



dated

2017

PUBLICA GROUP (SUPPORT) LIMITED

Articles of Association

adopted by a special resolution passed on [19th May] 2017

Company number: 10580349

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The Companies Act 2006

Company limited by guarantee and not having a share capital

Articles of Association

of

PUBLICA GROUP (SUPPORT) LIMITED

as adopted by a special resolution passed on []

1 **Interpretation and definitions**

In these Articles unless the context otherwise requires:

the Act means the Companies Act 2006 and any statutory modification or re-enactment thereof for the time being in force;

Articles means these Articles of Association;

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

Chair means the chair of the Board appointed pursuant to Article 21.10.1 or in his absence any vice or deputy chair appointed pursuant to Article 21.10.3;

Clear Days means in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

Committee means any committee constituted under the provisions of these Articles;

Conflict of interest has the meaning given in Articles 21.9.1 and 21.9.2;

electronic form and **electronic means** have the meaning given in section 1168 of the Companies Act 2006;

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

Executive Director means a Director who is also an employee of the Company;

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

Member means a person whose name is entered in the Register of Members of the Company and **Members** and **Membership** shall be construed accordingly;

Members Agreement means the agreement entered into between the Members to regulate their relationship as Members of the Company;

Non - Executive Director means a Director who is not an employee of the Company;

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

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

Subsidiary has the meaning given by section 1159 of the Act;

the United Kingdom means Great Britain and Northern Ireland; and

Voting Representative means the individual appointed by each Member to attend, speak and vote at general meetings on its behalf in accordance with Article 12.4.

2 **Interpretation**

2.1 Unless the context otherwise requires words or expressions contained in these Articles bear the same meaning as in the Act but excluding any statutory modification thereof not in force on the date of incorporation of the Company.

2.2 In these Articles words importing individuals shall unless the context otherwise requires include corporations and words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender.

3 **Model Articles**

These Articles shall apply to the Company in place of the Model Articles (attached in Schedule 2 to the Companies (Model Articles) Regulations 2008).

4 **Name**

The name of the company is Publica Group (Support) Limited (the **Company**).

5 **Registered office**

The Company's registered office is to be located in England and Wales.

6 **Objects**

The object of the Company shall be to provide services:

6.1.1 to public bodies; and

6.1.2 other customers (whether public bodies or not) as considered appropriate by the Members from time to time provided that services to non-public bodies shall always remain incidental to the primary aim of providing services to public bodies.

7 **Powers**

7.1 The Company shall have power to do anything that a natural or corporate person can lawfully do which is necessary or expedient in furtherance of its objects unless prohibited by these Articles.

7.2 The Members may, by Special Resolution, direct the Directors to take, or refrain from taking, specified action provided that no such Special Resolution invalidates anything which the Directors have done before the passing of Special Resolution.

- 7.3 Without limiting the powers described in Article 7.1 the Company shall have the power:
- 7.3.1 to purchase and maintain insurance for the benefit of any persons who are or were at any time Directors, officers or employees of the Company or any other company which is a Subsidiary or Subsidiary undertaking of the Company or in which the Company has any interest, whether direct or indirect, or who are or were at any time trustees of any pension fund in which any employee of the Company or of any other such company or Subsidiary undertaking are or have been interested, indemnifying such persons against liability for negligence, default, breach of duty or breach of trust or any other liabilities which may be lawfully insured against;
 - 7.3.2 to invest and deal with the monies of the Company not immediately required in such manner as may from time-to-time be determined and to hold or otherwise deal with any investments made, provided that the Company shall not have power to invest in any organisation which is a Member of the Company at the time the investment is made;
 - 7.3.3 to promote any other company for the purpose of acquiring the whole or any part of the business or property or undertaking or any of the liabilities of the Company, or of undertaking any business or operations which may appear likely to assist or benefit the Company;
 - 7.3.4 to pay all or any expenses incurred in connection with the formation and promotion and incorporation of the Company, the running costs and administration of the Company, the employment of consultants and the reimbursement of Directors' expenses;
 - 7.3.5 to employ and pay any employees, officers, and professional or other advisers and to pay its Directors;
 - 7.3.6 to set up, establish, support and maintain superannuation and other funds or schemes (whether contributory or non-contributory) for the benefit of any of the employees of the Company or of any Subsidiary, holding or fellow Subsidiary of the Company and of their spouses, widows or widowers, children and other relatives and dependants to lend money to any such employees or to trustees on their behalf or enable any such schemes to be established or maintained;
 - 7.3.7 to borrow or raise money in such manner as the Company shall think fit and in particular by the issue (whether at par or at a premium or discount and for such consideration as the Company may think fit) of bonds, debentures or debenture stock (payable to bearer or otherwise), mortgages or charges, perpetual or otherwise, and, if the Company thinks fit, charged on all or any of the Company's property (both present and future) and undertaking, and collaterally or further to secure any obligations of the Company by a trust deed or other assurance;
 - 7.3.8 to do anything that a natural or corporate person can lawfully do which is necessary and expedient in furtherance of its objects unless prohibited in these Articles.

8 **Application of income and property**

8.1 The income and property of the Company shall be applied solely in promoting the Company's objects.

8.2 No distribution shall be paid or capital otherwise returned to the Members in cash or otherwise other than

8.2.1 the payment in good faith:

- (a) of reasonable and proper remuneration (including pensions, contributory pension payments, payment of premiums to pension policies and terminal grants and gratuities) to any officer or employee of the Company in return for any services rendered to the Company;
- (b) of fees, remuneration or other benefit in money or money's worth to a company or other body corporate of which a Director may be a Member holding not more than 2% of the share capital and controlling not more than 2% of the voting rights at general meetings of such company or body corporate;
- (c) to any Director of reasonable out-of-pocket expenses;
- (d) of reasonable and proper remuneration to any Director who is not an employee of the Company in return for any services rendered to the Company;
- (e) of reasonable and proper rent for premises demised or let by any Member;
- (f) of reasonable and proper interest on money lent by any Member;
- (g) of any indemnities to Directors or other officers of the Company under Article 24.1 and any premium in relation to insurance in respect of liabilities of Directors and other officers of the Company in accordance with Article 24.2; or
- (h) subject to prior approval of all Members, to Members (and any former Member(s) which contributed to a distributable surplus within the preceding five years) of any surplus of the Company.

9 **Limited liability**

The liability of the Members is limited.

10 **Members' guarantee**

Each Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while they are a Member of the Company or within one year after they cease to be a Member of the Company for payment of the debts and liabilities of the Company contracted before they cease to be a Member of the Company and of the costs charges and expenses of winding up such amount as may be required not exceeding ten pounds.

11 **Winding up**

If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and liabilities any property whatsoever such property shall be divided between the Members (whose names appear in the register of Members at the date of winding up or dissolution) and any former Member(s) which contributed to the surplus within the five years preceding such winding up or dissolution. The division shall be proportionate to the total contribution to such surplus by each Member or former Member (based on a reasonable relationship between the former Member(s) contribution and the distributable surplus) prior to the date of winding up or dissolution. For the purposes of this Article a certificate in writing signed by the duly appointed auditors for the time being of the Company as to the proportions in which any property is to be divided will be sufficient.

12 **Admission of Members and cessation of Membership**

12.1 The subscribers shall be the first Members of the Company.

12.2 The Members may admit any other body to Membership on receiving:

12.2.1 a written application confirming that it agrees to be bound by these provisions of the Articles; and

12.2.2 where a Members' Agreement has been entered into, a signed deed of adherence to the Members' Agreement

from any such body.

12.3 The rights powers and obligations of each Member under these Articles shall take effect on the admission of that organisation to Membership.

12.4 Each Member shall nominate a person to act as its representative in the manner provided in Section 323 of the Act. Such representative shall have the right on behalf of the Member to attend meetings of the Company and vote thereat and to exercise all rights of Membership on behalf of the Member. The relevant Member may by written notice to the Company revoke the nomination of such representative and may nominate another representative in his place.

12.5 The rights of each Member shall be personal and shall not be transferable and shall be exercisable only by the Member or its Voting Representative.

12.6 Any Member shall cease to be a Member of the Company if it withdraws, is removed or expelled under any agreement entered into between the Members from time to time and the noting of the cessation of Membership in the Company's register of Members shall be conclusive in this regard.

13 **General meetings and resolutions**

13.1 The Company shall once in every calendar year hold a general meeting which for the purposes of these Articles shall be called the annual general meeting. The Directors may call general meetings and on the requisition of any two or more Members shall forthwith proceed to convene a general meeting as required pursuant to the provisions of Section 304 of the Act.

- 13.2 Any general meeting not called on the requisition of a Member pursuant to Article 13 shall be called by at least twenty-one Clear Days' notice or by shorter notice if it is so agreed by not less than 90% of the Members. The notice shall specify the time and place of the meeting, the general nature of the business to be transacted and if it is anticipated that Members 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. The notice shall be given to all Members and to the Directors and to the Company's auditors.
- 13.3 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at that meeting.
- 13.4 A Director shall be entitled to attend and speak at any general meeting.
- 13.5 The Chair of the meeting may permit other persons who are not Members of the Company to attend and speak at a general meeting.
- 13.6 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.
- 13.7 A person is able to exercise the right to vote at a general meeting when:
- 13.7.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
- 13.7.2 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 other persons attending the meeting.
- 13.8 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.
- 13.9 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.
- 13.10 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.
- 13.11 No business shall be transacted at any general meeting unless a quorum is present. 75% of Members present by their Voting Representative or by proxy shall be a quorum.
- 13.12 If a quorum is not present within half an hour from the time appointed for a general meeting it shall stand adjourned to the same day in the next week at the same time and place or to such later day and time and/or other place as the Members present decide.
- 13.13 If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Members present shall constitute a quorum.
- 13.14 An entry in the minutes of any general meeting stating that a resolution has been passed or not passed shall be conclusive evidence of the fact.

14 **Chair at General Meetings**

The Chair or in his absence some other Director who is present and nominated by the Members shall Chair the meeting. If neither the Chair or such Director is present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act, the Members present shall elect another Director who is present to be the Chair and, if there is only one Director present and willing to act, he shall be the Chair. If no Director is present within fifteen minutes after the time appointed for holding the meeting or is willing to act as Chair the Members present shall elect one of their number to be the Chair.

15 **Adjournments**

15.1 The Chair may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the original meeting. It shall not be necessary to give notice of the adjourned meeting unless it is adjourned for fourteen days or more when at least seven Clear Days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted.

15.2 The Chair may also, without the consent of the meeting, adjourn the meeting (whether or not it has commenced or is quorate) either to a time and place to be determined pursuant to Article 15.3 or to such other time and place as he may decide if the unruly conduct of persons attending the meeting is preventing the orderly holding or continuance of the meeting.

15.3 When a meeting is adjourned pursuant to Article 15.2 without a decision to a new time and place, the time and place for the adjourned meeting shall be fixed by the Board. It shall not be necessary to give any notice of the adjourned meeting unless it is adjourned for fourteen days or more when at least seven Clear Days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted.

16 **Votes of Members**

16.1 A resolution put to the vote of a meeting shall be decided on a show of hands unless a poll is demanded either before the meeting or on the declaration of the result of the show of hands. Subject to the provisions of the Act, a poll may be demanded:-

16.1.1 by the Chair; or

16.1.2 by any Member having the right to vote at the meeting;

16.1.3 and a demand by a person as proxy for a Member shall be the same as a demand by a Member.

16.2 On a show of hands every Member present by its Voting Representative shall have one vote. On a poll every Member present by its Voting Representative or by proxy shall have one vote.

16.3 In the case of an equality of votes, whether on a show of hands or on a poll, the Chair shall not have a casting vote.

- 16.4 Unless a poll is demanded, a declaration by the Chair that a resolution has been passed or not passed unanimously, or by a particular majority, or passed, or not passed by a particular majority shall be final and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 16.5 A demand for a poll may be withdrawn before the poll is taken but only with the consent of the Chair. A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
- 16.6 A poll shall be taken immediately. The results of the poll shall be the resolution of the meeting at which the poll was demanded.
- 16.7 No objection shall be raised to the qualification of any vote except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the Chair whose decision shall be final.

17 **Written Resolutions**

A written resolution may be passed in accordance with the Act.

18 **Reserved Matters**

Notwithstanding the provisions of Articles 16 to 17 inclusive, no resolution of the Members that relates to a matter described in the Members' Agreement as a reserved matter or equivalent shall be passed unless it achieves the majority required by the Members' Agreement in relation to such matter.

19 **Appointment of Proxies**

- 19.1 An appointment of a proxy shall be in writing, signed by or on behalf of the appointor and shall be in the following form (or in any other form which the Board may approve):-

[Name of the Company]

I/We,

being a Member/Members of the above-named Company, hereby appoint

of

or, failing him,

of _____, as my/our proxy to vote in my/our name(s) and on my/our behalf at the annual/extraordinary general meeting of the Company to be

held on _____, and at any adjournment thereof.

Signed

Date

19.2 Where it is desired to afford Members an opportunity of instructing the proxy how he shall act the document appointing a proxy shall be in the following form (or any other form which the Board may approve):

[Name of the Company]

I/We

being a Member/Members of the above-named Company, hereby appoint

of

or, failing him,

of , as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the Company

to be held on , and at any adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:-

Resolution Number 1 *for *against Resolution Number 2 *for *against

*strike out whichever is not desired

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed

Date

19.3 The document appointing a proxy and any authority under which it is signed or a copy of such authority certified notarially or in some other way approved by the Board shall be deposited at the Company's registered office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote. An instrument of proxy which is not deposited or delivered in this manner shall be invalid.

19.4 A vote given or poll demanded by proxy or by the Voting Representative of a Member shall be valid unless termination of the proxy or representative's authority is received by the Company at its registered office or the place at which the meeting is due to be held before the meeting begins.

20 Amendments to resolutions

20.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if –

20.1.1 notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the Chair of the meeting may determine), and

- 20.1.2 the proposed amendment in the reasonable opinion of the Chair of the meeting:
- (a) does not, materially alter the scope of the resolution
 - (b) is no more onerous on the company and
 - (c) does not have the effect of negating the substantive resolution.
- 20.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution if –
- 20.2.1 the Chair of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
- 20.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 20.3 If the Chair of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chair's error does not invalidate the vote on that resolution.

21 **Directors**

21.1 **Number of Directors**

- 21.1.1 Each Member shall be entitled to appoint one Director. Any appointment under this Article shall be made by giving notice signed by the Member in question to the Company.
- 21.1.2 The Members shall be entitled to jointly appoint one or more Directors who shall be independent of all of them. Any appointment under this Article shall be made by giving notice signed by all of the Members in question to the Company.

21.2 **Disqualification of and cessation of office for Directors**

- 21.2.1 A person shall be ineligible for appointment to the Board and if already appointed shall immediately cease to be a Director if the relevant individual:
- (a) ceases to be a Director by virtue of any provision of the Act or becomes prohibited by law from being a company director; or
 - (b) is or becomes bankrupt or makes any arrangement or composition with his creditors generally; or
 - (c) 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
 - (d) resigns his office by written notice to the Company; or

- (e) is removed from office by the Member that appointed him by giving notice signed by the relevant Member to Company; or
- (f) Other than a Director appointed in accordance with Article 21.1.1 above, is removed from office by a resolution of or written notice signed by not less than three quarters of all the other Members from time to time; or
- (g) Other than a Director appointed in accordance with Article 21.1.1 above, 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
- (h) 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 Member, and at any time ceases to be so employed.

21.2.2 It is agreed that in the case of a Director appointed in accordance with Article 21.1.1 above, the Members shall in respect of the circumstances set out in Article 21.2.1(f) and the Board in respect of Article 21.2.1(g) be entitled to notify the Member which appointed the Director in question of the reasons and/or circumstance which they consider sufficient for that Director to be removed from office.

21.3 Powers of the Board

21.3.1 Subject to:

- (a) the provisions of the Act;
- (b) any resolution from time to time of the Members in accordance with these Articles; and
- (c) these Articles;

the business of the Company shall be managed by the Board who may exercise all the powers of the Company. No alteration of these Articles and no resolution of the Members shall invalidate any prior act of the Board which would have been valid if that alteration or resolution had not been made. The powers given by this Article 21.3.1 shall not be limited by any special power given to the Board by these Articles and a meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.

21.4 Delegation of Directors' powers

21.4.1 The Board may delegate in writing any of its powers to any Committee consisting of two or more Directors together with such other persons as the Board sees fit.

21.4.2 The Board may delegate in writing to a Director or to any officer such of their powers as they consider desirable to be exercised by such person. Any such

delegation may be made subject to any conditions the Board may impose and either collaterally with or to the exclusion of its own powers and may be revoked or altered. Subject to any such conditions the proceedings of any Committee shall be governed by the provision of these Articles insofar as they apply to proceedings of the Board.

21.5 Alternate Directors

No Director shall be entitled to appoint any person as an alternate Director.

21.6 Directors' expenses

Directors may be paid all expenses reasonably and properly incurred by them in connection with their attendance at meetings of the Board or committees of the Board or general meetings of the Company or otherwise in connection with the discharge of their duties and such other sums as may be determined by the Members of the Company.

21.7 Directors' appointments and interests

A Director may not have any financial interest personally or as a Member of a firm or as a director or senior employee (being an employee with managerial status) or in any contract or other transaction of the Company unless it is permitted by these Articles.

21.8 Proceedings of Directors

21.8.1 Subject to these Articles the Board may regulate their proceedings as they think fit.

21.8.2 Subject to the articles, Directors participate in a Directors' meeting, or part of a Directors' meeting, when:

(a) The meeting has been called and takes place in accordance with the articles, and

(b) They can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

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

21.8.4 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

21.8.5 The Board shall hold at least four meetings a year. Meetings called under this Article shall be convened on not less than fourteen Clear Days' notice.

21.8.6 Any Directors may, by notice in writing given to the Company, requisition a meeting of the Board. In such circumstances it shall be the duty of the Company to convene such a meeting as soon as is reasonably practicable.

- 21.8.7 The quorum for Board meetings must comprise such number of Non-Executive Directors who between them command not less than 50% of the total number of votes commanded by Non-Executive Directors plus one Executive Director.
- 21.8.8 If a quorum is not present within half an hour from the time appointed for a Board meeting the Board meeting shall if requested by a majority of those Directors present be adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors present may determine.
- 21.8.9 If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the adjourned meeting then the adjourned meetings shall if requested by a majority of those Directors present be adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors present may determine.
- 21.8.10 If at the meeting adjourned pursuant to Article 21.8.9 a quorum is not present within half an hour from the time appointed for the adjourned meeting then notwithstanding Article 21.8.6 at least one Executive Director plus one Non-Executive Director present shall constitute a quorum.
- 21.8.11 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 in person shall be entitled to one vote. In the case of an equality of votes at any Board meeting the Chair shall not have a second or casting vote.
- 21.8.12 The Board may invite such person as it deems appropriate to attend and (if appropriate) speak at Board meetings. Any such invitation may be made on such terms as the Board may determine and may be revoked at any time. Provided that such attendees shall not be Directors and may not vote on any matter discussed by the Board.

21.9 **Conflicts of interest**

- 21.9.1 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
- 21.9.2 Unless the interest is of the type specified in Articles 21.9.3 or 21.9.4 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 21.9.3 or 21.9.4 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.
- 21.9.3 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:
- (a) 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;

- (b) the Director is a director or other officer of a company or body which is a Member of the Company; or
 - (c) the Director is a director or other officer of Publica Group Limited or Publica Group (Services) Limited.
- 21.9.4 A Director shall not be treated as having an interest:
 - (a) of which the Director has no knowledge and of which it is unreasonable to expect him to have knowledge;
 - (b) in the establishment of a policy in respect of Director expenses or in any resolution relating to the remuneration of Directors.
- 21.9.5 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.
- 21.9.6 Authorisation of a matter under Article 21.9.5 shall be effective only if:
 - (a) 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;
 - (b) 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
 - (c) 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.
- 21.9.7 Unless otherwise determined by the Directors (excluding the Interested Directors), any authorisation of a matter under Article 21.9.5 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 21.9.8 Any authorisation of a matter under Article 21.9.5 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.

- 21.9.9 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:
- (a) disclose any such information to the Company, the Directors or any other Director or employee of the Company; or
 - (b) use or apply any such information in connection with the performance of his duties as a Director;
 - (c) 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 21.9.5.
- 21.9.10 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 21.9.5 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.
- 21.9.11 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.
- 21.9.12 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 Chair or in his absence the Chair of the meeting and his ruling shall be final and conclusive.

21.10 **Appointment of Chair of the Board**

- 21.10.1 As soon as practicable after incorporation, and thereafter immediately prior to the conclusion of each annual general meeting the Members shall by ordinary resolution appoint one of the Board to be the Chair of the Board (who shall not be an Executive Director) to hold office until he is either reappointed or until another Chair of the Board is appointed or removed by ordinary resolution of the Members.
- 21.10.2 The Director so appointed as Chair shall preside at every meeting of the Board at which he is present. If there is no Director holding that office or if the Director holding it is not present within five minutes after the time appointed for the meeting the Directors present may appoint one of their number to be Chair of the meeting.
- 21.10.3 The Board may appoint a vice or deputy Chair to act in the absence of the Chair on such terms as the Board shall think fit.

21.11 **Written resolutions of the Board**

- 21.11.1 A decision of the Directors is taken in accordance with this Article when all eligible Directors indicate to each other by any means that they share a common view on a matter.
- 21.11.2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible Director or to which each eligible Director has otherwise indicated agreement in writing.
- 21.11.3 References in this Article to eligible Directors are to Directors who would have been entitled to vote on the matter had it been proposed as a resolution at a Directors' meeting.
- 21.11.4 A decision may not be taken in accordance with this Article if the eligible Directors would not have formed a quorum at such a meeting.

21.12 **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 and of all proceedings at meetings of the Company

22 **Means of communication to be used**

- 22.1 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.
- 22.2 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.
- 22.3 A Director may agree with the company that notices or documents sent to that Director in a particular way are deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

23 **Notices**

- 23.1 Any notice to be given to or by any person pursuant to these Articles shall be in writing.
- 23.2 The Company may give any notice to the Members either personally, or by sending it by post in a prepaid envelope addressed to the Members at their registered address, or by leaving it at that address, or by suitable electronic means in accordance with the provisions of the Act.
- 23.3 The Members present by their Voting Representative at any meeting of the Company shall be deemed to have received notice of the meeting and where requisite of the purposes for which it was called.

23.4 Proof that an envelope containing a notice was properly addressed prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted, or 24 hours after being sent by electronic means or delivered by hand to the relevant address, or on being handed to a Member's Voting Representative or Director personally, or as soon as the Member or Director acknowledges actual receipt.

24 **Indemnity**

24.1 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 24.1 shall only have effect in so far as its provisions are not avoided by Section 232 of the Act.

24.2 The Board shall have power to purchase and maintain for any Director or officer of the Company insurance against any such liability as is referred to in Section 232 of the Act.



dated

25th May

2017

- (1) **Cotswold District Council**
- and
- (2) **Forest of Dean District Council**
- and
- (3) **West Oxfordshire District Council**
- and
- (4) **Cheltenham Borough Council**

Members' Agreement for Publica Group (Support) Limited

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Members Deed of Agreement

dated 25th May 2017

Parties

- (1) **Cotswold District Council** of Trinity Road, Cirencester, Gloucestershire, GL7 1PX (CDC);
- (2) **Forest of Dean District Council** of Council Offices, High Street, Coleford, Gloucestershire GL16 8HG (FDDC);
- (3) **West Oxfordshire District Council** of Woodgreen, Witney, OX28 1NB (WODC);
- (4) **Cheltenham Borough Council** of Municipal Offices, Promenade, Cheltenham GL50 9SA (CBC) and
- (5) **Publica Group (Support) Limited** (registered number 10580349) whose registered office is at Cotswold District Council of Trinity Road, Cirencester, Gloucestershire, GL7 1PX (the Company)

Introduction

- (A) The Company was incorporated in England and Wales as a private company limited by guarantee on 24 January 2017 under the Companies Act 2006.
- (B) The Company is a *Teckal* company fulfilling the conditions set out in Regulation 12(4) of the Public Contracts Regulations 2015. The Company is subject to management supervision by the Members 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) The Members have established the Company as a vehicle through which services are delivered to the Members.
- (D) CDC, FDDC, WODC and CBC are each a local authority exercising their powers under section 1 Localism Act 2011 when establishing the Company.
- (E) The Members wish to participate as Members in the Company and have agreed to enter into this Deed for the purpose of regulating their relationship with each other and the Company as provided herein.
- (F) The Company has agreed with the Members that it will comply with the terms and conditions of this Deed insofar as they relate to the Company.
- (G) Critical management decisions are reserved to the Members and these are set out in Schedule 1 to this Deed.

Agreed terms

1 Definitions and Interpretation

In this Deed:

1.1 the following expressions have the following meanings unless inconsistent with the context:

Act means the Companies Act 2006;

Annual Business Plan means a business plan in a form to be approved by the Members setting out the implementation, over a particular Financial Year, of the strategic objectives of the Company in relation to the Business as described in the Service Plans, to include budgets, expenses (including any administrative expenses) and projected financial results for such Financial Year;

Application for Membership and Deed of Adherence means an application for membership of the Company and deed of adherence to this Deed in the form set out at Schedule 2;

Articles means the articles of association of the Company adopted (as may be amended from time to time);

Board means the Directors of the Company, or such of those Directors present at a duly convened meeting of the Directors at which a quorum is present in accordance with the Articles;

Business means the business of the Company (including any Subsidiaries) as described in clause 4 and/or such other business as the Members may unanimously 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 Transfer Agreement means the agreed form agreement for the transfer by the relevant Member(s) to the Company of the relevant Member(s) business and assets for the delivery of the Services;

Commissioned Contract means a services contract made between any Member and the Company for the delivery of Services;

Completion means the performance by the parties of their respective obligations under clause 5;

Confidential Information means any financial or other information in respect of the Company or the Business or the Members (in the case of the Company) or any other Member (in the case of a Member) or any matter subject to or in connection with this Deed;

Deed of Adherence means a deed of adherence to this Deed in the form set out at Schedule 2 or such other form as the Members may prescribe;

Director means any duly appointed director of the Company from time to time;

Employee Transfer Agreement means an agreed form agreement for the transfer of employees from the relevant Member(s) to the Company under the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with the delivery of the Services;

Encumbrance means any mortgage, charge, pledge, lien, assignment by way of security, option, refusal, other preferential arrangement, third party right or interest, security interest of any kind or other arrangement having similar effect;

Executive Director means a Director who is also an employee of the Company;

Facility Agreement the agreed form working capital loan facility to be made available to the Company by the relevant Member(s) on or before the Operational Date;

Financial Year means the year commencing 1 April and expiring on the subsequent 31 March;

FOIA means the Freedom of Information Act 2000;

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

Lease means the agreed form lease of the property to be granted by the relevant Member(s) (as Landlord) to the Company (as Tenant) on the Operational Date;

Member means each of CDC, FDDC, WODC and CBC and any other body or person admitted to Membership by consent of the Members from time to time in accordance with the Articles and this Deed;

Members' Representative Board means a board comprising the Voting Representatives as described in clause 3;

Nominated Director means a Director appointed pursuant to Clause 11.2.2 of this Agreement;

Non-Executive Director means a Director who is not also an employee of the Company;

Normal Trade Credit means the credit which arises when a supplier of goods and/or services allows the Company to pay for those goods and/or services at a date which is later than the date upon which they are supplied to the Company;

Operational Date means the date upon which the Company commences the provision of the Services;

Ordinary Resolution has the meaning given to it by section 282 of the Act;

Project Documents means the documents agreed between the Members relating to the operation and funding of the Company including (as applicable) the Business Transfer Agreement, the Facility Agreement, the Commissioned Contracts, the Lease and the Employee Transfer Agreement;

Request for Information shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations 2004;

Reserved Matter means any of the individual management decisions reserved to the Members and requiring the percentage approval listed in Schedule 1;

Services means the services that make up the Business of the Company to be delivered by the Company under any Commissioned Contract;

Service Plan means the plan agreed on a rolling three year basis between the Company and each Member detailing the Services; and

Subsidiary has the meaning given to it by section 1159 of the Act.

- 1.2 references to any statute or statutory provisions will, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute, whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provisions, or re-enacted in such statute or provisions, and to any subsequent statute or the corresponding provisions of any subsequent statute in force at any time prior to the date of this Deed directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provisions which are in force prior to the date of this Deed;
- 1.3 references to persons will be construed so as to include bodies corporate, unincorporated associations and partnerships;
- 1.4 references to clauses, Schedules and Annexures are to clauses of and the Schedules and Annexures to this Deed;
- 1.5 the Schedules form part of this Deed and will have the same force and effect as if expressly set out in the body of this Deed;
- 1.6 the headings to the clauses of this Deed and to the paragraphs of the Schedules will not affect its construction;
- 1.7 any phrase in this Deed introduced by the term **include, including, in particular** or any similar expressions which will be construed as illustrative and will not limit the sense of the words preceding that term.

2 **Consideration**

In consideration of the mutual agreements and undertakings set out in this Deed the parties have granted the rights and accepted the obligations in this Deed.

3 **Delegated Authority**

- 3.1 Each Member shall nominate one individual (**Voting Representative** as defined in the Articles) to represent that Member at general meetings of the Members, to cast the membership vote and to sign any resolution in writing on behalf of that Member (acting at all times within the bounds of the delegated authority and in accordance with the instructions of the appointing Member in respect of any such resolution).

- 3.2 Delegated authority shall be in writing in agreed form and served upon the Company.
- 3.3 A Member may change its Voting Representative from time to time provided that any change shall not take effect until notice has been duly served in writing on the Company.
- 3.4 The other Members, the Directors and the Company shall have the right to rely on any action taken by a notified Voting Representative acting within his delegated authority.
- 3.5 The following persons shall be the initial Voting Representatives for each Member on and from Completion:
 - 3.5.1 CDC: Leader of CDC;
 - 3.5.2 FDDC: Leader of FDDC;
 - 3.5.3 WODC: Leader of WODC; and
 - 3.5.4 CBC: Leader of CBC.

4 Business Of The Company

- 4.1 The Business of the Company is:
 - 4.1.1 to provide Services to public bodies and other customers (whether public bodies or not); and
 - 4.1.2 to do such other things as may be agreed between the Members from time to time provided that Services to non-public bodies shall always remain incidental to the primary aim of providing Services to public bodies.

5 Completion

- 5.1 Completion shall take place immediately after the execution of this Deed when the parties shall take, or procure to be taken at Board and Members' meetings of the Company the following steps, to the extent not already taken:
 - 5.1.1 the appointment or designation of the following persons as Directors as appropriate:

Name	Appointment or designation
David Neudegg	Executive Director
Frank Wilson	Executive Director
David Brooks	Non-Executive Director
Steve Anderson Dixon	Non-Executive Director
James Towner	Non-Executive Director
Rosa Stewart	Non-Executive Director

(a) IT BEING AGREED THAT:

- i DAVID BROOKS has been jointly appointed by the Members pursuant to Article 21.1.2 and clause 11.2.2A of this Deed;
- ii STEVE ANDERSON DIXON, JAMES TOWNER and ROSA STEWART have been jointly appointed by CDC, FDDC and WODC pursuant to Article 21.1.1 and clause 11.2.2 (b) of this Deed; and
- iii WENDY FLYNN has been appointed by CBC pursuant to Article 21.1.1 and clause 11.2.2 (a) of this Deed.

5.1.2 the adoption of the agreed form articles of association as the Company's Articles.

5.2 Not later than the Operational Date the relevant Members and the Company shall enter into such of the Project Documents as each relevant Member considers necessary.

6 Conduct Of The Company's Affairs

6.1 Each Member covenants with the other Members that so long as this Deed remains in force and effect it will so far as it is reasonable for it to do so:

6.1.1 be just and true to the other Members and act in good faith;

6.1.2 as soon as practicable notify the Company of any matters of which it becomes aware which may affect the Company or the Business;

6.1.3 generally do all things necessary to give effect to the terms of this Deed;

6.1.4 take all steps available to it to ensure that it is represented at meetings of the Board or any committee of the Board or general meetings has the necessary quorum throughout;

6.1.5 consider the Company as a potential supplier for all activities that form part of the Business;

6.1.6 keep the Company fully informed of its activities that are relevant to the Business and of any plans it may have to enter into a material contract with a third party for services that are similar to the Services or any of part of them.

6.2 Subject to clause 12 the Board shall be responsible for the day to day management of the Company in accordance with the Annual Business Plan and without prejudice to the generality of the foregoing shall:

6.2.1 transact all its business on arm's length terms;

6.2.2 maintain, with a well-established and reputable insurer, adequate insurance against all risks usually insured against by companies carrying on the same or a

similar business and (without prejudice to the generality of the foregoing) for the full replacement or reinstatement value of all its assets of an insurable nature;

- 6.2.3 keep proper books of account and therein make true and complete entries of all its dealings and transactions of and in relation to the Business;
 - 6.2.4 prepare its accounts in accordance with the Act and in accordance with all applicable accounting standards and principles and practices generally acceptable in the United Kingdom;
 - 6.2.5 prepare such accounts in respect of each accounting reference period as are required by statute and procure that such accounts are audited (where required) as soon as practicable and in any event not later than four months after the end of the relevant accounting reference period; and
 - 6.2.6 within 6 weeks after the end of each quarter (the first quarter starting on the date of this Deed), prepare quarterly management accounts (including once the first six months have elapsed budget forecasts by comparison to their respective business plans).
- 6.3 Any surpluses generated from providing Services to Members may only be distributed to Members and any former Member(s) which contributed to such surpluses within the preceding five years subject to prior approval of all Members following a recommendation of the Board of Directors.
- 6.4 Nothing in this Deed shall prevent the Company from providing services to non-members, provided that:
- 6.4.1 this does not impact on the Company's ability to provide the Services to any Member; and
 - 6.4.2 the services to non-members do not account for more than 20% of the turnover of the Company in any financial year (or such other percentage of turnover as may be permitted by law from time to time) so as to ensure the Company remains classified as a jointly controlled Teckal company pursuant to Regulation 12 of the Public Contract Regulations 2015.
- 6.5 Where services are provided to non-members, any surpluses generated from those services will only be distributed to Members (and any former Member(s) within the five years preceding such distribution) and only in accordance with arrangements agreed in writing between the Members.
- 6.6 In the event that the Company is dissolved any capital and assets available for distribution shall be divided between the Members and any former Member(s) in accordance with the provisions of the Articles.
- 6.7 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company with any members, officers and executives at any time. All books, records, accounts and documents relating to the business and the affairs of the Company shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the relevant Member properly informed about the business and affairs of the Company or to protect its interests as a Member.

Any confidential information secured as a consequence of such discussions and examinations shall be kept confidential by the requesting Member and its designated officers and executives in accordance with the terms of clause 17.

7 **Member Rights**

- 7.1 Each Member shall have the right to cast one vote on any Member resolution (at a general meeting or in writing).

8 **Funding**

- 8.1 The Company will be funded through payment from clients of the Company's Business in respect of delivery of Services, in particular payment from Members contracting with the Company for delivery of Services.
- 8.2 Individual costs associated with delivery of Services in accordance with any contractual arrangements with the Members will be borne by the relevant Members.
- 8.3 Any additional operating costs (including applicable profit margin) will be attributed to the relevant Member where possible. Any such costs which cannot be directly allocated to a relevant Member will be apportioned according to the economic/service benefit derived by the relevant Members.
- 8.4 Any operational savings will be attributed to the relevant Member where possible. Any savings which cannot be directly allocated to a relevant Member will be apportioned according to the economic/service benefit derived by the relevant Members except for an amount which will be retained by the company for future development or asset replacement as agreed by the Board.
- 8.5 For the avoidance of doubt, the reference to costs in clauses 8.2 to 8.4 includes any applicable profit margin of the Company from time to time and the parties confirm that the charging arrangements are not intended to amount to an exact reimbursement of costs overall.
- 8.6 Without prejudice to the provisions of clauses 8.1 to 8.5 above, the Company and the Business shall be financed by such sources as specified in the Annual Business Plan.
- 8.7 In the event that the Company requires additional finance from time to time, no Member shall be required to provide any such funding or to guarantee or provide any security or accept any other liability with respect to any borrowings by, or loan facilities made available to, the Company. Any requests for additional funding shall be considered in good faith by the Board and the Members on a case by case basis.

9 **Annual Business Plan**

- 9.1 The first Annual Business Plan shall be agreed between the Members and the Company not later than the Operational Date.
- 9.2 For each subsequent Financial Year:
- 9.2.1 the Company will (not less than 90 days prior to the beginning of such Financial Year) provide each Member with a draft Service Plan for consideration and the

Company will (not less than 30 days prior to the beginning of such Financial Year) agree a Service Plan with each Member; and

9.2.2 the Board will (not less than 60 days prior to the beginning of such Financial Year) cause to be prepared a draft Annual Business Plan for such Financial Year for Board approval.

9.3 Where Member approval is required in accordance with clause 9.2, the Members will, not later than 30 days before the beginning of each Financial Year, consider and seek to unanimously reaffirm the draft Annual Business Plan. If the members cannot agree the draft Annual Business Plan then, notwithstanding that this matter is a Deadlock for the purposes of clause 13, the last approved version of the Annual Business Plan shall remain in full force and effect until such time that a plan is unanimously agreed by the Members or the matter is resolved pursuant to the provisions of clause 13 and the last approved version of the Annual Business Plan shall continue to apply to the Business and the Company for the next Financial Year.

10 **Organisation of the Board**

10.1 If any Member ceases to be a Member then that Member shall be deemed to have served notice to remove from office any Nominated Director appointed by it and shall not be entitled to appoint any Nominated Director in their place.

10.2 Upon such removal or resignation from the office of Director or termination of employment the said Member will use its best endeavours to procure that any such Director shall deliver to the Company a letter signed as a deed and/or the required statutory form of compromise agreement (at the Company's option) acknowledging that he or she has no claim outstanding for compensation for wrongful dismissal or unfair dismissal or entitlement to any payment for redundancy or in respect of any other moneys or benefits due to him or her from the Company arising out of his or her employment and/or its termination. In any event, the said Member shall be responsible for and shall indemnify the other Members and the Company against any claim (save for unpaid salary and benefits) by such Director for unfair or wrongful dismissal or any other claim whatsoever arising out of such Director's removal from office as a Director and/or the termination of his or her employment.

10.3 Any Member exercising its right under the Company's Articles to remove a Director shall be responsible for and shall indemnify the other Members and the Company against any claim (save for unpaid salary and benefits due up to the date of their removal) by such Director for unfair or wrongful dismissal or any other claim whatsoever arising out of such removal from office as a Director and/or the termination of his or her employment.

10.4 The Board may in its absolute discretion create sub-committees and delegate such responsibilities as it sees fit provided always that the provisions of clause 13 shall always apply.

10.5 Subject to clause 10.6, the Board shall have a Chairman, who shall be appointed in accordance with Article 21.9, Article 21.10 and Schedule 1.

10.6 If a Chairman is unable to attend any meeting of the Board, the alternate appointed by the Board shall act in his place.

10.7 This clause 10 shall also apply to any Director who is also a director of any Subsidiary.

11 **Board and Meetings**

11.1 The Board shall be composed as set out in the Articles and shall comprise directors appointed in accordance with the provisions set out below in this clause 11.

11.2 **Appointment and Removal of Directors**

11.2.1 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed to be a Director.

11.2.2 (a) Each Member has the right to appoint a person nominated by them to be a director (Nominated Director); or

(b) It is agreed that:

i two or more Members may jointly appoint one or more Nominated Directors provided that the total number of Nominated Directors appointed does not exceed the number of Members jointly appointing them;

ii if two or more Members jointly appoint a single Nominated Director that Nominated Director shall have one vote for each Member by whom he/she is appointed;

iii if two or more Members jointly appoint more than one Nominated Director those Nominated Director shall have a total of one vote for each Member by whom they are appointed divided between them equally;

iv the individual right to appoint a Nominated Director under paragraph 11.2.2 (a) above shall not apply to any Members who have exercised their right to jointly appoint a Nominated Director under paragraph 11.2.2 (b);

(c) Each Member has the right to remove or replace such person they have appointed at any time, provided that in the case of a joint appointment this right shall only be exercisable by all of the Members who made the appointment.

11.2.2A The Members have the right to jointly appoint an independent, Non-Executive Director, who may act as the Chairman.

11.2.3 The Members have the right to appoint a Managing Director and a Finance Director. The Members have the right to remove or replace the Managing Director and/or the Finance Director they have appointed at any time by agreement.

11.2.4 The Members may appoint such other Executive Directors as they may from time to time determine. The Members have the right to remove or replace any Executive Director they have appointed at any time.

11.2.5 The appointment, removal or replacement of a Director under clauses 11.2.2, 11.2.2A, 11.2.3 or 11.2.4 above shall take effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date.

11.3 Termination of Director's Appointment

11.3.1 A person ceases to be a Director as soon as the Company receives notification that the individual is to be removed as a Director from the Member or Members who made the appointment;

11.3.2 That person ceases to be a Director by virtue of any provisions of the Act or is prohibited from being a director by law;

11.3.3 A bankruptcy order is made against that person;

11.3.4 A composition is made with that person's creditors generally in satisfaction of that person's debts;

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

11.3.6 Notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

11.4 All Board meetings shall be held at a venue reasonably convenient for all the Directors (including, for the avoidance of doubt, by video-conference or other virtual means).

11.5 A Board meeting will be held at least four times in each calendar year, with no more than four months between each meeting.

11.6 The Company shall ensure that:

11.6.1 each Member is sent papers (which may be sent by electronic means if agreed) for all general meetings of the Company (including but not limited to an agenda and details of any specific resolutions to be put to the meeting) no less than five Business Days before the date of such meeting; and

11.6.2 each Director is sent papers (which may be sent by electronic means if agreed) for Board meetings (including but not limited to an agenda and details of any specific resolutions to be put to the meeting) no less than five Business Days before the date of such meeting.

11.6.3 Any Member which requests the Company to do so:

(a) is sent papers (which may be sent by electronic means if agreed) for all Board and all general meetings of the Company (including but not limited to an agenda and details of any specific resolutions to be put to the meeting) no less than five Business Days before the date of such meeting;

- (b) is sent all draft minutes within fourteen Business Days of the Board or general meeting; and
- (c) is permitted to send a representative (who may be a councillor) to speak on a matter of business at Board meetings subject to seeking the prior written permission of the Chair of the Board.

12 **Reserved Matters**

12.1 The Company will not, and the Members shall exercise their powers in relation to the Company to procure that (save as otherwise provided or contemplated in this Deed) the Company will not, undertake those matters set out in Schedule 1 without the consent of the requisite percentage of Members set out in Schedule 1.

12.2 Clause 12.1 shall also apply to any Subsidiary of the Company.

12.3 Notwithstanding any other provision of this Deed or the Articles, no new member shall be admitted to the Company without such member entering into a Deed of Adherence whereby such new member agrees to be bound by the terms of this Deed.

12.4 **Unanimous Decision Making**

12.4.1 The Members agree that no changes will be made that would be detrimental to one or more of the Members even if of benefit to others and that the Members shall work collaboratively to seek the agreement of all of the Members and the Members further agree their respective Voting Representatives will informally meet with representatives of the Board or the Directors as necessary to consider and discuss strategic areas of Company Business at a Members' Representative Board.

12.4.2 Where a potential Reserved Matter decision or any item for discussion has the potential to be detrimental to one or more of the Members the matter shall first be considered by the informal meeting of the Voting Representatives at a Members' Representative Board.

12.4.3 If having considered the proposed resolution or the item for discussion the Voting Representatives or any of them are of the opinion that it is unlikely to be passed unanimously at a general meeting (or in writing) they may notify the person or body which has proposed the resolution or item of their concerns, and the reasons for them, and require them, within such time as is reasonable in the circumstances, to formulate an alternative proposal or proposals which address the concerns and submit them to a meeting of the Members' Representative Board to be held within such time as is reasonable in the circumstances following receipt of the alternative proposals (or such later meeting of the Members' Representative Board as shall be agreed) for further consideration.

12.4.4 The Members' Representative Board shall consider the alternative proposal or proposals submitted to them and notify the person or body proposing the Resolution of any further concerns, and the reasons for them, which they have.

12.4.5 The person or body requiring the Resolution shall then finalise the wording of the resolution on the Reserved Matter or item for decision to be put to the vote

at a general meeting of the company (or in writing) having due regard to the comments made by the Members' Representative Board.

13 **Deadlock**

13.1 **Meaning of Deadlock**

For the purposes of this clause 13 there shall be a Deadlock if:

- 13.1.1 a matter constituting a Reserved Matter has been considered by the Members; and
- 13.1.2 no resolution has been carried by the Members in relation to the matter because of a failure of any Member to consent to such resolution; and
- 13.1.3 the matter is not resolved within ten (10) Business Days from the date of the relevant general meeting or the end of the period for approval of a written resolution circulated to the Members for consent (as appropriate).

13.2 **Members' obligations**

In any case of Deadlock each of the Members shall (at the request of any Member) within fifteen (15) Business Days of Deadlock having arisen or become apparent, cause its Nominated Director on the Board, or the Chairman of the Board, to prepare and circulate to the Members and the other Directors a memorandum or other form of statement setting out its position on the matter in respect of which the Deadlock has arisen and its reasons for adopting that position, but on the basis that such memorandum or statement shall always be prepared and delivered on a "without prejudice" basis. Each Member shall then refer the Deadlock to its Head of Paid Service and such persons shall use all reasonable efforts in the 20 Business Days following such reference to resolve the Deadlock.

13.3 **Failure to resolve Deadlock**

If a resolution of a Deadlock referred pursuant to clause 13.2 is not resolved or is not agreed in accordance with that clause (or such longer period as the Members may agree in writing) the status quo shall prevail unless the Directors resolve that to do so would be detrimental to the proper conduct of the Business in which instance the provisions of clauses 13.4 to 13.7 shall apply.

13.4 The Board shall serve written notice on the Members requiring them to attempt to settle the dispute by mediation (such notice to be served within seven Business Days of the Board meeting at which the decision was passed). On receipt of such notice from the Board the Members will attempt to settle the dispute by mediation in accordance with the model mediation procedures (the **Procedures**) published by the Centre for Effective Dispute Resolution, CEDR Solve (**CEDR**). To initiate a mediation, a Member must give notice in writing (**Mediation Notice**) to the other Members.

13.5 The Members will seek to agree the appointment of a mediator but, failing agreement within 28 days of the service of the Mediation Notice, any Member may ask CEDR to appoint a mediator.

13.6 In the event that there are no Procedures available and CEDR is unable or unwilling to appoint a mediator, any Member may ask the President of the Law Society of England & Wales (or its successor body) to appoint a mediator and to recommend a mediation procedure which the Members shall adopt.

13.7 If the matter in dispute is not resolved within 40 Business Days of the service of the Mediation Notice then any Member may (but shall not be obliged to) within fifteen (15) Business Days after expiry of such period serve notice in writing upon the other Members and the Board that the Board shall, at the earliest practicable date:

13.7.1 make or concur in the making of a statutory declaration in the terms mentioned in section 89 of the Insolvency Act 1986 (if the state of the Company's affairs permits the making of such a declaration); and

13.7.2 convene an extraordinary general meeting of the Company to consider:

(a) the matter from which the Deadlock arose; and

(b) the passing of a special or extraordinary resolution to place the Company in members' voluntary winding-up (if such a declaration has been made in accordance with clause 13.7.1) or (in any other case) in creditors' voluntary winding-up;

such meeting or meetings to be held within five weeks after either the making of any declaration made in pursuance of clause 13.7.1 or (where the state of the Company's affairs does not admit to the making of such a declaration as is mentioned in clause 13.7.1) convene a meeting of the Company's creditors in accordance with section 98 of the Insolvency Act 1986.

14 Intellectual property

14.1 The Members and the Company acknowledge that:

14.1.1 any and all Intellectual Property Rights created wholly by the Company in connection with the Business (the **Business IPRs**) shall automatically belong to the Company.

14.1.2 any and all Intellectual Property Rights created by the Members in connection with the Business (the **Member IPRs**) shall belong to the Member who created them.

14.2 The Company hereby grants to each Member for the time being and for the duration of their Membership of the Company a non-transferable royalty-free licence to use the Business IPRs (as they may be constituted from time to time) to the extent necessary for the purposes of the Business. The Members hereby grant to the Company a non-transferable royalty-free licence (without the right to grant sub-licences) to use the Member IPRs (as they may be constituted from time to time) solely to the extent necessary for the purposes of the Business.

14.3 All use of the Business IPRs by the Members pursuant to this Deed, including all goodwill arising from such use, shall accrue solely to the benefit of the Company. All use of

Member IPRs by the Company pursuant to this Deed, including all goodwill arising from such use, shall accrue solely to the benefit of the respective Member.

14.4 The Company and each Member agree that they shall not, without the prior written consent of the other parties to this Deed, assign, transfer, mortgage, charge or deal in any other manner with any of their rights under this clause 14.

14.5 For the purposes of this clause 14, **Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

15 **Withdrawal and Removal of Members**

15.1 Any Member may cease to be a party to this Deed and cease to be a member of the Company upon giving not less than twelve months' notice in writing to the Company and the other Members.

15.2 With the exception of any money reimbursed to a Member under clause 6.6, a Member shall not be entitled to any refund of any amount paid to the Company as a consequence of ceasing to be a party to this Deed or ceasing to be a member of the Company.

15.3 On the withdrawal of a Member, their Commissioned Contract will, unless otherwise agreed, be deemed to have been terminated on the date of withdrawal except as otherwise agreed by the withdrawing Member and the Company.

15.4 Notwithstanding that a Member shall cease to be a party to this Deed, it shall not be released from any liabilities or rights of action accrued against it under or in connection with this Deed up to the date of its ceasing to be a party and that Member shall continue to be bound by those provisions of this Deed which are expressed to continue following termination of this Deed. The Deed shall continue in force in relation to the remaining parties including any party having entered into a Deed of Adherence.

15.5 A Member (the **Defaulting Member**) shall cease to be a Member in the event that:

15.5.1 it commits a serious breach of this Deed; or

15.5.2 it persistently breaches this Deed; and

the breach (if capable of remedy) is not rectified within 20 Business Days of written notice having been given to the Defaulting Member requiring it to rectify such breach or breaches and the remaining Members agree by majority vote at a duly convened general meeting or in writing that the Defaulting Member's membership shall cease.

16 **Termination Of This Deed**

16.1 This Deed shall continue in full force and effect from the date hereof until:

- 16.1.1 all the Members or their successors in title agree in writing to its termination;
 - 16.1.2 there is only one Member of the Company; or
 - 16.1.3 the Company goes into liquidation whether voluntary or compulsory (other than for the purpose of an amalgamation or reconstruction approved by all the Members).
- 16.2 Without prejudice to any accrued rights and liabilities of any of the Members, the ongoing rights and liabilities of any Member pursuant to this Deed shall cease automatically upon the cessation of his or its membership of the Company.
- 16.3 Termination of this Deed pursuant to this clause 16 shall be without prejudice to any accrued rights and liabilities of any of the Members.

17 **Confidentiality**

Each of the parties hereto shall hold in confidence and shall not and shall procure (where applicable) that its employees, agents and contractors shall not without the written consent of the other parties (such consent not to be unreasonably withheld) or as required by any other provision of law divulge to any third party any Confidential Information or use any such information other than for the purposes anticipated by this Deed provided that the provisions of this clause 17 shall not apply to information which may properly come into the public domain through no fault of the party so restricted.

18 **Freedom Of Information**

- 18.1 Clause 17 shall not apply where a party has obtained the written consent of the other parties (such consent not to be unreasonably withheld) to divulge or use any Confidential Information or where Confidential Information is required to be disclosed by any law or statutory or regulatory obligation including without limitation the FOIA and the Environmental Information Regulations 2004 (but only to the extent of such law or statutory or regulatory obligation).
- 18.2 Each party acknowledges that it and the other parties are subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and each party shall assist and cooperate with the others (at their own expense) to enable the other parties to comply with these Information disclosure obligations.
- 18.3 Where a party receives a Request for Information in relation to Information which it is holding on behalf of another party, it shall:
- 18.3.1 transfer the Request for Information to the other party as soon as practicable after receipt and in any event within five Business Days of receiving a Request for Information;
 - 18.3.2 provide the other party with a copy of all Information in its possession or power in the form that the other party requires within five Business Days (or such other period as the other party may specify) of a request from the other party; and
 - 18.3.3 provide all necessary assistance as reasonably requested by the other party to enable that party to respond to the Request for Information within the time for

compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.

18.4 Where a party receives a Request for Information which relates to Confidential Information, it shall inform the other parties of the Request for Information as soon as practicable after receipt and in any event within five Business Days of receiving a Request for Information.

18.5 If any party determines that Information (including Confidential Information) must be disclosed under the FOIA, it shall notify the other parties of that decision at least five Business Days before disclosure.

18.6 Each party shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:

18.6.1 is exempt from disclosure under the FOIA or the Environmental Information Regulations 2004;

18.6.2 is to be disclosed in response to a Request for Information.

18.7 Each party acknowledges that any other party may, acting in accordance with the Department for 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 2004 to disclose Information:

18.7.1 without consulting with the other parties, or

18.7.2 following consultation with the other parties and having taken their views into account.

18.8 Notwithstanding the provisions of clause 17 each Nominated Director (whilst he holds that office) will be entitled to make full disclosure to the Member appointing him of any information relating to the Company which that Member may reasonably require.

19 **No Partnership or Agency**

Nothing in this Deed shall constitute a partnership between the parties hereto or constitute one the agent of another and none of the parties shall do or suffer anything to be done whereby it shall or may be represented that it is the partner or agent of a party hereto (save as aforesaid) unless such party is appointed partner or agent of that other party with the consent in writing of that party.

20 **Waiver**

The waiver by any party of any default by any other party in the performance of any obligation of such other party under this Deed shall not affect such party's rights in respect of any other default nor any subsequent default of the same or of a different kind nor shall any delay or omission of any party to exercise any right arising from any default, affect or prejudice that party's rights as to the same or any future default.

21 **Variation**

Any variation of any term of this Deed shall be in writing duly signed by the Members and the Company.

22 **Conflict with Articles**

Where the provisions of the Articles conflict with the provisions of this Deed, the Members agree that the provisions of this Deed shall prevail, to the intent that they shall if necessary in any case procure the amendment of the Articles to the extent required to enable the Company and its affairs to be administered as provided herein.

23 **Notices**

23.1 Any demand, notice or other communication given or made under or in connection with this Deed will be in writing.

23.2 Any such demand, notice or other communication will, if given or made in accordance with this clause 23, be deemed to have been duly given or made as follows:

23.2.1 if sent by prepaid first class post, on the second Business Day after the date of posting; or

23.2.2 if delivered by hand, upon delivery at the address provided for in this clause 23,

provided however that, if it is delivered by hand on a day which is not a Business Day or after 4.00 pm on a Business Day, it will instead be deemed to have been given or made on the next Business Day.

23.3 Any such demand, notice or other communication will, in the case of service by post or delivery by hand, be addressed to the recipient at the recipient's address stated in this Deed or his Deed of Adherence or at such other address as may from time to time be notified in writing by the recipient to the sender as being the recipient's address for service.

23.4 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

24 **Costs**

Each of the parties hereto will pay its own legal costs and expenses incurred in connection with the preparation of this Deed.

25 **Severability**

The illegality, invalidity or unenforceability of any clause or part of this Deed will not affect the legality, validity or enforceability of the remainder. If any such clause or part is found by any competent court or authority to be illegal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

26 **Exercise of powers**

26.1 Words denoting an obligation on a party to do any act, matter or thing include, except as otherwise specified, an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit or allow infringement of that restriction.

26.2 Where a Member is required under this Deed to exercise its powers in relation to the Company to procure a particular matter or thing, such obligation shall be deemed to be satisfied by such Member exercising its voting and other rights as a member and ensuring that any Nominated Director appointed by it shall procure such matter or thing, subject to the Director acting in accordance with his fiduciary duty to the Company.

27 **Entire Agreement**

This Deed and the documents referred to in it, the Annexures to this Deed and the Articles constitute the entire contractual relationship between the parties in relation thereto and there are no representations, promises, terms, conditions or obligations between the parties, implied or otherwise, other than those contained or expressly referred to therein. This clause does not restrict liability of either party for fraudulent misrepresentations.

28 **Assignment**

The Members shall not assign nor transfer nor purport to assign nor transfer any of their rights or obligations hereunder (other than to a successor body).

29 **Contract (Rights of Third Parties) Act**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

30 **Law and Jurisdiction**

This Deed shall be governed by and construed in accordance with the laws of England and Wales and each of the parties hereto submits to the exclusive jurisdiction of the English and Welsh Courts.

This document is executed as a deed and delivered and takes effect on the date stated at the beginning of this Deed.

Schedule 1

Reserved Matters

Matters that require seventy-five percent (75%) Member approval at a duly convened general meeting or in writing:

1	Permitting the admission of any additional Members of the Company.
2	Adopting or amending the Business Plan in respect of each Financial Year.
3	Forming any Subsidiary or acquiring membership or shares in any other company or participating in any partnership or joint venture (incorporated or not).
4	Amalgamating or merging with any other company or business undertaking.
5	Entering into any arrangement, contract or transaction with either a capital or revenue value over £500,000 which is not included in the current approved Business Plan.
6	Agreeing the appointment and the appointment terms (including any remuneration terms) of all Directors of the Company other than Nominated Directors.
7	Agreeing any remuneration terms for Nominated Directors.
8	Appointing or removing the chair of the Company.
9	Making any petition or resolution to wind up the Company or any Subsidiary.
10	Making any amendment to the Articles or any Subsidiary articles of association, including (without limitation) any rights of the Members.
11	Giving any guarantee to secure the liabilities of any person.
12	Creating any Encumbrance over the whole or any part of the Company or assets of any Subsidiary company. Giving or taking any loans, borrowing or credit (other than Normal Trade Credit in the ordinary course of business) save as specifically provided for in the first Annual Business Plan.

Schedule 2

Deed of Adherence

Application for Membership and Deed of Adherence

dated

Parties

- (1) **Cotswold District Council** of Trinity Road; Cirencester, Gloucestershire, GL7 1PX;
- (2) **Forest of Dean District Council** of Council Offices, High Street, Coleford, Gloucestershire GL16 8HG;
- (3) **West Oxfordshire District Council** of Woodgreen, Witney, OX28; and
- (4) **Cheltenham Borough Council** of Municipal Offices, Promenade, Cheltenham GL50 9SA;
(together the **Continuing Members**)
- (5) **Publica Group (Support) Limited** (registered number 10580349) whose registered office is at Cotswold District Council of Trinity Road, Cirencester, Gloucestershire, GL7 1PX (**Company**); and
- (6) [*name of new member*] of [*address*] (**New Member**).

Introduction

- (A) The Continuing Members and the Company are party to an agreement dated 2017 (**Members Agreement**) which regulates their membership of the Company and sets out their respective rights and obligations as Members.
- (B) The New Member wishes to become a Member in accordance with the Company's Articles and the Members Agreement.

Agreed terms

- 1 Words and expressions used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in the Members Agreement. The **Effective Date** means the date of this Deed.
- 2 The New Member hereby applies to be a Member of the Company in accordance with the Articles and the Members Agreement.
- 3 The New Member confirms that he/she has been supplied with a copy of the Members Agreement and Articles.
- 4 The Company, the New Member and each of the Continuing Members undertake with each other that, from the Effective Date, the New Member shall be admitted to the Company as a Member and shall assume all of the rights under the Members Agreement granted to the Members and shall observe, perform and be bound by the provisions of the

Members Agreement and Articles as though the New Member was an original party to the Members Agreement.

- 5 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 6 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

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.

THE COMMON SEAL of)
COTSWOLD DISTRICT COUNCIL)
was hereunto affixed)
in the presence of:)

Authorised Signatory

THE COMMON SEAL of)
FOREST OF DEAN DISTRICT COUNCIL)
was hereunto affixed)
in the presence of:)

Authorised Signatory

THE COMMON SEAL of)

WEST OXFORDSHIRE DISTRICT)

COUNCIL)

was hereunto affixed)

in the presence of:)

Authorised Signatory

THE COMMON SEAL of)

CHELTENHAM BOROUGH COUNCIL)

being affixed hereto)

and authenticated by the)

undermentioned person authorised)

by the council to act for that purpose:)

Authorised Signatory

executed as a deed by the)

New Member (acting)

)

)

in the presence of:)

Signature

witness signature:

name:

address:

occupation: