIMITED] (the Company)**

- 1 This letter contains the terms which we have discussed and agreed for your appointment as a director of the Company, as [a][the] nominated Director nominated by Lincolnshire County Council (**LCC**) (**Nominated Director**). Your appointment is made pursuant to and is subject to the terms and conditions set in the Shareholder's Agreement dated [DATE] and made between LCC and the Company (**Shareholder's Agreement**).
- 2 You are not entitled to fees or remuneration for fulfilling the role of Nominated Director other than as agreed in writing from time to time by the Board.
- 3 You will be expected to attend the Board Meetings and General Meetings of the Company. You will receive details of all such meetings in advance.
- 4 You will not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions, or affairs of the Company or any client, customer or supplier of the Company which comes to your knowledge during the course of this appointment and will comply with the provisions of clause 11 (*Confidentiality*) of the Shareholder's Agreement as if it applied to you. You will, however, be entitled to disclose information to LCC as permitted under the Shareholder's Agreement and the articles of association of the Company (**Articles**).
- 5 The appointment will automatically cease in relation to the Company in the event that:
  - 5.1.1 you resign as a director; or
  - 5.1.2 upon the lodgement or delivery of a notice from LCC in accordance with Article 11 of the Articles removing you from office in relation to the Company.

Without limitation to paragraphs 5.1.1 and 5.1.2 above, in signing this letter, you acknowledge that your office is subject to the terms of the Shareholder's Agreement and the Articles and may be determined as permitted under the terms of the Shareholders' Agreement and such Articles and that upon such termination you will vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company (including without limitation any claim for compensation).

- 6 On termination of your appointment, you agree that you will promptly return to the Company Secretary all papers and property of the Company which are in your possession or under your control.
- 7 Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at our next Board meeting.

Yours sincerely

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<sup>1</sup> Drafting note: to be confirmed if the terms in this template letter are acceptable to LCC

.....  
Signatory, duly authorised  
for and on behalf of the Company

I agree to and acknowledge the terms and conditions set out above relating to my appointment as director of [Lincolnshire Legal Services Trading Limited].

Signed .....

Print name .....

Dated .....

## SCHEDULE 4 - CODE OF ETHICS

- 1 Representatives of the Company will adhere to the Nolan Standards of Public Life as follows:
  - 1.1 **SELFLESSNESS:** I will act solely in terms of the public interest. I will not act in such a way as to gain financial or other material benefits for myself, my family or my friends.
  - 1.2 **INTEGRITY:** I will not place myself under any financial or other obligation to outside individuals or organisations that might seek to influence me in the performance of my official duties.
  - 1.3 **OBJECTIVITY:** I will make choices on merit, in carrying out public business, including when making public appointments, awarding contracts or recommending individuals for rewards and benefits
  - 1.4 **ACCOUNTABILITY:** I will be accountable for my decisions and actions to the public and to the Council and must submit myself to whatever scrutiny is appropriate to my office.
  - 1.5 **OPENNESS:** I will be as open as possible about all the decisions and actions I take. I will give reasons for my decisions and restrict information only when the wider public interest or the law clearly demands.
  - 1.6 **HONESTY:** I will declare any private interests relating to my public duties and take steps to resolve any conflicts arising in a way that protects the public interests.
  - 1.7 **LEADERSHIP:** I will promote and support these principles by leadership and example.
- 2 LCC's representatives will comply with the Council's conduct and other ethical framework policies in force.
- 3 The Company agrees that minutes of all Company meetings and accounts and records of all Company dealings will be kept in a manner acceptable to LCC and there shall be no presumption that all such information is confidential. Whilst Company related information may not be routinely published, LCC reserves the right to publish information in the public interest, taking account of the views of the Company and provided this does not give rise to an actionable breach of confidence.

**SCHEDULE 5 - THE ARTICLES**

## SCHEDULE 6 – LCC CONSENT MATTERS<sup>2</sup>

<b>Ref</b>	<b>Matter</b>
<b>A</b>	<b>Financial and Business Plan</b>
A1	The approval of the Business Plan and agreeing or approving any material amendments to the Business Plan including any in-year material changes to the Business Plan.
A2	The increase in any Indebtedness of the Company other than in accordance with the Business Plan.
A3	The commencement by the Company of any new business not being ancillary to or in connection with the Business or making any material change to the nature of the Business.
A4	The approval of the annual accounts once signed off by the auditors.
A5	The payment of any dividend to the shareholders
A6	The approval of any expenditure above the value of £[100,000] <sup>3</sup> that is not already approved in the Business Plan (excluding client disbursements)
A7	The approval of indemnities for relevant officers and any insurances in relation to the liabilities of officers
<b>B</b>	<b>Share/ loan capital and constitutional</b>
B1	Any amendment to the Articles.
B2	Any variation of any rights, including class rights, attaching to any shares or loan notes of the Company.
B3	The admission of further shareholders to the Company or agreeing any rights or restrictions attaching to any shares allocated to such new shareholders.
B4	The capitalisation of profits or reserves of the Company.
<b>C</b>	<b>Officers of the Company</b>
C1	The devolution or transfer of management control of the Company to persons outside the Board and, if approved, the terms of such devolution.
C2	The appointment (including the terms and conditions of appointment where such terms depart from Schedule 3) or removal of any Director (including alternate Directors)
<b>D</b>	<b>Future direction and development of the Company</b>
D1	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle
D2	Amalgamating or merging with any other company or business undertaking

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<sup>2</sup> To be reviewed by LCC. These are the current WCC Consent Matters.

<sup>3</sup> Appropriate threshold to be confirmed by LCC

<b>Ref</b>	<b>Matter</b>
D3	Acquiring the business and assets of any other company or business undertaking
D4	Selling or disposing of any part of the business of the Company
D5	The commencement of any winding-up or dissolution or of the appointment of any liquidator, administrator or administrative receiver of the Company or any of its assets unless it shall have become insolvent, and no party shall present or cause to be presented or allow any act which would result in the winding up or the presentation of any petition for the winding up of the Company.
<b>E</b>	<b>Management of the business of the Company</b>
E1	A change of name of the Company.
E2	A change of the Company's registered office
E3	Creating or agreeing to create a charge, security or encumbrance over the Company's assets, shares or income
E4	Any matter that is reasonably likely to have an adverse effect on the reputation of LCC
E5	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the Company
E6 <sup>4</sup>	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which the Board reasonably expects will exceed £[20,000]
E7	Giving notice of termination of any arrangements, contracts or transactions the total value of which the Board reasonably expects will exceed £[20,000] per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a Company
E8	Making any borrowing in excess of £[10,000]
E9	Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a Company which has been approved under the Business Plan) or giving any guarantee or indemnity (other than in the normal course of trading)
E10	Changing the financial year of the Company
E11	Appointing or removing bankers of the Company.
E12	Appointing or removing auditors of the Company.
E13	Increasing or reduce the amount of its issued share capital, grant any option over or in its share capital, redeem or purchase any of its own shares or otherwise alter, or effect any reorganisation of, its share capital (where applicable)

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<sup>4</sup> Drafting note: financial thresholds in E6 – E8 to be confirmed

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