

Background Papers Council Agenda



**Epping Forest
District Council**

Council Thursday, 29th July, 2021

Place: Council Chamber - Civic Offices

Time: 7.00 pm

Committee Secretary: Gary Woodhall Tel: (01992) 564243
Email: democraticservices@eppingforestdc.gov.uk

**12. QUALIS 4 YEAR BUSINESS PLAN 2021-2025 (Pages 3 - 64)
BACKGROUND PAPERS TO THE REPORT AND APPENDICES**

(Finance, Qualis Client and Economic Development) To consider and agree the attached report regarding the Qualis 4 Year Business Plan.

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Report to the Cabinet

Report reference: C-031-2019/20
Date of meeting: 06 February 2020



Portfolio: Leader

Subject: Group Company Governance Documents

Responsible Officer: S Jevans (01992 564229).

Democratic Services: A Hendry (01992 564246).

Recommendations/Decisions Required:

- (1) That Cabinet approve the Qualis Group Shareholder Agreement.**
- (2) That Cabinet note the Directors Roles and Responsibilities.**
- (3) That Cabinet note the terms of reference for Qualis Group Board Meetings.**
- (4) That Cabinet approve the selection and recruitment process for Group Board Members.**
- (5) That Cabinet appoint the Interim Board on the recommendation of the Leader in consultation with the LRA Group Leader and operate in accordance with the Shareholder Agreement.**

Executive Summary:

In order to ensure that there is effective governance of the Council Group Companies there is a requirement to put in place several key documents to provide the framework for control of decision making, levels of authority and powers of delegation. The Shareholder agreement sets out the matters that the Directors of the relevant company cannot undertake without the express consent of the Council specified body. This report covers; the draft Shareholder Agreement including the 'reserved matters' schedule, the guidance on Directors' Roles/Responsibilities, and the Terms of Reference for Board meetings.

It is proposed that the composition of the Board be made up of a combination of Council Officer Appointees, Council Members (pro rata) and Independent Non-Executives. The paper sets out the selection and recruitment process of the Group Board and the Qualis Managing Director.

The Qualis Group and subsidiaries will move from the governance of an EFDC Group Steering Board (Membership: Cllr S Stavrou, Cllr A Patel and Cllr H Whitbread, Cllr B Jennings, CEO Georgina Blakemore and Qualis Lead Sacha Jevans) to a formal company structure with Board Directors both Executive and Non-Executive but with approvals on key and significant matters being

retained by EFDC.

An Interim Board appointed by Cabinet on 6th February will operate in order to ensure Qualis delivers on the commitments made to EFDC embedded within the 20/21 Budget.

Members will be pro rata represented (currently 2 Conservative, 1 LRA).

Qualis Group is a Ltd Company and the registered office is:

Civic Centre
Epping High Street
Epping
Essex
CM16 4 BZ

Reasons for Proposed Decision:

It is a requirement the Council ensure that the appropriate governance documents are in place for the commencement of operational activity/trading within the Group Company Structure.

Other Options for Action:

The operation of the new Group Company Structure would not proceed without the correct governance arrangements in place to ensure the effective management and control of decision making between the Council and its companies.

Shareholder Agreement

1. A new corporate structure is to be established consisting of:
 - a. A holding company limited by shares (Qualis Group)
 - b. Three wholly owned subsidiaries of Qualis Group each being a company limited by shares being:
 - i. A development company (Qualis Commercial);
 - ii. An investment company (Qualis Living); and
 - iii. A Services company (Qualis Management).
2. It is intended that each of these four companies will have a board of directors who will be appointed by EFDC and responsible for the day to day governance of the companies but subject to EFDC Reserved Matter approval for key issues. Each of these boards can delegate where appropriate and, subject to compliance with directors' duties and the constitutional constraints of the vehicles, to other Council personnel to undertake actions on behalf of the companies.
3. It is advised that it is acceptable for the board of each company to be the same. This can facilitate a streamlined setup, as board meetings of all the companies can be held sequentially without separate personnel having to attend. These meetings will need to be documented as separate board meetings. It is also appropriate for the board for the differing vehicles to include different people depending on the skill sets required, noting activities within the different companies vary.
4. Each company will enter into a shareholders' agreement. The parties to the shareholders' agreement will be the relevant company and its sole shareholder. For Qualis Group this will be the Council and for each Key Subsidiary it will be Qualis Group.
5. The primary purpose of the shareholders' agreement is to set out the parameters within which each vehicle operates and is governed and those matters that the directors of the relevant company cannot undertake without the consent of a specified body (known as "Reserved Matters").
6. It is recommended that for the Council this person would be the Section 151 Officer on behalf of EFDC as the Shareholder's Representative. The Shareholder agreement is attached to Appendix 1 of this report. The Reserved Matters are listed in Schedule 2.

Directors Roles and Responsibilities

7. The document attached to Appendix 2 of this report sets out the roles and responsibilities of Company Directors.
8. There are seven main areas which Company Directors should act accordingly in their role as a Director of the Qualis Board.

9. The Section 151 Officer will act on behalf of EFDC as the main conduit with Qualis Group and other Qualis Companies. This role needs to be specifically mentioned in EFDC's constitution and delegations.

10. The main controls over Qualis are:

- the annual ability of Cabinet to review annually the business cases proposed by Qualis and the 1 year and 6 year Business Plans, to review it and subsequently recommend it to council for approval, (with a commentary and recommendation provided by the Section 151 Officer).
- The inclusion of the impact of the Qualis annual business case into EFDC's Annual Budget for approval by Cabinet and recommendation for approval to Council.
- The specific requirement for Qualis to approach Cabinet for any loans and give first refusal to EFDC to either provide these loans or approve another counterparty for the loans, (this requirement should be in the Qualis annual business, (with a commentary and recommendation provided by the Section 151 Officer).
- The quarterly requirement for Qualis to provide a progress reports including standard financial and business measures, to Cabinet and through to Council, (with a commentary and recommendation provided by the Section 151 Officer).
- The ad hoc ability for the Section 151 Officer to exercise the "open book" requirement and provide a report to the Cabinet as necessary.

11. In the main therefore the Section 151 Officer will act in accordance with already sanctioned, business case, budget and loans already agreed or approved by the Cabinet or delegated authorities to the s151 officer (both generally and in its capacity as Shareholder's Representative). The Shareholder Representative / the s151 officer will also bring to the attention of the Cabinet any significant issue or deviation from these approvals on the precautionary principle. (The Section 151 Officer's responsibilities are therefore as exercised in a way that they would be with any individual director or budget holder.)

12. In respect of any issue of concern or requiring a decision beyond the parameters of approvals previously provided by Cabinet and Council to the s151 Officer (in its capacity as Shareholder's Representative the Section 151 Officer will:

- Firstly, brief the Leader
- Secondly, if requested set out the issue and decision to Cabinet or Full Council for approval in line with the mandates of the existing EFDC Constitution.

13. In summary the controls exercised over Qualis will be by means of approving a Qualis Business case together with a Qualis Budget and the separate controls over loans and by means of quarterly and ad hoc reports, i.e. very similar to the business arrangements that exist with direct services.

Qualis Board – Terms of Reference

14. The document attached to Appendix 3 of this document sets out the formality in how the Board should operate. These general guidelines will be adopted into a full Terms of Reference for the Qualis Group. It will be the responsibility of the Company Secretary to ensure good governance in line with the adopted Terms of Reference.

Qualis Group Board Members – Selection and Recruitment Process

15. The Directors of the Qualis Group Board will need to reflect the collective skills and experience required to successfully manage the activities of the Council companies.

16. Qualis Commercial Ltd will develop several council owned sites to deliver significant residential, retail and leisure amenities for the District. The estimated gross investment by the Council will be around £100m in the next five years, delivering a minimum 3% net return across the portfolio.

17. The current budget estimates expect Qualis to deliver:

- A return of £600,000 a year for four years in respect of working capital loan
- A return of £600,000 a year in perpetuity around new asset purchases (initially these have been purchased via the Council).
- A return £2,200,000 for 30 years in respect of loans given for developments
- A return £192,000 a year in leasing space and buying services from the Council.

18. In addition to the benefits set out within the budget the Council may also achieve:

- Additional dividends as properties are sold, potentially from 2022/23
- Possible savings in EFDC if further services and personnel are transferred to Qualis.

19. The table below sets out the proposed composition of the Group Board. The salaries have been externally benchmarked against existing salaries for similar roles and as such reflect the current market. Examples of Harlow and Gilston Garden Town, Cornwall Council Development Company and Executives across Health Boards have been researched and of equal importance the recruiters and search organisations who are approaching candidates on a frequent basis.

Role	Equivalent Days Per Week	Rate
Independent Non-Executive Director Chair of Board	1 day	£1000 / day
Independent Non-Executive Director (Development and Commercial expertise)	1 day	£500 / day
Independent Non-Executive Director (Services expertise)	1 day	£500 /day
Council Member	1 day	£500 / day
Council Member	1 day	£500 / day
Council Member	1 day	£500 / day
Executive Director Qualis Group Managing Director	Full Time	£125k salary
Executive Director of Operations Qualis Group	Full Time	£100k salary
Executive Director of Resources Qualis Group	Half Time	£50k salary
Executive Officer Council Appointee	1 day	£500 / day
Executive Officer Council Appointee	1 day	£500 / day

20. It is proposed that all members of the Board undertake the same recruitment and selection process. All posts will be advertised externally using an independent recruitment specialist company who will be working on behalf of Qualis Group. Due diligence will be undertaken at the selection stage and will pay attention to other commercial and development interests of potential candidates.

21. The final selection process to be undertaken by the Councils Senior Management Selection Panel. Recommendations to appoint will then be made to Full Council for approval.

22. It anticipated that this process will take six months or more to complete. There will be a period (whilst the full Board is recruited) within which an interim Board will need to be established to ensure key deliverables are achieved. The set-up of the Qualis Management company is underway with an operational date 'go live' of July 2020. The work to establish the full business cases for sites to be developed by Qualis Commercial is to be completed by March 2020. It is essential that the interim Board oversee this work over the coming months whilst the full recruitment process is underway.

23. The interim board will be operational from the approval of the 6th February Cabinet decision with full board director responsibilities in the new Ltd Company. Future incoming members of the Interim Board post February Cabinet will go through a Cabinet approval process following the same process. The Interim Board remuneration is in line with Group Board.

24. The interim Board would comprise of the following:

Role	Equiv Days per Week	Nominee
Independent Chair of Board	1 day	In recruitment
3 x Co Opted Council Members	1 day	Pro rata representation
2 x Co Opted Council Executives	1 day	Georgina Blakemore Sacha Jevans
Development Director Qualis	1 day	Chris Ives
Interim Managing Director Qualis Management	1 day	Glen Finch

25. In the interim period the existing Development Director (Chris Ives) and the interim Managing Director of Qualis Management (Glen Finch) will bring the Commercial and Services expertise to the Board that will be replaced by the two independent NED roles. The recruitment of the Qualis Group Board Chair will be prioritised with the view to being in post by the end of March 2020.

26. Members are recruited (with appropriate skills and experience) and paid in line with the independent Non Executive Directors. As Non Executive Directors legal advice will be provided to ensure all appropriate declarations are made in all roles. The Monitoring Officer, S151 and external legal advice has been sought in this regard.

Resource Implications:

The total Qualis Group Board costs (including the Interim Board) as set out in the table are contained within the Council budget 20/21 and medium-Term Financial Strategy.

Legal and Governance Implications:

All governance documents will be in place to enable the operational trading and have been reviewed by the Monitoring Officer.

Safer, Cleaner and Greener Implications:

Any construction through the development company will meet standards and requirements of the local plan.

Consultation Undertaken:

All Member workshop on the 3rd February with a presentation from the legal advisors Penningtons to cover all aspects of the governance documents contained within this report.

Background Papers:

Shareholder Agreement
Directors Roles and Responsibilities
Qualis Group Board Terms of Reference

Risk Management:

The Group Company Steering Group review and update the risk map on a regular basis. All risks are identified and mitigating actions put into place as appropriate.

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DATED

2020

EPPING FOREST DISTRICT COUNCIL

QUALIS GROUP LTD

SHAREHOLDERS' AGREEMENT
relating to Qualis Group Ltd



**PENNINGTONS
MANCHES
COOPER**

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SHAREHOLDERS' AGREEMENT

DATED

2020

BETWEEN

- (1) **Epping Forest District Council** of Civic Offices High Street, Epping, Essex, CM16 4BZ (**EFDC**); and
- (2) **Qualis Group Ltd** a private company incorporated in England and Wales with registered number 012250938 whose registered office is at Civic Office, High Street, Epping England CH16 4BZ (the **Company**),

each a "**Party**" and together the "**Parties**".

INTRODUCTION

- (A) The Company is a private company limited by shares incorporated and registered in England and Wales under the Companies Act 2006 with registered number 12250938, details of which are set out in Part 1 of Schedule 1. The issued share capital as at the date of this Agreement is owned as set out in Part 2 of Schedule 1.
- (B) The Company has been established to undertake the Business in line with the Company's Objectives.
- (C) The Parties wish to enter into this Agreement to regulate the conduct of the business of the Company.

AGREED TERMS

1. DEFINITITONS AND INTERPRETATION

1.1 Definitions

In this Agreement the following expressions have the meanings specified:

Agreed Form means any document in a form agreed by EFDC;

Agreement means this agreement;

Anti-slavery Policy has the meaning given in clause 10.1;

Applicable Laws has the meaning given in clause 15.1;

Articles means the articles of association of the Company in force as at the date of this Agreement;

Associated Person has the meaning given in clause 11.1(b);

Bank means []¹;

¹ PMC Note: Proposed bank for Group to be inserted prior to signing.

Baseline Model means the baseline financial model as presented and approved by EFDC's Cabinet, containing the original financial assumptions, loan structure and financial flow for the Company and the Key Subsidiaries;

Board means the board of directors of the Company from time to time;

Business means the delivery of a housing, development, regeneration & investment programme and the provision of a repairs and maintenance service to (in each case) generate a profit for the Company and with a view to (as a minimum) producing a financial return to EFDC in line with the Financial Model to the extent practicable and commercially viable for the Company to do so;

Business Day means a day other than a Saturday, Sunday or public holiday in England on which clearing banks in the City of London are open for non-automated banking business;

Business Plan means the base financial business plan and Delivery Plan for a Development in line with the 1 Year Business Plan and 6 Year Business Plan in the Agreed Form and as may be updated from time to time in accordance with this Agreement;

Company Objectives has the meaning given in clause 3.2;

Company Party has the meaning given in clause 9.1;

Company Person has the meaning given in clause 11.5(c);

Confidential Information means in relation to the Company, all information or data (in whatever medium, including written, oral, visual, electronic, magnetic or digital) of a secret, confidential or proprietary nature relating to or used in the actual or prospective business or affairs of the Company, including any business, financial, commercial, technical, scientific, operational, organisational, legal, management and marketing information or data, know-how and trade secrets and any information or data relating to the businesses or affairs of the customers, clients or suppliers of the Company;

Consent Notice means the consent of an individual to the sharing of their Personal Data for the provision of the Services;

Corrupt Activity means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including, without limitation, any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 of the Bribery Act if such practice or conduct had been carried out in the United Kingdom whether in connection with a Development or otherwise;

Council Objectives means the generation (through the activities of Company and its Subsidiaries) of a financial return to the Council in line (as a minimum) with the envisaged returns set out in the Financial Model (where and to the extent practicable and commercially viable for the Company to do so) by the Company and its Subsidiaries undertaking commercial activities, including (without limitation) developing housing and investing in commercial and other real estate assets and

by providing a repairs and maintenance service so as to (in each case) generate a profit and to supplement EFDC's income and to assist to balance EFDC's budget;

Council Premises has the meaning given in clause 19.2;

Data Controller has the meaning given to that term in the Data Protection Legislation;

Data Guidance means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to the Company by EFDC and/or EFDC's Representative and/or any relevant regulatory body;

Data Processor has the meaning given to that term in the Data Protection Legislation;

Data Protection Legislation means the General Data Protection Regulations and the Data Protection Act 2018 (together referred to as the Data Protection Legislation) and subordinate and subsequent legislation;

Data Protection Officer has the meaning set out in the Data Protection Legislation;

Data Subject has the meaning given to that term in Data Protection Legislation;

Delivery Plan means the details of the base scheme, delivery methodology and sales and/or investment strategy and/or management and/or repair and maintenance strategy for a Development in the Agreed Form as such plan may be updated from time to time in accordance with this Agreement;

Devco means Qualis Commercial Ltd a private company incorporated in England and Wales with registered number 12251541 whose registered office is at Civic Office, High Street, Epping England CH16 4BZ;

Development means a particular scheme to be developed and/or acquired by or on behalf of the Company or any Subsidiary of the Company with a view to achieving the Company Objectives;

Disputes has the meaning given in clause 26;

EFDC Anti-Bribery Policy means the anti bribery policy provided to the Company by EFDC from time to time;

EFDC's Representative means the Epping Forest District Council EFDC Section 151 Officer in his/her capacity as shareholder manager for EFDC or such other person designated as such from time to time by EFDC and notified in writing to the Devco, the Investco, the R&Mco and the Company;

Encumbrance means any:

- (a) an interest or equity of any person (including any right to acquire, option or right or pre-emption) or any mortgage, charge, pledge, lien, hypothecation, title retention or any legal or equitable third party right or interest including any security interest of any kind or any type of preferential arrangement; or
- (b) any like agreement or arrangement creating any of the same or having similar effect;

Erasure Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access, rectify or erase their Personal Data and “**Right of Access Request**” and “**Rectification Request**” shall be construed accordingly;

Exit Day means the date the United Kingdom legally has withdrawn from the European Union pursuant to Article 50 of the Treaty on European Union;

Financial Model means the Baseline Model as the same may have been updated, amended and approved by EFDC from time to time in accordance with this Agreement;

Financial Regulations means the operational financial parameters under which the Company and any of its Subsidiaries are required to operate as part of the Company’s constitution as determined by EFDC and notified to the Company in writing from time to time;

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004;

GDPR has the meaning given to that term at clause 14(b) of this Agreement;

Group means, in relation to a Party, that Party and each subsidiary of that Party, and any company that it from time to time its holding company, and each other subsidiary (if any) of that holding company;

Guidance has the meaning given in clause 11.1(b);

Indirect Losses means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;

Information Commissioner means the UK’s regulatory body charged with enforcing Data Protection Legislation;

Information Governance Lead means the individual responsible for information governance and for providing the Company with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence;

Investco means Qualis Living Ltd a private company incorporated in England and Wales with registered number 12251397 whose registered office is at Civic Office, High Street, Epping England CH16 4BZ;

Joint Data Controller means shall have the meaning given that term in the Data Protection Legislation;

Key Subsidiaries means Invesco, Devco, R&Mco and **Key Subsidiary** means any one of them as the context requires

Local Plan means (as set out in the full Local Plan document available on the website)

Losses means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services on an indemnity basis) proceedings, demands and charges whether arising under statute, contract or at common law, including without limitation any Indirect Losses ;

Name [];

Personal Data means has the meaning given to it in the Data Protection Legislation;

Personal Data Breach means has the meaning given to it in the Data Protection Legislation;

Potentially Affected Party has the meaning given in clause 8.1;

Project Document (means those Agreed Form documents)

R&Mco means Qualis Management Ltd a private company incorporated in England and Wales with registered number 12251475 whose registered office is at Civic Office, High Street, Epping England CH16 4BZ;

Reserved Matters means those matters listed in Schedule 2;

Requirements has the meaning given in clause 11.2;

Rectification Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access, rectify or erase their Personal Data and **Right of Access Request** and **Erasure Request** shall be construed accordingly;

Right of Access Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access, rectify or erase their Personal Data and **Rectification Request** and **Erasure Request** shall be construed accordingly;

Services means any works or services procured or delivered through and/or on behalf of the Company and/or any of [the Key/its] Subsidiaries for the purpose of and/or in connection with the Business;

Share means a share in the capital of the Company;

Shareholder means a person who is the holder of any Share (but excluding the Company as the holder of any Treasury Shares);

Special Categories of Data has the meaning given to it in the Data Protection Legislation;

Subsidiaries means Invesco, Devco, R&Mco and any other subsidiary of the Company and **Subsidiary** means any one of them as the context permits;

subsidiary has the meaning given in clause 1.2(a)(xiv);

Treasury Shares has the meaning given in the Articles;

UK means the United Kingdom of Great Britain and Northern Ireland;

CA 2006 means the Companies Act 2006;

CTA 2010 means the Corporation Tax Act 2010;

1 Year Business Plan means the business plan covering the 12 month development and investment activities of the Company and its Key Subsidiaries approved by the cabinet of EFDC from time to time; and

6 Year Business Plan means the business plan covering the 72 month development and investment activities of the Company and its Key Subsidiaries approved by the cabinet of EFDC from time to time.

1.2 Interpretation

In this Agreement, (except where the context otherwise requires) or as defined above:

(a) reference to:

- (i) the transfer of a Share will be deemed to be a reference to the transfer, assignment or other disposal of a beneficial or other interest in a Share or the creation of a trust or encumbrance over that Share or the renunciation of assignment of any rights to acquire that Share, and reference to a Share includes a beneficial or other interest in a Share;
- (ii) a statute or statutory provision is a reference to that statute or statutory provision as amended, consolidated, re-enacted or replaced from time to time and includes any subordinate legislation made under it except to the extent that the inclusion of a reference to any such amendment, consolidation or re-enactment or replacement coming into force after the date of this Agreement and not prospectively in force at the date of this Agreement would have the effect of making the obligations of any Party under this Agreement more onerous or would otherwise adversely affect the rights of any Party;
- (iii) a **clause** or **Schedule** is a reference to the relevant clause of and schedule to this Agreement;

- (iv) a **Part** or a **paragraph** is, unless otherwise stated, a reference to the relevant part or paragraph of the Schedule in which the reference appears;
- (v) this Agreement includes:
 - (A) the Schedules, which form part of this Agreement and have the same force as if set out in the body of this Agreement; and
 - (B) this Agreement as amended or supplemented from time to time;
- (vi) a **Party** or the **Parties** is to a party or the parties to this Agreement from time to time and their respective successors and permitted assigns and in the case of a party who is an individual, that party's legal personal representatives;
- (vii) a **person** includes any a natural person, body corporate, or unincorporated association, whether or not having separate legal personality and wherever incorporated or established;
- (viii) any document being in **agreed form** is to that document in the form signed or initialled for and on behalf of EFDC;
- (ix) an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing will, in respect of any jurisdiction other than England and Wales be deemed to include that which most closely approximates in that jurisdiction to the English legal term;
- (x) words in the singular include the plural and vice versa;
- (xi) words importing any gender include all other genders;
- (xii) **writing** and **written** include faxes and any non-transitory form of visible reproduction of words in a legible form but, unless expressly provided otherwise, exclude email and text messaging via mobile telephone or similar device;
- (xiii) a time of day is, unless expressly provided otherwise, to that time in London, UK;
- (xiv) a reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the CA 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:
 - (A) another person (or its nominee), by way of security or in connection with the taking of security; or
 - (B) its nominee.

- (xv) the **holder** or **holders** of any Shares, excludes the Company holding any Treasury Shares; and
 - (xvi) **Shares in issue, issued share capital** or **issued Shares** excludes any Treasury Shares;
 - (xvii) any EU law that has direct effect in the UK as at the date of this Agreement, includes a reference to that law as retained, amended, extended or re-enacted in the UK on or after Exit Day; and
 - (xviii) the **United Kingdom** or the **UK** means the United Kingdom of Great Britain and Northern Ireland (or, if the United Kingdom ceases to exist in its current form, any successor sovereign state that includes England);
- (b) words and phrases defined in particular clauses or paragraphs bear the same meanings throughout this Agreement, despite being defined or explained in relation to a specific clause or paragraph;
 - (c) the words **include(s), including, in particular** or **for example** will be construed as being by way of illustration or emphasis only and the use of those words does not limit the generality of the words preceding them;
 - (d) the headings and sub-headings are inserted for convenience only and will not affect the construction or interpretation of this Agreement;
 - (e) an obligation on a Party to not do something includes an obligation to use all reasonable endeavours not to allow that thing to be done;
 - (f) a person will be regarded as holding rights as a **nominee** for another person where the rights held by them are exercisable only on the instructions or with the consent of that other person;
 - (g) except for services of notices under clause 8, or where this Agreement expressly provides otherwise, where a Party must do something on a particular day, they must do it before 5:30pm on that day, otherwise it will be deemed to have been done at 9.00am on the next following Business Day;
 - (h) section 1122 of the CTA 2010 will apply to determine whether one person is connected with another for the purposes of this Agreement; and
 - (i) unless the context otherwise requires, or where stated to the contrary, words and expressions defined in the Articles will have the same meaning when used in this Agreement.

2. THE BOARD

- 2.1 EFDC will be entitled to appoint and maintain in office all the directors of the Company and to remove any director so appointed and upon the removal of any director appointed by them, to appoint another director in their place.

- 2.2 The appointment or removal of a director under to clause 2.1 will be by written notice to the Company which will take effect on delivery at its registered office or at any meeting of the Board directors or committee of the Board.
- 2.3 EFDC will be entitled to appoint the post of Chairman. If the Chairman for the time being is unable to attend any meeting of the Board, they will be entitled to nominate any other director to act as Chairman of the meeting. The Chairman will have a casting vote at Board meetings.
- 2.4 The Parties must use their respective reasonable endeavours to procure that any Board meeting (or meeting of a committee of the Board) and each general meeting of the Company has the requisite quorum of at least four (4) directors.
- 2.5 The Board shall act in accordance with the Company Objectives to the extent practicable.
- 2.6 The Board shall be responsible for the day to day management and control of the Business and the affairs of the Company and shall have the power and authority to do all things necessary to carry out the Company Objectives in line with the approved 1 Year Business Plan and 6 Year Business Plan.
- 2.7 Without prejudice to the generality of clause 2.6; the Board shall:
- (a) maintain an accurate register of all assets of the Company;
 - (b) focus on operational delivery of the Business of the Company;
 - (c) comprise up to ten (10) persons; and
 - (d) meet at least once a month or at such other times or at such other frequency as EFDC may reasonable require.
- 2.8 The key roles and responsibilities of the Board shall include:
- (a) using reasonable endeavors to achieve the Company Objectives;
 - (b) preparation of the 1 Year Business Plan and 6 Year Business Plan for approval by EFDC;
 - (c) identifying development and investment opportunities;
 - (d) formulating and preparing the Business Plan for each Development;
 - (e) final appraisal of any Development prior to submission (for information) to EFDC;
 - (f) progressing each Development in line with any relevant Business Plan to that Development approved in accordance with this Agreement by EFDC;
 - (g) without prejudice to clause 2.8(e), achievement of budgets and operational plans in line with the Business Plan for each Development;
 - (h) updating the Baseline Model at least every quarter or at such other frequency as EFDC may reasonably notify to the Company in writing for approval by EFDC;

- (i) management and regular review of operational and financial performance of the Business and other activities of the Company;
- (j) responsibility for Company compliance with applicable EFDC policies and relevant regulations;
- (k) ownership for the identification and management of risk across the Business and activities of the Company;
- (l) to manage the internal control environment and prepare regular reports for presentation to EFDC's audit and risk committee;
- (m) responsibility for the integrity of management information and financial reporting systems of the Company and any Subsidiaries;
- (n) development of policy guidelines in line with the Company Objectives,
- (o) workforce mobilization and planning for the Company and any Subsidiaries; and
- (p) ongoing review of the Company and any Subsidiary activities against the legal structure and Financial Model and making proposals and recommendations to EFDC in this regard.

2.9 The first members of the Board shall be:

- (a) Georgina Blakemore - CEO
- (b) Sacha Jevans – Interim Strategic Director
- (c) Chris Ives – Development Director Qualis Commercial
- (d) Glen Finch – Interim Managing Director – Qualis Management
- (e) 3x Council Members

3. BUSINESS AND OBJECTIVES

3.1 The Company shall carry on the Business.

3.2 The Company agrees to use reasonable endeavours to operate commercially with a view to generating a profit and/or returns to EFDC through:

- (a) investing in and/or developing and/or managing property and/or land;
- (b) acquisition of sites and site assembly;
- (c) owning, managing and/or operating Developments;
- (d) strategic planning of longer term investment strategy which will set out the rules, behaviour and procedures to develop an investment portfolio across different markets;
- (e) securing value through planning permissions and larger scale master planning and design briefs to support site development;

- (f) acting as the master developer for large- scale development(s) and regeneration schemes, including, but not limited to:
 - (i) the acquisition of land;
 - (ii) investment in infrastructure;
 - (iii) securing planning permission(s);
 - (iv) undertaking master-planning;
 - (v) retaining or selling packages of land for development by a wide range of providers;
- (g) acting as the holding vehicle for a range of assets, including, without limitation, assets of EFDC and its subsidiaries;
- (h) management of these assets including the delivery of the housing management, landlord responsibilities and fulfilling relevant regulatory requirements;
- (i) providing investment and development and consultancy services to EFDC and its direct delivery programme, Investco and other Subsidiaries of EFDC;
- (j) providing repairs and maintenance services to the Company and its Subsidiaries and to third parties.
- (k) developing the market conditions, procurement and contracting models to drive value and support delivery;
- (l) developing, refurbishing and delivering, owning and/or managing a mix of private residential tenure, including (without limitation):-
 - (i) private rented;
 - (ii) private market sale;
 - (iii) s.106 affordable housing in line with the planning requirements set out in the Local Plan;
 - (iv) shared ownership housing in line with the planning requirements set out in the Local Plan and subject to schemes being mortgageable;
- (m) delivering of business and industrial developments and/or managing and operating (including where appropriate providing repairs and maintenance services for) the same , including (without limitation):
 - (i) business and industrial sites;
 - (ii) workspace investment;
- (n) developing and delivery of mixed use schemes comprising, inter alia, a combination of residential and business and industrial across single sites;

- (o) enabling wider commercial opportunities together with the other Key Subsidiaries (as applicable and relevant), including (without limitation) consideration of a range of development and investment propositions from a range of sectors including (for example only) industrials, information technology etc. both in and outside the Epping Forest District boundaries;
- (p) delivering the EFDC commercial property portfolio;
- (q) holding, operating managing and/or maintaining the EFDC commercial property, investment and/or private rented portfolios and/or assets and/or 3rd party assets and/or portfolios ; and/or
- (r) leading on the proposals and delivery of the transformation of the commercial estate of EFDC and its Subsidiaries,

and in doing so, the Company and its Shareholder shall have regard to the Council Objectives, including:

- (a) the desire of EFDC to generate a profit and return for EFDC on its investment;
- (b) to deliver housing (but only to the extent commercially viable to do so and as may otherwise be required and be in line with applicable planning requirements for each Development the Company undertakes); and
- (c) through its commercial activities to create job opportunities, regeneration in the Epping Forest District,

so as to assist EFDC to fulfil the Council Objectives (provided, in all circumstances, in so doing, the Shareholder shall not act in a manner so as to fetter the Company's commercial nature nor the primary objective of the Company of generating a profit and returns),

together the "**Company Objectives**".

3.3 The Company must, and EFDC as shareholder in relation to the Company shall (to the extent not contrary to their constitutional powers) exercise each of their respective powers so as to ensure that the Company will, at all times do all of the following:

- (a) carry on and conduct its business and affairs in a proper and efficient manner so as to enable and not fetter the Company and any Subsidiaries from acting in a commercial manner so as to generate profit and financial return (as a minimum) in line with the financial mode and for the benefit of EFDC and in accordance with:
 - (i) the 6 Year Business Plan;
 - (ii) the 1 Year Business Plan; and
 - (iii) the Business Plan for a Development;
- (b) transact all its business on arm's length terms;

- (c) not enter into any agreement or arrangement restricting its competitive freedom to provide and take goods and services by such means and from and to such persons as it may think fit;
- (d) ensure that all business of the Company, other than routine day-to-day business and business that has been delegated by the Board to individual office holders and/or the Key Subsidiaries, will be undertaken and transacted by the Board;
- (e) maintain, with a well-established and reputable insurer, adequate insurance cover against all risks usually insured against by companies carrying on the same or a similar business for the full replacement or reinstatement value of all its assets of an insurable nature (whether or not companies carrying on the same or a similar business would maintain cover at that level);
- (f) maintain complete and accurate financial records; and
- (g) maintain in full force and effect any approval, consent or licence required by the Company for the carrying on of its business in the places and in the manner in which it is from time to time carried on or proposed to be carried on.

4. FUNDING FOR THE COMPANY AND SHAREHOLDER'S OBLIGATIONS

- 4.1 It is intended that the Company shall be financed initially by the one pound share per company plus a working capital loan
- 4.2 Save pursuant to the business case and/or as otherwise provided for in the Financial Model, EFDC shall not be obliged to offer any additional finance to the Company (whether in the form of debt or equity) and/or whether to fund a Development and/or the working capital and/or day to day activities of the Company and/or its Subsidiaries .
- 4.3 Where the Company seeks any third party finance, loan or other indebtedness from any party other than EFDC, in addition to this being a Reserved Matter as outlined at Schedule 2, the Company shall (where permission has been granted to obtain such finance, loan or other indebtedness by the Shareholder and/or the EFDC's Representative (as applicable) in accordance with this Agreement) allow the Shareholder a reasonable opportunity to match the terms and basis on which such monies are to be lent to the Company (or its Subsidiaries, as the case may be) and, if the Council can match or better the terms and basis on which such monies are to be lent and provide such funds in the time the Company requires such funds to be provided in accordance with such third party proposals or as the Company may otherwise reasonably require and Council agree, the Company shall first seek to obtain such funds from the Council and the Council shall provide such funds to the Company (or its Subsidiaries, as the case may be) on such terms instead of the third party.
- 4.4 EFDC shall, in a manner that is not inconsistent with its statutory functions and obligations, at all times:

- (a) use its reasonable endeavours to promote the Business and the interests of the Company;
- (b) exercise all voting rights and powers of control available to it in relation to the Company so as to give full effect to the terms and conditions of this Agreement with the view to achieving the Company Objectives;
- (c) conduct itself, and procure that each of its officers, employees, agents and nominees conduct themselves, in a proper and responsible manner in each case in relation to the Business and the interests of the Company;
- (d) provide to the Company particulars of all business transacted by it on behalf of the Company;
- (e) comply, and procure that each of its officers, employees, agents and nominees comply, with all legislation, regulations and other provisions as may govern the conduct of the Business;
- (f) procure any staff employed by the Company and/or any Key Subsidiary in connection with the performance of its obligations under this Agreement will be paid no less than the Living Wage;
- (g) show the utmost good faith to the Company in all transactions relating to the Business and affairs of the Company and give the Company a true account of all such dealing; and
- (h) within no later than 3 months of the date of this Agreement:
 - (i) appoint the EFDC's Representative;
 - (ii) notify the Company and Key Subsidiaries in writing of the identity of the person so appointed;
 - (iii) provide to the Company and Key Subsidiaries the details of the delegated powers of EFDC's Representative; and
- (i) without prejudice to clause 4.3 (h) (if requested by the Company) clarify to the Company and Key Subsidiaries how and the extent EFDC's Representative is empowered and authorised by EFDC to make decisions on behalf of EFDC.

5. BANKING ARRANGEMENTS

- 5.1 The Company's bank shall be the Bank.
- 5.2 All monies, cheques and drafts belonging to or received by or on behalf of the Company shall be paid promptly into the Company's account at the Bank for the credit of the Company and all securities for money shall be promptly deposited in the name of the Company with the Bank.
- 5.3 All cheques drawn on, or instructions given for the transfer of monies from any account referred to in clause 5.2 shall be drawn in the name of the Company and shall be signed by EFDC or a member of the Board appointed by EFDC and authorised to do the same.

6. ACCOUNTS AND AUDIT

- 6.1 The Company shall ensure that proper books of account, giving a true and fair view of the Business, the state of affairs and profit or loss of the Company are properly kept and preserved, including without limitation, on a Development by Development basis, which shall clarify each asset class within a Development and detail how such assets have performed and are being treated within the books of account.
- 6.2 The books of account referred to in clause 6.1 shall be:
- (a) kept at the Registered Office or such other place as the Board may determine in accordance with this Agreement; and
 - (b) shall be open for inspection and copying by EFDC (and/or its duly authorised agent) and the Auditors at all times upon reasonable prior notice in writing.
- 6.3 The Company's accounting reference period ends on its accounting reference date and the Company shall prepare annual Accounts as at its accounting reference date in accordance with CA2006.
- 6.4 The Accounts shall be:
- (a) audited and settled each year by the Auditors in accordance with CA2006 and generally accepted accounting principles and practices in the United Kingdom and shall include no value for goodwill or other intangible assets (other than goodwill arising on the purchase of any business by the Company);
 - (b) approved by the Board in accordance with this Agreement and subject only to approved amendments; and
 - (c) distributed to EFDC in its capacity as the Shareholder as required by CA2006.
- 6.5 The Company shall procure that quarterly management accounts and reports (including a balance sheet, profit and loss account and cash flow statement) containing such information as EFDC may reasonably require are provided to EFDC and EFDC's Representative. Such management accounts shall be distributed to EFDC and EFDC's Representative within 10 Business Days of the end of the quarter to which they relate.

7. MATTERS REQUIRING SHAREHOLDER CONSENT

- 7.1 The Company shall not do nor undertake any of the Reserved Matters without the prior written consent of EFDC, which consent may be given on behalf of EFDC by EFDC's Representative to the extent EFDC's Representative is empowered and authorised by EFDC to do so.
- 7.2 Should the Board not be able to reach a decision on a matter that may or is likely to adversely impact the Business of the Company or should the Chairman (in its absolute discretion) feel a matter brought before the Board on which a decision is not reached should otherwise be flagged to EFDC, then the Chairman shall notify EFDC's Representative

7.3 The Board shall notify EFDC's Representative immediately on becoming aware of any breach of any of Clauses 8 to 17 inclusive by the Company and/or by any Subsidiary of the Company.

8. SAFEGUARDING

8.1 The Company shall develop and maintain awareness and understanding of safeguarding issues with vulnerable adults, children and young people as and to the extent relevant and/or applicable to the Business, and/or the activities of the Company and/or any Subsidiary (a "**Potentially Affected Party**"), including (without limitation) in procuring and delivering the Services.

8.2 The Company shall ensure that all allegations, suspicions and incidents of abuse, harm or risk of harm to a Potentially Affected Party or where there is concern about the behaviour of a Company Person are reported immediately to EFDC's Representative and the Multi Agency Referral Unit (MARU) 0300 123 1116. The Company shall procure its and any Subsidiary's safeguarding policies and procedures shall include active encouragement to employees and staff in whistle blowing if aware of suspected abuse.

8.3 The Company shall comply with all relevant statutory obligations and EFDC's and Government policies (including but not limited to the EFDC's safeguarding policies.) in respect of safeguarding as applicable and amended or updated or replaced from time to time.

8.4 Without prejudice to clause 8.3, the Company shall ensure that any Potentially Affected Party is safeguarded from any form of exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhumane or degrading treatment through deliberate intent, negligent acts or omissions.

8.5 The Company shall immediately notify EFDC of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 8 are being complied with and/or satisfied (as relevant).

8.6 The Company must, without charge to EFDC, comply with any instruction given by EFDC in respect of this clause 8.

8.7 The Company shall review and update the EFDC safeguarding policies as soon as is reasonably practicable following the date of this Agreement (and, in any event, within 6 months of the date of this Agreement) to ensure the policies are up to date and is tailored to apply correctly and as desired by EFDC to the Company and its Subsidiaries.

9. WHISTLEBLOWING

9.1 The Company shall have in place a process whereby any of its employees and/or staff and any Subsidiary (or its employees and/or staff) (a "**Company Party**") may report in confidence any alleged malpractice on the part of the Company and/or any Subsidiary as regards any part of the provision of the Services;

9.2 The Company shall not take any action against any Company Party pursuant to its contractual rights in respect of that a Company Party where such person has in accordance with the process provided pursuant to clause 9.1 and in good faith reported alleged malpractice on the part of the Company.

10. MODERN SLAVERY

10.1 In performing its obligations under this Agreement, the Company shall ensure that that it and any Associated Person comply with all applicable laws, statutes, regulations and codes from time to time in force concerning slavery including but not limited to the Modern Slavery Act 2015 and the EFDC's anti-slavery policy as may be updated from time to time (the "**Anti-slavery Policy**").

10.2 The Company represents and warrants that at the date of this Agreement:

- (a) its responses to EFDC's slavery and human trafficking due diligence questionnaire are complete and accurate; and
- (b) neither the Company nor any Associated Person:
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) having made reasonable enquiries, so far as it is aware or to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

10.3 The Company shall implement due diligence procedures for its own Subsidiaries, suppliers, sub-contractors and other participants in its supply chains, to assist to ensure that there is no slavery or human trafficking in its supply chains.

10.4 The Company undertakes not to purchase any resource or raw material or products that has been sourced from producers or manufacturers using forced labour in its operations and/or practices.

10.5 The Company shall notify EFDC as soon as it becomes aware of:

- (a) any breach, or potential breach, of the Anti-slavery Policy; or
- (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.

10.6 The Company shall prepare and deliver to EFDC no later than the anniversary of this Agreement, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of the Business and that it is complying with the Anti-slavery Policy.

10.7 The Company shall:

- (a) maintain a complete set of records to trace the supply chain of all works, products and services provided to the Company in connection with this Agreement and the performance of the Services; and
 - (b) implement annual, Subsidiary, supplier and sub-contractor audits, either directly or through a third party auditor to monitor compliance with the Anti-slavery Policy, the first of which shall be completed by no later than the anniversary of this Agreement.
- 10.8 The Company shall implement a system of training for any Associated Person to ensure compliance with the Anti-slavery Policy.
- 10.9 The Company shall keep a record of all training offered and completed by its Associated Persons to ensure compliance with the Anti-slavery Policy and shall make a copy of the record available to EFDC on request.
- 10.10 The Company shall indemnify EFDC against any losses, liabilities, damages, costs (including but not limited to legal fees on an indemnity basis) and expenses incurred by, or awarded against the EFDC as a result of any breach of Anti-slavery Policy.
- 10.11 If the Company breaches any terms of this clause 10, EFDC may require the Company or any Subsidiary to take such action as EFDC deems fit or as may otherwise be required in order to comply with any relevant legislation in consequence of the breach.

11. ANTI BRIBERY & CORRUPTION

- 11.1 In this clause:
- (a) the expressions 'adequate procedures', 'foreign public official', 'associated person(s)' and 'performing services' shall bear the meanings assigned to them in the Bribery Act and, as the case may be, any guidance for the time being issued under section 9 of the Bribery Act (the "**Guidance**"); and
 - (b) an associated person of EFDC includes any contractual counterparty or sub-contractor of EFDC or the Company or of any Subsidiary (an "**Associated Person**").
- 11.2 The Company shall comply with all applicable laws statutes regulations and codes relating to anti-bribery and anti-corruption practices including the Bribery Act and the Guidance (together the "**Requirements**").
- 11.3 EFDC and the Company shall not and the Company shall procure that each Subsidiary shall not engage in, and each Party shall procure that any Associated Person shall not in relation to this Agreement, any Project Document and/or any contract to which the Company and/or any Subsidiaries are a party, and/or in relation to the performance of the Services engage in any activity practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act if such activity practice or conduct had been carried out in the United Kingdom.
- 11.4 Each Party shall:

- (a) have and maintain in place throughout the term of this Agreement their own policy and procedures including adequate procedures to ensure compliance with the Requirements and clause 11.3 above and shall enforce them whenever appropriate;
- (b) promptly report to the other Parties any request or demand for any financial or other advantage of any kind offered promised or given to it in connection with the performance of this Agreement, any Project Document and/or any contract to which the Company and/or its Subsidiaries are a party and/or in connection with the Services;
- (c) at a Party's request certify to the other Parties in writing signed by it or its duly authorised officer compliance with this clause by it and by all Associated Persons of it performing services or supplying goods in connection with this Agreement, any Project Document and/or any contract to which the Company and/or its Subsidiaries are a party and/or in connection with the Services;
- (d) forthwith notify the other Parties in writing in the event that a foreign public official becomes an officer or employee of it or acquires a direct or indirect interest in the Party and EFDC warrants that no officer employee or direct or indirect owner of it is a foreign public official as at the date of this Agreement; and
- (e) be directly liable to the other Parties in the event of breach of this clause 11.

11.5 Without prejudice to clause 11.2 to 11.4 (inclusive), the Company further warrants and undertakes to EFDC that:

- (a) it and any Subsidiary shall will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- (b) it and any Subsidiary shall comply with EFDC Anti-Bribery Policy as may be amended from time to time;
- (c) it will procure that any person who performs or has performed services for or on its behalf, including, without limitation, any staff, employee, agent, consultant and/or any Subsidiary (a "**Company Person**") in connection with this Agreement complies with this clause 11.5;
- (d) it will not enter into any agreement with any Subsidiaries in connection with this Agreement, unless such agreement contains undertakings on the same terms as contained in this clause 11.5;
- (e) it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the agreement;
- (f) from time to time, at request of EFDC, it will confirm in writing that it has complied with its undertakings under clauses 11.5(a) to 11.5(e) (inclusive) and will provide any information requested by EFDC in support of such compliance;

- (g) it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;
 - (h) it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Company in breach of section 7(1) Bribery Act;
 - (i) it shall notify EFDC as soon as practicable of any breach of any of the undertakings contained within this clause 11.5 of which it becomes aware.
 - (j) it has and shall maintain and implement:
 - (i) procedures to ensure compliance with clauses 11.2, 11.3 and 11.5(a) to 11.5(i) (inclusive); and
 - (ii) adequate procedures designed to prevent any Associated Person from undertaking any Corrupt Activity and/or conduct that would give rise to an offence under section 7 Bribery Act;
 - (k) it shall include undertakings similar to those contained in this clause 11.2, 11.3 and 11.5(a) to 11.5(j) (inclusive) in any contract it may enter into with any Subsidiary, sub-contractors and suppliers;
 - (l) from time to time, at the request of EFDC, it will confirm in writing that it has complied with its undertakings under clauses 11.2, 11.3 and 11.5(a) to 11.5(k) (inclusive) and will provide any information requested by EFDC in support of such compliance;
- 11.6 Each Party shall maintain adequate records to assist in verifying its compliance with the provisions of this clause 11 (including, without limitation, books of account showing all payments made by such Party in connection with the Services and/or any Project Document and/or any material contract to which the Company and/or its Subsidiaries are a party) and shall permit each of the other Parties and its or their (as the case may be) third party representatives, on reasonable notice during normal business hours, but without notice in the case of any reasonably suspected breach of clause 11.2 to 11.5 (inclusive), to access and take such records and to meet the relevant Party's personnel to audit the Party's compliance with its obligations under this clause 11. The relevant Party shall give all necessary assistance to the conduct of such audits.
- 11.7 The Company shall indemnify EFDC against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, EFDC as a result of any breach of clause 11.2, 11.3, 11.5(a) to 11.5(k) (inclusive) and/or 11.6 by the Company or any breach of provisions equivalent to clauses 11.2, 11.3, 11.4, 11.5(a) to 11.5(k) (inclusive) and/or 11.6 in any contract with a Subsidiary, sub-contractor or supplier.
- 11.8 If the Company breaches any terms of this clause 11, EFDC may take such action as it deems fit or as may otherwise be required in order to comply with any relevant legislation in consequence of the breach.

11.9 The Company shall review and update the EFDC's Anti-Bribery Policy as soon as is reasonably practicable following the date of this Agreement (and, in any event, within 6 months of the date of this Agreement) to ensure the policy is up to date and is tailored to apply correctly and as desired by EFDC to the Company and any Subsidiary and to any persons acting for or on their behalf.

12. FURTHER ASSURANCE

At all times during the continuance of this Agreement each Party shall, at their own cost, execute all such documents and do all such acts and things as may reasonably be required to give effect to the provisions of this Agreement.

13. CONFIDENTIAL INFORMATION

13.1 The Shareholder undertakes with the Company that, subject to clause 13.2, it:

- (a) will not at any time use, or disclose to a person, Confidential Information it has or acquires; and
- (b) will make every effort to prevent the use or disclosure of Confidential Information.

13.2 Without prejudice to clause 13.1 and subject to clauses 13.3, the receiving party agrees:

- (a) to use the disclosing party's Confidential Information only in connection with the receiving party's performance under this Agreement the Subsidiary's performance and/or delivery of the Services;
- (b) not to disclose the disclosing party's Confidential Information to any third party (other than to a Subsidiary, where and provided the Subsidiary is bound by provisions similar to those in this clause 13) or to use it to the detriment of the disclosing party; and
- (c) to maintain the confidentiality of the disclosing party's Confidential Information and to return it immediately on receipt of written demand from the disclosing party.

13.3 Clauses 13.1 and 13.2 do not apply to and a receiving party may disclose the disclosing party's Confidential Information:

- (a) for the purposes of use or disclosure of Confidential Information by a Shareholder during the proper performance of its duties as a Shareholder, including (subject to clause 13.5) to a Subsidiary in the proper performance of the Services;
- (b) for the purposes of disclosure of Confidential Information to a Shareholder or employee of the Company whose function requires it to have the Confidential Information;
- (c) for the purposes of use or disclosure of Confidential Information required to be used or disclosed by law or by or to any governmental or regulatory body;

- (d) for the purposes of disclosure of Confidential Information to an adviser for the purpose of advising the Company or a Shareholder but only on terms that clauses 13.1 and 13.2 applies *pari passu* to the use or disclosure by the adviser of such Confidential Information in a similar manner to the Shareholder and Company under this clause 13; in connection with any dispute and/or any litigation between the Parties in connection with this Agreement, but only on terms that clauses 13.1 and 13.2 applies *pari passu* to the use or disclosure for such purposes (to the extent permitted by law) of such Confidential Information in a similar manner to the Shareholder and the Company under this clause 13 in connection with any dispute in connection with this Agreement;
- (e) to the receiving party's staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the receiving party's duty set out in clauses 13.1 and/or 13.2;
- (f) which becomes publicly known or is in or comes into the public domain except by a breach of clauses 13.1 and/or 13.2;
- (g) the receiving party can show by its records was in its possession before it received it from the disclosing party; or
- (h) the receiving party can prove that it obtained or was able to obtain from a source other than the disclosing party without breaching any obligation of confidence.

13.4 The Shareholder shall immediately inform the Company if it becomes aware of the possession, use or knowledge of any Confidential Information by any person who is not authorised to possess, use or have knowledge of it and shall, at the Company's request, provide such reasonable assistance as is required to deal with such an event.

13.5 The Company shall immediately inform the Shareholder if it becomes aware of the possession, use or knowledge of any Confidential Information by any person who is not authorised to possess, use or have knowledge of it and shall, at the Shareholder's request, provide such reasonable assistance as it required to deal with such an event.

13.6 The Company shall procure each Subsidiary complies with duties in respect of the use and disclosure of Confidential Information on terms no less onerous than as set out in this clause 13.

14. USE OF PERSONAL DATA

Each Party shall, at its own expense, ensure that it complies with and assists the other Parties to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of Personal Data, including, without limitation:

- (a) the Data Protection Act 2018; and

- (b) the General Data Protection Regulation ((EU) 2016/679) (“**GDPR**”) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK.

15. INFORMATION GOVERNANCE AND DATA PROTECTION

- 15.1 Each Party shall comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR (together the “**Applicable Laws**”), and shall assist each other Party as necessary to enable the others to comply with these obligations.
- 15.2 The Company must comply with and must demonstrate satisfactory compliance with clause 15.1 above.
- 15.3 The Company shall:
 - (a) nominate an Information Governance Lead;
 - (b) nominate a Data Protection Officer, if applicable; and
 - (c) ensure that the Shareholder is kept informed at all times of the identities and contact details of the Information Governance Lead and the Data Protection Officer (if applicable).
- 15.4 If the Company is required under Data Protection Legislation to notify the Information Commissioner or a Data Subject of a Personal Data Breach, then, within 48 hours of the breach occurring, the Company must inform the Shareholder of the Personal Data Breach, and the Company will report the breach to the Information Commissioner within 72 hours as is required within the Data Protection Legislation.
- 15.5 Each Party shall comply with all applicable requirements of the Data Protection Legislation. This clause 15.5 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 15.6 Whether or not a party to this Agreement, a Subsidiary or sub-contractor is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and any further Data Guidance. The Parties acknowledge that a Party, a Subsidiary or sub-contractor may act as both a Data Controller and a Data Processor, or a Joint Data Controller.
- 15.7 Without prejudice to the foregoing provisions of this clause, EFDC will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company for the duration and purposes of this Agreement.
- 15.8 Where required under Data Protection Legislation, the Company shall ensure that it has a Privacy Notice or Consent Notice in place.
- 15.9 Any failure by the Company to inform individuals as required by Data Protection Legislation or Data Guidance about the uses of Personal Data that may take place under this Agreement cannot be relied on by the Company as evidence that such use is unlawful and therefore not contractually required.

- 15.10 Without prejudice to the other provisions of this clause 15, the Company must ensure that all Personal Data processed by or on behalf of the Company in the course of delivering the Services is processed in accordance with the relevant party's obligations under Data Protection Legislation and Data Guidance. The Company shall:
- (a) process Personal Data only on the written instructions of EFDC, unless the Company is required by the laws of any member of the European Union or by the laws of the European Union ("**Applicable Laws**") applicable to the Company to otherwise process the Personal Data. Where the Company is so required, it shall promptly notify EFDC before processing the Personal Data, unless prohibited by the Applicable Laws;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by EFDC, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of EFDC has been obtained and the following conditions are fulfilled:
 - (i) EFDC or the Company has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Company complies with the reasonable instructions notified to it in advance by EFDC with respect to the processing of the Personal Data;
 - (d) notify EFDC as soon as reasonably practicable if it receives:
 - (i) a request from a Data Subject to have access to that individual's Personal Data;
 - (ii) a Right of Access, Rectification or Erasure Request;

- (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
 - (e) at the Company's expense, assist EFDC in responding to any request from a Data Subject and in ensuring compliance with EFDC's obligations (as relevant) under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) at the written direction of EFDC, delete or return Personal Data and copies thereof to the individual on termination or expiry of this Agreement unless required by the Applicable Laws to store the Personal Data;
 - (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by EFDC's designated auditor(s).
- 15.11 Where EFDC requires information for the purposes of quality management, the Company must consider whether such EFDC's request can be met by providing anonymised or aggregated data which does not contain Personal Data. Where Personal Data must be shared in order to meet the requirements of EFDC, the Company shall:
- (a) provide such information in pseudonymised form where possible; and in any event
 - (b) ensure that there is a legal basis for the sharing of Personal Data.
- 15.12 If the Company is to engage any sub-contractor (including without limitation any Subsidiary) to deliver any part of the Services (other than as a Data Processor) and such sub-contractor or Subsidiary is to access personal or confidential information or interact with individuals, the Company must impose on its sub-contractor or Subsidiary (as relevant) obligations that are no less onerous than the obligations imposed on the Company by this clause 15.
- 15.13 The Company shall indemnify EFDC against any Losses incurred by EFDC arising from, or in connection with, any breach of the Company's obligations under this clause 15.
- 15.14 Notwithstanding any other provision of this Agreement, where the Company commits a Personal Data Breach which under Data Protection Legislation must be notified to the Information Commissioner and/or to an individual, EFDC may take such action as it deems fit or as may otherwise be required in order to comply with any relevant legislation in consequence of the breach.
- 16. FREEDOM OF INFORMATION AND TRANSPARENCY**
- 16.1 The Parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

- 16.2 If the Company is not a public authority, the Company acknowledges that EFDC is subject to the requirements of the FOIA and will assist and co-operate EFDC to enable it to comply with its disclosure obligations under the FOIA. Accordingly the Company agrees:
- (a) that this Agreement and any other recorded information held by the Company on EFDC's behalf for the purposes of this Agreement are subject to the obligations and commitments of EFDC under the FOIA;
 - (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for EFDC;
 - (c) that if the Company receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by EFDC) and will promptly (and in any event within 2 working days) transfer the request to EFDC;
 - (d) that EFDC, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Company and this Agreement without consulting with the Company, or following consultation with the Company and having taken its views into account; and
 - (e) to assist EFDC in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an authority within 5 working days of such request and without charge.
- 16.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information.
- 16.4 Notwithstanding any other provision of this Agreement, the Company hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- 16.5 In preparing a copy of this Agreement for publication pursuant to clause 16.4 EFDC may consult with the Company to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at EFDC's absolute discretion.
- 16.6 The Company shall assist and co-operate with EFDC to enable EFDC to publish this Agreement.
- 16.7 The Company shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) in

relation to its security policies, procedures and control of Confidential Information, Personal Data and Special Categories of Data.

- 16.8 The Company shall be responsible for any costs associated with compliance with the provisions of this clause 16.
- 16.9 The Company shall indemnify EFDC and shall keep EFDC indemnified against Losses and Indirect Losses suffered or incurred by EFDC as a result of any breach of this clause 16.
- 16.10 The Parties acknowledge that damages may not be an adequate remedy for any breach of this clause 16 and in addition to any right to damages EFDC shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause 16. This clause 16 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

17. EQUALITY

- 17.1 The Company shall comply with all applicable European and domestic statutory and regulatory requirements where relevant to the provision by the Company of the Service and shall indemnify EFDC against all actions, claims, demands, proceedings, damages, costs, charges and expenses suffered or incurred by EFDC whatsoever and howsoever arising in respect of any breach by the Company of this clause 17.
- 17.2 The Company shall at all times comply with and take reasonable steps to secure the observance of employees of the requirements of the Disability Discrimination Act 1995, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality Regulations 2006, the Equality Act 2006 and the Human Rights Act 1998 and all other statutory and regulatory requirements (all as amended from time to time) and EFDC's policies and procedures relating to equal opportunities available on request from EFDC.

18. INSURANCE

- 18.1 EFDC shall maintain such insurance policies as EFDC deems appropriate for the Business and is legally required and/or commercially prudent to be maintained in light of the Business and activities of the Company and any Subsidiary for the benefit of the Company and each Subsidiary (as appropriate) and as notified to EFDC by the Company from completion of this Agreement until the Company itself takes out equivalent or replacement cover for such risks and eventualities, pursuant to clause 18.2
- 18.2 The Company shall, at its own expense, maintain or procure insurance policies for the benefit of the Company and/or Devco and/or Investco and/or R&Mco and/or any other Subsidiary (as appropriate) as soon as is reasonably practicable following completion of this Agreement and agreed by EFDC to be commercially prudent and in such amounts and for such circumstances as the Board deems appropriate for the Business.

19. HEALTH AND SAFETY

- 19.1 The Company shall at all times comply with the requirements of the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 and all other statutory and regulatory requirements.
- 19.2 The Company shall at all times ensure that its staff, whilst on the premises owned, managed, controlled or occupied by EFDC ("**Council Premises**"), comply with EFDC's policies and procedures relating to health and safety.
- 19.3 EFDC's nominated health and safety representative reserves the right at any time to monitor and audit health and safety systems and procedures relevant to the Services under this Agreement, including the request for a copy of the organisation's health and safety policy and such other information (including all related policies and risk assessments) relating to the provision of the Services.
- 19.4 The Company shall notify EFDC as soon as practicable of any health and safety incidents or material health and safety hazards at Council Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement.
- 19.5 The Company shall properly maintain records of all accidents and incidents and notify EFDC of all incidents that occur on Council Premises and/or meet the criteria of Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 which arise in connection with the performance of this Agreement.
- 19.6 The Company shall at all times comply with the requirement of the Equality Act 2010 and all other relevant related statutory and regulatory requirements and shall not treat any person or group of people less favourably than another on the grounds of race, colour, religion, belief, ethnicity, gender, age, disability, nationality, marital status and civil partnership, pregnancy and maternity or sexual orientation.
- 19.7 The Company shall indemnify EFDC against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever and howsoever arising in respect of any breach by the Company of this clause 18.

20. INTELLECTUAL PROPERTY

- 20.1 The copyright in the Documents shall remain vested in the Company but the Company grants to EFDC an irrevocable, non terminable, royalty-free, perpetual, non-exclusive licence to copy and to use the Documents and to reproduce the designs and content of them for any purpose connected with the Services and/or any Development, including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement and repair and/or maintenance of the Development and such licence shall enable the relevant beneficiary to copy and use the documents for the extension of the Development but shall not include a licence to reproduce the designs contained in them for any extension to the Development.
- 20.2 The licence referred to in clause 20.1 carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the expiry or termination, for any reason, of the Company's engagement under this Agreement.

- 20.3 EFDC acknowledges that the Company shall not be liable for the consequences of any use of the Documents for any purpose which is inconsistent with that for which it was prepared by the Company.
- 20.4 Insofar as the Company is the author (as defined in the Copyright, Designs and Patents Act 1988) of the Documents, the Company waives any moral rights which he might otherwise be deemed to possess under Chapter IV of that Act in respect of the Documents.
- 20.5 The Company shall procure for EFDC and any other beneficiary notified by EFDC to the Company a waiver corresponding to that in clause 20.4 from any Subsidiary, sub-contractor and/or sub-consultant employed by the Company who is an author (as referred to in the Copyright, Designs and Patents Act 1988) of any part of the Documents.
- 20.6 The Company shall indemnify EFDC against any liability which EFDC may incur by reason of the Company infringing or being held to have infringed any copyright or other intellectual property rights of any person.
- 20.7 The Company shall, on request, provide such copies of the Documents (in hard copy or electronic form) as it may reasonably require in connection with the Services and/or any Development.
- 20.8 EFDC shall, to the extent it is able to do so, grant licences in relation to EFDC's copyright and intellectual property in any design for use on a Development (where practicable and agreed to be provided in the Business Plan by EFDC) on an irrevocable, non terminable, royalty-free, perpetual, non-exclusive basis (or such other basis as EFDC may otherwise reasonably require) and so the Company and any Subsidiary may copy and to use the Documents as may be required by the Company and/or any Subsidiary in connection with the Services and/or any Development or as may otherwise be agreed to be provided by EFDC to the Company and/or any Subsidiary and such licence(s) shall (where and to the extent EFDC can permit or allow for the same):
- (a) entitle the Company and/or any Subsidiary to reproduce the designs and content of them for any purpose connected with the Services and/or any Development, including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement and repair and/or maintenance of any Development;
 - (b) enable the beneficiary to copy and use the documents for the extension of the Development but shall not include a licence to reproduce the designs contained in them for any extension to the Development; and
 - (c) be freely transferable.

21. NOTICES

- 21.1 Subject to clause 21.4, any notice given by a Party under or in connection with this Agreement must be:

- (a) in writing (which, for the purposes of this clause 21.1 will include email) in the English language;
- (b) signed by or on behalf of the Party giving it;
- (c) sent or delivered to the address, and marked for the attention of the person, specified in this clause 21.1(c) and in the case of a Party that is not a natural person, stating the name of that party:

- (i) Epping Forest District Council
Civic Offices
High Street
Epping
CM16 4BZ
FAO: CEO – Georgina Blakemore

- (ii) Qualis Group Ltd
Civic Offices
High Street
Epping
CM16 4BZ
FAO: []

or to such other person or address within the UK as that party may notify in accordance with and for the purposes of this clause 21; and

- (d) delivered by hand or by courier or sent by pre-paid first class post, pre-paid airmail, email or special delivery.

21.2 Any notice will, subject to clause 21.3, be deemed to have been delivered (provided that the other requirements of this clause 21 have been complied with):

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address;
- (b) if sent by special delivery, on signature on delivery of the notice to the address;
- (c) if sent by pre-paid first class post, to an address in the UK, at 9:00am on the second Business Day after (and excluding) the date of posting;
- (d) if sent by pre-paid airmail to an address outside the country from which it is posted, at 9:00am on the fifth Business Day after (and excluding) the date of posting; or
- (e) if sent by email, at the time of completion of transmission by the sender.

21.3 If, under clause 21.2, a notice would be deemed to have been received:

- (a) before 9:00am on a Business Day it will be deemed to have been received at 9:00am on that Business Day; or
 - (b) after 5:30pm on a Business Day, or on a day that is not a Business Day, it will be deemed to have been received at 9:00am on the next Business Day.
- 21.4 Any change of address or addressee notified under clause 21.1(c) will take effect on the date on which the notice is served or, if later, on the date specified in the notice.
- 21.5 The provisions of this clause 21 will not apply to the service of proceedings or other documents in any legal action.

22. ANNOUNCEMENTS

- 22.1 Subject to clause 22.2, no Party shall make or authorise any public announcement or other communication or circular concerning the terms of any matter contemplated by or ancillary to this Agreement without the prior written consent of the EFDC's Representative such consent not to be unreasonably withheld or delayed.
- 22.2 A Party may:
- (a) make or authorise an announcement required by law or by any regulatory or governmental body (whether or not such requirement has the force of law); and
 - (b) make a communication to its professional advisers in connection with advice relating to the interpretation of this Agreement, proceedings relating to the enforcement of the terms of this Agreement or otherwise.

23. ENTIRE AGREEMENT

- 23.1 This Agreement (together with the documents referred to in it) constitute the entire agreement and understanding between the Parties with respect to its subject matter and supersedes all earlier understandings and agreements, whether express or implied, relating to the subject matter of this Agreement.
- 23.2 Each Party acknowledges and undertakes to each other Party that it has not relied on or been induced to enter into this Agreement on the basis of, and will have no remedy in respect of, any representation, promise, assurance or warranty or undertaking not expressly set out in this Agreement.

24. THIRD PARTY RIGHTS

- 24.1 No provision of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

25. MISCELLANEOUS

25.1 Relationship to Articles

- 25.1.1 In the event of a conflict between any provision of this Agreement and the Articles, then as between any Shareholders and as between the Parties, the provisions of this Agreement will prevail.

25.1.2 Nothing in this Agreement will be deemed to constitute an amendment to the Articles nor any previous articles of association of the Company.

25.2 No partnership

25.2.1 Nothing in this Agreement will create, imply or evidence any partnership between all or any of the Parties or the relationship of principal and agent between any of them.

25.2.2 Each Party confirms that it is acting on its own behalf and not for the benefit of any other person.

25.3 Further assurance

Each Party must, and must use all reasonable endeavours to procure that any necessary third party will, execute and deliver those documents, and perform those acts, as may be required for the purpose of giving full effect to the provisions of this Agreement.

25.4 No assignment

No right or benefit under this Agreement may be assigned or held in trust for any other person or otherwise made subject to any Encumbrance other than with the prior written consent of all Parties to this Agreement unless such assignment or trust is permitted or otherwise approved by EFDC under and in accordance with the 1 Year Business Plan and/or the 6 Year Business Plan. Any purported assignment of any rights or benefits under this Agreement will be void.

25.5 Successors and assigns

This Agreement is entered into for the benefit of the Parties and their successors and permitted assigns, and the rights and obligations of the Parties under this Agreement will continue for the benefit of, and will be binding on, their respective successors and permitted assigns.

25.6 Amendments

No amendment to this Agreement will be effective unless it is in writing and stated to constitute an amendment to this Agreement and it is signed by or on behalf of each of the Parties.

25.7 No waiver

25.7.1 Any delay by a Party in exercising, or omission to exercise, a right under this Agreement will not operate as a waiver of that right.

25.7.2 A single or partial exercise of a right under this Agreement will not preclude the exercise of any other right.

25.7.3 No waiver by a Party of any right under, or requirement of, this Agreement will be effective unless it is in writing signed by it and it is stated to be a waiver of that right or requirement.

25.8 Severability

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to, or deletion of, a provision or part-provision under this clause will not affect the validity and enforceability of the rest of this Agreement.

25.9 Counterparts

This Agreement may be executed in any number of counterparts each executed by at least one Party and each of which constitute an original, but all of which together will constitute one instrument. This Agreement will not take effect until each Party has executed and delivered at least one counterpart.

26. GOVERNING LAW

This Agreement and any dispute, claim, action, proceeding or demand arising out of or in connection with its subject matter, formation or effect (including any non-contractual disputes, claims, actions, proceedings or demands) (**Disputes** and each a **Dispute**) will be governed by, and construed in accordance with, the law of England.

27. JURISDICTION

27.1 Subject to clause 27.2, each Party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of England to settle any Dispute;
- (b) undertakes not to bring proceedings in the courts of any state or country other than England ;
- (c) waives any objection to the courts of England having jurisdiction on the grounds of inconvenient forum or otherwise; and
- (d) undertakes not to oppose the enforcement or recognition of any judgment or order of the courts of England by the courts of any other state or country that (under the laws applicable in that country or state) are competent to recognise or enforce a judgment or order of the courts of England.

27.2 A Party may bring proceedings in the courts of any country or state for the purposes of enforcing or seeking recognition of a judgment or order of the courts of England

SCHEDULE 1

Part 1: Details of the Company

Registered number:	12250938
Registered office:	Civic Offices High Street Epping England CM16 4BZ
Directors:	Nicholas Harry William Dawe
Secretary:	N/A
Accounting reference date:	31 October
Charges:	None
Issued share capital (including Treasury Shares):	1 ordinary share of £1
Charges:	None

Part 2: Shareholder and share capital

Member of the Company

Member	Number of Shares held
Epping Forest District Council	1 ordinary share

SCHEDULE 2

RESERVED MATTERS

1. Permit or cause to be proposed any alteration to its share capital (including any increase or removal of the limit on the number of Shares that may be allotted by the Company) or the rights attaching to its Shares or waive any right to receive payment on any of its Shares issued partly paid;
2. Create, allot, issue, buy-in or redeem any Share or loan capital or grant or agree to grant any options or warrants for the issue of any Share or loan capital or issue any securities convertible into Shares, or establish any employee incentive scheme, except in accordance with the Articles or this Agreement;
3. Permit the Company to hold any Treasury Shares or permit the sale or transfer or cancellation of any Shares held by the Company as Treasury Shares;
4. Permit or cause to be proposed any amendment to the Articles;
5. Propose or pay any dividend or propose or make any other distribution (as defined under section 1000 or section 1064 of the CTA 2010);
6. Subscribe or otherwise acquire, or dispose of any shares in the capital of any other company (including, without limitation, any Subsidiary) other than as envisaged and/or permitted in the Project Documents at the date of this Agreement;
7. Acquire or dispose of the whole or part of the undertaking of any other person or dispose of the whole or part of the undertaking of the Company (and/or any Subsidiary of the Company) or merge the Company (and/or any Subsidiary of the Company) or any part of its (or their) business with any other person or propose to do so;
8. Apply for the listing or trading of any Shares or debt securities on any stock exchange or market or engage any broker, advisor (including, without limitation, financial, accounting, auditing or legal), investment bank or similar party to provide any services in connection with the same;
9. Permit the Company to cease, or propose to cease, to carry on its business or permit the Company or its directors (or any one of them) to take any step to wind up the Company, except where it is insolvent (within the meaning of section 123 of the Insolvency Act 1986);
10. Permit the Company or its directors (or any one of them) to take any step to place the Company into administration (whether by the filing of an administration application, a notice of intention to appoint an administrator or a notice of appointment), permit the Company or its directors to propose or enter into any arrangement, scheme, moratorium, compromise or composition with its creditors (whether under Part I of the Insolvency Act 1986 or otherwise) or to apply for an interim order under Part 1 of the Insolvency Act 1986, or permit the Company or its directors to invite the appointment of a receiver or administrative receiver over all or any part of the Company's assets or undertaking;

11. Enter into or give or permit or suffer to subsist any guarantee of or indemnity or contract of suretyship for or otherwise commit itself in respect of the due payment of money or the performance of any contract, engagement or obligation of any other person or body other than of a wholly-owned subsidiary of the Company where permitted in the Financial Model;
12. Engage any broker, advisor (including, without limitation, financial, accounting, auditing or legal), investment bank or similar party to provide any services in connection with a proposed sale of the issued share capital of the Company;
13. Deal in any way (including the acquisition or disposal, whether outright or by way of licence or otherwise howsoever) with intellectual property other than in the ordinary course of business;
14. Incur any capital expenditure (including obligations under hire-purchase and leasing arrangements) (unless such expenditure is already provided for or authorised pursuant to a Project Document, the 1 Year Business Plan or 6 Year Business Plan approved by EFDC) which exceeds either:
 - (a) in relation to any item 10% of the cost shown for such item in the 1 Year Business Plan or 6 Year Business Plan approved by EFDC; or
 - (b) increases the overall capital expenditure in any relevant year (as shown in the 1 Year Business Plan or 6 Year Business Plan) by more than one million pounds (£1,000,000.00) in aggregate;
15. Dispose ((unless such disposal is already provided for or authorised pursuant to a Project Document, the 1 Year Business Plan or 6 Year Business Plan approved by EFDC) of any asset of a capital nature having a book or market value greater than £250,000;
16. Make any material change to the nature of the Business and/or the jurisdiction where it is managed and controlled;
17. Change the name of the Company;
18. Establish any new branch, agency, trading establishment or business or close any such branch, agency, trading establishment or business;
19. Do any act or thing outside the ordinary course of the business carried on by it and/or the Subsidiaries;
20. Make any change to:
 - (a) its auditors;
 - (b) its bankers or the terms of the mandate given to such bankers in relation to its account(s);
 - (c) its accounting reference date;

- (d) its accounting policies, bases or methods from those set out in its accounts and the accountants' report (other than as recommended by the auditors of the Company); or
21. Factor any of its debts, borrow monies (other than by way of its facilities in place at the date of this Agreement), or incur indebtedness or accept credit (other than normal trade credit) unless authorised or provided for pursuant to a Project Document, the 1 Year Business Plan or 6 Year Business Plan and/or the Financial Model;
 22. Engage any employee or consultant on terms that either their contract cannot be terminated by three months' notice or less or any or all of that employee's emoluments (other than base salary), commissions or bonuses are or are likely to be at the rate in excess of twenty percent (20 %) of such employee's base salary per annum or more or increase any or all of the emoluments (excluding base salary), commissions or bonuses of any employee or consultant to more than fifty eight thousand pounds (£58,000) per annum or vary the terms of employment of any employee or consultant earnings (or so that after such variation they will, or are likely to earn) more than two hundred thousand pounds £200,000 per annum in aggregate unless and to the extent provided for in the 1 Year Business Plan or 6 Year Business Plan;
 23. Vary or make any binding decisions on the terms of employment and service of any director or company secretary of the Company, increase or vary the salary or other benefits of any such officer, or appoint or dismiss any such officer;
 24. Mortgage or charge or permit the creation of or suffer to subsist any mortgage or fixed or floating charge, lien (other than a lien arising by operation of law) or other Encumbrance over the whole or any part of its undertaking, property or assets;
 25. Make any loan or advance or give any credit (other than in the ordinary course of business) to any person or acquire any loan capital of any corporate body (wherever incorporated) other than to the Key Subsidiaries on the basis outlined in the 1 Year Business Plan and/or 6 Year Business Plan and detailed in the relevant Business Plan for a Development;
 26. Permit the appointment or removal of any person as a director of it;
 27. Conduct any litigation material to the Company, except for the collection of debts arising in the ordinary course of the business carried on by the Company or any application for an interim injunction or other application or action (including interim defence) which is urgently required in the best interests of the Company in circumstances in which it is not reasonably practicable to obtain prior consent under clause 7;
 28. Propose or implement any variation to any Company pension scheme or any of the benefits payable to members of the scheme;
 29. Take or agree to take any leasehold interest in or licence over any real property other than has been approved by EFDC under a the 1 Year Business Plan and/or the 6 Year Business Plan;

30. Other than where expressly contemplated by this Agreement or any service agreement entered into before the coming into force of this Agreement, enter into or vary any transaction or arrangement with, or for the benefit of any of its directors or Shareholders or any other person who is connected with any of its directors or Shareholders;
31. Enter into any transaction or make any payment other than on an arm's length basis for the benefit of the Company other than as envisaged and/or permitted in the Project Documents at the date of this Agreement;
32. Enter into any partnership, joint venture or consortium agreement other than has been approved by EFDC under a the 1 Year Business Plan and/or the 6 Year Business Plan;
33. Surrender or agree to any material change in the terms of any substantial supply or distribution agreement to which it is from time to time a party;
34. Enter into or vary either any unusual or onerous contract or any other material or major or long term contract;
35. Make any gifts or charitable donations above £50,000 in aggregate per annum or make any political donation;
36. Materially vary a Business Plan for a Development other than as envisaged and/or permitted in both the 1 Year Business Plan and 6 Year Business Plan.
37. Vary the Baseline Model or Financial Model.
38. Vary the 1 Year Business Plan and/or 6 Year Business Plan.
39. Make any distribution other than as envisaged in the Financial Model current at the time when such distribution is being made and/or proposed to be made.
40. Give any appropriate guarantee or indemnity whatsoever where EFDC is named as the parent company or guarantor.
41. Enter into any formal joint venture or partnership or profit sharing agreement other than as envisaged and/or permitted by the 1 Year Business Plan and/or the 6 Year Business Plan.
42. Enter into a contract or transaction except in the ordinary and proper course of business on arms-length terms.
43. Appoint any agent or intermediary to conduct the whole or any part of the Business.
44. Give notice of termination of any arrangements, contracts or transactions which are material in the nature of the Business or materially varying any such arrangements, contracts or transactions.
45. Enter into any lease arrangement other than with EFDC (unless such arrangements are already provided for or authorised pursuant to a Project Document, the 1 Year Business Plan or 6 Year Business Plan approved by EFDC).

46. Make any material alteration to any contract or transaction entered into between the Company and EFDC or persons connected with them.
47. Unless authorised or provided for pursuant to a Project Document, the 1 Year Business Plan or 6 Year Business Plan and/or the Financial Model:
 - (a) create or issue any Encumbrance over any of the Company's assets (unless arising pursuant to a retention of title clause on the ordinary course of Business) or increase the amount of any borrowing capable of being secured thereby;
 - (b) enter into any borrowing or lending arrangements or give any guarantee, indemnity, assurance, undertaking, or the like;
 - (c) obtain third party finance or contributions;
 - (d) make any alteration to the 1 Year Business Plan or 6 Year Business Plan;
 - (e) make any alteration to the Financial Model;
 - (f) sell, release, assign, or factor the debts or securities of the Company;
 - (g) making any distribution of profit, except where expressly provided for in this Agreement; or
 - (h) approve the Financial Regulations of the Company.
48. Cease to carry on or change the Business.
49. Carry on the Business otherwise that in accordance with the relevant Business Plan for a Development and the Financial Model.
50. Conduct all or any part of the Business other than through the Company and/or any of its Key Subsidiaries.
51. Change the place of Business or open a new place of business.
52. Make any distribution other than as envisaged in the Financial Model current at the time when such distribution is being made and/or proposed to be made.
53. Engage in any activities or actions which would detract from or diminish any brand image agreed between EFDC and the Company, to promote the image of the Company and its working relationship with EFDC and EFDC's other delivery vehicles or service providers.
54. Grant any license of intellectual property other than in the ordinary course of the Company's business.
55. Make amendments to the Company's Objectives
56. Make any amendments to the constitution documents of the Company that is inconsistent with the constitution documents of EFDC or that would cause EFDC to be acting ultra vires or to act in an ultra vires manner.

EXECUTION PAGE

SHAREHOLDERS' AGREEMENT

This Agreement has been executed by the parties as a deed and is delivered on the date stated at the beginning of it.

Executed as a Deed by)
Epping Forest District Council whose)
Common Seal was hereunto affixed in)
the presence of)

sign here:

Authorised Officer
print name:

Executed as a Deed by)
Qualis Group Ltd)
acting by a director in the presence of:)

sign here:

Director
print name:

Witness signature:

Witness sign here:

Witness name:

print name:

Witness address:

insert address here:

Witness occupation:

insert occupation here:

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DIRECTORS: ROLE AND RESPONSIBILITIES

WHAT IS A DIRECTOR?

Although this may seem obvious, it is not necessarily just those people who are called 'directors' who will qualify as such. For instance, company law provides that a director includes 'any person occupying the position of director, by whatever name called'. This means that if, on the facts, a person is fulfilling the role of a director, then he or she may be deemed to be one and fully liable as such. Equally, if the directors are accustomed to act in accordance with the directions and instructions of a third party, that person may be deemed to be a 'shadow director' of the company and liable as such.

WHAT IS THE DIRECTOR'S ROLE?

Although companies are legal entities in their own right, they can only act through human agents. Company directors fulfil this role and the operation and management of the company is typically delegated to them. The directors' powers to manage the company are subject to the terms of its constitution and any restrictions that may be contained within it.

Directors exercise their powers principally through the board of directors, which is the body empowered and entrusted to 'direct' the affairs of the company. The board will meet periodically to consider matters relating to the management of the company and will make its decisions collectively through resolutions. However, in practice, the running of a company of any real size would be impossible if all decisions required a full board meeting. Whilst in small companies with few directors, day-to-day decisions can be taken at meetings of all of the directors, board meetings of larger companies are relatively infrequent and are generally used to discuss and formulate policy or to approve and authorise important transactions.

The operation of most companies is delegated to their executive directors, who are usually employed by the company under the terms of a service contract. Except in the smallest companies, it is common to appoint one or more non-executive directors, who are selected for their commercial experience and expertise, but who are generally not involved in the day-to-day running of

the company and do not devote their whole working time to it. Their relative distance from the daily operations of the company gives them an objective overview, which operates to the benefit of members. In addition, for publicly quoted companies, the UK Corporate Governance Code 2018 and the Quoted Companies Alliance Corporate Governance Code for Small and Mid-Size Quoted Companies 2018 (QCA Code), both recently updated, preserve the requirement for the appointment of non-executive directors and impose greater accountability on directors.

WHICH DUTIES ARE IMPOSED ON DIRECTORS?

As directors have extensive powers, the law imposes certain duties on them to safeguard the rights of shareholders and others.

Directors' duties are now primarily set out in a statutory statement of directors' duties introduced by the Companies Act 2006 (Act). However, it is important to note that this statement is still not an exhaustive list of the duties of directors.

The seven main general duties owed by directors to a company are as follows:

- to act within powers;
- to promote the success of the company;
- to exercise independent judgment;
- to exercise reasonable care, skill and diligence;
- to avoid conflicts of interest;
- not to accept benefits from third parties; and
- to declare interests in proposed transactions or arrangements with the company.

The statement codifies (with some significant changes) and replaces the common law and fiduciary duties that have been developed by the courts in case law over many years. This case law remains highly relevant because the Act expressly states that in interpreting the statement, regard should be had to the case law that it replaces.



Wider stakeholder engagement has been a key driver in recent corporate governance reform discussions. As a result, related reforms (taking effect from 1 January 2019) include for example:

- Large companies (including large private companies) will be required to include a 'section 172 statement' in their strategic report describing how the directors have had regard to the matters in section 172 of the Act (ie to promote the success of the company).
- Large and medium-sized companies (including private companies) with more than 250 UK employees will be required to include a statement in their directors' report explaining how the directors have engaged with employees, how they have had regard to employee interests and the effect of that on the business.
- Large companies (including large private companies) will be required to include a statement in their directors' report explaining how the directors have had regard to the need to foster the company's business relationships with suppliers, customers and others, and the impact of that on the business.
- The introduction of the Wates Corporate Governance Principles for Large Private Companies (Wates Principles), intended to provide large private companies with a voluntary framework when complying with the corporate governance reporting requirements outlined above. While aimed at large private companies, the Wates Principles will provide a useful tool for a wide range of companies (not just those covered by the new reporting requirement) to understand and adopt good practice in corporate governance.

There are various remedies that may be sought against directors for breach of their duties, depending upon the circumstances. These include both civil and criminal penalties, depending on the breach. For example, a director who commits a breach of duty may face civil action by the company for which he may be held personally liable to pay damages, or other orders. He may be the subject of investigation by a third party, such as the Department of Trade, for breach of any of his

duties and may be disqualified for a period of up to 15 years under the Company Directors Disqualification Act 1986.

Actions can also be brought by shareholders in the name of the company with prior consent of the court.

OTHER SOURCES OF DUTIES

In addition to the general duties set out in the Act's statement of directors' duties, there are a number of other duties imposed upon directors - for example under health and safety legislation or by regulatory authorities in relation to publicly traded companies. The codified statutory position under the Act is by no means a 'one-stop shop' for a full understanding of all directors' duties.

Other legislation, such as the Financial Service and Markets Act 2000, the Insolvency Act 1986, the Corporate Manslaughter and Bribery Acts all impose additional duties. Breach of other types of regulation, such as those made under health and safety legislation, environmental legislation and data protection, can give rise to both civil and criminal action.

The assessment of whether a particular decision or course of action was negligent or non-compliant will always be a matter of detailed evaluation of the facts. For directors to protect themselves in advance they must ensure that decision processes are well documented, showing how and why decisions were reached. A defence to an allegation, that a decision was not reasonable or diligent, will be greatly assisted if the detailed reasoning is clearly set out in minutes with supporting papers showing how the decision was arrived at, any advice that was obtained and where appropriate consultation with relevant stakeholders, such as shareholders or possibly trade unions.

RESPONSIBILITIES ON INSOLVENCY

Directors of companies in financial difficulties face additional issues and directors of insolvent companies may be found liable for fraudulent or wrongful trading. This is a particularly nuanced area for directors to navigate so where a company is in (or approaching) financial difficulties directors should seek independent legal advice as soon as possible if they are to avoid potential personal liability under insolvency legislation. Liability can attach to the directors for fraudulent or wrongful trading if the company continues trading when



insolvent and the interests of creditors are prejudiced. Notably, where a company is insolvent or approaching insolvency, the general duty to promote the success of the company is modified so that a director must instead act in the best interests of the company's creditors. Fraudulent trading occurs if, in the course of a winding up, it appears that any business of the company has been carried on with intent to defraud creditors or for any other fraudulent purpose. In such cases the liquidator can seek a court declaration that anyone who was knowingly party to the fraudulent business make a contribution to the company's assets. Only those who were knowingly parties to the fraudulent trading are caught by this offence: there has to be "actual dishonesty, involving, [...], real moral blame".

Directors of an insolvent company may be found liable for wrongful trading if it is established that, at a time before the company went into insolvent liquidation, the director knew or ought to have concluded, there was no reasonable prospect of the company avoiding an insolvent liquidation. There is no requirement for dishonesty by the director and a director's actions will be judged on the basis of what a reasonable director would have done in the circumstances with the same knowledge, skill and experience as the director in question. It will be a defence for a director to show that, after the point when he concluded (or should have concluded) that there was no reasonable prospect of the company avoiding an insolvent liquidation, he took every step a reasonably diligent director could be expected to take with a view to minimising the potential loss to the company's creditors. A director found liable for wrongful trading may be required to make a personal contribution to the assets of the insolvent company.

MITIGATING DIRECTORS' LIABILITY

In some cases, there may be opportunities for directors to mitigate their liability. In certain situations, the court may grant relief from liability if the director has acted honestly and reasonably; in other circumstances, the shareholders of the company may ratify unauthorised acts.

A company may (but is not obliged to) indemnify its directors in respect of certain proceedings brought against them by third parties. An indemnity can potentially cover both the cost of the claim itself and the costs involved in defending it but never the

unsuccessful defence of fines imposed in criminal proceedings or penalties imposed by regulatory bodies.

Against this background, it is common for a company to take out directors' and officers' insurance on behalf of its directors. Policy cover and terms vary but typically deal with directors' liabilities arising from claims of negligence, breach of duty or other default. Standard policy exclusions include fraud, dishonesty and criminal behaviour but the directors should ensure they understand any limitations on cover and that insurance policies are kept under regular review.

OTHER RESPONSIBILITIES: LISTED COMPANIES

Directors of companies whose securities are listed on an investment exchange are subject to a further layer of regulation. For example, the Listing Rules of the UK Listing Authority impose a number of duties on the directors of a company listed on the Official List and the AIM Rules of the London Stock Exchange have the same effect in relation to that market. One requirement of the Listing Rules that is particularly important for such directors is that companies incorporated in the UK with a premium listing of equity shares must include in their annual reports and accounts a statement as to how they have applied the principles of good governance set out in the UK Corporate Governance Code, giving reasons for any non-compliance (frequently referred to as 'comply or explain'). Likewise, since new corporate governance requirements came into effect on 28 September 2018, boards of AIM listed companies have been required to adopt a recognised corporate governance code (typically selecting the QCA Code), explaining how the company complies with it and how it departs from it (together with an explanation of the reasons for any departures from the chosen code). Previously, AIM companies have not been required to do this.

It should be noted that although these corporate governance codes have been prescribed solely for publicly listed companies, they do provide helpful guidance, and are increasingly seen as relevant, to all companies on best practice in governance issues. The boards of all companies (however small) should give consideration to having in place a corporate governance framework which is suitable for the company's size, shareholders, stakeholders and business model, since



this will lead to a more effective board and, in turn, to a more efficient and successful business.

FURTHER INFORMATION

For further information, please get in touch with your usual Penningtons Manches contact.

This briefing note is intended merely to provide a summary of the law in this area and is not a comprehensive guide. It is not intended to provide legal advice for specific cases. The law and practice in this note is stated as at December 2018.

FIND OUT MORE

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PENNINGTONS
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COOPER

Formalities for a Directors' Board Meeting

Epping Forest District Council

Epping Forest District Council

Formalities for a Directors' Board Meeting

Obligation to meet	<p>There is no specific minimum number of board meetings prescribed by law. Directors must meet sufficiently often to ensure that they are discharging their duties as directors. We have proposed in the shareholders' agreement that the board meets once a month.</p>
Calling a meeting	<p>Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice. Notice of a directors' meeting must indicate:</p> <ul style="list-style-type: none">(a) its proposed date and time;(b) where it is to take place; and(c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting. <p>Notice of a directors' meeting must be given to each director but need not be in writing.</p>
Chairperson	<p>The Parent Company (if there is one) may appoint, and remove, a person who is a director to chair meetings of the directors and the person so appointed shall be known as the chairperson. Such appointment or removal shall be by notice to the company. If and for so long as the position of chairperson is vacant, the directors may appoint one of their number to be the chairperson and may terminate such chairperson's appointment at any time.</p>

	<p>If the chairperson is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.</p>
Quorum	<p>The quorum for directors' may be fixed from time to time by a decision of the directors, but it must never be less than two. The quorum for a meeting of directors will usually be determined by the articles.</p> <p>A quorum must be present at the start of, and throughout, the meeting. In the absence a quorum, no business should be transacted and any resolutions purporting to be passed will be invalid (except as specifically permitted under the articles). Subject to the provisions in the articles, the board meeting should be adjourned until a quorum can be found.</p> <p>The chairperson is responsible for determining whether there is a quorum.</p> <p>If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision:</p> <ul style="list-style-type: none"> (a) to appoint further directors; or (b) to call a general meeting so as to enable the shareholders to appoint further directors. <p>Any alternate director appointed (with the approval of the Parent Company) may be counted as participating for the purposes of determining whether a quorum is participating, may participate in a decision of the directors (only if that person's appointor is eligible to vote in relation to that decision but does not participate) and shall not be counted as more than one director.</p>
Conflicts of interest	<p>Subject to the provisions of the Companies Acts and the articles and provided that a director has previously disclosed the nature and extent of such duty or interest to the directors in accordance with the provisions of the Companies Acts, and provided further that they have obtained the approval of the Parent Company, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement of the company:</p>

	<p>(a) may vote at a meeting of the directors (or any committee of the directors), and form part of a quorum present at that meeting, or participate in any decision making of the directors in relation to such transaction or arrangement with the company;</p> <p>(b) may be a party to, or otherwise interested in, any such transaction or arrangement; and</p> <p>(c) shall not, save as they may otherwise agree, be accountable to the company for any benefit which they (or a person connected to them) derives from any such transaction or arrangement and no such transaction or arrangement shall be liable to be avoided on the grounds of any such interest not shall the receipt of any remuneration or other benefit constitute a breach of their duty under section 176 of the Companies Act 2006.</p>
Voting	<p>The general rule about decision making by directors is that any decision of the directors must be either a majority decision at a meeting or a unanimous decision.</p> <p>If the company only has one director and no provision in the articles requires it to have more than one director, the general rule does not apply and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision making.</p> <p>A unanimous decision is made when all eligible directors indicate to each other by any means that they share a common view on a matter. Such decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.</p> <p>A director who is an alternate director is entitled, in the absence of his appointor, to a separate vote on behalf of this appointor, in addition to his own vote on any decision of the directors.</p>
Casting vote	<p>If the number of votes for and against a proposal are equal, the chairperson or other director chairing the meeting has a casting vote.</p> <p>This does not apply if, in accordance with the articles, the chairperson or other director is not to be counted as participating in the decision making process for quorum or voting purposes.</p>

Duty to take minutes

Every company is required to take minutes of all proceedings at meetings of its directors. The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

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