

Agenda

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Shareholder Meeting **Oxford Direct Services Limited** **Oxford Direct Services Trading Limited**

Date: **Monday 18 December 2017**

Time: **5.00 pm**

Place: **Barrister's Room - Town Hall**

For any further information please contact the Committee
Services Officer:

John Mitchell, Committee and Member Services Officer

Telephone: 01865 252402

Email: democraticservices@oxford.gov.uk

Shareholder Meeting

Membership

Chair Councillor Bob Price

Vice-Chair Councillor Susan Brown

Councillor Tom Hayes

Councillor Mike Rowley

Councillor Linda Smith

Councillor Marie Tidball

Councillor Alex Hollingsworth

Councillor Dee Sinclair

Councillor John Tanner

Councillor Ed Turner

The quorum for this meeting is three members.

Copies of this agenda

Reference copies are available to consult in the Town Hall Reception. Agendas are published 6 working days before the meeting and the draft minutes a few days after.

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- viewed using the computers in the Customer Services, St Aldate's, or
- subscribed to electronically by registering online at mycouncil.oxford.gov.uk

AGENDA

	Pages
Items to be considered in public	
1 Apologies for absence	
2 Declarations of Interest	
3 ODSL and ODSTL terms of reference	9 - 14
<p>The proposed terms of reference for Oxford Direct Services Limited and Oxford Direct Services Trading Limited are set out in the attached document.</p> <p>Recommendation: that the Shareholder Group resolves to:</p> <p>Approve the terms of reference.</p>	
4 ODSL and ODSTL Adoption of Articles of Association	15 - 40
<p>Attached are:</p> <ul style="list-style-type: none">• Articles of Association (common to both companies)• Resolutions to confirm agreement to the Articles (one for each company) <p>Recommendation: that the Shareholder Group resolves to:</p> <p>Agree the resolutions to adopt the Articles of Association for both Oxford Direct Services Limited and Oxford Direct Services Trading Limited and that Councillor Bob Price be authorised to sign them on behalf of the Shareholder.</p>	
5 ODSL and ODSTL Shareholder Agreements	41 - 84
<p>On 29 November 2017 the Board of Directors of Oxford Direct Services Limited and Oxford Direct Services Trading Limited resolved that the attached Shareholder Agreements be put to the Shareholder Group for its consideration and, if appropriate, approval, following which the agreements will be signed on behalf of both parties.</p> <p>Recommendation: that the Shareholder Group resolves to:</p> <ol style="list-style-type: none">1. Agree the City Council's entry into the Shareholder Agreements and nominate Cllr Price to sign on its behalf; and2. Note that Tim Sadler will sign the agreements behalf of Oxford Direct Services Limited and Oxford Direct Services Trading Limited.	

6 Appointment of Auditor

To note the present position in respect of the appointment of an auditor to Oxford Direct Services Limited and Oxford Direct Services Trading Limited. The Council's Head of Financial Services will provide a verbal update.

7 ODSL and ODSTL appointment of Director

The Group is asked to note that Graham Bourton is retiring from Oxford City Council on 31 January 2018 and resigned as a Director of Oxford Direct Services Limited and Oxford Direct Services Trading Limited with effect from 31 October 2017.

It is proposed that Simon Howick should be appointed as a Director of Oxford Direct Services Limited and Oxford Direct Services Trading Limited with effect from 18 December 2017.

Recommendation: that the Shareholder Group resolves to:

Approve the appointment of Simon Howick as a Director of Oxford Direct Services Limited and Oxford Direct Services Trading Limited with effect from 18 December 2017.

8 Any other business

Items to be considered in private - matters exempt from publication

If the Shareholder Group wishes to exclude the press and the public from the meeting during consideration of any of the items on the exempt from publication part of the agenda, it will be necessary for the Shareholder Group to pass a resolution in accordance with the provisions of Paragraph 21(1)(b) of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 on the grounds that their presence could involve the likely disclosure of exempt information as described in specific paragraphs of Schedule 12A of the Local Government Act 1972.

The Shareholder Group may maintain the exemption if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Matters Exempt from Publication

9 ODSL and ODSTL Business Plan

85 - 88

The Board of Directors of Oxford Direct Services and Oxford Direct Services Trading Limited will present the draft business plan to the Shareholder Group.

Recommendation: that the Shareholder Group resolves to:

1. **Note** the progress of Oxford Direct Services Limited and Oxford Direct Services Trading Limited ; and
2. **Endorse**, the draft business plan.

Councillors declaring interests

General duty

You must declare any disclosable pecuniary interests when the meeting reaches the item on the agenda headed "Declarations of Interest" or as soon as it becomes apparent to you.

What is a disclosable pecuniary interest?

Disclosable pecuniary interests relate to your* employment; sponsorship (ie payment for expenses incurred by you in carrying out your duties as a councillor or towards your election expenses); contracts; land in the Council's area; licenses for land in the Council's area; corporate tenancies; and securities. These declarations must be recorded in each councillor's Register of Interests which is publicly available on the Council's website.

Declaring an interest

Where any matter disclosed in your Register of Interests is being considered at a meeting, you must declare that you have an interest. You should also disclose the nature as well as the existence of the interest.

If you have a disclosable pecuniary interest, after having declared it at the meeting you must not participate in discussion or voting on the item and must withdraw from the meeting whilst the matter is discussed.

Members' Code of Conduct and public perception

Even if you do not have a disclosable pecuniary interest in a matter, the Members' Code of Conduct says that a member "must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself" and that "you must not place yourself in situations where your honesty and integrity may be questioned". What this means is that the matter of interests must be viewed within the context of the Code as a whole and regard should continue to be paid to the perception of the public.

*Disclosable pecuniary interests that must be declared are not only those of the member her or himself but also those member's spouse, civil partner or person they are living with as husband or wife or as if they were civil partners.

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Oxford Direct Services Ltd (ODSL) and Oxford Direct Services Trading Ltd (ODSTL) Shareholder Groups - terms of reference and meeting arrangements

Overview

The Council has established two wholly owned Local Authority Trading Companies (LATCO) to trade services and generate income for the Council. These companies are Oxford Direct Services Ltd (ODSL), responsible for providing trade services to Oxford City Council, and Oxford Direct Services Trading Ltd (ODSTL) responsible for competing for work with the private sector. These companies are referred to collectively as “the LATCO” or “the LATCO Group”.

The Council is the sole shareholder in the LATCO Group. Shareholding is an executive function. Under the ‘strong leader’ model operated by this Council, executive power is vested in the Leader of the Council. The Leader of the Council therefore has the authority to determine how the Council is to be represented in its role as the shareholder of its companies.

The Leader of the Council has delegated his responsibility for the shareholder function in relation to the LATCO Group to the members of the City Executive Board (CEB) collectively. ODSL and ODSTL are separate companies and will report to separate shareholder group meetings which will generally be held on the same day. The members of the CEB will therefore form two Shareholder Groups to carry out this responsibility in respect of the LATCO Group.

ODSL and ODSTL Shareholder Groups

The ODSL and ODSTL Shareholder Groups are responsible for the consideration of issues of strategic importance and taking decisions that may involve changes to financial rules or which may have an impact on the Council’s reputation.

Responsibility for the day to day operation and management of the LATCO Group (including the responsibility for internal processes and staffing matters) vests in each Company’s Board of Directors, who must ensure that the Company’s business is conducted in accordance with the terms of the Company’s Shareholder’s Agreement and its Articles of Association.

Each Company’s Articles of Association includes a list of things the Company may not do without the consent of the Shareholder (Appendix 1: Shareholder Consent Matters).

The ODSL and ODSTL Shareholder Groups will appoint advisors who are independent of those engaged by the Company. The advisors may include the Councils’ Section 151 Officer and/or Monitoring Officer, as well as other Council officers as required.

ODSL and ODSTL Shareholder Groups terms of reference

For each of the LATCO Group companies the ODSL and ODSTL Shareholder Groups will:

1. Safeguard the Council's investment in the Company and ensure the Company complies with the Council's corporate values and objectives and maximises outcomes in line with Council policy.
2. Approve the Shareholder's Agreement, which will have the initial Company Business Plan scheduled to it.
3. Receive, review and comment on the annual report and financial accounts of the Company and agree how these are to be published and circulated.
4. Appoint (at least annually) and remove Company Directors and ensure that Company Directors operate in accordance with the Company objectives.
5. Agree the employment of any non-executive or external Company Directors and the basis on which these directors will be remunerated.
6. Appoint the Company auditors.
7. Determine the distribution of any surplus or the issue of any dividends from the Company, in accordance with the Shareholder's Agreement, and exercise any other strategic functions flowing from the Council's ownership of shares.
8. Exercise any reserved powers set out in the Company's Shareholder Agreement or Articles of Association (see appendices).
9. Take decisions in respect of the Council's total holdings in the Company.

ODSL and ODSTL Shareholder Groups meetings arrangements

1. Meetings will be operated in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, requiring that:
 - a) Agendas are published 5 clear working days in advance of meetings, unless urgency rules apply.
 - b) Private meetings are notified 28 days in advance. Otherwise urgency rules will apply, requiring the agreement of the Chair of Scrutiny.
 - c) Key decisions will be notified 28 days in advance and will appear on the Forward Plan. Otherwise urgency rules will apply, requiring that the Chair of Scrutiny is informed (or if less than 5 clear days in advance, agrees).
 - d) Members of Council will be able to attend public and private parts of meetings unless otherwise notified.
 - e) Members of the public will be able to attend the public part of meetings.
2. Meetings will be scheduled at least annually.
3. Extraordinary meetings can be called at any time by the Leader of the Council or the Company's Board of Directors.
4. The quorum is 3 and must include either the Leader of the Council or Statutory Deputy Leader.
5. Substitutions will not be allowed.

6. Meetings will be chaired by the Leader of the Council or in their absence, the Statutory Deputy Leader.
7. Meetings will also be attended by the Company Directors, the Company Secretary and the Shareholder Group's independent advisors.
8. Committee and Member Services will provide appropriate secretariat and governance support.
9. After each meeting the Chair will approve the minutes of the previous meeting.
10. Decisions will be taken by consensus of those present unless any member of the ODSL or ODSTL Shareholder Group requires a vote, in which case a majority decision will be taken with each Shareholder Group member present having a single vote. In the event of a tied vote the Chair will have a casting vote.

Relationship to the Scrutiny Committee

The Council's Scrutiny Committee retains its scrutiny function in relation to the LATCO Shareholder Groups. The Scrutiny Committee will be able to call the LATCO Shareholder Groups and its advisors to account for the progress and performance of the LATCO Group in accordance with a scrutiny protocol.

Company Directors act in a way that is legally independent from the Council and their actions as company directors are not open to scrutiny in this way.

Appendices

Appendix 1: ODSL Shareholder Consent Matters

Appendix 2: ODSTL Shareholder Consent Matters

Appendix 1: ODSL Shareholder Consent Matters

Appendix 2: ODSTL Shareholder Consent Matters

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Oxford Direct Services Limited

Articles of Association

Company number: 10719222

Private company limited by shares

Articles of Association

of

Oxford Direct Services Limited

1 **Model Articles not to apply**

The model Articles of Association for Private Companies Limited by Shares contained in Schedule 1 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these Articles shall not apply to the Company. References to **the Articles** shall be to the following Articles of Association as amended from time.

2 **Defined terms**

In the Articles, unless the context requires otherwise:

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

Board means the Board of Directors of the Company from time to time;

Chairman has the meaning given in Article 15;

Chairman of the Meeting has the meaning given in Article 46;

Companies Acts means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company;

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

Distribution Recipient has the meaning given in Article 38;

Document includes, unless otherwise specified, any document sent or supplied in electronic form;

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

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

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

Holder in relation to Shares means the person whose name is entered in the register of members as the holder of the Shares;

Instrument means a Document in Hard Copy Form;

Local Authority means a local authority in England or Wales as defined in section 270 of the Local Government Act 1972;

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

Paid means paid or credited as paid;

Participate, in relation to a Directors' meeting, has the meaning given in Article 13;

Proxy Notice has the meaning given in Article 52;

Shareholder means the Holder of a share. Only a Local Authority may hold Shares;

Shareholder Agreement means the agreement entered into between the member and the Company to regulate its relationship as a member of the Company

Shares means Shares in the Company;

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

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

Transmittee means a person entitled to a share by reason of the death or Bankruptcy of a Shareholder or otherwise by operation of law;

Voting Representative means the individual appointed by each Shareholder to attend, speak and vote at general meetings on its behalf; and

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

Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Companies Act 2006 as in force on the date when these Articles become binding on the Company.

3 **Liability of the member**

The liability of a member is limited to the amount, if any, unpaid on the Shares held by them.

4 **Objects clause**

The Company's objects are unrestricted.

5 **Shareholder**

- 5.1 The subscriber shall be the first Shareholder of the Company.
- 5.2 The Board may admit any other Local Authority to membership on receiving:
- 5.2.1 a written application; and
 - 5.2.2 a signed deed of adherence to the Shareholder Agreement or written confirmation of intention to sign such deed with fourteen days of admission to membership,
- from any such authority.
- 5.3 The rights powers and obligations of the Shareholder under these Articles shall take effect on its admission to membership.
- 5.4 The Shareholder shall nominate one or more persons to act as its Voting Representative in the manner provided in Section 323 of the Companies Act 2006. Such representative shall have the right on behalf of the Shareholder to attend meetings of the Company and vote thereat and to exercise all Shareholder rights on behalf of the member. The Shareholder may by written notice to the Company revoke the nomination of such representative and may nominate another representative in his place.

6 **Directors' general authority**

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

7 **Shareholder's reserve power**

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

8 **Directors may delegate**

- 8.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles:
- 8.1.1 to such person or committee;
 - 8.1.2 by such means (including by power of attorney);
 - 8.1.3 to such an extent;
 - 8.1.4 in relation to such matters or territories; and
 - 8.1.5 on such terms and conditions;
- as they think fit.

8.2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.

8.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

9 **Committees**

9.1 Committees to which the Directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the Articles which govern the taking of decisions by Directors.

9.2 The Directors may make rules of procedure for all or any committees, which prevail over rules derived from the Articles if they are not consistent with them.

10 **Directors to take decisions collectively**

Save as expressly provided in these Articles questions arising at a Board meeting shall be decided by a majority of votes and each Director present shall be entitled to one vote, save that no decision or resolution may be taken or made by the Board unless each Director present at the meeting who at the time of the vote is an employee of the Shareholder has voted in favour of the decision or resolution. Subject to the foregoing, in the case of an equality of votes at any Board meeting the Chair shall have a second or casting vote.

11 **Written resolutions of the Board**

A resolution in Writing signed by not less than simple majority of all the Directors entitled to receive notice of a meeting of the Board including sufficient Directors to satisfy the quorum requirements in Article 14 shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held and may consist of several Documents in the like form each signed by one or more Board members.

12 **Calling a Directors' meeting**

12.1 The Board shall hold at least four meetings a year. Meetings called under this Article shall be convened by the company secretary or the designated Director discharging the company secretary's functions on not less than five clear days' notice.

12.2 Any two Directors may, by notice in Writing given to the company secretary or to the designated Director discharging the company secretary's functions, requisition a meeting of the Board. In such circumstances it shall be the duty of the company secretary or the designated Director discharging the company secretary's functions to convene such a meeting as soon as is reasonably practicable.

12.3 Notice of any Directors' meeting must indicate:

12.3.1 its proposed date and time;

12.3.2 where it is to take place; and

12.3.3 if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

12.4 Notice of a Directors' meeting must be given to each Director in Writing.

13 **Participation in Directors' meetings**

13.1 Subject to the Articles, Directors Participate in a Directors' meeting, or part of a Directors' meeting, when:

13.1.1 the meeting has been called and takes place in accordance with the Articles, and

13.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

13.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.

13.3 If all the Directors participating in a meeting are not in the same place, the meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the Chairman of the Meeting is.

14 **Quorum for Directors' meetings**

14.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

14.2 The quorum for the transaction of business of the Directors shall be two.

14.3 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision to request that the Shareholder appoints such number of further Directors as are required to make up the Board under Articles 20 and 21.

15 **Chairing of Directors' meetings**

15.1 The Board shall appoint a Director to chair the Directors' meetings.

15.2 The person so appointed for the time being is known as the Chairman.

15.3 If the Chairman 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.

16 **Casting vote**

16.1 Subject to the provisions of Article 10 above, if the numbers of votes for and against a proposal are equal, the Chairman or other Director chairing the meeting has a casting vote.

16.2 But this does not apply if, in accordance with the Articles, the Chairman or other Director is not to be counted as participating in the decision-making process for quorum or voting purposes.

17 **Conflicts of interest**

- 17.1 Any Director having an interest in any arrangement between the Company and another person or body shall before the matter is discussed by the Board or any committee of which they are a member disclose that interest to the meeting save that an interest arising because a Director is a Director or other officer of a company or body which is a Shareholder need not be disclosed.
- 17.2 Unless the interest is of the type specified in Articles 17.3 or 17.4 the Director concerned shall not remain present during the discussion of that item unless requested to do so by the remaining members of the Board or committee of the Board. Unless permitted by Articles 17.3 or 17.4 the Director concerned may not vote on the matter in question but no decision of the Board or any committee of the Board shall be invalidated by the subsequent discovery of an interest which should have been declared.
- 17.3 A Director may remain present during the discussion and may vote on the matter under discussion where the interest arises only by virtue of the fact that:
- 17.3.1 the Director is a director or other officer of a company or body which is a Subsidiary undertaking of the Company as such term is defined in Section 1162 of the 2006 Act; or
- 17.3.2 the Director is a director or other officer of a company or body which is a Shareholder of the Company.
- 17.4 A Director shall not be treated as having an interest:
- 17.4.1 of which the Director has no knowledge and of which it is unreasonable to expect him to have knowledge;
- 17.4.2 in the establishment of a policy in respect of Director expenses.
- 17.5 For the purposes of section 175 of the Act, the Directors shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a Director of the duty to avoid conflicts of interest set out in that section of the Act. Any reference in these Articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.
- 17.6 Authorisation of a matter under Article 17.5 shall be effective only if:
- 17.6.1 the matter in question shall have been proposed in Writing for consideration by the Directors, or in such other manner as the Directors may determine;
- 17.6.2 any requirement as to the quorum at the meeting of the Directors at which the matter is considered is met without counting the Director in question and any other interested Directors (together the **interested Directors**); and
- 17.6.3 the matter was agreed to without the interested Directors voting or would have been agreed to if the votes of the interested Directors had not been counted.
- 17.7 Unless otherwise determined by the Directors (excluding the interested Directors), any authorisation of a matter under Article 17.5 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.

- 17.8 Any authorisation of a matter under Article 17.5 shall be on such terms and/or conditions as the Directors (excluding the interested Directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the Directors (excluding the interested Directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the interested Directors from all information and discussion of the matter in question. A Director shall comply with any obligations imposed on him by the Directors (excluding the interested Directors) pursuant to any such authorisation.
- 17.9 If a Director receives or has received any information otherwise than by virtue of his position as a Director and in respect of which he owes a duty of confidentiality to another person, the Director is under no obligation to:
- 17.9.1 disclose any such information to the Company, the Directors or any other Director or employee of the Company; or
 - 17.9.2 use or apply any such information in connection with the performance of his duties as a Director;
 - 17.9.3 provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the Director of the duty to avoid conflicts of interest set out in section 175 of the Act, this Article shall apply only if such situation or relationship has been authorised by the Directors under Article 17.5.
- 17.10 A Director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the Directors under Article 17.5 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.
- 17.11 All acts done by the Board or by a committee of the Board or by a person acting as a Director shall notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Director or that any Director was disqualified from holding office or had vacated office or was not entitled to vote be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote.
- 17.12 If a question arises at a meeting of the Board as to the right of a Director to vote, the question may before the conclusion of the meeting be referred to the Chairman or in his absence the chair of the meeting and his ruling shall be final and conclusive.
- 18 **Records of decisions to be kept**
- 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.
- 19 **Directors' discretion to make further rules and meetings with other Shareholder-owned companies**

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

19.2 In the event that the Board so agrees (in accordance with the provisions of Clause 10 above), the Board may meet jointly with the board of any other company owned by the Shareholder, and any unanimous decision taken by such joint board meeting will be deemed to be a decision of the Board.

20 **The Board**

Unless otherwise determined by ordinary resolution, the number of Directors is not subject to any maximum and the minimum number is two.

21 **Appointment and Removal of Directors**

21.1 The Shareholder shall appoint three Directors.

21.2 The Shareholder shall have the power to remove from office any Directors and replace them with further Directors.

21.3 Every such appointment or removal shall be effected by notice in Writing to the Company and shall take effect immediately (or on such later date, if any, specified in the notice). Any such notice of appointment or removal may consist of several Documents in similar form, each signed by or on behalf of one or more Holders.

22 **Termination of Director's appointment**

22.1 A person shall be ineligible for appointment to the Board and if already appointed ceases to be a Director as soon as:

22.1.1 he ceases to be a Director by virtue of any provision of the Companies Acts or becomes prohibited by law from being a company Director; or

22.1.2 he is or becomes bankrupt or makes any arrangement or composition with his creditors generally; or

22.1.3 a registered medical practitioner who is treating the Director gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months; or

22.1.4 by reason of a Director's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or

22.1.5 he resigns his office by written notice to the Company; or

22.1.6 he is removed from office by the Shareholder that appointed him by giving notice signed by the relevant Shareholder to the company secretary; or

22.1.7 he is removed from office by a resolution of or written notice signed by not less than three quarters of all the other Shareholders from time to time; or

- 22.1.8 he has been absent without permission of the Board from three consecutive meetings of the Board (including meetings of any committee of which that Director is a member) and the Board resolves that his office be vacated; or
- 22.1.9 he is an employee of the Company or of a member of the Company, or of a Subsidiary or associate of the company or of a Shareholder, and at any time ceases to be so employed; or
- 22.1.10 that person is or becomes a person disqualified from elected membership of a Local Authority.

23 **Directors' remuneration**

Directors may undertake any services for the Company that the Directors decide **provided that** the Directors shall not be remunerated for discharging their duties as Directors and no sum shall be Paid to a Director who is an elected member of the Shareholder. This clause shall exclude non-executive Directors.

24 **Directors' expenses**

24.1 The Company may pay any reasonable expenses which the Directors properly incur in connection with their attendance at:

- 24.1.1 meetings of Directors or committees of Directors;
- 24.1.2 general meetings; or
- 24.1.3 separate meetings of the Holders of any class of Shares or of debentures of the Company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company **provided that** no sum shall be Paid to a Director who is an elected member of the Shareholder .

25 **Company secretary**

The Directors may appoint a company secretary for such term, at such remuneration and upon such conditions as they think fit. Any company secretary may be removed or replaced by the Directors.

26 **Nil or partly Paid Shares permitted**

If the Company at any time has nil or partly Paid Shares in issue, Articles 52 to 62 (inclusive) of the model Articles of Association for public companies contained in Schedule 3 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these Articles, shall apply to the Company and form part of these Articles as if the text of such provisions was set out in full in these Articles.

27 **Allotment of Shares**

27.1 Save as authorised from time to time by an Ordinary Resolution of the Shareholder(s) and in accordance with any Shareholder Agreement, the Directors shall not exercise any

power to allot Shares or to grant rights to subscribe for, or to convert any security into, any Shares in the Company.

27.2 Sections 561 and 562 of the Companies Act 2006 shall not apply to any allotment of equity securities (as defined in section 560 of the Companies Act 2006) by the Company.

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

28.1 Subject to the Articles, but without prejudice to the rights attached to any existing Share, the Company may issue Shares with such rights or restrictions as may be determined by Ordinary Resolution.

28.2 The Company may issue Shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the Holder, and the Directors may determine the terms, conditions and manner of redemption of any such Shares.

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

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

30 **Share certificates**

30.1 The Company must issue the Shareholder, free of charge, with a certificate in respect of the Shares which the Shareholder holds.

30.2 Every certificate must specify:

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

30.2.2 the nominal value of those Shares;

30.2.3 the amount Paid up on the Shares to which it relates; and

30.2.4 any distinguishing numbers assigned to them.

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

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

30.5 Certificates must:

30.5.1 have affixed to them the Company's common seal, or

30.5.2 be otherwise executed in accordance with the Companies Acts.

31 **Replacement share certificates**

31.1 If a certificate issued in respect of the Shareholder's Shares is:

31.1.1 damaged or defaced; or

31.1.2 said to be lost, stolen or destroyed,

the Shareholder is entitled to be issued with a replacement certificate in respect of the same Shares.

31.2 The Shareholder exercising the right to be issued with such a replacement certificate:

31.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;

31.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and

31.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the Directors decide.

32 **Share transfers**

32.1 In these Articles, reference to the transfer of a Share includes the transfer, assignment or other disposal of a beneficial or other interest in that Share, or the creation of a trust or encumbrance over that Share, and reference to a Share includes a beneficial or other interest in a Share.

32.2 The Shareholder shall not transfer any Share except in accordance with the terms of any Shareholder Agreement (or similar Document) in force between the Shareholder and the Company, or if applicable, with the prior written consent of all of the other Shareholders.

32.3 Subject to Article 32.2, the Directors must register any duly stamped transfer made in accordance with these Articles and shall not have any discretion to register any transfer of Shares which has not been made in compliance with these Articles.

32.4 The Directors may, as a condition to the registration of any transfer of Shares in the Company require the transferee to execute and deliver to the Company a deed of adherence under which the transferee agrees to be bound by the terms of any Shareholder Agreement (or similar Document) in force between the Shareholder and the Company in such form as the Directors may reasonably require (but not so as to oblige the transferee to have any obligations or liabilities greater than those of the Shareholder holding Shares of the same class under any such agreement or other Document). If any such condition is imposed in accordance with this Article 32.4, the transfer may not be registered unless that deed has been executed and delivered to the Company's registered office by the transferee.

33 **Transmission of Shares**

33.1 If title to a Share passes to a Transmitttee, the Company may only recognise the Transmitttee as having any title to that Share.

33.2 A Transmitttee who produces such evidence of entitlement to Shares as the Directors may properly require:

33.2.1 may, subject to the Articles, choose either to become the Holder of those Shares or to have them transferred to another person; and

33.2.2 subject to the Articles, and pending any transfer of the Shares to another person, has the same rights as the Holder had.

33.3 But Transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of Shares to which they are entitled, by reason of the Holder's death or Bankruptcy or otherwise, unless they become the Holders of those Shares.

34 **Exercise of Transmittees' rights**

34.1 Transmittees who wish to become the Holders of Shares to which they have become entitled must notify the Company in Writing of that wish.

34.2 If the Transmitttee wishes to have a share transferred to another person, the Transmitttee must execute an Instrument of transfer in respect of it.

34.3 Any transfer made or executed under this Article is to be treated as if it were made or executed by the person from whom the Transmitttee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

35 **Transmittees bound by prior notices**

If a notice is given to the Shareholder in respect of Shares and a Transmitttee is entitled to those Shares, the Transmitttee is bound by the notice if it was given to the Shareholder before the Transmitttee's name has been entered in the register of members.

36 **Procedure for declaring dividends**

36.1 The Company may by Ordinary Resolution declare dividends, and the Directors may decide to pay interim dividends.

36.2 A dividend must not be declared unless the Directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the Directors.

36.3 No dividend may be declared or Paid unless it is in accordance with the Shareholder's respective rights.

36.4 Unless the Shareholder's resolution to declare or Directors' decision to pay a dividend, or the terms on which Shares are issued, specify otherwise, it must be Paid by reference to the Shareholder's holding of Shares on the date of the resolution or decision to declare or pay it.

36.5 If the Company's Share capital is divided into different classes, no interim dividend may be Paid on Shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.

36.6 The Directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

36.7 If the Directors act in good faith, they do not incur any liability to the Holders of Shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on Shares with deferred or non-preferred rights.

37 **Calculation of dividends**

37.1 Except as otherwise provided by these Articles or the rights attached to Shares, all dividends must be:

37.1.1 declared and Paid according to the amounts Paid up on the Shares on which the dividend is Paid; and

37.1.2 apportioned and Paid proportionately to the amounts Paid up on the Shares during any portion or portions of the period in respect of which the dividend is Paid.

37.2 If any Share is issued on terms providing that it ranks for dividend as from a particular date that Share ranks for dividend accordingly. For the purposes of calculating dividends, no account is to be taken of any amount which has been Paid up on a share in advance of the due date for payment of that amount.

38 **Payment of dividends and other distributions**

38.1 Where a dividend or other sum which is a distribution is payable in respect of a Share, it must be Paid by one or more of the following means:

38.1.1 transfer to a bank or building society account specified by the Distribution Recipient either in Writing or as the Directors may otherwise decide;

38.1.2 sending a cheque made payable to the Distribution Recipient by post to the Distribution Recipient at the distribution recipient's registered address (if the Distribution Recipient is a Holder of the share), or (in any other case) to an address specified by the Distribution Recipient either in Writing or as the Directors may otherwise decide;

38.1.3 sending a cheque made payable to such person by post to such person at such address as the Distribution Recipient has specified either in Writing or as the Directors may otherwise decide; or

38.1.4 any other means of payment as the Directors agree with the Distribution Recipient either in Writing or by such other means as the Directors decide.

38.2 In these Articles, the **Distribution Recipient** means, in respect of a Share in respect of which a dividend or other sum is payable:

38.2.1 the Holder of the Share; or

38.2.2 if the Share has two or more joint Holders, whichever of them is named first in the register of members; or

38.2.3 if the Holder is no longer entitled to the Share by reason of death or Bankruptcy, or otherwise by operation of law, the Transmittree.

39 **No interest on distributions**

39.1 The Company may not pay interest on any dividend or other sum payable in respect of a Share unless otherwise provided by:

- 39.1.1 the terms on which the share was issued, or
- 39.1.2 the provisions of another agreement between the Holder of that Share and the Company.

40 **Unclaimed distributions**

40.1 All dividends or other sums which are:

- 40.1.1 payable in respect of Shares; and
- 40.1.2 unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed.

40.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.

40.3 If:

- 40.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and
- 40.3.2 the Distribution Recipient has not claimed it,

the Distribution Recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company.

41 **Non-cash distributions**

41.1 Subject to the terms of issue of the Share in question, the Company may, by Ordinary Resolution on the recommendation of the Directors, decide to pay all or part of a dividend or other distribution payable in respect of a Share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

41.2 For the purposes of paying a non-cash distribution, the Directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:

- 41.2.1 fixing the value of any assets;
- 41.2.2 paying cash to any Distribution Recipient on the basis of that value in order to adjust the rights of recipients; and
- 41.2.3 vesting any assets in trustees.

42 **Waiver of distributions**

42.1 Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a Share by giving the Company notice in Writing to that effect, but if:

- 42.1.1 the Share has more than one Holder; or

42.1.2 more than one person is entitled to the Share, whether by reason of the death or Bankruptcy of one or more joint Holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the Holders or persons otherwise entitled to the Share.

43 **Authority to capitalise and appropriation of capitalised sums**

43.1 Subject to the Articles, the Directors may, if they are so authorised by an Ordinary Resolution:

43.1.1 decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and

43.1.2 appropriate any sum which they so decide to capitalise (a **capitalised sum**) to the persons who would have been entitled to it if it were distributed by way of dividend (the **persons entitled**) and in the same proportions.

43.2 Capitalised sums must be applied:

43.2.1 on behalf of the persons entitled; and

43.2.2 in the same proportions as a dividend would have been distributed to them.

43.3 Any capitalised sum may be applied in paying up new Shares of a nominal amount equal to the capitalised sum which are then allotted credited as Fully Paid to the persons entitled or as they may direct.

43.4 A capitalised sum which was appropriated from profits available for distribution may be applied in or towards:

43.4.1 paying up new debentures of the Company which are then allotted credited as Fully Paid to the persons entitled or as they may direct;

43.4.2 paying up any amounts unpaid on existing Shares held by the persons entitled.

43.5 Subject to the Articles the Directors may:

43.5.1 apply capitalised sums in accordance with paragraphs 43.3 and 43.4 partly in one way and partly in another;

43.5.2 make such arrangements as they think fit to deal with Shares or debentures becoming distributable in fractions under this Article (including the issuing of fractional certificates or the making of cash payments); and

43.5.3 authorise any person to enter into an agreement with the Company on behalf of all the persons entitled which is binding on them in respect of the allotment of Shares and debentures to them under this Article.

44 **Attendance and speaking at general meetings**

44.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

44.2 A person is able to exercise the right to vote at a general meeting when:

44.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

44.2.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

44.3 The Directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

44.4 In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

44.5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

45 **Quorum for general meetings**

45.1 The Shareholder present by their Voting Representative or by proxy shall constitute a quorum.

45.2 No business other than the appointment of the Chairman of the Meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

46 **Chairing general meetings**

46.1 If the Directors have appointed a Chairman, the Chairman shall chair general meetings if present and willing to do so.

46.2 If the Directors have not appointed a Chairman, or if the Chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:

46.2.1 the Directors present; or

46.2.2 (if no Directors are present), the meeting,

must appoint a Director or the Shareholder to chair the meeting, and the appointment of the Chairman of the Meeting must be the first business of the meeting.

46.3 The person chairing a meeting in accordance with this Article is referred to as **the Chairman of the Meeting**.

47 **Attendance and speaking by Directors and non-shareholders**

47.1 Directors may attend and speak at general meetings, whether or not they are a Shareholder.

47.2 The Chairman of the Meeting may permit other persons who are not:

47.2.1 a Shareholder of the Company; or

47.2.2 otherwise entitled to exercise the rights of a Shareholder in relation to general meetings,

to attend and speak at a general meeting.

48 **Adjournment**

48.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the Chairman of the Meeting must adjourn it.

48.2 The Chairman of the Meeting may adjourn a general meeting at which a quorum is present if:

48.2.1 the meeting consents to an adjournment; or

48.2.2 it appears to the Chairman of the Meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

48.3 The Chairman of the Meeting must adjourn a general meeting if directed to do so by the meeting.

48.4 When adjourning a general meeting, the Chairman of the Meeting must:

48.4.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the Directors; and

48.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

48.5 If a general meeting is adjourned, then notice of the time and place to which it is adjourned shall be given:

48.5.1 to the same persons to whom notice of the Company's general meetings is required to be given; and

48.5.2 containing the same information which such notice is required to contain.

48.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

49 **Voting: general**

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

50 **Errors and disputes**

50.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

50.2 Any such objection must be referred to the Chairman of the Meeting, whose decision is final.

51 **Poll votes**

51.1 A poll on a resolution may be demanded:

51.1.1 in advance of the general meeting where it is to be put to the vote, or

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

51.2 A poll may be demanded by:

51.2.1 the Chairman of the Meeting;

51.2.2 the Directors;

51.2.3 any member (present by its Voting Representative or by proxy) having the right to attend and vote at the meeting or by a duly authorised representative of a corporation.

51.2.4 A demand for a poll may, before the poll is taken, be withdrawn. A demand so withdrawn shall not invalidate the result of a vote on a show of hands declared before the demand was made.

51.3 Polls must be taken immediately and in such manner as the Chairman of the Meeting directs.

52 **Appointment of Proxies**

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

52.1.1 states the name and address of the Shareholder appointing the proxy;

52.1.2 identifies the person appointed to be that Shareholder's proxy and the general meeting in relation to which that person is appointed;

52.1.3 is signed by or on behalf of the Shareholder appointing the proxy, or is authenticated in such manner as the Directors may determine; and

52.1.4 is delivered to the Company in accordance with the Articles and any instructions contained in the notice of the general meeting to which they relate.

52.2 The Company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

52.3 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

52.4 Unless a Proxy Notice indicates otherwise, it must be treated as:

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

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

53 **Delivery of proxy notices**

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

53.2 An appointment under a Proxy Notice may be revoked by delivering to the Company a notice in Writing given by or on behalf of the person by whom or on whose behalf the Proxy Notice was given.

53.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

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

54 **Written resolutions of Shareholders**

A written resolution of members passed in accordance with Part 13 of the Companies Act 2006 is as valid and effectual as a resolution passed at a general meeting of the Company.

55 **Means of communication to be used**

55.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.

55.2 Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or Documents for the time being.

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

55.4 Any notice, Document or other information shall be deemed served on or delivered to the intended recipient:

- 55.4.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five working days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five working days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
- 55.4.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
- 55.4.3 if properly addressed and sent or supplied by electronic means, one hour after the Document or information was sent or supplied; and
- 55.4.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

55.5 For the purposes of this Article, no account shall be taken of any part of a day that is not a working day.

55.6 In proving that any notice, Document or other information was properly addressed, it shall be sufficient to show that the notice, Document or other information was delivered to an address permitted for the purpose by the Companies Act 2006.

56 **Company seals**

56.1 Any common seal may only be used by the authority of the Directors.

56.2 The Directors may decide by what means and in what form any common seal is to be used.

56.3 Unless otherwise decided by the Directors, if the Company has a common seal and it is affixed to a Document, the Document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

56.4 For the purposes of this Article, an authorised person is:

56.4.1 any Director of the Company;

56.4.2 the company secretary (if any); or

56.4.3 any person authorised by the Directors for the purpose of signing Documents to which the common seal is applied.

57 **No right to inspect accounts and other records**

Except as provided by law or authorised by the Directors or an Ordinary Resolution of the Company, no person is entitled to inspect any of the Company's accounting or other records or Documents merely by virtue of being a Shareholder.

58 **Indemnity**

- 58.1 Every Director or other officer of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto including any liability incurred by him in defending any proceedings whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under Section 1157 of the Act in which relief is granted to him and no Director or other officer shall be liable for any loss damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto provided that this Article 58.1 shall only have effect in so far as its provisions are not avoided by Section 232 of the Act.
- 58.2 The Board shall have power to purchase and maintain for any Board member or officer of the Company insurance against any such liability as is referred to in Section 232 of the Act.

Company No 10719222

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

**WRITTEN RESOLUTION
Of
OXFORD DIRECT SERVICE LIMITED (the "Company")
DATE OF CIRCULATION – 18 September 2017**

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006 (the "Act"), it is proposed that the following resolution is passed as a written resolution of the Company, having effect as a special resolution (the "Resolution").

SPECIAL RESOLUTION

THAT the amended Articles of Association attached to this resolution be adopted as the Articles of Association of the Company to the exclusion of all existing articles.

AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolution.

We, the undersigned, being the shareholders entitled to vote on the Resolution as at the Date of Circulation, hereby irrevocably agree to the Resolution:-

.....
Authorised Signatory
For and on behalf of
Oxford City Council

.....
Date

NOTES

1. If you agree with the Resolution, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company's registered office address at

If you do not agree with the Resolution, you do not need to do anything: you will not be deemed to agree if you fail to reply.
2. Once you have indicated your agreement to the Resolution, you may not revoke your agreement.
3. If, within 28 days of the Date of Circulation, insufficient agreement has been received for the resolution to pass, such Resolution will lapse. If you agree to the Resolution, please ensure that your agreement reaches us within 28 days of the Date of Circulation.

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Company No 10719214

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

**WRITTEN RESOLUTION
Of
OXFORD DIRECT SERVICE TRADING LIMITED (the "Company")
DATE OF CIRCULATION – 18 September 2017**

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006 (the "Act"), it is proposed that the following resolution is passed as a written resolution of the Company, having effect as a special resolution (the "Resolution").

SPECIAL RESOLUTION

THAT the amended Articles of Association attached to this resolution be adopted as the Articles of Association of the Company to the exclusion of all existing articles.

AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolution.

We, the undersigned, being the shareholders entitled to vote on the Resolution as at the Date of Circulation, hereby irrevocably agree to the Resolution:-

.....
Authorised Signatory
For and on behalf of
Oxford City Council

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Date

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1. If you agree with the Resolution, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company's registered office address at

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dated

2017

Oxford City Council

and

Oxford Direct Services Limited

Shareholder Agreement

Oxford Direct Services Limited

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Shareholder Agreement

dated 2017

Parties

- (1) **Oxford City Council** of Town Hall, St Aldate's, Oxford, OX1 1BX (the **Council**); and
- (2) **Oxford Direct Services Limited** a company incorporated and registered in England and Wales with registered number 10719222 whose registered office is at St Aldates Chambers, 109 St Aldates, Oxford, United Kingdom, OX1 1DS (the **Company**).

Introduction

- (A) The Company was incorporated on 10 April 2017 as a private company limited by shares. At the date of this Agreement the Company has issued share capital of £1 with one share of £1 owned by the Council.
- (B) The Company is a Teckal company fulfilling the conditions set out in Regulation 12(1) of the Public Contracts Regulations 2015. The Company is subject to management supervision by the Shareholder in the terms set out in this Deed. As such, the Company is a body governed by public law as defined in the Public Contracts Regulations 2015.
- (C) This Agreement sets out the terms upon which the Council will participate in the Company as its Shareholder and is made pursuant to the Council's powers under section 1 of the Localism Act 2011 and all other relevant enabling legislation.

Agreed terms

1 Interpretation and definitions

1.1 In this Agreement:

Board of Directors means the board of directors of the Company;

Board Meeting means a meeting of the Board of Directors;

Business means the business of the Company described in clause 3, as set out in the Business Plan and such other business as the Council may agree from time to time in writing should be carried on by the Company;

Business Day means any day (other than a Saturday or Sunday) or a bank or public holiday in England and Wales;

Business Plan means a business plan in a form to be approved by the Directors setting out the implementation, over a particular financial year or years, of the strategic objectives of the Company in relation to the Business, to include budgets, expenses (including any administrative expenses) and projected financial results for the financial year(s) in question and the first Business Plan is set out in Schedule 3; For the avoidance of doubt, the parties acknowledge that the first and subsequent Business Plans may be a joint Business Plan made between the Company and Oxford Direct Services Trading Limited.

Completion means completion of the various matters provided for in clause 2;

Deed of Adherence means a deed of adherence in substantially the same form as set out in Schedule 1;

Director means any director for the time being of the Company, including where applicable any alternate director;

Dividend Policy means a dividend policy that the Shareholder will agree from time to time and the first Dividend Policy is set out in Schedule 4;

Environmental Information Regulations means the Environmental Information Regulations 2004;

Financial Year means the 12 month period reported in the annual accounts to be filed at Companies House.

FOIA means the Freedom of Information Act 2000;

Information has the meaning given to it under section 84 of the FOIA;

Management Accounts Date means 31 March, 30 June, 30 September and 31 December in each year;

New Articles means the new articles of association of the Company to be adopted at Completion, which are substantially in the form set out in Schedule 2 (with such changes as the parties may agree) as amended or superseded from time to time;

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

Security Interest means any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, guarantee, indemnity, debenture, declaration of trust, right of set off or combination of accounts or any other type of preferential arrangement (including without limitation, a title transfer and retention of title) or any encumbrance or security interest whatsoever, howsoever arising and whether monetary or not;

Service Contract means a contract to be let by the Council to the Company under which the Company will provide certain services to and on behalf of the Council.

Shareholder means the Council and/or any person to whom it may properly transfer any Shares in accordance with this Agreement and who enters into a Deed of Adherence agreeing to be bound by the terms of this Agreement;

Shares means the ordinary shares of £1 each in the capital of the Company; and

Subsidiary Undertaking means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006.

1.2 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.3 Clause headings in this Agreement are for convenience only and do not affect the construction of any provision.
- 1.4 References to any gender shall include the other genders and references to the singular shall include the plural and vice versa.
- 1.5 Any reference to a person (which for the purposes of this Agreement shall include a firm, unincorporated association, body corporate, government, state or agency of state, any association or partnership or joint venture (whether or not having a separate legal personality)) shall include its successors in title.
- 1.6 In this Agreement all obligations and liabilities on the part of the Shareholder are (unless expressly stated otherwise) several and shall be construed accordingly.
- 1.7 Any reference to a document **in the agreed form** shall be a reference to that document in the form agreed and initialled by or on behalf of the Shareholder for the purpose of identification and attached to this Agreement.

2 **Completion**

- 2.1 Completion shall take place immediately following execution of this Agreement, when the parties shall procure that meetings of the Company and the Board of Directors are held as may be necessary to adopt the New Articles.

3 **The Business of the Company**

- 3.1 The Shareholder acknowledges and agrees that unless and until it indicates otherwise, the Business of the Company shall be to provide services on behalf of or which support the operations and functions of the Council.
- 3.2 The first Business Plan of the Company is attached as Schedule 3 to this Agreement, and by such attachment the Shareholder indicates its agreement to the first Business Plan. The first and each subsequent Business Plan shall cover a 4 year rolling period, and shall be refreshed on an annual basis. On each such annual refresh the Company shall circulate its new 4 year Business Plan to the Shareholder for approval. The Shareholder shall use its reasonable endeavours to either approve the new Business Plan, or to provide comments indicating any areas of disapproval, as quickly as possible and in any event within 2 months of receipt. In the event that the new Business Plan is agreed by the Shareholder the Directors shall adopt the Business Plan at its next convenient Board meeting. In the event that the Shareholder does not agree the new Business Plan, the Directors shall meet the Shareholder to discuss any points of disagreement with a view to producing an agreed draft, but in the event that there is no such agreement, the Shareholder may direct the Directors either to adopt a new Business Plan with which the Shareholder agrees, or to revert to the then current Business Plan. No new Business Plan or any annual refresh or any material variation, updating or replacement of any existing Business Plan shall be valid unless such new, refreshed, materially varied or updated version has been adopted by the Company in accordance with the provisions of this clause.
- 3.3 Each new Business Plan shall be substantially in the format of the preceding Business Plan and shall be for a 4 year rolling period and refreshed on an annual basis in accordance with the provisions of Clause 3.2 above. For the avoidance of doubt, the

Company and the Shareholder acknowledge that unless they agree otherwise, the Business Plan (and any refresh of it) may relate to both the Company and to any other trading company owned by the Shareholder.

- 3.4 For the further avoidance of doubt, throughout any period when any new or refreshed Business Plan which has been presented for comment to the Shareholder under clause 3.2 above has not been properly adopted by the Company fully in accordance with the provisions of Clause 3.2 above, the relevant existing Business Plan shall continue to be the Business Plan of the Company.
- 3.5 Subject to the provisions of this Agreement, the Shareholder understands and agrees that the Company shall use all reasonable and proper means to maintain and improve the Business.
- 3.6 Nothing in this Agreement shall prevent the Company from providing services to persons other than the Shareholder, provided that:
- 3.6.1 this does not impact on the Company's ability to provide services to the Shareholder; and
- 3.6.2 the services to persons other than the Shareholder do not in any relevant financial period account for more than the relevant percentage of the turnover of the Company permitted by law from time to time so as to ensure that the Company remains classified as a Teckal company pursuant to Regulation 12 of the Public Contract Regulations 2015.

4 Conduct of the Company's affairs

- 4.1 With the exception of those matters requiring the Shareholder's consent pursuant to clause 7, the day-to-day management of the Company shall be vested in the Directors. Without prejudice to the generality of the foregoing, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out. In particular, but without limitation to the generality of the foregoing, the Directors shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this Agreement, the Company shall carry on and conduct its Business and affairs in a proper and efficient manner, for its own benefit, for the benefit of the Shareholder, in accordance with the Business Plan, the Service Contract and following good business practices.
- 4.2 The Company shall not carry out any activity which would render the holding of Shares by any Shareholder unlawful provided that where a proposed change of law would render such Shareholding unlawful such Shareholder will use all reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.
- 4.3 The Company will if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.
- 4.4 All books, records, accounts and documents relating to the Business and the affairs of the Company and its subsidiaries shall be open, on receipt of reasonable notice, to the inspection of the Shareholder (or its agents) to keep the Shareholder properly informed

about the Business and affairs of the Company or to protect its interests as a Shareholder. Any confidential information secured as a consequence of such examinations shall be kept confidential by the requesting Shareholder in accordance with the terms of clause 14.

4.5 The Company agrees with the Shareholder that it will ensure the maintenance of effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Shareholder informed of the progress of the Company's Business and affairs and in particular will procure that the Shareholder is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment in the Company.

4.6 The Company shall:

4.6.1 identify the Council's ownership of the Company on its official business stationery and in other promotional material (as agreed); and

4.6.2 not engage in any party political publicity.

4.7 The Shareholder shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it, in relation to the Company so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement:

4.7.1 the Company is managed in accordance with the objectives and provisions of this Agreement; and

4.7.2 the Company performs and complies with all obligations on its part under this Agreement and the New Articles.

4.8 The Company's Financial Year shall run from 1st April to 31st March.

5 **The Board of Directors**

5.1 A Board Meeting shall be held no less than once in every quarter.

5.2 Unless otherwise agreed by all the Directors, 5 Business Days' notice shall be given to each of the Directors of all Board Meetings. The notice convening a Board Meeting shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting.

6 **Finance for the Company**

If the Company requires capital, the Company may request such capital from the Shareholder **provided that** the Shareholder shall not be obliged to provide any such capital or any guarantee or security in respect of any indebtedness of the Company or to put up the finance concerned.

7 **Matters requiring the consent of the Shareholder**

7.1 The Company shall procure (insofar as it is able to do so) that at all times during the term of this Agreement no action shall be taken or resolution passed by the Company or any

Subsidiary Undertaking of the Company in respect of any of the following matters except with the prior written consent of the Shareholder:

- 7.1.1 altering in any respect the New Articles or the rights attaching to any of the Shares in the Company;
- 7.1.2 permitting the registration of any person as a member of the Company other than the Council;
- 7.1.3 issuing or allotting any Shares;
- 7.1.4 borrowing any monies (other than from the Council);
- 7.1.5 changing the name of the Company or its registered office;
- 7.1.6 adopting a new Business Plan or materially amending the then current Business Plan, other than in accordance with the provisions of Clause 3.2 above;
- 7.1.7 changing the nature of the Company's Business or commencing any new business by the Company or undertaking business which is materially inconsistent with the Business Plan and the Service Contract;
- 7.1.8 forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not) outside of the Business Plan;
- 7.1.9 amalgamating or merging with any other company or business undertaking;
- 7.1.10 creating or granting any Security Interest over the whole or any part of the Business, undertaking or assets of the Company or over any Shares in the Company or agreeing to do so;
- 7.1.11 making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading) or giving any guarantee or indemnity;
- 7.1.12 entering into or tendering for any work which would fall outside of the normal course of business as set out in the then current Business Plan or permitted under the Company's Scheme of Delegation;
- 7.1.13 appointing or changing the auditors of the Company or its financial year end;
- 7.1.14 making or permitting to be made any change in the accounting policies and principles adopted by the Company in the preparation of its audited or management accounts except as may be required to ensure compliance with relevant accounting standards under the Companies Act 2006 or any other generally accepted accounting principles in the United Kingdom;
- 7.1.15 declaring or paying any dividend outside the terms of the Dividend Policy;
- 7.1.16 appointing or dismissing any Director;

- 7.1.17 establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for Directors;
- 7.1.18 making any remuneration decision outside the terms of the Remuneration Policy
- 7.1.19 making any amendment to the collective terms and conditions of employment of any members of staff
- 7.1.20
 - a) purchasing, leasing or otherwise acquiring assets, or any interests in assets, or
 - b) disposing of any assets, or
 - c) entering into any contracts or transactions

which would involve the Company in the payment of consideration having an aggregate value in excess of £250,000, where dealing with any such assets or entering into any such contracts or transactions would fall outside the normal course of business as set out in the then current Business Plan or the Service Contract;

7.2 The agreement of the Shareholder to any of the matters referred to in clause 7.1 shall be evidenced by the signature of an authorised signatory of the Shareholder on the resolution approving the matter in question.

8 Dividends

8.1 The amount of any Dividend to be paid (if any) shall be determined by the Dividend Policy.

9 Anti-corruption

9.1 In this clause:

Adequate Procedures means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

Associated Person means in relation to a party to this Agreement, any person (including an officer, employee, agent or Subsidiary Undertaking) who performs services for or on behalf of that party;

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 constitute an offence under sections 1, 2 or 6 of the Bribery Act;

9.2 Each party declares and undertakes to the other parties that:

9.2.1 it has not and will not in relation to the Company or the operation of the Business, engage in any Corrupt Activity;

- 9.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;
- 9.2.3 it has and will maintain in place, or in the case of the Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;
- 9.2.4 it has not and will not engage in any activity, practice or conduct which could place the Company or any other party in breach of section 7(1) of the Bribery Act;
- 9.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause 9.2 and will provide any information reasonably requested by the other party in support of such compliance; and
- 9.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 9.

10 **Transfer of Shares**

- 10.1 Except with the prior written consent of the other Shareholders each Shareholder shall comply with the provisions relating to the issue and transfer of Shares contained in the New Articles.
- 10.2 The Directors and the Company shall procure that no person who acquires Shares in the Company (whether by transfer or allotment or otherwise) (a **New Shareholder**) shall be registered as their holder unless or until he has entered into a Deed of Adherence.
- 10.3 A New Shareholder who has entered into a Deed of Adherence in accordance with clause 10.2 shall have all the rights and obligations as if he were an original party to this Agreement in the capacity of a Shareholder.

11 **Conflict with the New Articles**

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the New Articles, then it is the intention of the Shareholder that the provisions of this Agreement shall prevail. Accordingly, each Shareholder (so far as each is able) shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the New Articles.

12 **No fetter**

Nothing in this Agreement shall operate to bind the Company or the Council to the extent that it constitutes an unlawful fetter on any statutory power of the Company or the Council (but this shall not affect the validity of the relevant provision as between the other parties to this Agreement or the respective obligations of such other parties as between themselves under clause 11).

13 **Duration and termination**

13.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Shareholder until the earlier of the following events:

13.1.1 each Shareholder agrees in writing to terminate this Agreement; or

13.1.2 an effective resolution is passed or a binding order is made for the winding up of the Company;

provided that this Agreement shall cease to have effect as regards any Shareholder who ceases to hold any Shares in the Company, except for any provisions which are expressed to continue in force thereafter.

13.2 Termination of this Agreement pursuant to this clause shall not release any party from any liability which at the time of termination has already accrued to another party or which may accrue after termination of this Agreement in respect of any act or omission prior to such termination.

13.3 Upon termination of this Agreement pursuant to clause 13.1.1, the Shareholder shall do all such acts and things as are necessary to procure (so far as they are able) (including, without limitation, the holding of a general meeting of the Company and the passing of appropriate Shareholder resolutions) that the Company be wound up.

14 **Confidentiality**

14.1 This clause applies to:

14.1.1 all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to one of the other parties whether before or after the date of this Agreement;

14.1.2 any information concerning the business affairs of one party or other information confidential to that party which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement;

including any information relating to any party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, **Confidential Information**).

14.2 In this clause, in relation to a particular item of Confidential Information:

14.2.1 the **Disclosing Party** means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and

14.2.2 the **Receiving Party** means the other party.

14.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:

- 14.3.1 keep the Confidential Information confidential;
 - 14.3.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this clause 14; and
 - 14.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.
- 14.4 Notwithstanding clause 14.3, the Receiving Party may disclose Confidential Information as follows:
- 14.4.1 to its professional advisers (each, a Recipient) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and
 - 14.4.2 to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body.
- 14.5 This clause 14 shall not apply to any Confidential Information which:
- 14.5.1 is at the date of this Agreement or at a later date comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
 - 14.5.2 was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the same pursuant to this Agreement) and which had not previously been obtained under an obligation of confidence; or
 - 14.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.
- 14.6 The Company acknowledges that the Council is subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation, and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 14.7 and 14.10.
- 14.7 If the Council receives a Request for Information in relation to Information that the Company is holding and which the Council does not hold itself, the Council shall refer to the Company such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the Company shall:
- 14.7.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within 10 Business Days (or such other period as the Council acting reasonably may specify) of the Council's request; and
 - 14.7.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for

compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

14.8 Following notification under clause 14.7, and up until such time as the Company has provided the Council with all the Information specified in clause 14.7, the Company may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:

14.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

14.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information.

14.9 The Company acknowledges that (notwithstanding the provisions of clause 14.1) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Managers or the Company:

14.9.1 in certain circumstances without consulting with the Company; or

14.9.2 following consultation with the Company and having taken its views into account.

14.10 The Company shall transfer to the Council any Request for Information received by it as soon as practicable and in any event within 3 Business Days of receiving it.

14.11 The Company acknowledges that any lists provided which list or outline Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 14.9.

15 **General**

15.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.

15.2 No variation of this Agreement or any agreement or document entered into pursuant to this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.

- 15.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.
- 15.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 15.6 A waiver of a breach of any of the terms of this agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.
- 15.7 The rights and remedies provided by this Agreement are cumulative and [subject as otherwise provided in this Agreement] are not exclusive of any rights, powers or remedies provided by law.
- 15.8 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:
- 15.8.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- 15.8.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 15.9 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.
- 15.10 Each of the parties acknowledges and agrees that:
- 15.10.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or those documents;
- 15.10.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement;
- 15.10.3 nothing in this clause shall operate to limit or exclude any liability for fraud.
- 15.11 Save for a person who enters into a Deed of Adherence pursuant to clause 10.2, no person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

16 **Assignment**

This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its

rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party save where the Council's function are transferred or assigned to a successor body. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

17 **No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18 **Notices**

18.1 Any notice or other communication given under this Agreement:

18.1.1 shall be in writing;

18.1.2 shall be signed by or on behalf of the party giving it;

18.1.3 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post or by fax at the address or fax number set out in clause 18.2 of the party due to receive it and marked for the attention of the person named in clause 18.2 (or at such other address in the United Kingdom or fax number or marked for the attention of such other person as last notified in writing to the other parties;

18.1.4 shall be deemed to have been received:

(a) if delivered by hand, at the time of actual delivery;

(b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting; and

(c) in the case of fax, at the time of completion of transmission.

18.2 The addresses of the parties for the purposes of clause 18.1 are:

The Company

Address: St Aldates Chambers, 109 St Aldates, Oxford, United Kingdom, OX1 1DS

For the attention of: The Company Secretary

The Council

Address: Town Hall, St Aldate's, Oxford, OX1 1BX

For the attention of: **[Client-side representative]**?

To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in clause 18.2 and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out in clause 18.2.

18.3 In this clause if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

18.4 For the avoidance of doubt, a notice or other communication given under this Agreement shall not be validly served if sent by e-mail.

19 **Counterparts**

19.1 This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

20 **Applicable law**

20.1 The parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with the laws of England and Wales.

20.2 Each of the parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

This Agreement has been executed on the date stated at the beginning of this Agreement.

Schedule 1

Deed of Adherence

Deed of adherence

dated 20[]

By [Limited] a company incorporated in [] (registered number []) whose registered office is at [] (the **New Shareholder**) in favour of the persons whose names and addresses are set out in the Schedule to this Deed (the **Continuing Parties**).

Introduction

- (A) This Deed is supplemental to a Shareholder Agreement dated 2017 the Council and the Company (the **Shareholder Agreement**) and to *[insert details of any subsequent Deeds of Adherence or Amendment]*.
- (B) The New Shareholder wishes to [subscribe for] [acquire] [] Shares in the capital of the Company [from *Transferor*].
- (C) Clause [] of the Shareholder Agreement provides that no person other than a Shareholder shall acquire Shares in the Company (whether by way of transfer or allotment or otherwise) unless he enters into a Deed of Adherence in substantially the form of this Deed.

Agreed terms

- 1 The New Shareholder confirms that [he/it] has been given a copy of the Shareholder Agreement and covenants with the Continuing Parties to observe, perform and be bound by every provision of the Shareholder Agreement (other than the Excluded Clauses) as if the New Shareholder had been an original party to it.
- 2 In this Deed the Excluded Clauses shall mean clauses [insert numbers of clauses to be excluded i.e. ones containing a personal obligation] of the Shareholder Agreement.
- 3 Unless the context requires otherwise, words and expressions defined in the Shareholder' Agreement shall have the same meanings when used in this Deed.
- 4 This Deed shall be governed by and construed in accordance with the laws of [].

This Deed of Adherence has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule

[Insert names and addresses of Continuing Parties]

Schedule 2

New Articles

Schedule 3
Business Plan

Schedule 4

Dividend Policy

The Company shall pay no Dividend to the Shareholder unless the following matters have been met in full:

- 1) The Company and Oxford Direct Services Trading Limited (“the Trading Group”) have fully delivered the Council’s then current MTFP expectation *
- 2) All spending on enhancements of assets to reduce the cost to the Council and to build future business, as set out in the then current Business Plan or as agreed with the Council, have been fully taken into consideration.
- 3) All unbudgeted costs/risks in the Trading Group have been fully taken into consideration.

Provided all the above points have been achieved/taken into account, the Directors shall consult with the Shareholder in regard to the payment of a dividend,

- MTFP figures for the first four years (commencing 2018/19 to be confirmed).

Execution page

The Common Seal of

Oxford City Council

was affixed to this Deed

in the presence of

Authorised Officer

Executed as a deed by

Oxford Direct Services Limited

acting by [a director and its Secretary][two Directors]

Signature of Director:

Signature of [Secretary][Director]:

This page is intentionally left blank

dated

2017

Oxford City Council

and

Oxford Direct Services Trading Limited

Shareholder Agreement

Oxford Direct Services Trading Limited

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Shareholder Agreement

dated 2017

Parties

- (1) **Oxford City Council** of Town Hall, St Aldate's, Oxford, OX1 1BX (the **Council**); and
- (2) **Oxford Direct Services Trading Limited** a company incorporated and registered in England and Wales with registered number 107192144 whose registered office is at St Aldates Chambers, 109 St Aldates, Oxford, United Kingdom, OX1 1DS (the **Company**).

Introduction

- (A) The Company was incorporated on 10 April 2017 as a private company limited by shares. At the date of this Agreement the Company has issued share capital of £1 with one share of £1 owned by the Council.
- (B) This Agreement sets out the terms upon which the Council will participate in the Company as its Shareholder and is made pursuant to the Council's powers under section 1 of the Localism Act 2011 and all other relevant enabling legislation.

Agreed terms

1 Interpretation and definitions

1.1 In this Agreement:

Board of Directors means the board of directors of the Company;

Board Meeting means a meeting of the Board of Directors;

Business means the business of the Company described in clause 3, as set out in the Business Plan and such other business as the Council may agree from time to time in writing should be carried on by the Company;

Business Day means any day (other than a Saturday or Sunday) or a bank or public holiday in England and Wales;

Business Plan means a business plan in a form to be approved by the Directors setting out the implementation, over a particular financial year or years, of the strategic objectives of the Company in relation to the Business, to include budgets, expenses (including any administrative expenses) and projected financial results for the financial year(s) in question and the first Business Plan is set out in Schedule 3. For the avoidance of doubt, the parties acknowledge that the first and subsequent Business Plans may be a joint Business Plan made between the Company and Oxford Direct Services Limited.

Completion means completion of the various matters provided for in clause 2;

Deed of Adherence means a deed of adherence in substantially the same form as set out in Schedule 1;

Director means any director for the time being of the Company, including where applicable any alternate director;

Dividend Policy means a dividend policy that the Shareholder will agree from time to time and the first Dividend Policy is set out in Schedule 4;

Environmental Information Regulations means the Environmental Information Regulations 2004;

Financial Year means the 12 month period reported in the annual accounts to be filed at Companies House.

FOIA means the Freedom of Information Act 2000;

Information has the meaning given to it under section 84 of the FOIA;

Management Accounts Date means 31 March, 30 June, 30 September and 31 December in each year;

New Articles means the new articles of association of the Company to be adopted at Completion, which are substantially in the form set out in Schedule 2 (with such changes as the parties may agree) as amended or superseded from time to time;

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

Security Interest means any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, guarantee, indemnity, debenture, declaration of trust, right of set off or combination of accounts or any other type of preferential arrangement (including without limitation, a title transfer and retention of title) or any encumbrance or security interest whatsoever, howsoever arising and whether monetary or not;

Service Contract means a contract to be let by the Council to the Company under which the Company will provide certain services to and on behalf of the Council.

Shareholder means the Council and/or any person to whom it may properly transfer any Shares in accordance with this Agreement and who enters into a Deed of Adherence agreeing to be bound by the terms of this Agreement;

Shares means the ordinary shares of £1 each in the capital of the Company; and

Subsidiary Undertaking means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006.

- 1.2 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Clause headings in this Agreement are for convenience only and do not affect the construction of any provision.
- 1.4 References to any gender shall include the other genders and references to the singular shall include the plural and vice versa.

1.5 Any reference to a person (which for the purposes of this Agreement shall include a firm, unincorporated association, body corporate, government, state or agency of state, any association or partnership or joint venture (whether or not having a separate legal personality)) shall include its successors in title.

1.6 In this Agreement all obligations and liabilities on the part of the Shareholder are (unless expressly stated otherwise) several and shall be construed accordingly.

1.7 Any reference to a document **in the agreed form** shall be a reference to that document in the form agreed and initialled by or on behalf of the Shareholder for the purpose of identification and attached to this Agreement.

2 **Completion**

2.1 Completion shall take place immediately following execution of this Agreement, when the parties shall procure that meetings of the Company and the Board of Directors are held as may be necessary to adopt the New Articles.

3 **The Business of the Company**

3.1 The Shareholder acknowledges and agrees that unless and until it indicates otherwise, the Business of the Company shall be to provide services to external customers.

3.2 The first Business Plan of the Company is attached as Schedule 3 to this Agreement, and by such attachment the Shareholder indicates its agreement to the first Business Plan. The first and each subsequent Business Plan shall cover a 4 year rolling period, and shall be refreshed on an annual basis. On each such annual refresh the Company shall circulate its new 4 year Business Plan to the Shareholder for approval. The Shareholder shall use its reasonable endeavours to either approve the new Business Plan, or to provide comments indicating any areas of disapproval, as quickly as possible and in any event within 2 months of receipt. In the event that the new Business Plan is agreed by the Shareholder the Directors shall adopt the Business Plan at its next convenient Board meeting. In the event that the Shareholder does not agree the new Business Plan, the Directors shall meet the Shareholder to discuss any points of disagreement with a view to producing an agreed draft, but in the event that there is no such agreement, the Shareholder may direct the Directors either to adopt a new Business Plan with which the Shareholder agrees, or to revert to the then current Business Plan. No new Business Plan or any annual refresh or any material variation, updating or replacement of any existing Business Plan shall be valid unless such new, refreshed, materially varied or updated version has been adopted by the Company in accordance with the provisions of this clause.

3.3 Each new Business Plan shall be substantially in the format of the preceding Business Plan and shall be for a 4 year rolling period and refreshed on an annual basis in accordance with the provisions of Clause 3.2 above. For the avoidance of doubt, the Company and the Shareholder acknowledge that unless they agree otherwise, the Business Plan (and any refresh of it) may relate to both the Company and to any other trading company owned by the Shareholder.

3.4 For the further avoidance of doubt, throughout any period when any new or refreshed Business Plan which has been presented for comment to the Shareholder under clause 3.2 above has not been properly adopted by the Company fully in accordance with the

provisions of Clause 3.2 above, the relevant existing Business Plan shall continue to be the Business Plan of the Company.

3.5 Subject to the provisions of this Agreement, the Shareholder understands and agrees that the Company shall use all reasonable and proper means to maintain and improve the Business.

4 **Conduct of the Company's affairs**

4.1 With the exception of those matters requiring the Shareholder's consent pursuant to clause 7, the day-to-day management of the Company shall be vested in the Directors. Without prejudice to the generality of the foregoing, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out. In particular, but without limitation to the generality of the foregoing, the Directors shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this Agreement, the Company shall carry on and conduct its Business and affairs in a proper and efficient manner, for its own benefit, for the benefit of the Shareholder, in accordance with the Business Plan, the Service Contract and following good business practices.

4.2 The Company shall not carry out any activity which would render the holding of Shares by any Shareholder unlawful provided that where a proposed change of law would render such Shareholding unlawful such Shareholder will use all reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.

4.3 The Company will if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.

4.4 All books, records, accounts and documents relating to the Business and the affairs of the Company and its subsidiaries shall be open, on receipt of reasonable notice, to the inspection of the Shareholder (or its agents) to keep the Shareholder properly informed about the Business and affairs of the Company or to protect its interests as a Shareholder. Any confidential information secured as a consequence of such examinations shall be kept confidential by the requesting Shareholder in accordance with the terms of clause 14.

4.5 The Company agrees with the Shareholder that it will ensure the maintenance of effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Shareholder informed of the progress of the Company's Business and affairs and in particular will procure that the Shareholder is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment in the Company.

4.6 The Company shall:

4.6.1 identify the Council's ownership of the Company on its official business stationery and in other promotional material (as agreed); and

4.6.2 not engage in any party political publicity.

4.7 The Shareholder shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it, in relation to the Company so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement:

4.7.1 the Company is managed in accordance with the objectives and provisions of this Agreement; and

4.7.2 the Company performs and complies with all obligations on its part under this Agreement and the New Articles.

4.8 The Company's Financial Year shall run from 1st April to 31st March.

5 **The Board of Directors**

5.1 A Board Meeting shall be held no less than once in every quarter.

5.2 Unless otherwise agreed by all the Directors, 5 Business Days' notice shall be given to each of the Directors of all Board Meetings. The notice convening a Board Meeting shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting.

6 **Finance for the Company**

If the Company requires capital, the Company may request such capital from the Shareholder **provided that** the Shareholder shall not be obliged to provide any such capital or any guarantee or security in respect of any indebtedness of the Company or to put up the finance concerned.

7 **Matters requiring the consent of the Shareholder**

7.1 The Company shall procure (insofar as it is able to do so) that at all times during the term of this Agreement no action shall be taken or resolution passed by the Company or any Subsidiary Undertaking of the Company in respect of any of the following matters except with the prior written consent of the Shareholder:

7.1.1 altering in any respect the New Articles or the rights attaching to any of the Shares in the Company;

7.1.2 permitting the registration of any person as a member of the Company other than the Council;

7.1.3 issuing or allotting any Shares;

7.1.4 borrowing any monies (other than from the Council);

7.1.5 changing the name of the Company or its registered office;

7.1.6 adopting a new Business Plan or materially amending the then current Business Plan, other than in accordance with the provisions of Clause 3.2 above;

- 7.1.7 changing the nature of the Company's Business or commencing any new business by the Company or undertaking business which is materially inconsistent with the Business Plan and the Service Contract;
- 7.1.8 forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not) outside of the Business Plan;
- 7.1.9 amalgamating or merging with any other company or business undertaking;
- 7.1.10 creating or granting any Security Interest over the whole or any part of the Business, undertaking or assets of the Company or over any Shares in the Company or agreeing to do so;
- 7.1.11 making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading) or giving any guarantee or indemnity;
- 7.1.12 entering into or tendering for any work which would fall outside of the normal course of business as set out in the then current Business Plan or permitted under the Company's Scheme of Delegation;
- 7.1.13 appointing or changing the auditors of the Company or its financial year end;
- 7.1.14 making or permitting to be made any change in the accounting policies and principles adopted by the Company in the preparation of its audited or management accounts except as may be required to ensure compliance with relevant accounting standards under the Companies Act 2006 or any other generally accepted accounting principles in the United Kingdom;
- 7.1.15 declaring or paying any dividend outside the terms of the Dividend Policy;
- 7.1.16 appointing or dismissing any Director;
- 7.1.17 establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for Directors;
- 7.1.18 making any remuneration decision outside the terms of the Remuneration Policy
- 7.1.19 making any amendment to the collective terms and conditions of employment of any members of staff
- 7.1.20
 - a) purchasing, leasing or otherwise acquiring assets, or any interests in assets, or
 - b) disposing of any assets, or
 - c) entering into any contracts or transactions

which would involve the Company in the payment of consideration having an aggregate value in excess of £250,000, where dealing with any such assets or

entering into any such contracts or transactions would fall outside the normal course of business as set out in the then current Business Plan or the Service Contract;

7.2 The agreement of the Shareholder to any of the matters referred to in clause 7.1 shall be evidenced by the signature of an authorised signatory of the Shareholder on the resolution approving the matter in question.

8 Dividends

8.1 The amount of any Dividend to be paid (if any) shall be determined by the Dividend Policy.

9 Anti-corruption

9.1 In this clause:

Adequate Procedures means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

Associated Person means in relation to a party to this Agreement, any person (including an officer, employee, agent or Subsidiary Undertaking) who performs services for or on behalf of that party;

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 constitute an offence under sections 1, 2 or 6 of the Bribery Act;

9.2 Each party declares and undertakes to the other parties that:

9.2.1 it has not and will not in relation to the Company or the operation of the Business, engage in any Corrupt Activity;

9.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;

9.2.3 it has and will maintain in place, or in the case of the Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;

9.2.4 it has not and will not engage in any activity, practice or conduct which could place the Company or any other party in breach of section 7(1) of the Bribery Act;

9.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause 9.2 and will provide any information reasonably requested by the other party in support of such compliance; and

9.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 9.

10 **Transfer of Shares**

10.1 Except with the prior written consent of the other Shareholders each Shareholder shall comply with the provisions relating to the issue and transfer of Shares contained in the New Articles.

10.2 The Directors and the Company shall procure that no person who acquires Shares in the Company (whether by transfer or allotment or otherwise) (a **New Shareholder**) shall be registered as their holder unless or until he has entered into a Deed of Adherence.

10.3 A New Shareholder who has entered into a Deed of Adherence in accordance with clause 10.2 shall have all the rights and obligations as if he were an original party to this Agreement in the capacity of a Shareholder.

11 **Conflict with the New Articles**

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the New Articles, then it is the intention of the Shareholder that the provisions of this Agreement shall prevail. Accordingly, each Shareholder (so far as each is able) shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the New Articles.

12 **No fetter**

Nothing in this Agreement shall operate to bind the Company or the Council to the extent that it constitutes an unlawful fetter on any statutory power of the Company or the Council (but this shall not affect the validity of the relevant provision as between the other parties to this Agreement or the respective obligations of such other parties as between themselves under clause 11).

13 **Duration and termination**

13.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Shareholder until the earlier of the following events:

13.1.1 each Shareholder agrees in writing to terminate this Agreement; or

13.1.2 an effective resolution is passed or a binding order is made for the winding up of the Company;

provided that this Agreement shall cease to have effect as regards any Shareholder who ceases to hold any Shares in the Company, except for any provisions which are expressed to continue in force thereafter.

13.2 Termination of this Agreement pursuant to this clause shall not release any party from any liability which at the time of termination has already accrued to another party or which may

accrue after termination of this Agreement in respect of any act or omission prior to such termination.

13.3 Upon termination of this Agreement pursuant to clause 13.1.1, the Shareholder shall do all such acts and things as are necessary to procure (so far as they are able) (including, without limitation, the holding of a general meeting of the Company and the passing of appropriate Shareholder resolutions) that the Company be wound up.

14 **Confidentiality**

14.1 This clause applies to:

14.1.1 all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to one of the other parties whether before or after the date of this Agreement;

14.1.2 any information concerning the business affairs of one party or other information confidential to that party which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement;

including any information relating to any party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, **Confidential Information**).

14.2 In this clause, in relation to a particular item of Confidential Information:

14.2.1 the **Disclosing Party** means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and

14.2.2 the **Receiving Party** means the other party.

14.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:

14.3.1 keep the Confidential Information confidential;

14.3.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this clause 14; and

14.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.

14.4 Notwithstanding clause 14.3, the Receiving Party may disclose Confidential Information as follows:

14.4.1 to its professional advisers (each, a Recipient) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the

Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and

- 14.4.2 to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body.
- 14.5 This clause 14 shall not apply to any Confidential Information which:
 - 14.5.1 is at the date of this Agreement or at a later date comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
 - 14.5.2 was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the same pursuant to this Agreement) and which had not previously been obtained under an obligation of confidence; or
 - 14.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.
- 14.6 The Company acknowledges that the Council is subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation, and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 14.7 and 14.10.
- 14.7 If the Council receives a Request for Information in relation to Information that the Company is holding and which the Council does not hold itself, the Council shall refer to the Company such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the Company shall:
 - 14.7.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within 10 Business Days (or such other period as the Council acting reasonably may specify) of the Council's request; and
 - 14.7.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 14.8 Following notification under clause 14.7, and up until such time as the Company has provided the Council with all the Information specified in clause 14.7, the Company may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:
 - 14.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

- 14.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information.
- 14.9 The Company acknowledges that (notwithstanding the provisions of clause 14.1) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Managers or the Company:
- 14.9.1 in certain circumstances without consulting with the Company; or
- 14.9.2 following consultation with the Company and having taken its views into account.
- 14.10 The Company shall transfer to the Council any Request for Information received by it as soon as practicable and in any event within 3 Business Days of receiving it.
- 14.11 The Company acknowledges that any lists provided which list or outline Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 14.9.
- 15 **General**
- 15.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.
- 15.2 No variation of this Agreement or any agreement or document entered into pursuant to this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 15.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.
- 15.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.
- 15.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 15.6 A waiver of a breach of any of the terms of this agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.
- 15.7 The rights and remedies provided by this Agreement are cumulative and [subject as otherwise provided in this Agreement] are not exclusive of any rights, powers or remedies provided by law.

- 15.8 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:
- 15.8.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
 - 15.8.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 15.9 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.
- 15.10 Each of the parties acknowledges and agrees that:
- 15.10.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or those documents;
 - 15.10.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement;
 - 15.10.3 nothing in this clause shall operate to limit or exclude any liability for fraud.
- 15.11 Save for a person who enters into a Deed of Adherence pursuant to clause 10.2, no person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

16 **Assignment**

This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party save where the Council's functions are transferred or assigned to a successor body. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

17 **No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18 **Notices**

18.1 Any notice or other communication given under this Agreement:

18.1.1 shall be in writing;

18.1.2 shall be signed by or on behalf of the party giving it;

18.1.3 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post or by fax at the address or fax number set out in clause 18.2 of the party due to receive it and marked for the attention of the person named in clause 18.2 (or at such other address in the United Kingdom or fax number or marked for the attention of such other person as last notified in writing to the other parties;

18.1.4 shall be deemed to have been received:

(a) if delivered by hand, at the time of actual delivery;

(b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting; and

(c) in the case of fax, at the time of completion of transmission.

18.2 The addresses of the parties for the purposes of clause 18.1 are:

The Company

Address: St Aldates Chambers, 109 St Aldates, Oxford, United Kingdom, OX1 1DS

For the attention of: The Company Secretary

The Council

Address: Town Hall, St Aldate's, Oxford, OX1 1BX

For the attention of: **[Client-side representative]**?

To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in clause 18.2 and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out in clause 18.2.

18.3 In this clause if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

18.4 For the avoidance of doubt, a notice or other communication given under this Agreement shall not be validly served if sent by e-mail.

19 **Counterparts**

19.1 This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

20 **Applicable law**

20.1 The parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with the laws of England and Wales.

20.2 Each of the parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

This Agreement has been executed on the date stated at the beginning of this Agreement.

Schedule 1

Deed of Adherence

Deed of adherence

dated 20[]

By [Limited] a company incorporated in [] (registered number []) whose registered office is at [] (the **New Shareholder**) in favour of the persons whose names and addresses are set out in the Schedule to this Deed (the **Continuing Parties**).

Introduction

- (A) This Deed is supplemental to a Shareholder Agreement dated 2017 the Council and the Company (the **Shareholder Agreement**) and to *[insert details of any subsequent Deeds of Adherence or Amendment]*.
- (B) The New Shareholder wishes to [subscribe for] [acquire] [] Shares in the capital of the Company [from *Transferor*].
- (C) Clause [] of the Shareholder Agreement provides that no person other than a Shareholder shall acquire Shares in the Company (whether by way of transfer or allotment or otherwise) unless he enters into a Deed of Adherence in substantially the form of this Deed.

Agreed terms

- 1 The New Shareholder confirms that [he/it] has been given a copy of the Shareholder Agreement and covenants with the Continuing Parties to observe, perform and be bound by every provision of the Shareholder Agreement (other than the Excluded Clauses) as if the New Shareholder had been an original party to it.
- 2 In this Deed the Excluded Clauses shall mean clauses [insert numbers of clauses to be excluded i.e. ones containing a personal obligation] of the Shareholder Agreement.
- 3 Unless the context requires otherwise, words and expressions defined in the Shareholder' Agreement shall have the same meanings when used in this Deed.
- 4 This Deed shall be governed by and construed in accordance with the laws of [].

This Deed of Adherence has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule

[Insert names and addresses of Continuing Parties]

Schedule 2

New Articles

Schedule 3
Business Plan

Schedule 4

Dividend Policy

The Company shall pay no Dividend to the Shareholder unless the following matters have been met in full:

- 1) The Company and Oxford Direct Services Trading Limited (“the Trading Group”) have fully delivered the Council’s then current MTFP expectation*
- 2) All spending on enhancements of assets to reduce the cost to the Council and to build future business, as set out in the then current Business Plan or as agreed with the Council, have been fully taken into consideration.
- 3) All unbudgeted costs/risks in the Trading Group have been fully taken into consideration.

Provided all the above points have been achieved/taken into account, the Directors shall consult with the Shareholder in regard to the payment of a dividend,

*MTFP figures for first four years (commencing 2018/19) to be confirmed

Execution page

The Common Seal of

Oxford City Council

was affixed to this Deed

in the presence of

Authorised Officer

Executed as a deed by

Oxford Direct Services Limited

acting by [a director and its Secretary][two Directors]

Signature of Director:

Signature of [Secretary][Director]:

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Agenda Item 9

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

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