

## Appendix F - The Interactions with the Council and the rules that Govern this - Pages

### Legal Standards

#### Company Structure and Constitution

Advice from the Council's external legal advisers Bevan Brittan was sought as to the Company's most appropriate form of company structure and subsequently the CompanyLATCo was incorporated as a company limited by shares.

This has the following advantages:

- "Tried and tested" – a flexible and familiar structure which is still the most popular form of corporate vehicle.
- Simple mechanism for introduction of new equity/transfers of existing equity, although transfers of shares subject to potential 0.5% stamp duty charge. The share capital structure means shareholders can hold different numbers of shares (or different classes) and therefore hold varying levels of influence.
- Nature of shares as an investment gives possibility of future "exit" as well as income return for shareholders, subject to there being sufficient profits available for the purpose of distribution.
- Company can be established with a sole shareholder, so capable of being owned outright by the Council.

There are some potential disadvantages including:

- Annual and event driven reporting to Companies House meaning a reasonably high degree of publicity regarding the company.
- Directors subject to statutory and common law duties, especially if the company is or is near insolvency.
- Company treated as a separate taxable entity from its shareholders (although this could also be seen as an advantage).

Immediately upon incorporation the Company adopted model Articles of Association. The Articles determine limits to the Company's authority and the rules according to which the Company must conduct business. To ensure that certain decisions are reserved to the Council as sole shareholder, it is proposed that the Company adopt certain reserved matters in set out in the Reserved Matters list at Appendix D.

#### Legal Agreements

A suite of documents will be used to formalise the legal arrangements between the Council and the Company including:

- **Services Agreement** - the Council and the Company will enter into a formal agreement which sets out the Services to be delivered and the standards and performance indicators on which the Company will be measured, in largely the same manner as the Council would contract with any third party supplier.
- **Loan Agreement** - the Council and the Company will enter into an agreement to enable the Company to borrow from the Council up to an agreed limited. Detailed advice has been received from Bevan Brittan with regard to the effect of the state aid regime on any loan extended to the Company by the Council. State aid is "any aid granted by a Member State or through State resources in any form

whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods ..., in so far as it affects trade between Member States". Briefly any proposed loan from the Council to the Company LATCo should be offered on market terms. If the parties are able to demonstrate that a private investor in similar circumstances would be willing to invest on the same terms (for example, the loans will provide viable financial returns for that private investor) the market economy investor principle will apply. Where the benefit of the aid flows on market-facing terms, the aid will not amount to state aid because there will be no element of subsidy.

- **Support Services Agreement** - a formal agreement between the Council and the Company will allow some or all of the Council services set out above to be extended to the Company.
- **Property documentation** - leases and licences will be agreed with the Company to enable it to operate from Council premises.

### **Human Resource & Payroll Standards**

The Company will ensure and provide assurance that it engages a high quality, responsive HR & Payroll provision to provide strategic and operational support, advice and guidance to the Company.

All HR & Payroll activities within the service will meet not only statutory requirements, but support a best practice approach supporting, developing and engaging with the workforce through an active and positive approach.

The Company is expected to nurture and develop a desirable model of HR & Payroll to use as a basis and competitive advantage for growing the Company.

A more detailed service specification will set out be developed for HR & Payroll Services which will include but not be limited to:

**Workforce Resourcing** - timely and appropriate external recruitment is undertaken including building a talent pipeline for key positions from internal resources. Appropriate and value for money use of contract / agency staff minimum and zero hour contracts.

**Recruitment and Induction** - appropriate and relevant recruitment checks are undertaken taking into account equality, eligibility to work, evidence of objective and consistent process, record keeping, General Data Protection Regulation requirements and Disclosure and Barring Services (DBS) processes (if required). Employment contracts are issued within statutory period and each new employee receives an appropriate and fully recorded induction.

**Employee Relations** - provision of the day to day queries / operational issues such as absence management, disciplinary, grievance, appeals, whistleblowing, policy

advice and support on statutory entitlements such as flexible working, maternity, paternity; restructures and redundancy management; exits and management of trade union relations. Ensure that a supportive, work / life balance is achieved for all staff and promoting an environment free from harassment and provides an inclusive workplace.

**HR Policy Framework** - maintain the TUPE obligations regarding HR policies until such time as any policies are renegotiated. All new policies will support best practice and meet statutory requirements. The company will ensure that policies are reviewed on a regular basis.

**Training and Development** - ensure all staff have access to core skills development/ routine courses. Apprenticeship opportunities are considered in conjunction with the Council's apprenticeship scheme and associated development programmes. Yearly review of individual's Performance Development with a key emphasis on identifying staff development plan. All staff will receive a yearly appraisal, with a half year review, along with a development plan that addresses skills gaps and stretching targets.

**Reward** - Ensure policy and procedures are in line with best practice, legislatively compliant and support the Company's objectives. Undertake job evaluation, ensure all roles have an appropriate and updated job description and that the reward policy and benefits management is compliant with best practice.

**Organisational Development** - embed the workforce being tuped into the new Company and set a culture which supports the company's objectives and vision. Ensure that any change programmes are effectively managed; build and continually review leadership effectiveness, coaching, talent development, succession planning, employee satisfaction surveys, competency frameworks, values and behaviours.

**Management Information** - ensure that there is provision of management KPI data/dashboards from the organisation's HR Information system on a regular basis, reporting to the Board and the Council's Shareholder Committee any areas that highlight risk to the Council or the Company.

**Strategic HR Leadership** - ensure that there is adequate strategic HR advice and guidance which supports the needs of the "Managing Director" and provides the vision, strategic direction and coaching required by the senior team.

**Occupational Health** - ensure adequate OH support for staff is in place and that relevant provision is available to address the occupational health requirements ensuring that all/any statutory requirements of specific job roles are met. In addition, ensure that a Health and Wellbeing programme is in place for staff to access on an as and when needs basis.

**Trade Union Provision** - ensure that there is provision for a facilities agreement in place to recognise Trade Unions and an agreed structure for regular workforce meetings. Ensure that there are appropriate procedures and protocols in place for shop stewards and Safety Steward.

**Annual Assurance / Audit tests** - the Company will ensure that annual audits and assurances take place to ensure that the HR/Payroll statutory obligations are being met and that the HR provision continues to meet best practice standards.

### **Issues and Complaints**

A process will be devised and agreed to expedite any issues arising from the HR/Payroll service provided and a resolution process put in place.

**Payroll Provision** - ensure that provision is in place for a cost effective, reliable, comprehensive, accurate and punctual payroll service in accordance with all relevant legislation and applicable employment terms and conditions. This will include timely and accurate administration of the pension process.

### **Finance Standards**

The Company will ensure and provide assurance that it engages a high quality, responsive Finance provision to provide strategic and operational support, advice and guidance to the company.

All Finance activities within the service will support the best practice approach inherent in PCC to ensure stewardship of transactions and compliance to both Companies Act and Local Government legislation. In addition, the Company will comply with Council financial regulations (put in the link to the financial regulations) and processes including:

- Budgetary timetables and informational requirements;
- Closure timetables and informational requirements;
- Monitoring and reporting timetables and informational requirements.

Initially the City Council will supply support services to the Company and these arrangements will be formalised in a Support Services Agreement sets out the draft agreement.

**Payment Rules** - The Contract for Service delivery will be invoiced to the Council by the Company in 12 equal monthly payments and based on open book accounting. The Council will make payments to standard invoice terms (to comply with Council Standing Orders).

**Contract Level** - The value of the Contract for Service Delivery shall be subject to Annual Review, supported with an appropriately detailed business plan and cash flow

model; and this shall take account of any increases or decreases in service levels. Changes will be approved by the appropriate Governance and contractual routes in both the Council and the Company.

**Audit** - the Company will assign its own External and Internal Auditors. Accounts will be subject to inspection by the Councils Internal and External Auditors and part of the Annual Audit Plan and overall Closure process.

**Financial System** - the Company will be responsible for setting up a financial system that is compliant to legislative requirements of the Company and the Council and able to interface/link to Council reporting obligations.

**Banking** - the Company will be responsible for its own banking arrangements. This will include receipt of income and payment of expenditure.

**Authorisation** - the Company will set up an appropriate authorisation structure to ensure segregation of duties and appropriateness of transaction size to staffing level.

**Support Service Agreements** - will allow the Company to purchase certain Council services including (where required): ICT; Finance (including Audit), Corporate Human Resources; Operational Human Resources; Management Support Services, Legal Services. All Support Services Service Level Agreements shall be subject to annual review by the Council and Company in terms of the value for money that they deliver.

**Penalties** - Penalties and Incentives will be negotiated as part of the annual review of the Contract level.

**Exit Plans** - The Services Agreement referred to in more detail above will provide for contractual exit responsibilities and requirements.

The following assessments will be made in respect of **Assets and Liabilities**:

- **Asset assessments** (valuations, etc) and ownership:
  - The initial assets shall comprise a range of assets including vehicles, plant, ICT and other property currently used by EMS (the Contractor) to carry out the Services.
  - Assets are to be owned in the most cost manner for both the Council and the Company. Where assets are owned by the Company, there should be appropriate step in rights for the Council.
  - The Council shall make available the initial assets to the Company (where they are owned by the Council) on a commercial basis that includes an annual fee for the use of the initial assets and the terms by which they are to be maintained by the Company, incorporated within the terms of the Services Agreement

- The Council shall have the right to inspect assets over the life of the Services Agreement to ensure they are being properly maintained. Any remedial works required arising from such inspections shall be carried out at the cost of the Company.
- The Company may continue to use the Council's assets or provide substitute assets if they offer better value for money; but the Company cannot commit the Council to contractual liabilities or extend such arrangements beyond the term of the Services Agreement without the formal agreement in writing of the Council.
- **Liability assessments**
  - The Council will ensure that a full liability analysis is undertaken of the services being taken over.
  - Thereafter, liability assessments will take place as part of the annual closure and monitoring processes and where appropriate added to the Risk Register.
- **Loans and loan limits**
  - The Council will make available loans to the Company in order to provide working capital (revenue and capital) for the Company, the terms of which will be set out in a loan agreement and shall be limited to £1.75m.
  - Loans will be repayable to the Council in accordance with the terms of the loan agreement.

## **Change Management**

- The Services Agreement between the Council and the Company will contain a contractual change control process detailing the methodology by which both parties may formally request a change to the agreement or the Services, the subsequent evaluation of the impact of that change including any subsequent price variation, and the recording and adoption of the change if agreed.
- The Smart Client Team described above will be responsible for managing the change control process on behalf of the Council.