

Dated 1 July 2009

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As subsequently amended and restated

**THE COMMISSIONERS OF HER MAJESTY'S TREASURY**

**-and-**

**LOCAL GOVERNMENT ASSOCIATION**

**-and-**

**PUBLIC PRIVATE PARTNERSHIPS PROGRAMME LIMITED**

**-and-**

**LOCAL PARTNERSHIPS LLP**

**THE WELSH MINISTERS**

**MEMBERS' AGREEMENT  
RELATING TO  
LOCAL PARTNERSHIPS LLP**

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**Agreed Form Documents:**

- (1) PPPP Business Transfer Agreement
- (2) PUK Business Transfer Agreement
- (3) Loan Stock Instrument
- (4) LLP Governance Framework
- (5) Re-organisation Plan

**THIS MEMBERS' AGREEMENT** is made on the 1st day of July 2009 and amended and restated on the 27<sup>th</sup> day of July 2010 and further amended and restated on the 14th day of October 2013 and further amended and restated on the 22<sup>nd</sup> day of January 2018.

**BETWEEN:**

- (1) **THE COMMISSIONERS OF HER MAJESTY'S TREASURY**, of 1 Horse Guards Road, London SW1A 2HQ ("**HMT**");
- (2) **LOCAL GOVERNMENT ASSOCIATION**, an unincorporated association whose address is Local Government House, Smith Square, London, SW1P 3HZ ("**LGA**");
- (3) **PUBLIC PRIVATE PARTNERSHIPS PROGRAMME LIMITED**, a company limited by guarantee and without a share capital, registered in England and Wales with registered number 3130162 whose registered office is at Local Government House, Smith Square, London, SW1P 3HZ (which changed its name from Public Private Partnerships on 2 September 2009) ("**PPPP**");
- (4) **LOCAL PARTNERSHIPS LLP**, a limited liability partnership registered in England and Wales with registered number OC346845, whose registered office is at Local Government House, Smith Square, SW1P 3HZ (the "**LLP**"); and
- (5) **THE WELSH MINISTERS** of Cathays Park, Cardiff, CF10 3NQ (the "**WG**").

**WHEREAS**

- (A) LGA and Partnerships UK Plc ("**PUK**") established a new 50/50 joint venture, called Local Partnerships LLP, and incorporated an LLP as the joint venture entity. The original members of the joint venture were PUK and LGA's Wholly Owned Subsidiary, 4ps Ltd.
- (B) LGA is a membership association representing local authorities in England and Wales.
- (C) PPPP was historically focused on securing across local government (i) the delivery of projects, particularly PPP and PFI, (ii) strengthening the long term capacity of local authorities to manage such projects, (iii) enhancing market supply and demand, and (iv) supporting local government performance improvement. PPPP ceased to be a Specified Body which received RSG from CLG for the purpose of the above activities on 1 April 2011. PPPP no longer receives government grant or carries on any business.
- (D) The joint venture was formed in 2009 from the profit-making business of PPPP (other than its business of providing free services to local authorities out of the government grant it historically received) and the PUK Public Sector Services Business.
- (E) The purpose of the LLP is to be the expert delivery partner for local authorities and local public service delivery partners, supporting and accelerating the delivery of major infrastructure renewal, high quality public services and the efficient use of public assets in local communities through better and stronger partnerships.
- (F) The parties intend that the LGA will continue to support and represent local government in England and Wales, the LLP will execute business with central and local government, local health bodies and other community-based bodies and will continue to offer free services to local government, funded by a portion of LGA Grant received from CLG.
- (G) The LLP was incorporated on 1 July 2009.

- (H) The LLP has since 18 August 2009 been the sole member of PPPP.
- (I) The parties have agreed to execute this Agreement to regulate their respective rights and liabilities and the conduct of the business, management and affairs of the LLP.
- (J) By a Deed of Adherence executed on 18 August 2009 the LGA took over 4ps Limited's rights and obligations under the original Agreement.
- (K) The LLP commenced trading on 18 August 2009.
- (L) Pursuant to a deed of adherence dated 27 July 2010 (the "**HMT Deed of Adherence**") HM Treasury acceded to this Agreement and became a member of the LLP in place of Partnerships UK PLC. Pursuant to the HMT Deed of Adherence the parties thereto agreed to amend this Agreement. Pursuant to the LLP's application for admission as a sole member of Public Private Partnerships Limited dated 3 March 2015, which was approved by the LGA, the LLP became the sole member of PPPP.
- (M) Pursuant to the LLP's application for admission as a sole shareholder of 4ps Limited dated 13 August 2015 and two Deeds of Transfer for the shares of 4ps Limited, both dated 20 August 2015, the LLP became the sole shareholder of 4ps Limited.
- (N) Pursuant to a further deed of adherence dated \_\_\_\_\_ (the "**WG Deed of Adherence**"), the Welsh Ministers acceded to this Agreement and became a member of the LLP. Pursuant to the WG Deed of Adherence, the parties hereto agreed to amend this Agreement in the terms set out in this amended and restated agreement.
- (O) The parties have now agreed further amendments to this Agreement in the terms set out in this amended and restated agreement.

## IT IS AGREED

### 1. Interpretation

1.1 In this Agreement (including the recitals) the following words and expressions shall have the following meanings:

**"Act"** means the Limited Liability Partnerships Act 2000;

**"Accounting Date"** means 31 March in each year or such other date as the LLP Board may from time to time determine;

**"Accounting Year"** means a period of 12 months ending on the Accounting Date, save that the first Accounting Year shall be the period from the date of incorporation of the LLP to 31 March 2010;

**"Advisory Council"** has the meaning set out in clause 11;

**"Advisory Council Member"** has the meaning set out in clause 11;

**"Agreement"** means this Members' agreement as amended from time to time in accordance with its terms;

**"Alleged Default"** means it being alleged that a party has committed or suffered a Member's Default;

**"Annual Accounts"** means the audited annual accounts of the LLP for an Accounting Year;

**“Best Offer”** has the meaning set out in paragraph 5.4.2 of Schedule 3;

**“Business”** means the business of supporting local public services procurement, investment programmes, public service delivery and asset management in local communities in England and Wales (or elsewhere, as may be agreed) as more particularly set out in the Business Plan;

**“Business Day”** means any day (other than a Saturday, Sunday or a bank holiday) on which banks are open in London for normal commercial banking business;

**“Business Plan”** means the annual business plan of the LLP as agreed by the LLP Board;

**“Call Option Notice”** has the meaning set out in paragraph 1.1.2 of Schedule 3;

**“Capital”** means, in respect of each Member, the aggregate of all amounts contributed or, in the case of the WG, deemed to have been contributed by that Member from time to time to the LLP pursuant to clause 7 and which does not constitute Loan Stock, less any such amounts which have been repaid to such Member;

**“Chairman”** has the meaning set out in clause 9.2;

**“Chief Executive”** means such person as the LLP Board may appoint from time to time to act as the chief executive of the LLP operating within his agreed terms of reference in accordance with clause 9.1;

**“CLG”** means the Department for Communities and Local Government or any other government department with equivalent responsibilities, from time to time;

**“Companies Acts”** means the Companies Act 1985 and the Companies Act 2006;

**“Conditions”** means the First Completion Conditions and/or the Second Completion Conditions as the context may require;

**“Confidential Information”** means all information of a confidential nature relating to the LGA, PPPP or any Member or former Member or the LLP or their respective activities (including, without limitation, know-how, the terms of any contract to which the LLP is a party, details of investments, financial information, business and strategic plans, existing and proposed projects, Ministerial or other internal briefings of any party and commercially sensitive information and the terms of this Agreement and all matters and documents referred to, or contemplated by, this Agreement which are of a confidential nature);

**“Continuing Party”** has the meaning given in clause 24.1;

**“Deadlock Date”** has the meaning set out in paragraph 2 of Schedule 2;

**“Deed of Adherence”** means a deed in substantially the same form as is set out in Schedule 1 (or such other form as may be approved in writing by the Members);

**“Default Date”** means the date on which:

- (a) the Member's Default is admitted in writing by the Defaulting Member; or
- (b) the Defaulting Member failed to comply with a Dispute Notice in accordance with paragraph 1.6 of Schedule 2; or

- (c) the arbitrator determines the Defaulting Member's Default pursuant to clause 39.2; or
- (d) Intentionally omitted.
- (e) Intentionally omitted.

**“Defaulting Member”** means the Member who is the subject of a Member’s Default;

**“Designated Member”** has the meaning set out in clause 6.1;

**“Dispute”** means any dispute, disagreement or difference between the Members in relation to any action listed in Clause 12.1 or in paragraph 3.4 of Schedule 2;

**“First Completion Date”** means 1 August 2009;

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

**“HMT LLP Board Members”** has the meaning set out in clause 9.2;

**“Homes and Communities Agency”** means the Homes and Communities Agency or any other public body with equivalent responsibilities, from time to time;

**“Indemnified Party”** has the meaning set out in clause 18.1;

**“Insolvency Act”** means the Insolvency Act 1986 as modified to apply to limited liability partnerships;

**“Intellectual Property Rights”** means all patents, utility models, trade marks, trade or business names, logos or straplines, domain names, copyright, moral rights, rights to prevent passing off or unfair competition, database rights, rights in designs and all other intellectual property rights, in each case whether registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case, all rights or forms of protection having equivalent or similar effect anywhere in the world;

**“Law”** means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) any applicable guidance, direction, determination or regulations with which the Member is bound to comply; and
- (d) any applicable judgment of a relevant court of law which is a binding precedent;

**“LGA Grant”** means the grant paid by Government to the Improvement and Development Agency for Local Government (“**IDeA**”), a company limited by guarantee and under the control of the LGA and the sole Specified Body eligible to receive LGA Grant on behalf of local government. IDeA makes an annual allocation of LGA Grant to the LLP under the direction of the LGA to deliver agreed activities.

**“LGA Grant Activity”** means activity delivered by the LLP, pursuant to clause 13, free of charge to Local Authorities in England under the terms of the LGA/LP Grant Agreement;

**“LGA/LP Grant Agreement”** means the agreement between the LLP and the LGA providing for the provision of, and payment of, a portion of LGA Grant as set out in an annual email from the LGA to LP, based on the LGA’s annual grant submission to CLG, confirming the level of grant and the purpose for which it is made;

**“LGA LLP Board Members”** has the meaning set out in clause 9.2;

**“LLP Interest”** means a Member’s interest in the LLP, comprising its interest in the capital of the LLP and the rights that it has in respect of any loans made to, or Loan Stock issued by, the LLP;

**“Loan Stock Instrument”** means the LLP loan stock instrument in agreed form;

**“Loan Stock”** means the £10,000,000 unsecured convertible loan stock due 2029 constituted by the Loan Stock Instrument or any part of the issued and outstanding Loan Stock, as the case may be;

**“LLP Board”** has the meaning set out in clause 9.1;

**“LLP Board Members”** has the meaning set out in clause 9.2;

**“Members”** means HMT, the LGA and WG and any transferee of any Member’s interest in the LLP (and its rights under this Agreement) that executes, prior to such transfer, a Deed of Adherence;

**“Member’s Default”** means that a Member:

- (a) by an act or omission commits any material breach of its duties as a Member or the provisions of this Agreement (which breach, if capable of remedy is not remedied within 30 days after notice of such breach has been given); or
- (b) is unable to pay its debts as they fall due for the purposes of section 123 of the Insolvency Act 1986 or goes into liquidation whether compulsory or voluntary (except for the purposes of a bona fide reconstruction with the consent of the other Member, such consent not to be unreasonably withheld) or if a petition is presented or an order made for the appointment of an administrator in relation to that Member or if a receiver, administrative receiver or manager is appointed over any substantial part of the assets or undertaking of that Member; or
- (c) materially breaches the provisions of clause 20.1.2 and has not rectified such breach within 30 days after notice has been given requiring that Member to do so;

**“Member’s Representatives”** means in the case of HMT, the holder from time to time of the post of Managing Director of Public Services and Growth or the holder of the equivalent position which may replace it, and in the case of the LGA, the LGA Chairman or a person of appropriate seniority as the LGA may appoint, and in the case of the WG, the Director Welsh Treasury or a person of appropriate seniority as the WG may appoint;

**“Non-Defaulting Member(s)”** means, in respect of a Member’s Default, the Member(s) that is, or are, not the Defaulting Member(s);

**“Obligations”** has the meaning set out in clause 25.2.1;

**“Offer Period”** has the meaning set out in clause 23.11;

**“Officer Management Board”** means the officer management board of the LLP Board operating within its agreed terms of reference in accordance with clause 10;

**“PPPP Business”** means the business transferred to the LLP by PPPP at First Completion under the terms of the PPPP Business Transfer Agreement;

**“PPPP Business Transfer Agreement”** means the agreement relating to the transfer of the PPPP Business to the LLP;

**“Potential Transferees”** has the meaning set out in clause 23.8;

**“Proceedings”** means any proceeding, suit or action (including arbitration) arising out of or in connection with this Agreement or the Business;

**“Prohibited Person”** means any person whose past or current activities are, in the reasonable opinion of the non-transferring Member, incompatible with the provision of local authority services;

**“PUK Business Transfer Agreement”** means the agreement relating to the transfer of the PUK Public Sector Services Business to the LLP;

**“PUK Public Sector Services Business”** means the public sector services business of PUK transferred to the LLP by PUK at Second Completion under the terms of the PUK Business Transfer Agreement;

**“PUK Retained Local Authority Businesses”** means the following operations of PUK which were not transferred to the LLP pursuant to the PUK Business Transfer Agreement being:

- (a) activities relating to Partnerships for Schools and Building Schools for the Future Investments LLP;
- (b) the existing services provided to CLG and the Homes and Communities Agency relating to housing support and extensions of any existing contracts to provide these services;
- (c) services provided to the Department for Environment, Food and Rural Affairs relating to the Waste Infrastructure Delivery Programme; and
- (d) market regulatory activity which PUK undertakes for HM Treasury or The Office of Government Commerce (including the Projects Review Group, the PFI help desk, Operational Task Force, approval of standard form contracts and project derogation reviews);
- (e) services provided to any central government body; and
- (f) services provided to Transport for London;

**“Purchasers”** has the meaning set out in clause 23.12;

**“Put Option Notice”** has the meaning set out in paragraph 1.1.1 of Schedule 3;

**“Referral Date”** has the meaning set out in clause 9.4;

**“RSG”** means revenue support grant;

**“Re-organisation Plan”** means the re-organisation plan to put the PPPP, LLP and 4ps Ltd structure in place;

**“Review Date”** has the meaning set out in clause 11A;

**“Sale Interest”** has the meaning set out in clause 23.9;

**“Sale Notice”** has the meaning set out in clause 23.9;

**“Sealed Bid”** means a bid made in writing and sealed in an envelope by each Designated Member to buy the whole of the other Designated Member’s LLP Interest and the whole of the WG LLP Interest for the price (in cash and not on deferred terms) specified in the Sealed Bid but which shall not be by reference to the sum offered by the other Designated Member;

**“Second Completion Date”** means 1 November 2009;

**“Seller”** has the meaning set out in clause 24.1;

**“Specified Body”** means a body eligible to receive government grant under the Local Government Finance Act 1988;

**“Substantiated Member’s Default”** means a Member’s Default in respect of which liability is admitted by the Defaulting Member or which has been determined by an arbitrator in accordance with clause 39.2 or a deemed Member’s Default pursuant to paragraph 1.6 of Schedule 2;

**“Taxes”** means all forms of taxation, levies, duties, imposts, and rates (including any related fine, penalty, surcharge or interest payable in respect thereof);

**“Transferor”** has the meaning set out in clause 23.8;

**“Transfer Price”** has the meaning set out in clause 23.8;

**“Valuation”** means a valuation of the Business as a going concern by the Valuers, addressed to the LLP and each of the Members;

**“Valuers”** means such reputable and independent firm of chartered accountants as the LLP may from time to time determine by unanimous agreement between the Members to appoint (or in default of such unanimous agreement, such firm of chartered accountants as the President of the Institute of Chartered Accountants in England and Wales shall determine upon a joint referral from the Members to appoint) to act as external independent valuers of the LLP;

**“Voluntary Termination”** means termination of this Agreement in accordance with clause 30;

**“Voluntary Termination Date”** has the meaning set out in clause 30;

**“WG Deed of Adherence”** shall have the meaning given to it in Recital N;

**“WG LLP Board Member”** has the meaning set out in clause 9.2; and

**“Wholly-Owned Subsidiary”** in relation to an undertaking (the **“holding undertaking”**) means (a) any other company incorporated and registered in England and Wales in which the holding undertaking for the time being directly or through

another Wholly-Owned Subsidiary holds or controls: (i) all of the voting rights exercisable at general meetings of the Members of that undertaking on all, or substantially all, matters; and (ii) the right to appoint or remove all of the directors of that undertaking or (b) a body which would be a Wholly-Owned Subsidiary under (a) above, save that less than half of the directors may be appointed or removed by someone other than HMT, the WG or the LGA.

1.2 In this Agreement, a reference to:

1.2.1 a statutory provision includes a reference to:

- (a) the statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and
- (b) any subordinate legislation made under the statutory provision (whether before or after the date of this Agreement);

1.2.2 persons includes a reference to any body corporate, unincorporated association or partnership;

1.2.3 a person includes a reference to that person's legal personal representatives or successors;

1.2.4 a **"party"** or **"parties"** is a reference to a party or parties to this Agreement;

1.2.5 a document **"in the agreed form"** is a reference to that document as approved and initialled by or on behalf of the Members;

1.2.6 a clause or Schedule, unless the context requires otherwise, is a reference to a clause of or schedule to this Agreement; and

1.2.7 any agreement other than this Agreement is a reference to that other agreement as amended from time to time in accordance with its terms.

1.3 The Schedules form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement and references to this Agreement include the Schedules.

1.4 The headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

1.5 Words denoting the singular shall include the plural and vice versa; words denoting any one gender shall include all genders; words denoting persons include corporations and vice versa.

1.6 In the event of any conflict between the Business Plan and any provision of this Agreement, the provisions of this Agreement shall prevail.

## **2. Effect of this Agreement**

2.1 This Agreement shall be binding on and between the LLP and each of the Members of the LLP for the time being, and between each of the Members of the LLP for the time being and between the LLP and each of the other parties hereto, and shall also bind any former Members of the LLP in relation to any matter arising during the currency of their Membership or in relation to their rights and obligations arising upon the cessation of their Membership.

2.2 The Members and each of the parties hereto are only associated together as Members of the LLP (or parties to this Agreement as the case may be) and it is understood between them that no relationship shall subsist between them which would be regarded as a partnership within the meaning of the Partnership Act 1890 and no Member or party hereto shall make any representation to any third party that there is any relationship between the Members or the parties hereto which would be regarded as such a partnership or as one of them being the agent of the other.

**3. NOT USED**

**4. NOT USED**

**5. Business and assets**

5.1 The Business of the LLP shall be carried on at:

5.1.1 its registered office which shall be Local Government House, Smith Square, London SW1P 3HZ or such other place as the Members may determine in accordance with the terms of this Agreement; and

5.1.2 such other regional offices outside of London as the LLP may determine, which may include the LP Cardiff office based at Local Government House, Drake Walk, Cardiff, CF10 4LG.

5.2 Any tangible and intangible assets of the LLP shall be the assets of the LLP and not of the Members or any of them, and the Members shall procure that all assets of the LLP are at all times held in the name of the LLP.

**6. Members and Designated Members and the LGA**

6.1 HMT and the LGA shall be “**Designated Members**”.

6.2 It is intended that the Members participate in the running of the Business.

6.3 The Members shall ensure that notice is delivered to the Registrar of Companies:

6.3.1 when a person is admitted as, becomes, or ceases to be, a Member and/or a designated member, within 14 days of such event; or

6.3.2 where there is any change in the name or address of a Member, within 24 days of such change.

6.4 A Member shall inform the LLP and the other Members of any change in their name or address within 14 days of such change.

**7. Capital**

7.1 The initial Capital and Loan Stock funding of the LLP was contributed 50% by PUK and 50% by the LGA.

7.2 On 18 August 2009 pursuant to a Deed of Adherence and in compliance with clause 23, LGA became a Member and 4ps Ltd transferred all of its LLP Interest to LGA.

- 7.3 On 27 July 2010 pursuant to a Deed of Adherence and in compliance with clause 23, HMT became a Member and PUK transferred all of its LLP Interest to HMT.
- 7.4 WG has agreed to become a Member and simultaneously upon the restatement of this Agreement has entered into a Deed of Adherence.
- 7.5 In compliance with clause 23, HMT has agreed to transfer 10% of its Capital to the WG for nil consideration and by agreeing to the restatement of this Agreement all the other parties hereto have consented to such transfer or otherwise waived any of their rights or interests (including, but not limited to, pre-emption and restrictions on transfers) hereunder in respect of such transfer.
- 7.6 As a result of the events referred to in clauses 7.1 to 7.5 above, the revised Capital of the LLP as at the date of this restated Agreement is contributed 50% by the LGA, 45% by HMT and deemed contributed 5% by the WG.
- 7.7 Notwithstanding the deemed Capital contribution of WG pursuant to clause 7.5 above or any other provision of this Agreement or the Business Plan, the WG shall at no time be liable for funding the LLP and the LLP and its Members shall have no right to call on the WG for any future funding of the LLP.
- 7.8 Subject to clauses 7.6 and 7.7, the funding of the LLP shall be governed by the provisions of the Business Plan and (to the extent not specified in the Business Plan) the split between Capital and Loan Stock funding, shall be as unanimously agreed by the Members.
- 7.9 Where the LLP requires funds in accordance with the Business Plan, the LLP Board shall by not less than 20 Business Days' notice (or any lesser period agreed by the Members), given in writing to the Members, require each Member (other than WG) to pay such amount of funding as is specified in the Business Plan in cleared funds by the date specified in such notice.
- 7.10 If the LLP Board considers that the LLP requires additional funds (in excess of the amount of the Members' funding specified in the Business Plan) for the purposes of the Business then the LLP Board shall prepare, approve (subject to clause 12) and submit to the Members a draft revised Business Plan in respect of the period covered by the Business Plan together with a request that the Designated Members approve, with such amendments as the Designated Members may agree, the revised Business Plan pursuant to clause 12.1.
- 7.11 Subject to clauses 7.6 and 7.7, no Member shall be required to provide capital or other funding pursuant to this clause 7 which is not required to be provided pursuant to the Business Plan.
- 7.9 No Member shall have any losses of the LLP attributed to it and no such losses shall in any event become a debt due from a Member.

## **8. Surpluses and distributions**

- 8.1 It is agreed that the dividend policy of the LLP shall be to distribute at least 50% of available surpluses to the Designated Members (unless otherwise determined by the Designated Members or agreed in the Business Plan), shared between the Designated Members in two equal halves. The LLP

Board may also agree a policy with respect to the repayment of any principal of any loan funding from the Members (other than in accordance with the terms of such loan funding), provided that such policy is at all times consistent with the Business Plan.

- 8.2 The WG hereby irrevocably waives any and all distributions allocated to it by the LLP Board pursuant to the operation of the dividend policy referred to in clause 8.1.
- 8.3 It is expressly acknowledged and agreed by the parties to this Agreement, and the parties shall procure, that no profit shall be made by the LLP from the delivery of activities under the LGA/LP Grant Agreement.

## 9. LLP Board

- 9.1 Overall supervision of the Business shall be delegated by the Members to, and shall be the responsibility of the board (the “**LLP Board**”) who shall have authority to act on behalf of the LLP in accordance with the terms of this Agreement and the Business Plan but the LLP Board shall obtain the prior written approval of:
  - 9.1.1 the Designated Members (and, if applicable under clause 12.1(A), the WG) before taking any decision in relation to the matters set out in clause 12.1; and
  - 9.1.2 the Designated Members before taking any decision in relation to the matters set out in clause 12.2,and the LLP Board may delegate the management aspects of their function to the Chief Executive and to sub-committees of the LLP Board on such terms as they shall think fit.
- 9.2 There shall be a minimum number of nine and no more than fourteen members of the LLP Board (the “**LLP Board Members**”) which shall comprise:
  - 9.2.1 A minimum of 1 and up to four LLP Board Members appointed by HMT (the “**HMT LLP Board Members**”), a minimum of 1 and up to four LLP Board Members appointed by the LGA (the “**LGA LLP Board Members**”), and one LLP Board Member appointed by the WG (the “**WG LLP Board Member**”). Each appointment shall be made by the relevant Member serving written notice on the LLP of such appointment and a Member may remove a LLP Board Member appointed by it by serving written notice on the LLP of such removal;
  - 9.2.2 two executive LLP Board Members who shall be appointed, replaced and removed in accordance with clause 12.1;
  - 9.2.3 three independent non-executive LLP Board Members each of which shall be appointed, replaced and removed in accordance with clause 12.1; and
  - 9.2.4 the LLP Board shall elect one LLP Board Member appointed pursuant to clause 9.2.1 or clause 9.2.3 as Chairman.
- 9.3 All actions of the LLP Board shall require the approval of a majority of the LLP Board Members present at the LLP Board meeting and each LLP Board Member shall have one vote, provided that if there shall be less than four persons appointed as:

- 9.3.1 HMT LLP Board Members in attendance at the meeting, the HMT LLP Board Members attending such meeting shall have a total of four votes between them; and
- 9.3.2 LGA LLP Board Members in attendance at the meeting, the LGA LLP Board Members attending such meeting shall have a total of four votes between them.
- 9.4 In the event of any disagreement or dispute arising between the LLP Board Members in relation to any action listed in clause 12.1 (Reserved Matters), the LLP Board Members shall use all reasonable endeavours to resolve the matter on an amicable basis. If one LLP Board Member serves formal written notice to the other LLP Board Members that a Dispute has arisen and the LLP Board Members are unable to resolve the Dispute within 20 Business Days from the service of such notice, then any Member may refer the Dispute for resolution in accordance with the provisions of Schedule 2. The date of such referral shall be the “**Referral Date**”.
- 9.5 Any action required or permitted to be taken by the LLP Board may be taken without a meeting if a majority of the LLP Board Members (including at least one HMT LLP Board Member and at least one LGA LLP Board Member) consent thereto in writing and such consent is filed with the minutes of the meetings of the LLP Board.
- 9.6 The Members shall use reasonable endeavours to ensure attendance (in person, by alternate or by conference telephone) by their respective representatives at meetings of the LLP Board. The quorum for the LLP Board shall be two LLP Board Members (comprising at least one HMT LLP Board Member and at least one LGA LLP Board Member) who may be present in person, by alternate or by conference telephone or similar communications equipment, provided that if at a meeting of the LLP Board such a quorum is not present within half an hour from the time appointed for the meeting, or if at any time during the meeting such a quorum ceases to be present, the meeting shall be adjourned to the same day in the next week (or such earlier date as may be agreed by the LGA LLP Board Members and the HMT LLP Board Members) at the same time and place (notice of which shall be given by the Chairman as soon as practicable after the adjournment). If at any meeting of the LLP Board which has been so adjourned such a quorum is not present, those LP Board Members who are present shall be a quorum for these purposes and shall be able to transact business.
- 9.7 The LLP Board shall be entitled to approve as the alternate of a LLP Board Member any other individual designated by a LLP Board Member and willing to act as an alternate for that LLP Board Member for the purposes of one or more meetings of the LLP Board. Such person may act as an alternate with effect from that approval.
- 9.8 If a LLP Board Member is not able to participate in a meeting of the LLP Board, he or she shall send their apologies in writing in advance of the meeting of the LLP Board and the previously approved alternate may attend in their place
- 9.9 Subject to clause 9.7 there shall be no limit on the number of alternates designated by a LLP Board Member save that only one may represent him at any single meeting. An alternate may represent more than one LLP

Board Member, and a LLP Board Member may represent another LLP Board Member.

- 9.10 Meetings of the LLP Board shall be held at least once every two months (and otherwise as considered necessary) at the registered office of the LLP for the time being unless otherwise agreed to by the LLP Board, and may be called by any LLP Board Member. Each meeting shall be held on such date and at such time (being during normal business hours on a Business Day unless the LLP Board Members agree otherwise) as designated by the requesting LLP Board Member. The LLP Board Member requesting the meeting shall give not less than 5 Business Days' notice to each of the other LLP Board Members of such meeting, provided that notice need not be given of any regular meetings held at times and places fixed by resolution of the LLP Board. Meetings may be held at any time without notice if all of the LLP Board Members are present and waive the requirement for notice before or at the meeting.
- 9.11 Any LLP Board Member may participate in any meeting by means of a conference telephone or other communications equipment by means of which all persons participating in such meeting can hear each other and participation in a meeting by such means shall constitute presence in person at such meeting. The LLP shall ensure that suitable telephone or other communications equipment is available at its registered office when such items are required.
- 9.12 The Chairman shall act as chairman of and preside at each meeting of the LLP Board. If the Chairman is unable to attend a meeting or is not present within half an hour from the time appointed for the meeting, the remaining LLP Board Members, subject to the meeting being quorate, and without prejudice to clause 12.2.8, may agree one of their number to act as a temporary chairman for the purposes of chairing the meeting. The LLP Board Members present at a meeting may regulate the taking of minutes of (and/or the recording of decisions taken at) that meeting as they see fit.
- 9.13 The LLP Board may make such arrangements as it sees fit for the payment of fees to the LLP Board Members, general remuneration and expenses policy subject to obtaining the prior approval of the Members in accordance with clause 12.

## **10. Officer Management Board and Chief Executive**

- 10.1 The LLP Board may delegate day-to-day executive management of the LLP and the Business to the Chief Executive. The Chief Executive shall be supported by an Officer Management Board. The Terms of Reference of the Officer Management Board are as set out in Part E(5) of the LLP Governance Framework.

## **11. Advisory Council**

- 11.1 The LLP shall establish an advisory council (the "**Advisory Council**") which shall have the responsibility of reviewing the effectiveness of the LLP fulfilling its public sector mission. For the avoidance of doubt the Advisory Council will not have any executive authority over the LLP.
- 11.2 The Advisory Council shall be chaired by a LGA LLP Board Member or a nominee of the LGA notified to the LLP in writing and shall consist of such number of representatives from (i) local authorities and (ii) community based public bodies made up of the LLP's most significant clients, as the

LGA LLP Board Members and the HMT LLP Board Members shall determine (each an “**Advisory Council Member**”).

- 11.3 The representatives referred to in clause 11.2 shall be appointed by agreement between the LGA LLP Board Members and HMT LLP Board Members. In the absence of agreement the LGA LLP Board Members shall have a casting vote in respect of any local authority appointment and the HMT LLP Board Members shall have a casting vote in respect of any non-local authority appointment.
- 11.4 The Advisory Council shall meet with the LLP Board at least once every 6 months (or more frequently if the LLP Board so agrees with the Advisory Council) to review the effectiveness of the LLP fulfilling its public sector mission and provide its conclusions in writing to the LLP Board within one month of each Advisory Council Meeting.
- 11.5 The LLP Board shall with reasonable promptness supply (and procure that others supply) the Advisory Council with all information and give access to all documentation reasonably required by the Advisory Council for the purposes of the review referred to in clause 11.4 above.
- 11.6 The LLP Board shall consider the conclusions of the Advisory Council and take these into account when formulating business planning and strategy of the LLP for the forthcoming year

#### **11A Review of Members’ Agreement**

- 11A.1 The Designated Members may, by written notice to the LLP, request the Officer Management Board commence a review of this Agreement and/or the LLP Governance Framework:
  - 11A.1.1 on or around a date that is 3 months from the date of this Agreement (the “**Review Date**”); and
  - 11A.1.2 on or around the second anniversary of the Review Date and thereafter once every two years.
- 11A.2 The purpose of any such review by the Officer Management Board will be to identify and make recommendations to the LLP Board and to the Members on any necessary updates to this Agreement, including any updates to bring its governance, oversight and other provisions in line with any best practice and/or applicable codes of good practice.

#### **12. Reserved matters**

- 12.1 Subject to clause 12.1(A), the following matters are reserved to the Members:
  - 12.1.1 altering or amending the LLP’s constitutional documents or this Agreement;
  - 12.1.2 permitting the business of the LLP to consist of any business other than the Business or permitting any material change (including cessation) to be made in the Business;
  - 12.1.3 except in the ordinary course of business, creating any mortgages or charges (whether fixed or floating) or any other encumbrance of a similar nature over the undertaking or assets of the LLP or any part thereof;
  - 12.1.4 revising the Business Plan so as to require additional funding from Members;

- 12.1.5 negotiating or enter into any financing or funding agreement;
- 12.1.6 acquiring any new business, property (of a material value) or significant asset;
- 12.1.7 entering into any contract other than in the ordinary course of the Business;
- 12.1.8 entering into or participate in any partnership;
- 12.1.9 entering into or participating in any joint venture, consortium or association with any other person or any arrangement involving the sharing with any other person of any profits or revenues or assets in each and every case with an actual or anticipated monetary value of greater than £250,000 per annum;
- 12.1.10 engaging in services other than public services or infrastructure services delivered at local, regional or national level;
- 12.1.11 approving any Annual Accounts of the LLP;
- 12.1.12 amending the LLP Governance Framework;
- 12.1(A) Without prejudice to the rights of HMT and the LGA under clause 12.1, any matter described in sub-clauses 12.1.1 to 12.1.12 shall be reserved to the WG if:
  - (i) it would, or would reasonably be likely to, have a disproportionate impact on the WG; or
  - (ii) it relates to an executive function and/or an area of legislative competence of the WG,

and for the purposes of clause 12.1(A)(i), "disproportionate impact" shall mean an impact which is reasonably likely to have greater relevance to Wales than in relation to any other area, region or country.
- 12.2 The following matters (in addition to those identified in clause 12.1) are reserved to the Designated Members:
  - 12.2.1 altering or amending the Loan Stock Instrument;
  - 12.2.2 making any change to the place at which the Business shall be principally carried on;
  - 12.2.3 amending the remuneration of any LLP Board Member;
  - 12.2.4 applying for the appointment of an administrator under the provisions of the Insolvency Act 1986 (as amended);
  - 12.2.5 passing a resolution for the winding up of the LLP or the appointment of a liquidator;
  - 12.2.6 adopting a policy in respect of the distribution of capital or income to the Members;
  - 12.2.7 appointing, replacing or removing the Chief Executive;
  - 12.2.8 appointing, replacing or removing the Chairman.

- 12.3 The Members intend that the LLP Board shall (subject always to clause 10 and clause 12.1) take all decisions in relation to the business of the LLP, and accordingly no Member shall on its own behalf and without the consent of the LLP Board:
- 12.3.1 engage or dismiss any employee of the LLP;
- 12.3.2 except to the extent provided for in the Business Plan and for the benefit of the LLP:
- (a) pledge the credit of the LLP;
  - (b) incur any liability on behalf of the LLP;
  - (c) lend any monies of the LLP;
  - (d) give any undertaking on behalf of the LLP;
  - (e) give any guarantee on behalf of the LLP; or
  - (f) bind the LLP to any act or deed;
- 12.3.3 do or knowingly permit to be done anything whereby the property of the LLP may be taken in execution or otherwise endangered or whereby judgment for any debt or other personal obligation may be entered against it and go unsatisfied for more than 28 days or execution may be levied on any of its assets;
- 12.3.4 compromise or compound or release or discharge any debt due to the LLP;
- 12.3.5 assign, mortgage or charge its share or interest in the LLP or enter into partnership with any other person concerning such share or any part thereof; or
- 12.3.6 change the dividend policy of the LLP, as set out in clause 8.1 of this Agreement.
- 12.4 Unless otherwise agreed by the LLP Board, all contracts and engagements entered into by any Member on behalf of the LLP pursuant to clause 12.2 and all cheques, banker's drafts, bills of exchange and other negotiable instruments shall be made, given and taken in the name of the LLP.
- 12.5 The LLP Board shall be entitled to make any consent given to a Member pursuant to clause 12.2 conditional upon such terms and conditions as it may from time to time think fit.
- 12.6 The LLP shall provide a copy of the amended Business Plan to each of the Members on each occasion when the Business Plan is amended or a new Business Plan adopted.

## **12A Members' Decisions**

- 12A.1 When taking a decision that requires consideration by both Designated Members or by both Designated Members and the WG, a meeting shall be held.
- 12A.2 Subject to clause 12A.3, the Members shall ensure that the following are invited to any such meeting:

- 12A.2.1 a minimum of one Member's Representative from each of HMT and the LGA, the LLP Board Chairman and Deputy Chairman;
  - 12A.2.2 the Corporate Secretary; and
  - 12A.2.3 the Chief Executive, except in circumstances where the matters which relate to the appointment, termination and remuneration of the Chief Executive.
- 12A.3 When holding a meeting pursuant to clause 12.1 and the content of such meeting includes a matter or matters contemplated by clause 12.1A, the Member's Representative for the WG must be invited and either be in attendance or having provided prior written consent (on behalf of the WG) for the meeting to proceed.
- 12A.4 Any decisions at such meeting shall require the unanimous agreement of the Member's Representatives present at the meeting and each Member's Representative shall have one vote.
- 12A.5 In the event of any disagreement or dispute arising between the Member's Representatives in relation to any action arising from the meeting, the Member's Representatives of HMT and LGA (and the Member's Representatives of WG, as the case may be) shall use all reasonable endeavours to resolve the matter on an amicable basis. If one Member serves formal written notice to the other Member(s) that a Dispute has arisen and the Member's Representatives of HMT and LGA (and of the WG, as the case may be) are unable to resolve the Dispute within 20 Business Days from the service of such notice, then either Designated Member (or the WG, as the case may be) may refer the Dispute for resolution in accordance with the provisions of Schedule 2. The date of such referral shall be the "**Referral Date**".
- 12A.6 Any such meeting shall be held at the registered office of the LLP unless otherwise agreed by the Member's Representatives of HMT and LGA (and of the WG, as the case may be) scheduled to attend. Each meeting shall be held on such date and at such time (being during normal business hours) as designated by the requesting Designated Member (or by the WG, as the case may be). The Member requesting the meeting shall give not less than 10 Business Days' notice to the other Member(s). The format, content and procedure for presenting papers will be agreed between the Member's Representatives who will attend the meeting.
- 12A.7 Any individual attending may participate in any meeting by means of a conference telephone or other communications equipment by means of which all persons participating in such meeting can hear each other and participation in a meeting by such means shall constitute presence in person at such meeting.

### **13. LGA Grant**

- 13.1 The parties agree and acknowledge that the LLP shall provide support free at the point of use to Local Authorities in England in accordance with the provisions of this clause 13 and that it is intended that the portion of LGA Grant received by the LLP shall be applied to meet the costs of that support.
- 13.2 The LGA undertakes to the LLP that:
  - 13.2.1 it will consult the LLP on the scope and method of delivery of the proposed LGA Grant Activity on an annual basis in a reasonable timeframe;

- 13.2.2 it will provide copies for the LLP of its annual submission for LGA Grant and such other documents relating to its activities as may be required by, and are provided to, CLG;
- 13.2.3 it will not (unless otherwise agreed in writing by HMT) establish or materially support any other entity or person which establishment or support would materially affect the prospects or potential of the LLP to conduct its business.
- 13.3 It is expressly agreed and acknowledged that the portion of LGA Grant received by the LLP shall be applied solely to meet the costs of support provided t no additional chargeof charge to Local Authorities in England
- 13.4 The LLP undertakes to provide such reports and plans, setting out its proposals for support of the delivery of LGA Grant Activity, as may reasonably be required for the LGA's discussions about LGA Grant levels.
- 13.5 Notwithstanding any other provision of this Agreement, any application of LGA Grant pursuant to this clause 13 shall be subject to the Local Government Finance Act 1988 and the Revenue Support Grant (Specified Bodies) Regulations as amended from time to time.
- 13.6 The LLP undertakes to the LGA that it shall, and each of the Members shall procure that the LLP shall:
  - 13.6.1 ensure that any LGA Grant Activity it provides shall be provided on a non-profit basis;
  - 13.6.2 deliver such accounts and explanations as may reasonably be required to establish that the portion of LGA Grant allocated to the LLP has been applied in accordance with this clause 13.

#### **14. Administration and information**

- 14.1 The LLP shall keep or procure that its delegates keep on behalf of the LLP such accounting and other records as are required by all applicable laws in England and Wales including, but not limited to, records provided for by the Companies Acts to the extent applied by the Limited Liability Partnerships Regulations 2001.
- 14.2 The LLP or its delegates shall ensure that proper books of account shall be kept and that all entries thereto are promptly made so that at all times the books of account are reasonably up to date. Such books of account shall be maintained within the United Kingdom at an address as shall from time to time be notified to the Members but for the time being at Local Government House, Smith Square, London, SW1P 3HZ. The Members agree the LLP shall perform or procure that its delegates perform company secretarial services including providing notification of meetings, taking of minutes, drawing up and procuring the signature of statutory notifications and filing of other statutory documents including audited financial statements.
- 14.3 The parties and their authorised representatives and authorised professional advisers shall be entitled on reasonable written request to inspect the books, papers, documents, accounts, minutes and other records of the LLP and shall have the right (at their own expense) to take away copies or extracts from all such books, papers, documents, accounts, minutes and other records. Subject to any contrary requirement imposed on a party pursuant to any Law, requests must be received at the registered

office not less than 5 Business Days before the proposed inspection. The proposed inspection must be made on a Business Day and such inspection shall be made during normal business hours in the United Kingdom.

14.4 Each party undertakes to the other parties that:

14.4.1 in the event that it becomes aware of any actual or potential Proceedings being brought against the LLP, or any liability which may give rise to any Proceedings, it shall promptly notify the other parties of such actual or potential Proceedings or liability, provided that this obligation to notify shall not apply to matters, developments or occurrences in relation to the LLP which arise from the exercise of HM Treasury's general functions as a finance ministry.

14.4.2 it shall promptly notify the LLP (which in turn shall promptly notify each of the other parties to this Agreement) of all matters, developments or occurrences in relation to that party which has or may have a material impact upon the business or operations of the LLP.

14.5 The LLP shall use all reasonable endeavours to procure that there are prepared and delivered to the Members:

14.5.1 not later than 10 Business Days after the date of any meeting of the LLP Board, copies of the minutes of such meeting;

14.5.2 not later than 20 Business Days after the end of each calendar month, management accounts for the LLP in respect of such month and each preceding month during the relevant Accounting Year such management accounts to contain trading and profit and loss accounts, balance sheets, cashflow forecasts, details as to forward forecasts (including the actual and anticipated investment position) and explanations of variances from the Business Plan;

14.5.3 within 2 months of the end of the Accounting Year to which they relate, draft annual financial statements of the LLP which conform to the Companies Acts and are reasonably believed by the LLP to show a true and fair view; and

14.5.4 annual audited financial statements of the LLP within 6 months of the end of the Accounting Year to which they relate.

The auditors of the LLP shall be appointed by the LLP Board from time to time.

14.6 Except as otherwise provided in the Business Plan, all outgoing and expenses incurred by the LLP (other than those of a capital nature) shall be charged to and paid out of the income of the LLP.

## **15. Taxation**

15.1 The LLP shall (to the extent not already the case) procure that it is registered with or recognised by HM Revenue & Customs:

15.1.1 in respect of Value Added Tax; and

15.1.2 in respect of the making of tax returns and statements pursuant to part II of the Taxes Management Act 1970.

15.2 Subject to clause 15.1, the LLP shall procure that the documents set out in column A of the table below are drawn up and shall send a copy of each of

the documents in draft by the dates shown in column B to the Members. The Members shall, if they have reasonable queries or objections in relation to the documents inform the LLP forthwith, but if no reply is received by the date shown in column C of the table the LLP shall be entitled to assume the Members' consent to the submission of the documents. For the purposes of this provision the date on which documents are sent by post should not be taken as the date on which received by the recipient.

Column A: Detail of submission	Column B: Date submission should be sent to Members	Column C: Last date for refusal or objection
Partnership return and statement under s.12AA Taxes Management Act 1970 together with any tax computations	<p>(a) 2 months after the Accounting Date.</p> <p>(b) Should audited accounts not be available for the Accounting Year to which the returns and statements principally relate, a revised return or statement shall be made within 5 Business Days of such accounts being received by the Members or a statement in writing that no changes are necessary.</p>	20 Business Days after the date specified in column B, save that if audited accounts are not available the deemed acceptance or comments be provisional on obtaining audited accounts and on the further submission as described in (b).

15.3 The LLP may request from each Member, and each Member may request from the LLP, and each Member or the LLP (as applicable) shall give to the LLP or such Member, any information required to enable the LLP or Member (as applicable) to make any tax return pursuant to statute or regulations thereto or to properly respond to any written query from any taxing authority.

15.4 The provisions of this clause 15 shall, to the extent that they may be applicable, survive the termination of this Agreement and the dissolution of the LLP.

## 16. Substantiated Member's Default

16.1 If a Substantiated Member's Default should occur (the Member admitting liability for, or being determined to have been liable for the Member's Default being the "**Defaulting Member**") the other Member(s) (the "**Non-Defaulting Member(s)**") shall be entitled to implement the procedures set out in Part A of Schedule 3.

16.2 Intentionally omitted.

16.3 The remedies set out in clause 39.2 and Schedule 3 shall be exhaustive of the rights or remedies available to the Non-Defaulting Member(s) in respect of such Substantiated Member's Default.

16.4 In the event of an Alleged Default, the provisions of Schedule 2 shall apply.

## 17. Valuers

17.1 If Valuers are appointed pursuant to this Agreement then the LLP and each Member shall promptly provide all assistance and information as may reasonably be requested by such Valuers. Any Valuers so appointed shall act as experts and not as arbitrators and their certification as to their

opinion of the Price or such other matter as they shall have been requested to opine on shall be final and binding on the parties.

- 17.2 Except as specifically otherwise provided for in this Agreement, the fees and expenses of such Valuers shall be payable by the Members as follows:
  - 17.2.1 by the Defaulting Member, pursuant to paragraphs 1 and 2 of Schedule 3;
  - 17.2.2 *Intentionally omitted.*
  - 17.2.3 equally, pursuant to paragraph 5 of Schedule 3;
  - 17.2.4 equally, pursuant to paragraph 6 of Schedule 3.
- 17.3 The LLP and each Member shall procure that such Valuers are appointed on such terms that the Valuers shall owe a duty of care to all Members notwithstanding that such costs and expenses may be payable by only one Member.

## 18. Indemnity

- 18.1 Each Member and its officers, directors, and employees (an “**Indemnified Party**”) shall be entitled to be indemnified out of the assets of the LLP against any liability, damage, cost or expense (including legal fees and expenses reasonably incurred in defence of any claims or legal proceedings) arising from any act or omission performed or omitted by them in the course of the Business or activities authorised by or on behalf of the LLP (unless and to the extent due to bad faith, wilful default or gross negligence of the Indemnified Party). This right to indemnification and payment of legal fees and expenses shall not be affected by the termination of the LLP.
- 18.2 For the avoidance of doubt the indemnity contained in clause 18.1 shall not operate to limit the indemnity provided by each of the Designated Members to the LLP contained in the PPPP Business Transfer Agreement and the PUK Business Transfer Agreement.

## 19. Undertakings and confidentiality

- 19.1 Each Member shall (whilst a member of the LLP within the meaning of the Act) ensure that its LLP Board Members shall devote such of their time, attention and professional efforts to the LLP as may reasonably be needed to carry on the Business.
- 19.2 Each of the Members shall ensure that its LP Board Members shall, so far as they are able, exercise their voting and decision-making and other powers in relation to the LLP to procure that the LLP complies in all respects with its obligations under this Agreement.
- 19.3 Except as provided by clauses 19.4 and 19.5 and subject to any overriding requirement of Law, the parties shall at all times during the continuance of this Agreement and after its termination:
  - 19.3.1 use their best endeavours to keep all Confidential Information confidential and accordingly not to disclose any such Confidential Information to any other person; and

- 19.3.2 not to use any such Confidential Information for any purpose other than the performance of its obligations under this Agreement.
- 19.4 Any of the parties to this Agreement and any Member of the LLP may disclose any Confidential Information to:
- 19.4.1 any governmental or other authority or regulatory authority as may be required by Law; or
- 19.4.2 a Member's or the LLP's employees or professional advisers,  
subject in each case to the party so disclosing such Confidential Information using its best endeavours in so far as it is lawfully able to ensure that the person to whom such Confidential Information is disclosed keeps the same confidential and does not use the same except for the purposes for which the disclosure is made.
- 19.5 Any Confidential Information may be used for any purpose or disclosed to any person to the extent only that it is at the date hereof or hereafter becomes public knowledge otherwise than through any breach of this clause by the party disclosing the Confidential Information, provided that in doing so such party does not disclose any Confidential Information which is not public knowledge.
- 19.6 The parties agree that the obligations in this Agreement as to confidentiality (or otherwise containing confidentiality provisions) shall be subject to each party's duties under FOIA (whether any party is expressly already subject to the provisions of the FOIA, or shall in the future become subject to the FOIA or, as a matter of best practise in its internal code of governance, complies with the FOIA as though it did expressly apply). No party shall be in breach of any such confidentiality provisions or agreements if it makes any disclosure of information in accordance with FOIA save that it shall take into account any reasonable requests of any other party hereto in connection to any proposed disclosure (to the extent permitted in law).

## **20. Restrictions on the Designated Members**

- 20.1 For the duration of the LLP and without prejudice to any services or support provided by HM Treasury arising from the exercise of its general functions as a finance ministry:
- 20.1.1 HMT shall not unless otherwise agreed in writing by the LGA (such agreement not to be unreasonably withheld) engage in any material respect in the provision of services at a local or regional level but without prejudice to services HMT provides in connection with the PUK Retained Local Authority Businesses).
- 20.1.2 Neither HMT nor the LGA shall (unless otherwise agreed in writing by the other Designated Member and the LLP) establish or materially support any other entity or person which establishment or support would materially adversely affect the prospects or potential of the LLP to conduct its Business (but without prejudice to each party's current support for organisations existing at the First Completion Date including Specified Bodies as at the First Completion Date).
- 20.2 Each of the covenants in this clause is considered fair and reasonable by the parties. If any such restriction shall be found to be unenforceable but would be valid if any part of it were deleted or the period or area of

application reduced, the restriction shall apply with such modifications as may be necessary to make it valid and effective.

## **21. Execution of documents**

- 21.1 The LLP shall have the power to sign any documents under hand by any one or more Designated Members signing such document on behalf of the LLP and such signature shall effectively bind the LLP to such document, whether signed in wet ink or electronically.
- 21.2 The Members delegate the power to execute any document on behalf of the LLP, and relating to the ordinary course of its business, to the Chairman or Deputy Chairman of the LLP Board, the Chief Executive and each member of the Officer Management Board. Any such document shall be valid whether signed in wet ink or electronically. This clause shall be deemed to be effective from the date the LLP was incorporated.
- 21.3 On each occasion that the LLP proposes to execute an instrument as a deed, such deed will be validly executed if it is executed on behalf of the LLP by or on behalf of each Designated Member, whether signed in wet ink or electronically. Accordingly, each Designated Member shall, promptly following a request from the LLP, procure the signature of the relevant instrument in their capacity as Designated Members. The LLP shall have the power to adopt a seal for the execution of documents, with the affixing of such seal to be witnessed by or on behalf of each Designated Member.
- 21.4 Save as required by Law or any regulatory authority (including, without limitation, Her Majesty's Treasury, the National Audit Office, the Wales Audit Office, the National Assembly for Wales and the Commission of the European Union) having jurisdiction over the relevant Member, no statement or announcement of any nature relating to the subject matter of or the transactions referred to in this Agreement or the establishment or operations of the LLP shall be made unless the Members have consulted together on the timing, contents and manner of release of any such statement or announcement.

## **22. Winding-up/dissolution of LLP**

- 22.1 The Designated Members may, for any lawful reason, (but without prejudice to clauses 16 or 23) by a unanimous decision of the Designated Members determine to voluntarily wind up the LLP in accordance with section 84 of the Insolvency Act.
- 22.2 The Designated Members will within 15 days of any such determination that the LLP be wound up voluntarily file with the Registrar of Companies notice of such determination and advertise the same in the London Gazette. In the case of a Designated Members' voluntary winding-up the Designated Members will make and file with the Registrar of Companies the statutory declaration of solvency required under section 89 of the Insolvency Act.
- 22.3 The Designated Members may by unanimous approval given in accordance with clause 12.2.5:
- 22.3.1 in the case of a Designated Members' voluntary winding up, resolve to appoint a liquidator or liquidators of the LLP pursuant to section 91(1) of the Insolvency Act; and
- 22.3.2 in the case of a creditors' voluntary winding up, nominate a person to be liquidator of the LLP pursuant to section 100(1) of the Insolvency Act.

- 22.4 The Designated Members may by unanimous approval given in accordance with clause 12.1 sanction a transfer or sale by a liquidator to another body corporate under section 110 of the Insolvency Act in consideration for the issue to all the Members of shares, Membership rights or other analogous rights in that other body corporate and any such arrangements will be binding on all Members. Such a decision shall be binding on all Members and if the Designated Members make such a decision, no Member may exercise any rights conferred upon it by section 111 of the Insolvency Act.
- 22.5 For the purpose of the section 124(1) of the Insolvency Act the Designated Members may, by unanimous approval given in accordance with clause 12.1, present a petition to the court in the name of the LLP to wind up the LLP pursuant to section 122(1)(d) of the Insolvency Act on the grounds that the LLP is unable to pay its debts within the meaning of section 123 of the Insolvency Act.
- 22.6 In the event of the winding up of the LLP, each Member shall (notwithstanding any other provision of this Agreement but subject to the provisions of the Insolvency Act) be liable to contribute to the assets of the LLP the sum of £10 only.
- 22.7 Save as otherwise provided in this clause 22, no Member (either independently or in concert with another Member or Members) shall present a petition to the court to wind up the LLP whether in its own name as a Member or contributory, or in the name of the LLP, or in the name of the Members collectively or as a creditor of the LLP or be entitled to determine that the LLP shall be wound up voluntarily, provided that any such action may be taken if the Member or Members concerned have received a written opinion from a barrister with not less than 10 years experience in insolvency matters that such a petition should be presented in order properly to comply with duties imposed or placed upon it or them by law.
- 22.8 Notwithstanding the winding up of the LLP the provisions of this Agreement continue in full force and effect insofar as they relate to post-winding-up matters and the rights and obligations of the Members.
- 22.9 Subject to the provisions of Schedules 2 and 3 and clause 13 (LGA Grant) in the event of any winding-up or dissolution of the LLP (other than in circumstances of insolvency), the net assets of the LLP (or the proceeds of sale of such assets) shall be distributed to and shared between the Designated Members in two equal portions.
- 22.10 The Parties agree, and undertake to procure that in the event of the winding up of the LLP, no LGA Grant shall be applied to subsidise, set-off or otherwise disburse winding-up costs, or to fund distribution to Members of the LLP, but shall be returned to the LGA.

### **23. Transfer of LLP Interests**

- 23.1 Subject to clauses 23.2, 23.3 and 23.4, no Member shall transfer, charge, assign or otherwise dispose of its LLP Interest or its interest under this Agreement in whole or in part:
- 23.1.1 Intentionally omitted.
- 23.1.2 after the end of 3 years from the First Completion Date, to any Prohibited Person.

- 23.2 Notwithstanding clause 23.1, HMT shall be entitled to transfer, assign or otherwise dispose of its LLP Interest or its interest under this Agreement in whole to:
- 23.2.1 a Wholly-Owned Subsidiary of HMT as defined in subparagraph (a) of the definition of “Wholly-Owned Subsidiary” contained in clause 1.1 above, provided that the transferee is not a Prohibited Person and provided that HM Treasury stands as guarantor of the transferee’s obligations under this Agreement pursuant to clause 25 (Guarantee) *mutatis mutandis*; or
- 23.2.2 a body defined in subparagraph (b) of the definition of “Wholly-Owned Subsidiary” contained in clause 1.1 above, subject to obtaining the prior consent of the other Members (such consent not to be unreasonably withheld or delayed), and provided that the transferee is not a Prohibited Person and further provided that HM Treasury stands as guarantor of the transferee’s obligations under this Agreement pursuant to clause 25 (Guarantee) *mutatis mutandis*.
- 23.3 Notwithstanding clause 23.1, the LGA shall be entitled to transfer, assign or otherwise dispose of its LLP Interest or its interest under this Agreement in whole to:
- 23.3.1 any person acting as a trustee for and on behalf of the LGA (the terms of which trust must be reasonably acceptable to HMT); or
- 23.3.2 a Wholly-Owned Subsidiary of the LGA as defined in subparagraph (a) of the definition of “Wholly-Owned Subsidiary” contained in clause 1.1 above, provided that the transferee is not a Prohibited Person, and provided that the LGA stands as guarantor of the transferee’s obligations under this Agreement pursuant to clause 25 (Guarantee); or
- 23.3.3 a body defined in subparagraph (b) of the definition of “Wholly-Owned Subsidiary” contained in clause 1.1 above, subject to obtaining the prior consent of the other Members (such consent not to be unreasonably withheld or delayed), and provided that the transferee is not a Prohibited Person and further provided that the LGA stands as guarantor of the transferee's obligations under this Agreement pursuant to clause 25 (Guarantee).
- 23.4 Notwithstanding clause 23.1, but subject to clause 23.5, the WG shall be entitled to transfer, assign or otherwise dispose of its LLP Interest or its interest under this Agreement in whole to:
- 23.4.1 any person acting as a trustee for and on behalf of the WG (the terms of which trust must be reasonably acceptable to HMT and the LGA); or
- 23.4.2 a Wholly-Owned Subsidiary of the WG as defined in subparagraph (a) of the definition of “Wholly-Owned Subsidiary” contained in clause 1.1 above, provided that the transferee is not a Prohibited Person and provided that the WG stands as guarantor of the transferee’s obligations under this Agreement pursuant to clause 25 (Guarantee); or
- 23.4.3 a body defined in subparagraph (b) of the definition of “Wholly-Owned Subsidiary” contained in clause 1.1 above, subject to obtaining the prior consent of the other Members (such consent not to be unreasonably withheld or delayed), and provided that the transferee is not a Prohibited Person and further provided that the WG stands as guarantor of the transferee’s obligations under this Agreement pursuant to clause 25 (Guarantee).

23.5 The WG shall not be entitled to transfer, assign or otherwise dispose of its LLP Interest or its interest under this Agreement in accordance with this clause 23:

23.5.1 without first causing the same to be offered to HMT for nominal consideration and, if HMT declines such offer, without then causing the same to be offered to the LGA; and

23.5.2 without the prior consent of the Designated Members.

23.6 Where LLP Interests have been transferred in accordance with clause 23.2, 23.3 or 23.4 (whether directly or by a series of transfers thereunder) from a Member (the “**transferor**”, which expression shall not include a second or subsequent transferor in such a series of transfers) to a Wholly-Owned Subsidiary of HMT, LGA or WG (as the case may be) (the “**transferee**”) and subsequently the transferee ceases to be a Wholly-Owned Subsidiary of HMT, LGA or WG (as the case may be), then the transferee shall, if any of the remaining Members so require, forthwith transfer the relevant interest (as hereinafter defined) to the transferor; and failure so to transfer such interest within 28 days of being so required shall result in a transfer notice being deemed immediately to be given in respect of the relevant interest at a price equal to the lower of the nominal value thereof and the Price at expiry of the said period of 28 days as determined by the Valuers. For the avoidance of doubt, this clause 23.5 shall not apply to the transfer by HMT to the WG pursuant to clause 7.5.

23.7 For the purposes of this clause 23, the expression “**relevant interest**” means and includes (so far as the same remain for the time being held by the transferee) the LLP Interest originally transferred to the transferee and any additional LLP Interest(s) issued or transferred to the transferee by virtue of the holding of the relevant interest or any of them.

23.8 Except as provided in clause 23.2, 23.3, 23.4 or 23.5 or else otherwise with the prior unanimous consent of or waiver by all the other Members, a Member wishing to transfer, charge, assign or otherwise dispose of its LLP Interest (the “**Transferor**”) must first cause the same to be offered to the remaining Members (the “**Potential Transferees**”) at the price determined in accordance with the provisions of this clause 23 (the “**Transfer Price**”).

23.9 The Transferor shall give written notice (a “**Sale Notice**”) to the LLP Board that it desires to sell, transfer, assign or otherwise dispose of such LLP Interest(s). Every Sale Notice shall unconditionally and irrevocably appoint the LLP Board to be the agents of the Transferor for the sale of the LLP Interest such Sale Notice refers to (the “**Sale Interest**”) to the Potential Transferees at the Transfer Price. If the Members simultaneously issue a Sale Notice, there shall be deemed to have arisen a Dispute and the procedure in Schedule 2 shall apply.

23.10 If within 14 days of the date of the Sale Notice, the Transferor shall have agreed a price for the Sale Interest with the LLP Board as representing the fair value of the Sale Interest or as being acceptable to the Transferor, then such price shall be the Transfer Price. Failing such agreement the LLP Board shall immediately instruct the Valuers to determine and report the value of the LLP Interest considered by them to be the fair value of the Sale Interest and the sum so determined shall be the Transfer Price. In so determining the Transfer Price, the Valuers shall be instructed to determine the fair value of the Sale Interest as the market value thereof as between a

willing seller and a willing buyer at arms' length. The expenses of the Valuers shall be borne by the Transferor.

- 23.11 Within seven days of the Transfer Price being so agreed or determined the Sale Interest included in any Sale Notice shall be offered for purchase at the Transfer Price by notice in writing given by the LLP to all Members (other than the Transferor). Such offer shall be on the basis that in the case of competition for them, the Sale Interest shall (in accordance with but subject to clause 23.13) be sold to acceptors in proportion (as nearly as may without involving fractions or increasing the number sold to any Member beyond that applied for by him) to their existing LLP Interest. Any such offer shall specify a period (being not less than 21 days and not more than 42 days (the "**Offer Period**") within which it must be accepted or will lapse.
- 23.12 If Members ("**Purchasers**") shall within the Offer Period of the offer agree to purchase the Sale Interest or any of them the LLP shall immediately give notice in writing as mentioned below to the Transferor and to the Purchasers and on payment of the Transfer Price the Transferor shall be bound to transfer the Sale Interest to the respective Purchasers accordingly. Every notice shall state the name and address of each Purchaser and the interest agreed to be purchased by him and the sale and purchase shall be completed at a place and time to be appointed by the LLP Board being not less than 7 days nor more than 30 days after the date of such notice provided always that if the Sale Notice shall state that the Transferor is not willing to transfer part only of the Sale Interest this clause 23.12 shall not apply unless the LLP shall have found Purchasers for the entire Sale Interest and (unless as aforesaid) any offer referred to in clause 23.11 shall be deemed to have lapsed without having been validly accepted.
- 23.13 If a Transferor shall fail or refuse to transfer any Sale Interest to a Purchaser under this clause 23, the LLP Board may authorise some person to execute the necessary transfer and may deliver it on its behalf and the LLP may receive the purchase money in trust for the Transferor (which it shall pay into a separate bank account in the LLP's name) and cause the Purchaser to be registered as the holder of such Sale Interest. The receipt of the LLP for the purchase money shall be a good discharge to the Purchaser (who shall not be bound to see the application of the purchase money) and after the Purchaser has been registered in purported exercise of these powers the validity of the proceedings shall not be questioned by any person.
- 23.14 If at the expiry of the period referred to in clause 23.11 the Members shall not have agreed to purchase the entire Sale Interest the LLP shall immediately give notice in writing of that fact to the Transferor and the Transferor shall then be at liberty at any time up to the expiration of three months after the giving of such notice to transfer those Sale Interest which Members shall not have so agreed to purchase to any person on a bona fide sale at any price not being less than the Transfer Price provided that:
- 23.14.1 such person is not a Prohibited Person;
- 23.14.2 if the Sale Notice shall state that the Transferor is not willing to transfer part only of the Sale Interest he shall not be entitled under this clause 23.14 to transfer part of such Sale Interest unless in aggregate the whole of such Sale Interest are so transferred; and

- 23.14.3 the LLP Board may require to be satisfied that such Sale Interest is being transferred in pursuance of a bona fide sale for the consideration stated in the instrument of transfer without any deduction, rebate or allowance whatever being given to the purchaser and if not so satisfied may refuse to register the instrument of the transfer.
- 23.15 If a Member, or other person entitled to transfer an LLP Interest, at any time attempts to deal with or dispose of such LLP Interest otherwise than in accordance with the foregoing provisions of this clause 23, such Member shall be deemed immediately prior to such attempt to have served a Sale Notice on the LLP in respect of such LLP Interest and the provisions of this clause 23 shall then apply to the LLP Interest. Any such Sale Notice shall be deemed to have been served on the date on which the LLP Board shall receive actual notice of such attempt.
- 23.16 On any transfer of an LLP Interest in accordance with the provisions of this clause 23, the parties shall use all reasonable endeavours to agree appropriate amendments to the provisions of this Agreement as may be reasonably required to reflect the new or varied Interest of the Members (including the transferee).
- 23.17 No Member can issue a Sale Notice or transfer any LLP Interest following the issue of a Dispute Notice concerning a matter which may constitute a Member's Default, until such matter has been finally resolved.
- 23.18 Unless already an existing Member prior to the transfer, any transferee must first enter into a Deed of Adherence before the transfer of any interests hereunder are effected and the LLP Board shall be free to withhold the registration of the transferee as the holder of such interests until being provided with a copy of the duly executed Deed of Adherence.

## 24. Tag along rights

- 24.1 Any Member (the "**Seller**") shall use all reasonable endeavours to procure that a Sale Notice given by it under clause 23 shall be accompanied by an offer to the other Members (each, a "**Continuing Party**") from the prospective purchaser of the Seller's relevant LLP Interest to purchase the entire LLP Interest held by the Continuing Party on terms at least as favourable to the Continuing Party as those set out in the Transfer Notice are to the Seller. Any such offer shall be expressed to be (i) irrevocable, (ii) governed by the law of England and Wales and (iii) open for acceptance by the Continuing Party during the Offer Period. If the Transfer Notice is not accompanied by such an offer:
- 24.1.1 the Offer Period for the purposes of clause 23.11 shall be deemed extended to a period of 60 days;
- 24.1.2 the Seller shall use all reasonable endeavours during the extended Offer Period (but without involving any financial obligation on its part) to procure that the prospective purchaser shall make an offer to the Continuing Party as aforesaid and that the Continuing Party shall be able to participate fully at its own expense in all negotiations and discussions between the Seller and the prospective purchaser or their respective agents; and
- 24.1.3 subject to any obligations of confidentiality owed to third parties, the Seller shall permit the Continuing Party to have full access to all documents and

information in the possession or under the custody and control of the Seller directly or indirectly relating to the intended transfer of the Seller's LLP Interest to the prospective purchaser and which the Continuing Party may reasonably require in connection with such negotiations and discussions.

- 24.2 If the relevant Sale Notice to which this clause 24 applies is in respect of part, but not all, of the Seller's LLP Interest, the offer shall relate to such proportion of the Continuing Party's LLP Interest as is equal to the proportion that the Sale Interest bears to the Seller's entire LLP Interest.

## 25. Guarantee

- 25.1 Intentionally omitted.
- 25.2 The LGA (as primary obligor and not as surety only) irrevocably and unconditionally:
- 25.2.1 guarantees to HMT the due and punctual performance of, and the due payment and discharge of, all sums and liabilities which now are or at any other time shall be due, owing or incurred by PPPP to HMT under this Agreement, the PPPP Business Transfer Agreement and all agreements ancillary to such agreements (the "**Obligations**");
- 25.2.2 undertakes to pay to HMT, if PPPP fails to pay them, all amounts whatsoever which such agreements provide are to be paid by them;
- 25.2.3 undertakes that if any amount guaranteed by this clause is not recoverable on the basis of a guarantee for any reason it will (as a separate and independent stipulation) pay HMT on demand whatever amount or amounts shall equal what it would have been liable to pay but for such irrecoverability.
- 25.3 This is a continuing guarantee and the LGA's undertakings under this clause shall remain in full force and effect until final performance in full of the Obligations and notwithstanding any intermediate payment or performance or the invalidity or unenforceability in whole or in part of any of the Obligations or any other event.
- 25.4 The guarantee and undertakings contained in this clause shall be discharged by the full performance by PPPP of the Obligations, but otherwise shall not be discharged or affected by any act, omission, matter or thing which, but for this provision, might operate to release or otherwise exonerate the LGA from those obligations in whole or in part including:
- 25.4.1 the granting of time, or any waiver or other indulgence (including any extension, renewal, acceptance, forbearance or release in respect of any of the Obligations);
- 25.4.2 the taking, variation, compromise, renewal or release of or refusal or neglect to perform or enforce any rights, remedies or securities against PPPP or any other person;
- 25.4.3 any modification, variation or addition to the terms of any of the Obligations or of any other document or security;
- 25.4.4 any irregularity, defect or informality in the terms of any of the Obligations or any other document or security or any legal limitation, disability, incapacity or want of authority of any person;

- 25.4.5 any transfer or assignment of any rights or obligations by any party, whether or not they relate to the Obligations;
  - 25.4.6 any corporate reorganisation, reconstruction, amalgamation, dissolution, liquidation, merger, acquisition of or by or other alteration in the corporate existence or structure of any party, or the non-existence of PPPP; or
  - 25.4.7 any composition or similar arrangement by any party or any other person.
- 25.5 Where any discharge (whether in respect of any of the Obligations or any security for the Obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored for any reason, the liability of the LGA under this clause shall continue as if the discharge or arrangement had not been made.
- 25.6 As a separate, continuing and primary obligation, the LGA undertakes to indemnify HMT on demand against all losses, claims, or costs suffered or incurred by HMT should the amounts due under clause 25.2 not be recoverable for any reason including (without limitation) the agreements under which the Obligations arise being or becoming void or voidable.

## **26. Intellectual Property Rights**

- 26.1 The parties agree that all Intellectual Property Rights created by the LLP shall be the property of the LLP.

## **27. Additional Members**

- 27.1 Subject to clause 23 (in particular clause 23.17), clause 27.2 and clause 33, if the Members of the LLP agree (or deem to agree in accordance with clause 27.2.1 below) to admit additional persons to Membership, the parties shall enter into a new Members' Agreement with such additional person(s) at that point in time in substitution for this Agreement.
- 27.2 In the event that the admission of such additional persons to the Membership of the LLP is pursuant to a sale of:
  - 27.2.1 part of a Member's LLP Interest pursuant to which that Member transfers a proportionate amount of its rights and obligations under this Agreement (by way of example, if a Member transfers a 50 per cent Interest, a "proportionate amount" would include 50 per cent of its rights to appoint LLP Board Members and a transfer of 50 per cent of its other rights under this Agreement) in proportion to its existing LP Interest the consent of the other parties shall be deemed to be given, subject to the other Member having seen the terms of sale and reasonable opportunity to object to the terms; if the Members cannot agree that a "proportionate interest" shall have been transferred, the Dispute provisions set out in clause 9.4 shall apply;
  - 27.2.2 a Member's LP Interest otherwise than as set out in clause 27.2.1, additional persons shall not be admitted to Membership unless the other Member has given its prior written consent.

## **28. Winding-up of Members**

If a Member is wound-up, that Member's interest shall be treated in such manner as that Member (if allowed to do so) or its liquidators or administrators direct, including

payment by the LLP to that Member's liquidators or administrators as would have been the case had the winding-up not occurred.

**29. Exclusion of section 994 Companies Act 2006**

The parties hereby exclude the application of section 994 of the Companies Act 2006 (protection of minority shareholders) for the term of this Agreement.

**30. Voluntary Termination**

30.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, in the event that a Designated Member wishes to terminate this Agreement, either Designated Member may serve a written notice stating that it wishes to terminate this Agreement:

30.1.1 Intentionally omitted.

30.1.2 provided that at least 3 years have passed from the First Completion Date on giving the other Designated Member and the WG not less than 12 months written notice, such notice to commence not earlier than the end of the third anniversary of the First Completion Date and the procedure set out in Part D of Schedule 3 shall then apply,

and the date on which such notice period expires shall be the "**Voluntary Termination Date**".

**31. Transfer of Loan Stock**

For the avoidance of doubt, no Member shall be entitled to transfer any Loan Stock held by it pursuant to the provisions of this Agreement unless such Member also transfers an equivalent proportion of its LLP Interest at the same time.

**32. Notices**

32.1 Any notice or other communication given or made under this Agreement shall be in writing and shall be delivered to the relevant party by sending the same by first class pre-paid letter or by hand leaving the same at:

32.1.1 If to HMT:

1 Horse Guards Road  
London SW1A 2HQ

Marked for the attention of the Finance Director

32.1.2 If to the LGA:

Local Government House  
Smith Square  
London  
SW1P 3HZ

Marked for the attention of The Chief Executive

32.1.3 If to the WG:

Cathays Park  
Cardiff  
CF10 3NQ

Marked for the attention of Director Welsh Treasury

32.1.4 If to PPPP:

Local Government House  
Smith Square  
London  
SW1P 3HZ

Marked for the attention of the Company Secretary

32.1.5 If to LLP

Local Government House  
Smith Square  
London  
SW1P 3HZ

Marked for the attention of the Chief Executive

32.2 A party may change its nominated address or addressee by prior written notice to each other party in accordance with clause 32.1.

32.3 Each such notice or communication shall be deemed to have been given or made and delivered (a) if by letter, 48 hours after posting (save in respect of a postal request for information sent pursuant to clause 14.3, in which event, it shall be deemed to be made on receipt by LLP); (b) if by personal delivery, when left at the relevant address provided that, if it is delivered personally on a day which is not a Business Day or after 4 p.m. on a Business Day, it will instead be deemed to have been given or made on the next Business Day.

### **33. Amendment to this Agreement**

33.1 Any amendment to this Agreement must be in writing and be signed by all the Members and the LLP and all the parties hereto unless the effect of such amendment would be to vary the rights or obligations of a Member or a particular class of Member(s) only and would not affect any other party to this Agreement, in which event it shall only be signed by all the Members so affected and by the Members on behalf of the LLP.

33.2 For the avoidance of doubt the LGA's liability under clause 25 (Guarantee) shall not be affected by any such amendment referred to in clause 33.1, unless the specific purpose of such amendment is to affect the LGA's liability under clause 25.

### **34. Third party rights**

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

**35. Entire agreement**

This Agreement and each document referred to in it constitute the full, complete, and final agreement of the parties hereto and supersede all prior written or oral agreements between the parties hereto (or any of them) with respect to the matters contemplated hereby.

**36. Counterparts**

This Agreement may be executed in any number of counterparts and by the parties on different counterparts. Each counterpart shall constitute an original of this Agreement but all the counterparts shall together constitute one and the same Agreement.

**37. Costs**

Each party shall bear its own costs in respect of this Agreement.

**38. Waiver**

- 38.1 No failure or delay on the part of any Member in exercising any power or right under this Agreement shall operate as a waiver of any agreement or undertaking to be performed by the other Member or in any way restrict the rights and powers of the first-mentioned Member.

**39. Governing law and jurisdiction**

- 39.1 This Agreement shall be governed by and construed in all respects in accordance with the law of England and Wales.
- 39.2 If a party shall consider that a breach or Member's Default has arisen, having followed the procedure in Schedule 2, it shall give notice to the other parties specifying the nature of the issue and asking it to concur in the appointment of an arbitrator to determine whether a breach or Member's Default has occurred. If the parties are unable to agree on the identity of an arbitrator within 14 days then an arbitrator shall be appointed by the President or a Vice President of the Chartered Institute of Arbitrators.
- 39.3 The arbitration shall be conducted in accordance with the Rules of the Chartered Institute of Arbitrators. The decision of the arbitrator shall be final and binding on the parties.

**SCHEDULE 1**  
**Deed of Adherence**

**THIS DEED OF ADHERENCE** is made the [date] day of [month] 200[ ] by [*name, address, details*] (hereinafter called the “**New Member**”).

**WHEREAS:**

- (A) This Deed is supplemental to a Members’ Agreement dated 1 July 2009 and amended and restated on 27 July 2010 and further amended and restated on 14 October 2013 and further amended and restated on 22<sup>nd</sup> January 2018 and made between (1) **HM TREASURY**, a company registered in England and Wales with registered number 3993425, whose registered office is at 1 Horse Guards Road, London SW1A 2HQ; (2) **LOCAL GOVERNMENT ASSOCIATION** an unincorporated association whose address is Local Government House, Smith Square, London, SW1P 3HZ; (3) **THE WELSH MINISTERS** whose address is at Cathays Park, Cardiff, CF10 3NQ; (4) **PUBLIC PRIVATE PARTNERSHIPS PROGRAMME LIMITED**, a company limited by guarantee and without a share capital, registered in England and Wales with registered number 3130162 whose registered office is at Local Government House, Smith Square, London, SW1P 3HZ and (5) **LOCAL PARTNERSHIPS LLP**, a limited liability partnership registered in England and Wales with registered number OC346845 (the “**LLP**”), whose registered office is at Local Government House, Smith Square, SW1P 3HZ (the “**Members’ Agreement**”);
- (B) The New Member has agreed to become bound by the rights and obligations set out in the Members’ Agreement on the terms as set out in this Deed.

**NOW THIS DEED WITNESSETH** as follows:

1. The New Member hereby agrees severally with the other parties to the Members’ Agreement (including such other parties as have entered into a Deed of Adherence under which they have become bound by the rights and obligations set out in the Members’ Agreement) from time to time to observe, perform and be bound by the terms of the Members’ Agreement which are capable of applying to the New Member and which have not been performed on or before the date of this Deed, to the intent and effect that the New Member shall be deemed with effect from the date on which the New Member is registered as a Member of the LLP to be a party to the Members’ Agreement as if it were named therein as [*insert name of transferor member*] (the “**Transferor**”).
2. The New Member undertakes to advance such funding as it has been agreed that the Transferor should make available to the LLP, and which has not been paid as at the date hereof, and to be liable for all pre-existing obligations of the Transferor in respect of such funding obligations.
3. The New Member’s notice details for the purposes of clause 32 are as follows:  
  
[*Address*]  
Marked for the attention of [*name*].
4. This Deed and all matters arising from or connected with it are governed by the law of England and Wales and the parties hereto irrevocably submit to the exclusive jurisdiction of the English Courts to settle any claim or dispute arising out of or in connection with this Deed or its formation and waives any objection to such jurisdiction on the grounds of inconvenient forum or otherwise.

Delivered as a Deed on the date written above.

**IN WITNESS WHEREOF** the New Member has executed this Deed the day and year first above written:

## **SCHEDULE 2**

### **Liaison and Dispute resolution**

#### **1. Dispute resolution procedure**

- 1.1 In the event that there is a Dispute, or an Alleged Default, the following provisions shall apply.
- 1.2 A Member who considers that a Dispute or Alleged Default has arisen (the “**Serving Party**”) shall give written notice (the “**Dispute Notice**”) to the other Member(s) with whom the Serving Party has a Dispute or the Alleged Default is complained against, (the “**Receiving Party(ies)**”) copied to the other Member. Such Dispute Notice shall specify in writing details of the Dispute or the Alleged Default complained of, and the steps that the Serving Party considers reasonably necessary for that/those Receiving Party(ies) to resolve the matter.
- 1.3 The Receiving Party(ies) shall within 5 Business Days of receipt of the Dispute Notice respond in writing copied to the other Member(s), including the Serving Party either to accept the steps proposed by the Serving Party by serving an “**Acceptance Notice**”, or stating its/their position in a “**Counter Notice**”, and:
- 1.3.1 if the Receiving Party(ies) gives/give such a Counter Notice, it/they shall specify its/their grounds for disputing the Serving Party’s position as set out in the Dispute Notice and make a counter proposal of the steps reasonably necessary (in the opinion of the Receiving Party(ies)) to resolve the matter; or
- 1.3.2 if the Receiving Party(ies) serves/serve an Acceptance Notice, the Receiving Party(ies) shall be bound to comply with the terms of the Dispute Notice and the Acceptance Notice, and upon the service of an Acceptance Notice, the Serving Party shall (subject to paragraph 1.6) have no further redress in respect of the matters set out in the Dispute Notice; or
- 1.3.3 if the Receiving Party(ies) shall fail to respond to the Dispute Notice within such 5 Business Days period then the Serving Party shall serve the Dispute Notice again. If the Receiving Party(ies) shall fail to respond to this replacement Dispute Notice within 5 Business Days of receipt of such notice then upon the expiry of such 5 Business Days period, the Receiving Party(ies) shall be deemed to have accepted the Dispute Notice as if it/they had served an Acceptance Notice and shall be bound to comply with the terms of the Dispute Notice and the deemed Acceptance Notice.
- 1.4 If a Counter Notice has been served, within 5 Business Days of service of such Counter Notice each Member shall nominate a representative and notify the others in writing. The Members shall ensure that their representatives meet within 10 Business Days of such nomination to resolve the matter in issue by discussion and agreement. Their agreement shall be recorded jointly in writing. If such representatives fail to meet within such 10 Business Day period or are unable to resolve the matter within 5 Business Days of their first meeting, the matter shall be referred to the Members’ Representatives (the “**CN Referral Date**”).
- 1.5 The Members’ Representatives shall meet promptly and use all reasonable endeavours to resolve the matter on an amicable basis. The Members shall ensure that they meet within 10 Business Days of the CN Referral Date. Their agreement shall be recorded jointly in writing.
- 1.6 Failure by the relevant Member to comply (or procure compliance) in any material respect with the terms of a Dispute Notice that has been accepted or deemed to have

been accepted under paragraph 1.3 or an agreement that has been reached pursuant to the service of a Counter Notice under paragraph 1.4 or paragraph 1.5 shall be treated as a material breach of this Agreement and a Substantiated Member's Default, and unless there is a dispute as to the meaning and/or effect of the terms accepted pursuant to paragraph 1.3 and/or the agreement reached under paragraph 1.4 or paragraph 1.5, any Non-Defaulting Member shall be entitled to exercise any rights that it may have under paragraph 3 below and paragraph 1 of Schedule 3.

## 2. **Failure to resolve a Dispute or Alleged Default**

If the Members' Representatives are unable to resolve a Dispute within 10 Business Days of the CN Referral Date, then, subject to any other agreement of the Members' Representatives in respect of the Dispute each Designated Member has the right to enforce the procedure set out in paragraph 6 of Schedule 3 and the date on which such 10 Business Day period expires shall be the "**Deadlock Date**".

## 3. **General**

- 3.1 In following the requirements of this Schedule 2, the parties shall act diligently, promptly and in good faith.
- 3.2 If, notwithstanding the express provisions of clause 16 and the expectation of the Members that any and all matters of a Dispute, or an Alleged Default that could arise will be fully provided for by the procedure in this Schedule 2, having followed the procedures set out in paragraph 1, the Members' Representatives are unable to agree whether a breach or Member's Default has occurred, and what the consequences under this Agreement should be, any Member may refer such matter to the arbitration of a single arbitrator appointed in accordance with clause 39, and the periods set out in Schedule 3 shall be suspended pending the determination of the arbitrator, which decision shall be binding on the parties.
- 3.3 If the relevant representatives or the Members' Representatives agree that the LLP should undertake the action (the disagreement or dispute over which was the cause of the Dispute) they shall jointly issue a written notice to the LLP Board Members instructing the LLP Board to undertake such action at the direction of the Members.
- 3.4 For the avoidance of doubt, a failure by the LLP to adopt a new annual Business Plan may give rise to a Dispute.

### **SCHEDULE 3**

#### **Default, Deadlock**

#### **Part A – Default Termination**

#### **1. Default by HMT**

1.1 In the event of a Substantiated Member's Default where HMT is the Defaulting Member, the LGA (being one of the Non-Defaulting Members) may serve on HMT within 20 Business Days of the Default Date one of the following (which shall be revocable at the option of the LGA):

##### *Put Option Notice*

1.1.1 a notice stating that it wishes to sell its LLP Interest to the Defaulting Member ("**Put Option Notice**"), in which case the valuation and payment arrangements specified in paragraph 1.2 below shall apply; or

##### *Call Option Notice*

1.1.2 a notice requiring the Defaulting Member to sell to the LGA the Defaulting Member's LLP Interest ("**Call Option Notice**"), in which case the valuation and payment arrangements specified in paragraph 1.3 below shall apply.

1.1A The Put Option Notice or Call Option Notice (as the case may be) shall be revocable at any time after service, at the absolute discretion of the LGA.

1.1B The WG (being the other Non-Defaulting Member) may serve on HMT within 20 Business Days of the Default Date a Put Option Notice. Save where the LGA has served a Call Option Notice on HMT in accordance with paragraph 1.1.2, HMT shall purchase the WG LLP Interest for nominal consideration. HMT and the WG shall complete the sale and purchase of the WG LLP Interest and paragraphs 1.2.4 and 1.2.5 shall apply.

1.1.C Where the LGA has served a Call Option Notice on HMT, then any Put Option Notice served by the WG in accordance with paragraph 1.1B shall be served on the LGA not HMT and the valuation and payment arrangements specified in paragraph 1.2 below shall apply.

1.1D The Put Option Notice shall be revocable at any time after service, at the absolute discretion of the WG.

##### *Put option*

1.2 Where a Put Option Notice is served in accordance with paragraph 1.1.1 and/or, if applicable, paragraph 1.1B, the following steps will be taken:

1.2.1 not later than 10 Business Days after receipt of the Put Option Notice the LLP shall procure the appointment of the Valuers to assess the value of the LGA LLP Interest (and/or, if applicable, the WG LLP Interest) on the basis of an arm's length open market price which a willing purchaser would pay a willing vendor for such LLP Interest on the basis that the Business is a going concern but disregarding the effect of the default on the value of the LGA LLP Interest (and/or, if applicable, the WG LLP Interest);

1.2.2 the LLP shall procure that not later than 20 Business Days after the appointment of the Valuers, the Valuers shall provide each of the Members and the LLP with a certificate setting out their opinion of the value of the LGA

LLP Interest (and/or, if applicable, the WG LLP Interest) (“**Put Option Certificate**”);

1.2.3 not later than 10 Business Days after the delivery of the Put Option Certificate:

- (a) HMT shall pay to the LGA the amount equal to the value of the LGA LLP Interest, as set out in the Put Option Certificate;
- (b) if applicable, the LGA shall pay to HMT the amount equal to the value of the WG LLP Interest, as set out in the Put Option Certificate;
- (c) the Members shall, as applicable, complete the sale and purchase of the LGA LLP Interest and/or, if applicable, the WG LLP Interest;

1.2.4 the parties shall take or procure the taking of such steps as are in their powers to implement the Put Option including entering into ancillary documentation necessary to implement the Put Option;

1.2.5 HMT shall pay the costs of the Valuers in accordance with clause 17.

#### *Call option*

1.3 Where a Call Option Notice is served in accordance with paragraph 1.1.1, the following steps will be taken:

1.3.1 not later than 10 Business Days after receipt of the Call Option Notice the LLP shall procure the appointment of the Valuers to assess the value of HMT’s LLP Interest on the basis of an arm’s length open market price which a willing purchaser would pay a willing vendor for such LLP Interest on the basis that the Business is a going concern but taking into account the effect of the default on the value of HMT’s LLP Interest;

1.3.2 the LLP shall procure that not later than 20 Business Days after the appointment of the Valuers, the Valuers shall provide each of the Members and the LLP with a certificate setting out their opinion of the value of HMT’s LLP Interest (“**Call Option Certificate**”);

1.3.3 not later than 10 Business Days after the delivery of the Call Option Certificate:

- (a) the LGA shall pay to HMT the amount equal to the value of HMT’s LLP Interest as set out in the Call Option Certificate;
- (b) the Members shall complete the sale and purchase of HMT’s LLP Interest;

1.3.4 the parties shall take or procure the taking of such steps as are in their powers to implement the Call Option including entering into ancillary documentation necessary to implement the Call Option;

1.3.5 HMT shall pay the costs of the Valuers in accordance with clause 17.

#### *Costs and indemnity*

1.4 HMT shall pay:

1.4.1 the costs of the sale and purchase pursuant to this paragraph 1 (including stamp duty);

1.4.2 the LLP's costs and the LGA's and the WG's respective third party costs pursuant to this paragraph 1;

1.4.3 all other reasonable costs and expenses pursuant to this paragraph 1,

upon production of valid invoices and HMT shall indemnify the LGA, the WG and the LLP against all such costs and expenses incurred by the LGA, the WG and the LLP pursuant to the matters described in this paragraph 1.

## 2. **Default by the LGA**

2.1 In the event of a Substantiated Member's Default, where the LGA is the Defaulting Member, HMT (being one of the Non-Defaulting Members) may serve on the LGA within 20 Business Days of the Default Date one of the following (which shall be revocable at the option of HMT):

### *Put Option Notice*

2.1.1 a Put Option Notice, in which case the valuation and payment arrangements specified in paragraph 2.2 below shall apply; or

### *Call Option Notice*

2.1.2 a Call Option Notice, in which case the valuation and payment arrangements specified in paragraph 2.3 below shall apply.

2.1A The Put Option Notice or Call Option Notice (as the case may be) shall be revocable at any time after service, at the absolute discretion of HMT.

2.1B Subject to paragraph 2.1C, the WG (being the other Non-Defaulting Member) may serve on LGA within 20 Business Days of the Default Date a Put Option Notice, in which case the valuation and payment arrangements specified in paragraph 2.2 below shall apply.

2.1C Where HMT has served a Call Option Notice on the LGA, then any Put Option Notice served by the WG in accordance with paragraph 2.1B shall be served on HMT not the LGA. HMT shall purchase the WG LLP Interest for nominal consideration. HMT and the WG shall complete the sale and purchase of the WG LLP Interest and paragraphs 2.2.4 and 2.2.5 shall apply.

2.1D The WG Put Option Notice shall be revocable at any time after service, at the absolute discretion of the WG.

### *Put option*

2.2 Where a Put Option Notice is served in accordance with paragraph 2.1.1 and 2.1B, the following steps will be taken:

2.2.1 not later than 10 Business Days after receipt of the Put Option Notice the LLP shall procure the appointment of the Valuers to assess the value of HMT's LLP Interest (and/or, if applicable, the WG LLP Interest) on the basis of an arm's length open market price which a willing purchaser would pay a willing vendor for such LLP Interest on the basis that the Business is a going concern but disregarding the effect of the default on the value of HMT's LLP Interest (and/or, if applicable, the WG LLP Interest);

2.2.2 the LLP shall procure that not later than 20 Business Days after the appointment of the Valuers, the Valuers shall provide each of the Members

and the LLP with a certificate setting out their opinion of the value of HMT's LLP Interest (and/or, if applicable, the WG LLP Interest) ("**Put Option Certificate**");

2.2.3 not later than 10 Business Days after the delivery of the Put Option Certificate:

- (a) the LGA shall pay to HMT the amount equal to the value of HMT's LLP Interest and/or, if applicable, shall pay to HMT the amount equal to the value of the WG LLP Interest as set out in the Put Option Certificate;
- (b) the Members shall complete the sale and purchase of HMT's LLP Interest and/or, if applicable, the WG LLP Interest;

2.2.4 the parties shall take or procure the taking of such steps as are in their powers to implement the Put Option including entering into ancillary documentation necessary to implement the Put Option;

2.2.5 the LGA shall pay the costs of the Valuers in accordance with clause 17.

#### *Call option*

2.3 Where a Call Option Notice is served in accordance with paragraph 2.1.2, the following steps will be taken:

2.3.1 not later than 10 Business Days after receipt of the Call Option Notice the LLP shall procure the appointment of the Valuers to assess the value of the LGA LLP Interest on the basis of an arm's length open market price which a willing purchaser would pay a willing vendor for such LLP Interest on the basis that the Business is a going concern but taking into account the effect of the default on the value of the LGA LLP Interest;

2.3.2 the LLP shall procure that not later than 20 Business Days after the appointment of the Valuers, the Valuers shall provide each of the Members and the LLP with a certificate setting out their opinion of the value of the LGA LLP Interest ("**Call Option Certificate**");

2.3.3 not later than 10 Business Days after the delivery of the Call Option Certificate:

- (a) HMT shall pay to the LGA the amount equal to the value of the LGA LLP Interest as set out in the Call Option Certificate;
- (b) the Members shall complete the sale and purchase of the LGA LLP Interest;

2.3.4 the parties shall take or procure the taking of such steps as are in their powers to implement the Call Option including entering into ancillary documentation necessary to implement the Call Option;

2.3.5 LGA shall pay the costs of the Valuers in accordance with clause 17.

#### *Costs and indemnity*

2.4 The LGA shall pay:

2.4.1 the costs of the sale and purchase pursuant to this paragraph 2 (including stamp duty);

2.4.2 the LLP's costs and HMT's and the WG's respective third party costs pursuant to this paragraph 2;

2.4.3 all other reasonable costs and expenses pursuant to this paragraph 2,

upon production of valid invoices and the LGA shall indemnify HMT, the WG and the LLP against all such costs and expenses incurred by HMT, the WG and the LLP pursuant to the matters described in this paragraph.

#### **2.4A Default by the WG**

2.4A.1 In the event of a Substantiated Member's Default where the WG is the Defaulting Member, HMT (being one of the Non-Defaulting Members) shall have priority over any other Member to serve on the WG within 20 Business Days of the Default Date a Call Option Notice (which shall be revocable at any time after service, at the absolute discretion of HMT, as the case may be), in which case the arrangements specified in paragraph 2.4A.3 below shall apply. To the extent HMT fails to serve a Call Option Notice within 20 Business Days of the Default Date, the LGA (being the other Non-Defaulting Member) may serve on the WG between the 21<sup>st</sup> Business Day and 40<sup>th</sup> Business Day of the Default Date a Call Option Notice, in which case the valuation and payment arrangements specified in paragraph 2.4A.2 below shall apply.

2.4A.2 Where the LGA serves a Call Option Notice in accordance with paragraph 2.4A.1, the following steps will be taken:

2.4A.2.1 not later than 10 Business Days after receipt of the Call Option Notice, the LLP shall procure the appointment of the Valuers to assess the value of the WG LLP Interest on the basis of an arm's length open market price which a willing purchaser would pay a willing vendor for such LLP Interest on the basis that the Business is a going concern but taking into account the effect of the default on the value of the WG LLP Interest;

2.4A.2.2 the LLP shall procure that not later than 20 Business Days after the appointment of the Valuers, the Valuers shall provide each of the Members and the LLP with a certificate setting out their opinion of the value of the WG LLP Interest ("**Call Option Certificate**");

2.4A.2.3 not later than 10 Business Days after the delivery of the Call Option Certificate:

(a) The LGA shall pay to HMT the amount equal to the value of the WG LLP Interest as set out in the Call Option Certificate;

(b) the Members shall complete the sale and purchase of the WG LLP Interest;

2.4A.2.4 the parties shall take or procure the taking of such steps as are in their powers to implement the Call Option including entering into ancillary documentation necessary to implement the Call Option;

2.4A.2.5 The WG shall pay the costs of the Valuers in accordance with clause 17.

2.4A.3 Where HMT serves a Call Option Notice in accordance with paragraph 2.4A.1, the following steps will be taken:

2.4A.3.1 HMT shall purchase the WG LLP Interest for nominal consideration; and

2.4A.3.2 the parties shall take or procure the taking of such steps as are in their powers to implement the Call Option including entering into ancillary documentation necessary to implement the Call Option.

*Costs and indemnity*

2.4A.3 The WG shall pay:

2.4A.3.1 the costs of the sale and purchase pursuant to this paragraph 2.4A (including stamp duty);

2.4A.3.2 the LLP's costs and HMT's (or the LGA's as the case may be) third party costs pursuant to this paragraph 2.4A;

2.4A.3.3 all other reasonable costs and expenses pursuant to this paragraph 2.4A,

upon production of valid invoices the WG shall indemnify HMT (or the LGA as the case may be) and the LLP against all such costs and expenses incurred by HMT (or the LGA as the case may be), and the LLP pursuant to the matters described in this paragraph.

**Part B RSG Termination**

3. ***Intentionally Omitted***

**Part C – Voluntary Termination within 4 years**

4. ***Intentionally Omitted***

## Part D – Voluntary Termination after 4 years

### 5. Re-examination of the LLP's Business and possible termination

5.1 In the event of a notice being served by a Designated Member pursuant to clause 30.1.2 (“**Proposed Termination Notice**”), the Designated Members shall review the LLP's Business and consult together for a period of 20 Business Days to discuss their respective views of the Business. Each Member's Representative of the Designated Members shall attend meetings and contribute to discussions so as to ensure the review is considered by the senior management of each Designated Member. At the end of such 20 Business Day period, each of the Designated Members shall state by notice in writing to the other Members and the LLP which of the following options they wish to pursue:

5.1.1 to put its LLP Interest on the other Designated Member or call for the other Designated Member's LLP Interest, in which case the valuation and payment arrangements specified in paragraph 5.3 below shall apply; or

5.1.2 agree (where both Designated Members wish to call for the other Designated Member's LLP Interest) that a sale shall take place by way of Sealed Bid, in which case the procedure specified in paragraph 5.4 below shall apply;

5.1.3 agree to sell the LLP to a third party, in which case the procedure specified in paragraph 5.5 shall apply; and

the date of such notice shall be the “**Option Agreement Date**”.

5.2 5.1A The WG shall be required to comply with the option agreed by the Designated Members pursuant to 5.1.1, 5.1.2 or 5.1.3 above. If the Designated Members cannot agree one of the options set out in paragraph 5.1 above (or any other option or strategy which may include continuing the LLP for a further period of time) within 15 Business Days, any Designated Member may serve not less than 3 months notice on the other Members requiring that the LLP be wound up, in which case on expiry of such notice period the Members and the LLP Board shall be deemed to have approved the liquidation of the LLP in accordance with clause 12.2.5 and clause 22.

#### *Sale of Member's LLP Interest to the other Member*

5.3 Where the Designated Members agree that one Designated Member shall buy the other Members' LLP Interest pursuant to paragraph 5.1.1 and 5.2 above, the following steps will be taken, subject to paragraphs 5.3A and 5.3B below:

5.3.1 not later than 10 Business Days after the Option Agreement Date the LLP shall procure the appointment of the Valuers who shall be instructed to assess the value of each selling Member's (“**Selling Member**”) LLP Interest on the basis of an arm's length open market price which a willing purchaser would pay a willing vendor for such LLP Interest on the basis that the Business is a going concern;

5.3.2 not later than 20 Business Days after the appointment of the Valuers, the Valuers shall provide each of the Members and the LLP with a certificate setting out their opinion of the value of each Selling Member's LLP Interest (“**Sale Certificate**”);

5.3.3 not later than 10 Business Days after the delivery of the Sale Certificate:

- (a) the buying Member (“**Buying Member**”) shall pay to each Selling Member the amount equal to the value of each Selling Member’s LLP Interest as set out in the Sale Certificate;
  - (b) the Members shall complete the sale and purchase of each Selling Member’s LLP Interest;
- 5.3.4 the parties shall take or procure the taking of such steps as are in their powers to implement the sale including entering into ancillary documentation necessary to implement the sale;
- 5.3.5 the Members shall pay the costs of the Valuers in accordance with clause 17.
- 5.3A Where, pursuant to this paragraph 5, the Designated Members agree that HMT shall buy the LGA’s LLP Interest, there shall be no valuation of the WG LLP Interest under paragraph 5.3. Instead, HMT as the Buying Member shall purchase the WG LLP Interest for nominal consideration and paragraphs 5.3.4 and 5.3.5 shall apply.
- 5.3B Where, pursuant to this paragraph 5, the Designated Members agree that the LGA shall buy HMT’s LLP Interest, the LGA, as the Buying Member, shall pay to HMT and not to the WG the amount equal to the value of the WG LLP Interest (in addition to the amount equal to the value of the HMT LLP Interest) and paragraph 5.3.3(a) shall be construed accordingly.

*Sealed bids*

- 5.4 Where the Designated Members agree that a sale shall be by way of Sealed Bid pursuant to paragraph 5.1.2 above, the following steps will be taken, subject to paragraphs 5.4.6 and 5.4.7 below:
- 5.4.1 not later than 20 Business Days after the Option Agreement Date (the “**Bid Date**”) both Designated Members shall issue Sealed Bids (which may not be revoked but which may be increased by way of subsequent bids), to be received by an independent third party appointed to conduct the process, by the LLP (“**Independent Third Party**”). The Independent Third Party shall be instructed not to open the Sealed Bids until 12 noon on the first Business Day after the Bid Date;
  - 5.4.2 at the time referred to in paragraph 5.4.1, the Independent Third Party shall immediately notify each Member and the LLP in writing of the offers received and which is the highest cash sum offered proportionate to the relevant LLP Interests being acquired (“**Best Offer**”). On receipt of such notification, the Designated Member who has made the Best Offer shall be bound to purchase the other Members’ LLP Interest and the other Members shall be bound to sell their LLP Interest for the cash sum attributable to their LLP Interest and stated in the Best Offer within 5 Business Days of receipt of such notification from the Independent Third Party;
  - 5.4.3 if the offers made by Sealed Bid pursuant to paragraph 5.4.1 are of an identical sum then:
    - (a) not later than 5 Business Days after receipt of such notification from the Independent Third Party pursuant to paragraph 5.4.2 (the “**Second Bid Date**”), both Designated Members shall issue further Sealed Bids (which may not be revoked but which may be increased by way of subsequent bids), to be received by the Independent Third Party. The Independent Third Party shall be instructed not to open

the Sealed Bids until 12 noon on the first Business Day after the Second Bid Date;

(b) at the time referred to in paragraph 5.4.3(a), the Independent Third Party shall immediately notify each Member and the LLP in writing of the new offers received and which is the Best Offer. On receipt of such notification, the Designated Member who has made the Best Offer shall be bound to purchase the other Designated Member's LLP Interest and the other Designated Member shall be bound to sell its LLP Interest for the cash sum stated in the Best Offer within 5 Business Days of receipt of such notification from the Independent Third Party;

5.4.4 if the further offers made by Sealed Bid pursuant to paragraph 5.4.3 are of an identical sum then the first further offer received by the Independent Third Party shall be deemed to be the Best Offer;

5.4.5 if there is a disagreement as to which offer or further offer shall be the highest bid (due, for example to the structuring of the bids) the Valuers shall be instructed to opine as to which shall be highest cash sum offered, having regard to the terms of the bids;

5.4.6 if HMT makes the Best Offer, or if it is determined in accordance with paragraph 5.4.5 that HMT has offered the highest cash sum, HMT shall purchase the WG LLP Interest for nominal consideration and paragraphs 5.4.2 to 5.4.4 shall be construed accordingly;

5.4.7 if the LGA makes the Best Offer, or if it is determined in accordance with paragraph 5.4.5 that LGA has offered the highest cash sum, the LGA shall pay to HMT rather than the WG the amount that is attributable to the WG LLP Interest, as stated in the Best Offer or determined by the Valuers in accordance with paragraph 5.4.5;

5.4.8 the parties shall take or procure the taking of such steps as are in their powers to implement the sale including entering into ancillary documentation necessary to implement the sale;

5.4.9 if no Sealed Bids have been received either Designated Member may serve not less than 3 months notice on the other Members requiring that the LLP be wound up, in which case on expiry of such notice period the Members and the LLP Board shall be deemed to have approved the liquidation of the LLP in accordance with clause 12.2.5 and clause 22.

#### *Sale to third party*

5.5 Where the Designated Members agree that the LLP shall be sold to a third party ("**Potential Buyer**") pursuant to paragraph 5.1.3 above ("**LLP Business Sale**"), the following steps will be taken, subject to paragraph 5.6 below:

5.5.1 the Members shall consult together and use reasonable efforts to agree on the identity of a purchaser, and if deemed appropriate, appoint a Financial Adviser to identify potential purchasers;

5.5.2 the Members and the LLP Board shall take or procure the taking of such steps as are in their powers to ensure that the sale of the LLP proceeds in an orderly manner and that such Members provide all such support as may be required to implement the sale.

- 5.5.3 Notwithstanding the deemed Capital contribution of the WG, the proceeds of the LLP Business Sale shall be shared between the Designated Members in two equal portions.
- 5.6 Failing agreement of any of the provisions in paragraphs 5.5.1 to 5.5.2 either Designated Member may serve not less than 3 months notice on the other Members requiring that the LLP be wound up, in which case on expiry of such notice period the Members and the LLP Board shall be deemed to have approved the liquidation of the LLP in accordance with clause 12.2.5 and clause 22.

## Part E – Deadlock Termination

### 6. Procedure following failure to resolve Dispute or Alleged Default

6.1 Pursuant to paragraph 2 of Schedule 2, not later than 20 Business Days after the Deadlock Date, each of the Designated Members shall state by notice in writing (“**Deadlock Notice**”) to the other Designated Member and the LLP which of the following options they wish to pursue:

6.1.1 to put its LLP Interest on the other Designated Member or call for the other Designated Member’s LLP Interest, in which case the valuation and payment arrangements specified in paragraph 6.3 below shall apply; or

6.1.2 agree (where both Designated Members wish to call for the other Designated Member’s LLP Interest) that a sale shall take place by way of Sealed Bid, in which case the procedure specified in paragraph 6.4 below shall apply;

6.1.3 agree to sell the LLP to a third party, in which case the procedure specified in paragraph 6.5 below shall apply; and

the date of such agreement shall be the “**Option Agreement Date**”

6.1A The WG shall be required to comply with the option agreed by the Designated Members pursuant to 6.1.1, 6.1.2 or 6.1.3 above.

6.2 If the Designated Members cannot agree one of the options set out in paragraph 6.1 above within 15 Business Days, either Designated Member may serve not less than 3 months notice on the other Designated Member requiring that the LLP be wound up, in which case on expiry of such notice period the Members and the LLP Board shall be deemed to have approved the liquidation of the LLP in accordance with clause 12.2.5 and clause 22.

#### *Sale of Member’s LLP Interest to the other Member*

6.3 Where the Members agree that one Designated Member shall buy the other Member’s LLP Interest pursuant to paragraph 6.1.1 above, the following steps will be taken, subject to paragraphs 6.3A and 6.3B below:

6.3.1 not later than 10 Business Days after the Option Agreement Date the LLP shall procure the appointment of the Valuers who shall be instructed to assess the value of each selling Member’s (“**Selling Member**”) LLP Interest on the basis of an arm’s length open market price which a willing purchaser would pay a willing vendor for such LLP Interest on the basis that the Business is a going concern;

6.3.2 not later than 20 Business Days after the appointment of the Valuers, the Valuers shall provide each of the Members with a certificate setting out their opinion of the value of each Selling Member’s LLP Interest (“**Sale Certificate**”);

6.3.3 not later than 10 Business Days after the delivery of the Sale Certificate:

(a) the buying Member (“**Buying Member**”) shall pay to each Selling Member the amount equal to the value of each Selling Member’s LLP Interest as set out in the Sale Certificate;

(b) the Members shall complete the sale and purchase of each Selling Member’s LLP Interest;

- 6.3.4 the parties shall take or procure the taking of such steps as are in their powers to implement the sale including entering into ancillary documentation necessary to implement the sale;
- 6.3.5 the Members shall pay the costs of the Valuers in accordance with clause 17.
- 6.3A Where, pursuant to this paragraph 6, the Designated Members agree that HMT shall buy the LGA's LLP Interest, there shall be no valuation of the WG LLP Interest under paragraphs 6.3.1 and 6.3.2. Instead, HMT as the Buying Member shall purchase the WG LLP Interest for nominal consideration and paragraphs 6.3.6 and 6.3.7 shall continue to apply.
- 6.3B Where, pursuant to this paragraph 6, the Designated Members agree that the LGA shall buy HMT's LLP Interest, the LGA, as the Buying Member, shall pay to HMT and not to the WG the amount equal to the value of the WG LLP Interest (in addition to the amount equal to the value of the HMT LLP Interest) and paragraph 6.3.3(a) shall be construed accordingly.

*Sealed bids*

- 6.4 Where the Designated Members agree that a sale shall be by way of Sealed Bid pursuant to paragraph 6.1.2 above, the following steps will be taken, subject to paragraphs 6.4.6 and 6.4.7 below:
  - 6.4.1 not later than 20 Business Days after the Option Agreement Date (the "**Bid Date**") both Designated Members shall issue Sealed Bids (which may not be revoked but which may be increased by way of subsequent bids), to be received by an Independent Third Party. The Independent Third Party shall be instructed not to open the Sealed Bids until 12 noon on the first Business Day after the Bid Date;
  - 6.4.2 at the time referred to in paragraph 6.4.1, the Independent Third Party shall immediately notify each Member and the LLP in writing of the offers received and which is the highest cash sum offered proportionate to the relevant LLP Interests being acquired ("**Best Offer**"). On receipt of such notification, the Designated Member who has made the Best Offer shall be bound to purchase the other Members' LLP Interest and the other Members shall be bound to sell their LLP Interest for the cash sum attributable to their LLP Interest and stated in the Best Offer within 5 Business Days of receipt of such notification from the Independent Third Party;
  - 6.4.3 if the offers made by Sealed Bid pursuant to paragraph 6.4.1 are of an identical sum then:
    - (a) not later than 5 Business Days after receipt of such notification from the Independent Third Party pursuant to paragraph 6.4.2 (the "**Second Bid Date**"), both Designated Members shall issue further Sealed Bids (which may not be revoked but which may be increased by way of subsequent bids), to be received by the Independent Third Party. The Independent Third Party shall be instructed not to open the Sealed Bids until 12 noon on the First Business Day after the Second Bid Date;
    - (b) at the time referred to in paragraph 6.4.3(a), the Independent Third Party shall immediately notify each Member and the LLP in writing of the new offers received and which is the Best Offer. On receipt of such notification, the Designated Member who has made the Best Offer shall be bound to purchase the other Designated Member's LLP

Interest for the cash sum stated in the Best Offer within 5 Business Days of receipt of such notification from the Independent Third Party;

- 6.4.4 if the further offers made by Sealed Bid pursuant to paragraph 6.4.3 are of an identical sum then the first further offer received by the Independent Third Party shall be deemed to be the Best Offer;
- 6.4.5 if there is a disagreement as to which offer or further offer shall be the highest bid (due, for example to the structuring of the bids) the Valuers shall be instructed to opine as to which shall be highest cash sum offered, having regard to the terms of the bids;
- 6.4.6 if HMT makes the Best Offer, or if the Valuers determine in accordance with paragraph 6.4.5 that HMT has offered the highest cash sum, HMT shall purchase the WG LLP Interest for nominal consideration and paragraphs 6.4.2 to 6.4.4 shall be construed accordingly;
- 6.4.7 if the LGA makes the Best Offer, or if it is determined in accordance with paragraph 6.4.5 that LGA has offered the highest cash sum, the LGA shall pay to HMT rather than the WG the amount that is attributable to the WG LLP Interest, as stated in the Best Offer or determined by the Valuers in accordance with paragraph 6.4.5;
- 6.4.8 the parties shall take or procure the taking of such steps as are in their powers to implement the sale including entering into ancillary documentation necessary to implement the sale;
- 6.4.9 if no Sealed Bids have been received either Designated Member may serve not less than 3 months notice on the other Members requiring that the LLP be wound up, in which case on expiry of such notice period the Members and the LLP Board shall be deemed to have approved the liquidation of the LLP in accordance with clause 12.2.5 and clause 22.

*Sale to third party*

- 6.5 Where the Designated Members agree that the LLP's Business or their combined entire LLP Interests shall be sold to a third party ("**Potential Buyer**") pursuant to paragraph 6.1.3 above ("**LLP Business Sale**"), the following steps will be taken, subject to paragraph 6.6 below:
  - 6.5.1 the Members shall consult together and use reasonable efforts to agree on the identity of a purchaser, and if deemed appropriate, appoint a Financial Adviser to identify potential purchasers;
  - 6.5.2 the Members and the LLP Board shall take or procure the taking of such steps as are in their powers to ensure that the sale of the LLP proceeds in an orderly manner and that such Members provide all such support as may be required to implement the sale.
  - 6.5.3 Notwithstanding the deemed Capital contribution of the WG, the proceeds of the LLP Business Sale shall be shared between the Designated Members in two equal portions.
- 6.6 Failing agreement of any of the provisions in paragraphs 6.5.1 to 6.5.2 either Designated Member may serve not less than 3 months notice on the other Members requiring that the LLP be wound up, in which case on expiry of such notice period the

Members and the LLP Board shall be deemed to have approved the liquidation of the LLP in accordance with clause 12.2.5 and clause 22.

**Part F**

***Intentionally omitted.***