

The City of Edinburgh Council

10am, Thursday, 10 March 2016

Energy for Edinburgh

Item number	8.3
Report number	
Executive/routine	
Wards	All

Executive summary

The Council has indicated its interest in setting up an arms length energy services company (ESCo). This is to demonstrate its commitment to reducing carbon emissions across the city and deliver sustainable energy for all consumers including businesses. Work has progressed on the establishment of an ESCo with draft legal documents completed, including the Articles of Association and the Shareholders Agreement. A draft Business Plan has been developed which will require to be approved by the new Board once established.

The development of energy projects will be crucial to the ESCo's success and work has been underway to identify projects across three areas of energy efficiency, district heating and renewables. A number of these are currently at the Investment Grade stage with others about to be progressed past feasibility. A project manager will be recruited who will oversee day to day operations for the new company.

The ESCo would be wholly owned by the Council as the single shareholder and have a key remit for delivering the strategic energy projects from the Council's Sustainable Energy Action Plan.

Links

Coalition pledges	P50 P53
Council outcomes	CO18 CO19
Single Outcome Agreement	SO4

Energy for Edinburgh

Recommendations

- 1.1 The Council is asked to approve the establishment of an Energy Services Company and specifically:
- approve the Articles of Association;
 - note that the appointment of Directors to the Board will need to be approved by Council at a subsequent meeting;
 - approve the Shareholders Agreement between the Council and the Company;
 - note the draft Business Plan which will need to be approved by the Company Board once established and submitted back to Council for further approval; and
 - note that a further report will be submitted to Council on progress within six months.

Background

- 2.1 The Council has made a number of political pledges to the reduction of carbon emissions across the city. The Sustainable Energy Action Plan (SEAP) approved in February 2015 is the key programme for this agenda. It details a number of sustainable energy projects aimed at reducing carbon emissions and delivering social, economic and environmental benefits including, alleviating fuel poverty, providing affordable energy, new jobs and greater energy security.
- 2.2 An energy services company (ESCo) is seen as an important vehicle for achieving the SEAP's objectives and a key response from the Council to delivering affordable energy for Edinburgh's residents and businesses. The Council has already given approval for the next steps in developing an ESCo.
- 2.3 In terms of developing the company, a number of structures were established:
- an internal working group with officers from Legal, Procurement, Finance, Housing, Corporate and Economic Development;
 - an external Technical Advisers Group with representatives from Scottish Government, Scottish Enterprise, Green Investment Bank, Scottish Futures Trust, Changeworks and the Edinburgh Business Forum. Through regular meetings, this group has been providing expertise, advice and support for

- the establishment of the ESCo, as well as contributing to the development of the Business Case; and
 - a Project Board chaired by the previous Executive Director of City Strategy and Economy.
- 2.4 This report provides details on the proposed ESCo structure, governance and activities and now recommends that the Council progress with the incorporation of the company.

Main report

- 3.1 The proposal is for the setting up of an Edinburgh ESCo, to be named Energy for Edinburgh (EfE). This will be an arms length company, wholly owned by the Council who will be the sole shareholder. It will therefore be a private company limited by shares. This is the recommended legal structure by the external legal advisers.
- 3.2 EfE will have five key objectives aligning with those in the SEAP:
- reduce carbon emissions;
 - deliver affordable energy (with a particular focus on alleviating fuel poverty);
 - generate income;
 - encourage wider community benefits; and
 - access and leverage the use of private sector finance where appropriate and where its use meets the above objectives.
- 3.3 The vision for EfE is:
- Delivering the Council's energy aspirations, supporting Edinburgh's citizens and businesses in becoming more sustainable by reducing energy demand and encouraging local energy generation.*
- 3.4 A series of documents have been drafted by the external legal advisers which set out the formal arrangements for how the company will function and govern itself. These have been approved by the Council's internal legal service.

Articles of Association

- 3.5 The Articles set out the objectives of EfE and stipulate that the Company will be established primarily for the benefit of the citizens of Edinburgh. The objectives have been designed to provide maximum flexibility for the company including the potential for it to operate outwith Edinburgh provided it meets the benefit of the citizens test above. In addition to the objectives at Paragraph 3.2 above, EfE can also focus on:
- developing strategies designed to deliver energy and resource efficiency, renewables, district heating, and sustainable transport;

- delivering income and generating revenue; and
 - providing consultancy and training.
- 3.6 Unlike other ESCos, Energy for Edinburgh will therefore have a clear strategic focus and will act as a delivery hub for major energy initiatives across the City. In many respects this makes it quite unique and an alternative model to other existing local authority energy companies. It will also have a strong ethical focus as a key objective will also be to deliver affordable energy and alleviate fuel poverty.
- 3.7 While the Articles also allow EfE to generate, supply and trade in electricity and heat, this will not be an initial focus for the company.
- 3.8 The Articles are drafted as standard under company law and detail the issues and procedures such as general conduct at meetings, arrangements for reporting, conflict of interest, resolution of disputes and records of decisions.
- 3.9 The Articles provide for dividends to be paid to the Council and also for discretion as to interim dividends.
- 3.10 The draft Articles are detailed in Appendix 1.

Appointment of Directors

- 3.11 The number of Directors appointed to the Board of the Company is proposed as a minimum of three and maximum of nine comprising:
- three Council Directors (these will be elected members, one of whom will always be Chair); and
 - **up to six** external Directors, subject to availability of high calibre candidates.
- 3.12 Directors will be in place for a three year tenure. There will be no remuneration or fee for Directors.
- 3.13 In selecting external Directors, particular attention will be given to the need for:
- appropriate skills and knowledge of the low carbon and/or energy agendas;
 - financial and commercial experience; and
 - ensuring a mix of private, public sector and community representation.
- 3.14 A rigorous recruitment process will be applied but the appointment of external Directors will in any case be subject to Council approval.

Shareholders Agreement

- 3.15 A Shareholders Agreement has also been drafted by the external legal advisers. This is a formal legal document that details the relationship between the Council and EfE.
- 3.16 The Agreement is detailed in Appendix 2. This sets out the expectations of the Council with respect to the company's performance and reporting, the structure of the Business Plan and financial accounting. It details the process around disputes or changes to the Agreement.
- 3.17 An important element of the Shareholders Agreement is the provision of data and information by the Council and the access to Council assets including land, buildings and operational and non operational property. This is designed to enable the company to develop initiatives to maximise the benefits to the Council. For example, EfE may be able to engage in wider commercial activities or with other partners where the Council may be unable to.

Business Plan

- 3.18 A draft Business Plan has been developed and is detailed in Appendix 3. This sets out the:
- structure of the business;
 - how it will be governed;
 - risks and mitigation; and
 - project ideas with indicative timelines.
- 3.19 The Business Plan will form a suite of documents along with the Articles of Association and Shareholders Agreement providing a framework through which the company can develop.
- 3.20 In terms of the Business Plan the Board will have a number of activities including engaging with key partners, approving projects, considering and approving Project Business Plans, financing projects and generating revenue. The Board will look to optimise revenue returns by reviewing the mix of project investments and balancing risks and rates of return.
- 3.21 The draft Business Plan suggests an initial operating plan which details some of the key operational activities and milestones for the company over the first 12 months of operation.
- 3.22 Following incorporation of the company, the Business Plan will need to be formally reviewed and approved by the Board as they will be responsible for its implementation. This will also include a final operating plan which will detail the delivery of individual projects. The Business Plan may therefore be subject to some changes.

Project Development

- 3.23 The development of project activities is crucial to EfE's viability. Advice from legal advisers was that, while developing the governance and formal processes could lead to the company being incorporated earlier, it would be more beneficial to develop projects to feasibility stages first. In particular it would be important to assess where there would be added value from EfE as opposed to the Council undertaking the projects itself. The intention was to co-ordinate the timings of these studies such that the projects would be ready to take to delivery stage once the company was incorporated and Directors and staff recruited. However this has led to some delay as resources have been switched to the development of feasibility cases and drafting of technical specifications.
- 3.24 In terms of project activities, it is proposed that efforts are concentrated on three principle areas namely; district heating, energy efficiency and renewables. This will be the focus for the company over the next 12-18 months.
- 3.25 The projects are summarised as follows:
- **Solar Photovoltaic (PV):** A feasibility study currently underway focusing on the large scale application of PV canopies at Park and Ride sites across the city, as well as developing solar farms on unused Council land or former landfill sites. The aim is to maximise value from CEC owned assets and generate income and green electricity for CEC. This will allow the above options to be fully appraised within a business case and determine which approach would be best for EfE to adopt.
 - **District Heating:** Two investment grade business cases are underway exploring the feasibility of district heating schemes at the Edinburgh BioQuarter (Gas CHP generation) and Saughton Park (ground source heat pumps). Liaison has also taken place with EDI on their plans to deliver a district heating scheme at Fountainbridge and what role the Council ESCo may play.
 - **Non Domestic Energy Efficiency:** EfE could potentially extend the current retrofit programme for non-domestic buildings further across the city. The implementation of Section 63 legislation for commercial properties offers other opportunities for retrofit projects. One route would be for EfE to offer a service in co-ordinating contracts for consortia via the Scottish Government's new retrofit framework. This could provide opportunities to work with other public sector organisations and potentially private sector companies.
- 3.26 Income from these projects (potentially in the form of fees, re-charges or investment returns) will be managed and used to promote future expansion and development of subsequent projects. Delivery of individual projects will be managed at an operational level by project managers or teams co-ordinated by EfE staff. These projects may be delivered through a variety of vehicles such as Special Purpose Vehicles (SPVs), partnership Joint Ventures (JVs), Council departments or simple concession arrangements with private sector suppliers.

Resourcing and Roles

- 3.27 To support the Board, an experienced Project Manager will be recruited for two years. This will be funded from the £150k funding identified for the start up of the company. The ESCo will also receive some initial support from Council staff particularly in the project development areas. This is in line with the Shareholders Agreement which states that the Council will ensure that the Company is aware of any projects that might be taken forward to maximise synergies and potential collaborative opportunities
- 3.28 The main role of the Project Manager will be responsibility for the day to day operations of EfE, developing project proposals and reporting on overall performance and progress. This post will be the key contact with the Council and appropriate staff. Other roles and responsibilities are detailed in the Business Plan.

Governance Arrangements

- 3.29 As the Council is the only shareholder of EfE, a robust governance arrangement will be necessary. This is detailed in the draft Business Plan.
- 3.30 A Shareholder Group will be set up between the Company and the Council with a number of senior managers appointed. This will ensure that the requirements of the Shareholders Agreement are met and that the Council's interests are protected. There will be clear governance and approvals processes for both EfE and the Council, ensuring that key decisions are made collaboratively and with full transparency. The frequency of meetings will be determined once the company is established.

Communication Strategy and Engagement

- 3.31 A detailed communications plan will need to be developed by the new Board as it will be important that it has ownership of any activities associated with promoting and profiling the new company. The Plan should also contain details of partnership relationships and collaboration with other stakeholders.
- 3.32 The "branding" of the company will also be developed, ensuring that there is a clear link to the Council SEAP.

Partnership

- 3.33 An early focus for EfE will be to explore and foster initiatives with public and private sector organisations, community interest companies and other social enterprise bodies in the city. This will be building on partnership working that has

already been taking place between the Council and strategic partners such as the ESDP, the largest businesses in the City, EDI and Our Power, among others, which will bring wider benefits, including: economic growth, inward investment and robust renewable energy provision in Edinburgh.

- 3.34 In terms of delivering projects a further option for EfE is to engage with appropriate strategic delivery partners where there are mutual benefits. Currently, “Our Power” is a new Scotland wide mutual co-operative fully licensed to supply energy. This new ESCo could provide a partnership arrangement with EfE by focusing on Edinburgh specific projects where the objectives of both organisations are similar. One such agreement may be that Our Power agrees to buy any renewable energy generated by EfE projects and sells this back at a favourable rate to vulnerable consumers in Edinburgh. Options like these may make a real impact on addressing fuel poverty.

Benefits

- 3.35 A consistent issue from both the internal working group and Project Board has been the need to ensure that there are clear benefits from establishing the ESCo as opposed to delivering any strategic energy projects in house. While the Council is delivering a number of energy projects, these are usually both service specific and budget constrained. Currently there is no central strategic energy function within the Council that brings projects together to pool expertise, explore synergies or maximise social, environmental and economic benefits. This approach also means that any opportunities to increase effectiveness of any available resources are missed.
- 3.36 However, even if such a function existed there are other benefits from an external ESCo. There has been considerable interest from external partners including private sector developers who seem more receptive to discussions that might bring about a partnership arrangement with an ESCo rather than a Council service.
- 3.37 EfE offers a “different way of doing things”, which complements the idea of transformation in council services creating a small company that can focus exclusively on sustainable energy for the good of the city. Potentially EfE can also offer a commercial approach to low carbon initiatives for the Council, something that Aberdeen Heat and Power are now looking at.
- 3.38 Prospects of obtaining larger scale funding are also reduced when there are numerous smaller and disparate projects. The existence of an ESCo as a single point for all strategic energy initiatives across the Council, and potentially wider across the city, offers a major advantage for leveraging in a wide range of funding sources (some of which may the Council itself may not be eligible for).

- 3.39 Crucially before any projects can be formally approved by the Council, the EfE Board will be required to identify how it will add value to the project's development, over and above what could be achieved internally by the Council.

Next Steps

- 3.40 If the Council agrees to the setting up of EfE the next immediate steps would be as follows:
- Legal Incorporation of the company;
 - Recruitment of Directors to the Board and approval by Council; and
 - Recruitment of a Project Manager.
- 3.41 Once appointments have been made and approved by the Council, the first meeting of the Board would begin the process of agreeing the Business Plan and developing detailed delivery plans for projects.
- 3.42 The intention would be to review the progress of the company every six months.

Measures of success

- 4.1 The success of EfE will be measured qualitatively and quantitatively through key performance indicators (KPIs). These KPIs might include number of projects delivered or carbon reduction achieved or financial measurements. For the purposes of the first Business Plan, a number of KPIs will be developed with agreement between the Shareholder Group and EfE Board for monitoring performance. A key focus for the Shareholder Group will be on assessing what is going well, what is not being achieved, the reasons for both, and accordingly identifying and implementing changes to ensure the Business Plan is met.

Financial impact

- 5.1 The intention is that EfE will become financially self sustaining. The company could earn income through various means, for example, margins on heat / electricity sales, margins on operating and maintenance costs amongst others. EfE could generate income via management fees or provide consultancy. There may be options to generate revenue depending on the project. These will need to be fully appraised within the business cases that are due to be completed for the various projects in the next few months. This will determine what approach provides an appropriate balance of risk and reward to EfE once the company is established.
- 5.2 The Council has already approved funding of up to £150K as start up funding for EfE, on the proviso that match funding be secured from Scottish Government. The Scottish Government has confirmed this financial support for the ESCo. The Council funding will be used over the first two years to recruit staff while the match funding from Scottish Government will be used for further project

development including both feasibility, full business case and development costs.

Risk, policy, compliance and governance impact

- 6.1 A table of risks are detailed in the draft Business Plan. A key risk will be to ensure the financial viability of the company post the ending of the start up funding from the Council. Robust projects and Business Plans will be required to ensure that there are defined projects to be taken forward that can provide a funding stream for EfE. There are now a number of funding schemes that provide finance for the development of full Business Cases. The Council has already applied for funding for these and a number of Business Cases are already underway. These are projects that can be handed over to the Company to take forward although it does not preclude it from pursuing other projects.
- 6.2 The development of EfE as a company focusing exclusively in sustainable energy will provide a means of co-ordinating energy activity across the city which will contribute (potentially) significantly to the aims and objectives of the SEAP. This will contribute to the relevant legislation for local authorities including compliance with the Climate Change (Scotland) Act 2009 as well as the mandatory Climate Change reporting (commencing this October).

Equalities impact

- 7.1 A key objective of the ESCO will be to deliver affordable energy and alleviate fuel poverty. By delivering this objective, the Council ESCO will contribute positively to key equalities outcomes of reducing inequality, poverty and deprivation.

Sustainability impact

- 8.1 The creation of a Council ESCO will potentially have a significant impact on the sustainability of the city. By taking a strategic role and overseeing energy initiatives across the city, it will contribute positively to the Council's pledges and targets on carbon. The ESCO is seen as a key delivery mechanism for the SEAP which aims to meet a 42% reduction in carbon emissions by 2020.

Consultation and engagement

- 9.1 There has been ongoing consultation and engagement in the development of the ESCo with Council officers and the Technical Advisers group. In addition regular updates have been provided through the Edinburgh Sustainable

Development Partnership. There has been keen interest from a range of external groups and a positive reception to the proposal of an ESCo.

Background reading / external references

None

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Links

Coalition pledges	P50 - Meet greenhouse gas targets, including the national target of 42% by 2020. P53 - Encourage the development of Community Energy Co-operatives.
Council outcomes	CO18 - Green- we reduce the local environmental impact of our consumption and production. CO19 - Attractive Places and well maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm.
Single Outcome Agreement	SO4 - Edinburgh's communities are safer and have improved physical and social fabric.
Appendices	Appendix 1: Articles of Association Appendix 2: Shareholders Agreement Appendix 3 Business Plan

Final Draft – 2 June 2015

**THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION
of
ENERGY FOR EDINBURGH LIMITED
Incorporated on [] 2016**

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PART 1 - INTERPRETATION AND LIMITATION OF LIABILITY

1 Definitions and interpretation

1.1 In the Articles, unless the context requires otherwise:

- 1.1.1 "**Act**" means the Companies Act 2006;
- 1.1.2 "**Articles**" means the company's articles of association;
- 1.1.3 "**Bankruptcy**" includes individual insolvency proceedings in a jurisdiction other than Scotland which have an effect similar to that of bankruptcy;
- 1.1.4 "**Chair**" has the meaning given in article 20;
- 1.1.5 "**Chair of the Meeting**" has the meaning given in article 45.3;
- 1.1.6 "**Clear Days**" means the period of the length specified in the Articles excluding the day of the meeting and the day on which the notice is given. Where the notice is sent by post to an address in the United Kingdom, and the company can show that it was properly addressed, pre-paid and posted, notice is deemed to have been given to the intended recipient 48 hours after it was posted;
- 1.1.7 "**Companies Acts**" means the Companies Acts (as defined in section 2 of the Act), in so far as they apply to the company;
- 1.1.8 "**Council**" means The City of Edinburgh Council, constituted under the Local Government etc. (Scotland) Act 1994 and having its principal offices at City Chambers, High Street, Edinburgh EH1 1YJ;
- 1.1.9 "**Council Director**" means a Director appointed under article 5;
- 1.1.10 "**Director**" means a director of the company (or, where the context requires, of a Subsidiary or of an associated company), and includes any person occupying the position of director, by whatever name called;
- 1.1.11 "**Distribution Recipient**" has the meaning given in article 36.2;
- 1.1.12 "**Document**" includes, unless otherwise specified, any document sent or supplied in Electronic Form;
- 1.1.13 "**Electronic Form**" means, in relation to the sending or supply of a document or information, the sending or supply by electronic means (such as by e-mail or fax) or by any other means while in an electronic form (such as sending a disk by post);

- 1.1.14 **"Eligible Director"** means a Director who would be entitled to vote on the matter at a meeting of Directors, but excluding any Director whose vote is not to be counted in respect of the particular matter;
- 1.1.15 **"External Director"** means a Director appointed under article 6;
- 1.1.16 **"Fully Paid"** in relation to a Share means that the nominal value and any premium to be paid to the company in respect of that Share have been Paid to the company;
- 1.1.17 **"Group Undertaking"** has the meaning given in section 1161(5) of the Act;
- 1.1.18 **"Holder"** in relation to Shares means the person whose name is entered in the register of members as the holder of the Shares;
- 1.1.19 **"Instrument"** means a document in paper copy or similar form capable of being read;
- 1.1.20 **"Objects"** means the objects for which the company is established as set out in article 3.1;
- 1.1.21 **"Ordinary Resolution"** has the meaning given in section 282 of the Act;
- 1.1.22 **"Paid"** means paid or credited as paid;
- 1.1.23 **"Participate"**, in relation to a Directors' meeting, has the meaning given in article 17 and "Participating" shall be construed accordingly;
- 1.1.24 **"Proxy Notice"** has the meaning given in article 51;
- 1.1.25 **"Share"** or **"Shares"** means a share or shares in the company;
- 1.1.26 **"Shareholder"** means a person who is the Holder of a Share;
- 1.1.27 **"Special Resolution"** has the meaning given in section 283 of the Act;
- 1.1.28 **"Subsidiary"** has the meaning given in section 1159 of the Act;
- 1.1.29 **"Transmittee"** means a person entitled to a Share by reason of the death or Bankruptcy of a Shareholder or otherwise by operation of law; and
- 1.1.30 **"Writing"** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in Electronic Form or otherwise and "written" shall be construed accordingly.

1.2 Unless the context otherwise requires:-

- 1.2.1 other words or expressions contained in the Articles bear the same meaning as in the Act as in force on the date when these Articles become binding on the company;
 - 1.2.2 words in the singular include the plural and in the plural include the singular; and
 - 1.2.3 a reference to one gender includes a reference to the other gender.
- 1.3 These Articles apply instead, and to the exclusion, of the model articles for private companies limited by shares set out in schedule 1 of The Companies (Model Articles) Regulations 2008.

2 Liability of members

- 2.1 The liability of the members is limited to the amount, if any, unpaid on the Shares held by them.

PART 2 – OBJECTS

3 Objects

- 3.1 The company is established for the benefit of the citizens of the City of Edinburgh, and subject to that qualification and to the proviso that the company is not precluded from carrying on activities outwith the City of Edinburgh so long as there is reasonably considered to be benefit, whether financial or non-financial, to the citizens of the City of Edinburgh from so doing, the objects for which the company is established are:
- 3.1.1 To consider, develop and implement, and revise and update from time to time, a strategy or strategies for delivering energy and resource efficiency, energy savings, reductions in carbon and other emissions, the production of renewable or sustainable energy, district heating, and/or sustainable transport ("Energy Services"), and/or income and revenue generation from Energy Services;
 - 3.1.2 To carry on in any manner the company thinks fit the businesses of delivering Energy Services, and/or income and revenue generation from Energy Services and/or the promotion of community benefits from Energy Services;
 - 3.1.3 To carry on in any manner the company thinks fit the businesses of generating and supplying electricity and space and water heating, selling surplus electricity and heat commercially, purchasing and trading electricity and heat and generally trading and dealing in the wholesale and retail markets in commodities, fuels and others of all kinds;
 - 3.1.4 To provide in any manner the Company thinks fit affordable energy to persons who by reason of age, ill health, disability, financial hardship or other disadvantage would benefit from the supply of affordable energy, and in doing so to seek to reduce levels of fuel poverty;

- 3.1.5 To provide consultancy and advisory services relating to Energy Services and to provide training programmes and dissemination of information and advice relating to Energy Services;
- 3.1.6 To design, engineer, manufacture, construct, extend, demolish, execute, carry out, equip, improve, purchase or otherwise acquire, lease, develop, administer, manage or control buildings, facilities, works and conveniences of all kinds in the furtherance of any of the above objects; and
- 3.1.7 To carry on in any manner the company thinks fit the business of implementing projects which are desirable for the furtherance of any of the above objects.

PART 3 - DIRECTORS

NUMBER, APPOINTMENT AND REMOVAL OF DIRECTORS

4 Number of Directors

- 4.1 The minimum number of Directors shall be three and the maximum number of Directors shall be nine comprising:
 - 4.1.1 a maximum of three Council Directors; and
 - 4.1.2 a maximum of six External Directors.

5 Appointment and removal of Council Directors

- 5.1 The Council, for so long as it remains a Shareholder, may by written notice, signed on its behalf by an appropriate officer, and given to the company:
 - 5.1.1 subject to article 4, appoint any elected member or officer (of chief officer status or above) of the Council who is willing so to act to be a Council Director; and
 - 5.1.2 remove any Council Director from the office of Director.
- 5.2 Any appointment or removal of a Council Director under this article 5 shall be effective from the date on which the relevant notice is given to the company or, if later, the date specified in the relevant notice.

6 Appointment and removal of External Directors

- 6.1 Subject to article 4, each appointment of an External Director shall be made by a decision of the Directors but, for so long as the Council remains a Shareholder, each such appointment shall require the Council's prior written consent. The Directors shall consider and make recommendations to the Council regarding the appointment of External Directors the basis of their having skills and experience which, in the opinion of the Directors, would be of assistance to the board of Directors.

6.2 The Council, for so long as it remains a Shareholder, may by written notice, signed on its behalf by an appropriate officer, and given to the company, remove any External Director from the office of Director.

6.3 Any removal of a Director under this article 6 shall be effective from the date on which the notice is given to the company or, if later, the date specified in the notice.

7 Term of office

7.1 Each Director shall be appointed for an initial period of up to three years ("Initial Period").

7.2 On or before expiry of a Director's Initial Period:

7.2.1 in the case of a Council Director, the Council may, by written notice, signed on its behalf by an appropriate officer and given to the company, direct that such Council Director's appointment be renewed for a further period of up to three years; and

7.2.2 in the case of an External Director, the remaining Directors may resolve that her/his appointment be renewed for a further period of up to three years provided that the Council (for so long as it is a Shareholder) has given prior written consent to such renewal

and any such period of renewal shall be called "Subsequent Period".

7.3 On or before expiry of a Director's Subsequent Period and only in exceptional circumstances:

7.3.1 in the case of a Council Director, the Council may, by written notice, signed on its behalf by an appropriate officer and given to the company, direct that such Council Director's appointment be renewed for a further period specified by the Council (but not exceeding three years); and

7.3.2 in the case of an External Director, the remaining Directors may resolve that her/his appointment be renewed for a further period of not exceeding three years provided that the Council (for so long as it is a Shareholder) has given prior written consent to such renewal

and any such period of renewal shall be called "Additional Period".

7.4 A Director's term of office expires automatically on the expiry of the Initial Period unless she/he is appointed for a Subsequent Period.

7.5 If she/he is appointed for a Subsequent Period, a Director's term of office expires automatically on the expiry of the Subsequent Period unless she/he is appointed for an Additional Period.

7.6 If she/he is appointed for an Additional Period, a Director's term of office expires automatically on the expiry of the Additional Period.

8 Termination of Director's appointment

- 8.1 Notwithstanding article 8, a person ceases to be a Director as soon as:-
- 8.1.1 that person ceases to be a Director by virtue of any provision of the Act or is prohibited from being a Director by law;
 - 8.1.2 a Bankruptcy order is made against that person;
 - 8.1.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - 8.1.4 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;
 - 8.1.5 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;
 - 8.1.6 that person is removed from office in terms of articles 5.1.2 or 6.2; or
 - 8.1.7 that person is absent without permission of the board from three consecutive meetings of Directors and the other Directors resolve that she/he vacate office.
- 8.2 A Council Director ceases to be a Director as soon as she/he ceases to be an elected member or officer (of chief officer status or above) of the Council.

9 Directors' remuneration and expenses

- 9.1 Unless (for so long as it is a Shareholder) the Council gives prior written consent:
- 9.1.1 no Director shall be entitled to receive any remuneration or fee in respect of her/his office, or her/his services to or for the company; and
 - 9.1.2 no benefit (in money or money's worth) shall be given by the company to any Director except for the repayment of reasonable out of pocket expenses as set out in article 9.2.
- 9.2 The company may pay any reasonable expenses which the External Directors and the secretary (if any) properly incur in connection with their attendance at:-
- 9.2.1 meetings of Directors or committees of Directors;
 - 9.2.2 general meetings; or
 - 9.2.3 separate meetings of the Holders of any class of Shares or holders of debentures of the company

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

DIRECTORS' POWERS AND RESPONSIBILITIES

10 Directors' general authority

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

11 Shareholders' reserve power

11.1 The Shareholders may, by Special Resolution, direct the Directors to take, or refrain from taking, specified action.

11.2 No such Special Resolution invalidates anything which the Directors have done before the passing of the resolution.

12 Directors may delegate

12.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles:-

12.1.1 to such person or committee;

12.1.2 by such means (including by power of attorney);

12.1.3 to such an extent;

12.1.4 in relation to such matters or territories; and

12.1.5 on such terms and conditions

as they think fit.

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

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

13 Committees

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

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

DECISION MAKING BY DIRECTORS

14 Directors to take decisions collectively

14.1 Any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with article 15.

15 Unanimous decisions

15.1 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.

15.2 Such a decision may take the form of a resolution in Writing where each Eligible Director has signed one or more copies of it or to which each Eligible Director has otherwise indicated agreement in Writing.

15.3 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.

16 Calling a Directors' meeting

16.1 Directors shall hold Directors' meetings at least once every 3 months.

16.2 Subject to article 16.1, any Director may call a Directors' meeting at any time by giving notice of the meeting to the Directors or by authorising the company secretary (if any) to give such notice.

16.3 Notice of any Directors' meeting must indicate:-

16.3.1 its proposed date and time;

16.3.2 where it is to take place; and

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

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

16.5 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

17 Participation in Directors' meetings

17.1 Subject to the Articles, Directors participate in a Directors' meeting, or part of a Directors' meeting ("**Participate**"), when:-

- 17.1.1 the meeting has been called and takes place in accordance with the Articles; and
- 17.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 17.2 In determining whether Directors are Participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.
- 17.3 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.

18 Quorum for Directors' meetings

- 18.1 At a Directors' meeting, unless a quorum is Participating, no proposal is to be voted on except a proposal to call another meeting.
- 18.2 For a Directors' meeting (or part of a meeting) to be quorate:
 - 18.2.1 at least three Directors must Participate unless article 18.4 applies or the company by Ordinary Resolution shall specify a different number; and
 - 18.2.2 at least one of the Directors Participating must be a Council Director unless article 18.4 applies.
- 18.3 If all Council Directors Participating in a Directors' meeting (or part of a meeting) are excluded from the decision-making process as a result of article 21.2, then article 18.2.2 does not apply in respect of that meeting, or part of meeting (as the case may be).
- 18.4 For the purposes of any meeting (or part of a meeting) held pursuant to article 24 to authorise a Director's conflict, if only:
 - 18.4.1 two Eligible Directors are Participating other than the Interested Directors (as defined in that article), the quorum for such meeting (or part of a meeting) shall be two Eligible Directors provided at least one of those is a Council Director; or
 - 18.4.2 one Eligible Director is Participating other than the Interested Directors, the quorum for such meeting (or part of a meeting) shall be one Eligible Director provided that such Director is a Council Director.
- 18.5 If the total number of Directors for the time being is less than the quorum required in terms of article 18.2, the Directors must not take any decision other than a decision to call a general meeting or propose a written resolution so as to enable the Shareholders to appoint further Directors.

19 Council observers at Directors' meetings

19.1 For so long as the Council is a Shareholder, the Directors shall allow such people as are nominated by the Council from time to time to attend and speak (but not vote) at any meeting of the Directors. Any such person shall not be entitled to exercise any of the powers of a Director, and shall not be deemed to constitute a Director for the purposes of the Act or any provision of these Articles.

20 Chairing of Directors' meetings

20.1.1 The Directors shall appoint a Council Director to chair their meetings.

20.1.2 The person so appointed for the time being is known as the Chair.

20.1.3 The Directors may terminate the Chair's appointment with the Council's prior written consent (provided it is, at that time, a Shareholder).

20.1.4 If the Chair is not Participating in a Directors' meeting within ten minutes of the time at which it was to start, the Participating Directors must appoint another Council Director to chair it.

20.1.5 The Chair or other Director chairing the meeting does not have a casting vote.

21 Directors' conflicts of interest in transactions or arrangements

21.1 If a proposed decision of the Directors is concerned with an existing or proposed transaction or arrangement with the company in which a Director is interested (whether directly or indirectly), that Director shall disclose the nature and extent of that interest to the other Directors in accordance with sections 177 or 182 of the Act as applicable.

21.2 Save as provided in article 21.3, a Director shall not count toward the quorum or vote at a meeting of Directors or at a meeting of a committee of Directors on any resolution concerning a matter in which she/he has, directly or indirectly, an interest which conflicts or may conflict with the interests of the company. The Director shall leave the meeting while such matter is being discussed and voted on.

21.3 A Council Director is entitled to:

21.3.1 receive information on transactions or arrangements with the company in which she/he has an interest in terms of sections 177 or 182 of the Act solely as a consequence of her/his being an elected member or officer (of chief officer status or above) of the Council; and

21.3.2 to Participate in any decision-making process relating thereto on the basis that she/he does so in such a way as she/he considers, in good faith, will be most likely to promote the success of the company for the benefit of its members as a whole.

- 21.4 For the purposes of article 21.1:
- 21.4.1 an interest of a person who is connected with a Director in terms of the Act, shall be treated as an interest of the Director; and
- 21.4.2 a Director shall be deemed to have a personal interest in relation to a particular matter if a body in relation to which she/he is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.
- 21.5 The company may by Ordinary Resolution suspend or relax to any extent, either generally or in relation to any particular matter, the provisions of this article 21.
- 21.6 Subject to the provisions of the Act, and provided that she/he has complied with article 21.1, a Director:
- 21.6.1 may be a party to, or otherwise interested in, any transaction or arrangement:
- 21.6.1.1 with the company;
- 21.6.1.2 with any Group Undertaking or with any other body corporate in which the company is otherwise interested; or
- 21.6.1.3 in which the company is otherwise interested, directly or indirectly;
- 21.6.2 may be a director or other officer of, or employed by, or otherwise interested in, any Group Undertaking or in any other body corporate in which the company is otherwise interested; and
- 21.6.3 shall not, save as she/he otherwise may agree, be accountable to the company for any remuneration or other benefit which she/he (or a person connected with him as defined in section 252 of the Act) derives from any of the matters described in articles 21.6.1 and 21.6.2. No such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of her/his duty under section 176 of the Act.

22 Records of Directors' decisions

- 22.1 The Directors shall ensure that the company:
- 22.1.1 records minutes of proceedings at Directors' meetings;
- 22.1.2 creates written records of decisions made by Directors other than at meetings; and

22.1.3 keeps such minutes and records for at least 10 years from the date of the relevant meeting or decision.

23 Directors' discretion to make further rules

23.1 Subject to the Articles, and provided it does not conflict with the Articles, the Directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors.

DIRECTORS' SITUATIONAL CONFLICTS OF INTEREST

24 Board authorisation of situational conflicts

24.1 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 of the duty of a Director under that section to avoid a situation in which she/he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

24.2 Authorisation of a matter under this article shall be effective only if:-

24.2.1 the matter in question shall have been proposed in Writing for consideration by the Directors in accordance with the board's normal procedures or in such other manner as the Directors may approve;

24.2.2 where the matter is to be considered at a Directors' meeting, any requirement as to the quorum at such meeting is met without counting the Director in question and any other interested Director (together "Interested Directors"); and

24.2.3 the matter was agreed to without the Interested Directors voting or would have been agreed to if the votes of the Interested Directors had not been counted.

24.3 Any authorisation of a matter under this article (whether at the time of giving the authorisation or subsequently) may:-

24.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised;

24.3.2 be for such duration and subject to such terms, conditions or limitations as the Directors may determine (including, without limitation, as to the Director's entitlement to receive information on the matter, and her/his entitlement to Participate in any subsequent decision-making process relating to the matter); and

24.3.3 be varied or terminated by the Directors at any time.

24.4 In authorising a matter under this article, the Directors may decide that if a Director has obtained any information through her/his involvement in the matter otherwise than as a Director of the

company and in respect of which she/he owes a duty of confidentiality to another person, then the Director is under no obligation to:-

24.4.1 disclose such information to all or any of the Directors or other officer or employee of the company; or

24.4.2 use or apply any such information in performing her/his duties as a Director

where to do so would amount to a breach of that confidence.

24.5 Where the Directors authorise a matter under this article, the Director will:-

24.5.1 conduct herself/himself in accordance with any terms imposed by the Directors in relation to the matter; and

24.5.2 not infringe any duty she/he owes to the company by virtue of sections 171 to 177 of the Act provided she/he acts in accordance with such terms, conditions and limitations (if any) which the Directors have imposed in respect of its authorisation.

24.6 A Director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director) to account to the company for any remuneration, profit or other benefit which she/he (or a person connected with him as defined in section 252 of the Act) derives from or in connection with any matter authorised:-

24.6.1 by the Directors under this article; or

24.6.2 by the company in general meeting

subject in each case to any terms, limits or conditions attaching to that authorisation. Any contract, transaction or arrangement relating thereto shall not be liable to be avoided on such grounds.

25 Authorisation of situational conflict of Council Directors

25.1 Without prejudice to article 21.6, a Director may be an elected member or officer (of chief officer status or above) of the Council. The general duty of that Director in section 175(1) of the Act is qualified to allow him to hold any such position even where that conflicts or possibly may conflict with the interests of the company.

25.2 A Council Director is entitled to disclose confidential information of the company to the Leader of the Council, the Chief Executive of the Council, or the Convenor of any Committee of the Council which, having regard to its remit, can reasonably be considered to have an interest in the information, but shall not otherwise disclose confidential information of the company without the prior written consent of the Directors.

- 25.3 If a Council Director obtains any information as a result of being an elected member or officer (of chief officer status or above) of the Council, and in respect of which she/he owes a duty of confidentiality, then the Council Director is under no obligation to:
- 25.3.1 disclose such information to all or any of the Directors or other officer or employee of the company; or
- 25.3.2 use or apply any such information in performing her/his duties as a Director
- where to do so would amount to a breach of that confidence.

PART 4 - SHARES AND DISTRIBUTIONS

SHARES

26 All Shares to be Fully Paid up

- 26.1 No Share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.
- 26.2 This does not apply to Shares taken on the formation of the company by the subscribers to the company's memorandum.

27 Issuing Shares

- 27.1 Save to the extent authorised from time to time by an Ordinary Resolution of the Shareholders, the Directors shall not exercise any power to allot Shares or to grant rights to subscribe for, or to convert any security into, any Shares in the company.
- 27.2 Subject to the Articles, but without prejudice to the rights attached to any existing Share, the company may issue Shares with such rights or restrictions as may be determined by Ordinary Resolution.
- 27.3 The company may issue Shares which are to be redeemed, or are liable to be redeemed at the option of the company or the Holder.

28 Trusts

- 28.1 The company shall be entitled, but shall not be bound, to accept and, in case of acceptance, shall be entitled to record in such manner as it may think fit, notices of any trusts in respect of any of the Shares. Notwithstanding any such acceptance and/or the making of any such record, the company shall not be bound to see to the execution, administration or observance of any trust, whether expressed, implied or constructive in respect of any Shares, and shall be entitled to recognise and give effect to the acts and deeds of the Holders of such Shares as if they were absolute owners thereof. For the purpose of this article, "trust" includes any right in respect of any Shares other than an absolute right thereto in the Holder thereof for the time being or such other rights in case of transmission of Shares as are set out in the Articles.

29 Share certificates

- 29.1 The company must issue each Shareholder, free of charge, with one or more certificates in respect of the Shares which that Shareholder holds.
- 29.2 Every certificate must specify—
- 29.2.1 in respect of how many Shares, of what class, it is issued;
 - 29.2.2 the nominal value of those Shares;
 - 29.2.3 that the Shares are Fully Paid; and
 - 29.2.4 any distinguishing numbers assigned to them.
- 29.3 No certificate may be issued in respect of Shares of more than one class.
- 29.4 If more than one person holds a Share, only one certificate may be issued in respect of it.
- 29.5 Certificates must be executed in accordance with the Companies Acts.

30 Replacement Share certificates

- 30.1 If a certificate issued in respect of a Shareholder's Shares is:-
- 30.1.1 damaged or defaced; or
 - 30.1.2 said to be lost, stolen or destroyed
- that Shareholder is entitled to be issued with a replacement certificate in respect of the same Shares.
- 30.2 A Shareholder exercising the right to be issued with such a replacement certificate:-
- 30.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;
 - 30.2.2 must return the certificate which is to be replaced to the company if it is damaged or defaced; and
 - 30.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the Directors decide.

31 Share transfers

- 31.1 Shares may be transferred by means of an Instrument of transfer in any usual form or any other form approved by the Directors, which is executed by or on behalf of the transferor.

- 31.2 No fee may be charged for registering any Instrument of transfer or other Document relating to or affecting the title to any Share.
- 31.3 The company may retain any Instrument of transfer which is registered.
- 31.4 The transferor remains the Holder of a Share until the transferee's name is entered in the register of members as Holder of it.
- 31.5 When a transfer of Shares has been lodged with the company, the company must either
- 31.5.1 register the transfer or approve the transfer for registration subject only to stamping; or
 - 31.5.2 subject to article 31.6, give the transferee notice of refusal to register the transfer together with its reasons for the refusal.

This must be done as soon as practicable and in any event within 2 months after the date on which the transfer is lodged with the company.

- 31.6 The Directors may refuse to register the transfer of a Share only if:-
- 31.6.1 the Share is not Fully Paid;
 - 31.6.2 the transfer is not lodged at the company's registered office or such other place as the Directors have appointed;
 - 31.6.3 the transfer is not accompanied by the certificate for the Shares to which it relates, or such other evidence as the Directors may reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf; or
 - 31.6.4 the transfer is in respect of more than one class of Share.

If the Directors refuse to register the transfer, the Instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

32 Transmission of Shares

- 32.1 If title to a Share passes to a Transmitlee, the company may only recognise the Transmitlee as having any title to that Share.
- 32.2 A Transmitlee who produces such evidence of entitlement to Shares as the Directors may properly require:-
- 32.2.1 may, subject to the Articles, choose either to become the Holder of those Shares or to have them transferred to another person; and

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

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

33 Exercise of Transmittees' rights

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

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

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

34 Transmitttees bound by prior notices

34.1 If a notice is given to a Shareholder in respect of Shares and a Transmitttee is entitled to those Shares, the Transmitttee is bound by the notice if it was given to the Shareholder before the Transmitttee's name (or the name of any person nominated pursuant to article 32.2.1) has been entered in the register of members.

DIVIDENDS AND OTHER DISTRIBUTIONS

35 Procedure for declaring dividends

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

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

35.3 No dividend may be declared or Paid unless it is in accordance with Shareholders' respective rights. If any Share is issued on terms providing that it ranks for dividend as from a particular date, that Share ranks for dividend accordingly.

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

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

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

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

36 Payment of dividends and other distributions

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

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

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

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

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

36.2 In the Articles, "Distribution Recipient" means, in respect of a Share in respect of which a dividend or other sum is payable:-

36.2.1 the Holder of the Share; or

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

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

37 No interest on distributions

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

37.1.1 the terms on which the Share was issued; or

37.1.2 the provisions of another agreement between the Holder of that Share and the company.

38 Unclaimed distributions

38.1 All dividends or other sums which are:-

38.1.1 payable in respect of Shares; and

38.1.2 unclaimed after having been declared or become payable

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

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

38.3 If:-

38.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and

38.3.2 the Distribution Recipient has not claimed it

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

39 Non-cash distributions

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

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

39.2.1 fixing the value of any assets;

39.2.2 paying cash to any Distribution Recipient on the basis of that value in order to adjust the rights of recipients; and

39.2.3 vesting any assets in trustees.

40 Waiver of distributions

40.1 Distribution Recipients may waive their entitlement to a dividend or other distribution payable in respect of a Share by giving the company notice in Writing to that effect, but if:-

40.1.1 the Share has more than one Holder; or

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

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

CAPITALISATION OF PROFITS

41 Authority to capitalise and appropriation of capitalised sums

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

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

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

41.2 Capitalised sums must be applied:-

41.2.1 on behalf of the persons entitled; and

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

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

41.4 A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

41.5 Subject to the Articles the Directors may:-

41.5.1 apply capitalised sums in accordance with articles 41.3 and 41.4 partly in one way and partly in another;

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

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

PART 5 - DECISION-MAKING BY SHAREHOLDERS

ORGANISATION OF GENERAL MEETINGS

42 Convening a general meeting

42.1 The Directors of the company may call a general meeting of the company.

42.2 In accordance with the provisions of the Act, the Shareholders of the company may require the Directors to call a general meeting of the company provided the request is made by Shareholders representing at least 5% of such of the paid-up capital of the company as carries the right of voting at general meetings.

42.3 A general meeting must be called by notice of at least 14 Clear Days. It may be called by shorter notice than this if agreed to by a majority in number of Shareholders having a right to attend and vote at the meeting, being a majority who together hold not less than 90% in nominal value of the shares giving a right to attend and vote at the meeting.

42.4 Notice of a general meeting must be sent to every Shareholder, every Director and the company's auditors (if any).

42.5 A notice of a general meeting must include:-

42.5.1 the time, date and place of the meeting;

42.5.2 the general nature of the business to be dealt with at the meeting; and

42.5.3 notification of the Shareholder's right to appoint one or more proxies to exercise all or any of her/his rights to attend, speak and vote at a meeting as set out in section 324 of the Act.

43 Attendance and speaking at general meetings

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

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

- 43.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
- 43.2.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 43.2.3 The Directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 43.2.4 In determining attendance at a general meeting, it is immaterial whether any two or more Shareholders attending it are in the same place as each other.
- 43.2.5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

44 Quorum for general meetings

- 44.1 No business other than the appointment of the Chair of the Meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.
- 44.2 If and for so long as the company has only one Shareholder, the quorum is one qualifying person. In any other case, the quorum is two qualifying persons subject to section 318(2) of the Act. A "qualifying person" means an individual who is a Shareholder of the company, a corporate representative duly authorised under section 323 of the Act, or a person appointed as a proxy of a Shareholder in relation to a meeting.

45 Chairing general meetings

- 45.1 If the Directors have appointed a Chair, the Chair shall chair general meetings if present and willing to do so.
- 45.2 If the Directors have not appointed a Chair, or if the Chair is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:-
 - 45.2.1 the Directors present; or
 - 45.2.2 (if no Directors are present), the meetingmust appoint a Director or Shareholder to chair the meeting, and the appointment of the Chair of the Meeting must be the first business of the meeting.
- 45.3 The person chairing a meeting in accordance with this article is referred to as "the Chair of the Meeting".

46 Attendance and speaking by Directors and non-Shareholders

46.1 Directors may attend and speak at general meetings whether or not they are Shareholders.

46.2 The Chair of the Meeting may permit other persons who are not:-

46.2.1 Shareholders of the company; or

46.2.2 otherwise entitled to exercise the rights of Shareholders in relation to general meetings to attend and speak at a general meeting.

47 Adjournment

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

47.2 The Chair of the Meeting may adjourn a general meeting at which a quorum is present if:-

47.2.1 the meeting consents to an adjournment; or

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

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

47.4 When adjourning a general meeting, the Chair of the Meeting must:-

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

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

47.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 Clear Days' notice of it:-

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

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

47.6 52.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

48 Voting: general

- 48.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the Articles.
- 48.2 Subject to any rights or restrictions attached to any Shares, on a vote on a resolution on a show of hands:-
- 48.2.1 every Shareholder who (being an individual) is present in person shall have one vote;
- 48.2.2 every proxy present who has been duly appointed by one or more Shareholders entitled to vote on the resolution shall have one vote unless article 48.2.4 or article 48.2.5 applies;
- 48.2.3 every Shareholder who (being a corporation) is present by a duly authorised corporate representative shall have one vote and if such Shareholder appoints more than one corporate representative, each such representative shall have one vote;
- 48.2.4 a proxy has one vote for and one vote against the resolution if she/he has been duly appointed by more than one Shareholder entitled to vote on the resolution and she/he has been instructed by one or more of those Shareholders to vote for the resolution and by one or more other of those Shareholders to vote against it;
- 48.2.5 where a proxy has been duly appointed by more than one Shareholder entitled to vote on the resolution and has received concrete instructions to vote in the same way from one or more of those Shareholders and been given a discretion as to how she/he votes by one or more other of those Shareholders, she/he may, if she/he chooses, cast a second vote the other way under the discretionary authority.
- 48.3 On a vote on a resolution on a poll taken at a meeting, every Shareholder has one vote in respect of each Share held by him. On a poll, votes may be given personally or by proxy.

49 Errors and disputes

- 49.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 49.2 Any such objection must be referred to the Chair of the Meeting, whose decision is final.

50 Poll votes

- 50.1 A poll on a resolution may be demanded:-
- 50.1.1 in advance of the general meeting where it is to be put to the vote; or

- 50.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 50.2 A poll may be demanded by:-
 - 50.2.1 the Chair of the Meeting;
 - 50.2.2 the Directors;
 - 50.2.3 two or more persons having the right to vote on the resolution; or
 - 50.2.4 a person or persons representing not less than one tenth of the total voting rights of all the Shareholders having the right to vote on the resolution.
- 50.3 A demand for a poll may be withdrawn if:-
 - 50.3.1 the poll has not yet been taken; and
 - 50.3.2 the Chair of the Meeting consents to the withdrawal.
- 50.4 Polls must be taken immediately and in such manner as the Chair of the Meeting directs.

51 Content of Proxy Notices

- 51.1 Proxies may only validly be appointed by a notice in Writing (a "Proxy Notice") which:-
 - 51.1.1 states the name and address of the Shareholder appointing the proxy;
 - 51.1.2 identifies the person appointed to be that Shareholder's proxy and the general meeting in relation to which that person is appointed;
 - 51.1.3 is signed by or on behalf of the Shareholder appointing the proxy, or is authenticated in such manner as the Directors may determine; and
 - 51.1.4 is either delivered to the company in accordance with the Articles and any instructions contained in or accompanying the notice of the general meeting or the proxy form, or whose delivery is otherwise accepted by the Chair of the Meeting at her/his discretion.
- 51.2 The company may require Proxy Notices to be delivered in a particular form, and may specify different forms for different purposes.
- 51.3 Proxy Notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- 51.4 Unless a Proxy Notice indicates otherwise, it must be treated as:-
 - 51.4.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and

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

52 Delivery of Proxy Notices

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

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

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

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

53 Amendments to resolutions

53.1 An Ordinary Resolution to be proposed at a general meeting may be amended by Ordinary Resolution if:-

53.1.1 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

53.1.2 the proposed amendment does not, in the reasonable opinion of the Chair of the Meeting, materially alter the scope of the resolution.

53.2 A Special Resolution to be proposed at a general meeting may be amended by Ordinary Resolution, if:-

53.2.1 the Chair of the Meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

53.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

53.3 If the Chair of the Meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, her/his error does not invalidate the vote on that resolution.

WRITTEN RESOLUTIONS

54 Written resolutions

- 54.1 The Shareholders may pass any resolution (other than a resolution to remove a Director or auditor before expiry of her/his term of office) as a written resolution in accordance with Chapter 2 of Part 13 of the Act.

PART 6 - ADMINISTRATIVE ARRANGEMENTS

55 Means of communication to be used

- 55.1 Subject to the Articles, anything sent or supplied by or to the company under the Articles may be sent or supplied in any way in which the Act provides for Documents or information which are authorised or required by any provision of the Act to be sent or supplied by or to the company.
- 55.2 Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or Documents for the time being.
- 55.3 A Director may agree with the company that notices or Documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

56 No right to inspect accounts and other records

- 56.1 The Council, for as long as it is a Shareholder, is entitled to inspect any of the company's accounting or other records or Documents.
- 56.2 Save as provided in article 56.1, or by law, or as authorised by the Directors or an Ordinary Resolution of the company, no person is entitled to inspect any of the company's accounting or other records or Documents merely by virtue of being a Shareholder.

57 Provision for employees on cessation of business

- 57.1 The Directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its Subsidiaries (other than a Director or former Director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that Subsidiary.

DIRECTORS' AND COMPANY SECRETARY'S INDEMNITY AND INSURANCE

58 Indemnity

- 58.1 Subject to article 58.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:-
- 58.1.1 each relevant officer may be indemnified out of the company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:-

58.1.1.1 in the actual or purported execution and/or discharge of her/his duties or in relation to them; and

58.1.1.2 in relation to the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Act);

including (in each case) any liability incurred by him in defending any civil or criminal proceedings in which judgement is given in her/his favour or in which she/he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on her/his part or in connection with any application in which the court grants him, in her/his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the company's or an associated company's affairs; and

58.1.2 the company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 58.1.1 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

58.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

58.3 In this article:-

58.4 companies are associated if one is a Subsidiary of the other or both are Subsidiaries of the same body corporate; and

58.5 a "relevant officer" means any Director, secretary, former Director or former secretary of the company or an associated company.

59 Insurance

59.1 The Directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant officer in respect of any relevant loss.

59.2 In this article:-

59.2.1 a "relevant officer " means any Director, secretary, former Director or former secretary of the company or an associated company;

59.2.2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant Director or relevant secretary in connection with that Director's or secretary's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company; and

- 59.2.3 companies are associated if one is a Subsidiary of the other or both are Subsidiaries of the same body corporate.
- 59.3 The terms of such insurance must, however, be framed to exclude the provision of any indemnity in respect of any liability incurred by the Director:
- 59.3.1 to pay a fine imposed in criminal proceedings;
- 59.3.2 to pay a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature;
- 59.3.3 in respect of representation in any criminal proceedings in which the Director is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the Director;
- 59.3.4 to the company that arises out of any conduct which the Director knew (or must reasonably be assumed to have known) was not in the interests of the company or in the case of which the Director did not care whether or not it was in the interests of the company.
- 59.4 For the purposes of article 59.3, the reference to conviction does not include a conviction:
- 59.4.1 quashed by an order under section 118(1)(b) or 183(1)(c) of the Criminal Procedure (Scotland) Act 1995;
- 59.4.2 quashed by an order under section 118(1)(c) of that Act and which order has the effect of an acquittal by virtue of section 119(9) of that Act or otherwise;
- 59.4.3 in relation to which the verdict is set aside by an order under section 183(1)(d) of that Act and which order has the effect of an acquittal by virtue of section 185(9) of that Act or otherwise.

60 Winding up

- 60.1 If the company is wound up, the liquidator may, with the sanction of a Special Resolution and any other sanction required by the Act or other applicable law, divide among the Shareholders in specie the whole or any part of the assets of the company. The liquidator may for that purpose value any assets and determine how the division shall be carried out as between the Shareholders or different classes of Shareholders.
- 60.2 The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the Shareholders as she/he with the like sanction determines but no Shareholder shall be compelled to accept any assets upon which there is liability.

61 Amendment of these Articles

61.1 For so long as the Council is a Shareholder, the following provisions of these Articles shall not be modified without the Council's written consent:

61.1.1 articles 3 to 6 inclusive;

61.1.2 article 7;

61.1.3 article 8.2;

61.1.4 article 9;

61.1.5 articles 18 to 21 inclusive;

61.1.6 article 25;

61.1.7 article 27;

61.1.8 article 31;

61.1.9 article 57;

61.1.10 articles 59.3 and 59.4; and

61.1.11 article 61.

61.2 The Council's consent may (without limitation) take the form of an assent to a Special Resolution to modify these Articles or to adopt new articles of association.

SHAREHOLDER AGREEMENT

between

THE CITY OF EDINBURGH COUNCIL

and

ENERGY FOR EDINBURGH LIMITED

Draft 4 – 10 OCTOBER 2015

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SHAREHOLDER AGREEMENT

BETWEEN

- 1) **THE CITY OF EDINBURGH COUNCIL**, established by the Local Government etc. (Scotland) Act 1994 and having its principal office at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG (the "**Council**"); and
- 2) **ENERGY FOR EDINBURGH LIMITED** a company incorporated in Scotland (company number: []) and having its registered office at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG (the "**Company**").

BACKGROUND

- (A) This Agreement sets out the terms on which the Parties have agreed that the Company will operate.
- (B) The Company has agreed with the Council that it will comply with the terms and conditions of this Agreement insofar as they relate to the Company and insofar as it can lawfully do so.

AGREED TERMS

1 Definitions and interpretation

1.1 In this Agreement the following expressions have the following meanings:

"Acceleration Notice"	means a notice given by the Company to the Council in accordance with clause 6.3;
"Adequate Procedures"	means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;
"Agreement"	means this agreement and the Schedule;
"Annual Budget"	means the annual budget prepared for each Financial Year in accordance with clause 5.4 and adopted by the Company in accordance with this Agreement;
"Articles"	means the articles of association of the Company as set out in Part 4 of the Schedule, as the same may be amended from time to time, and references to an Article shall mean a specific article in the Articles as amended from time to time;

"Board"	means the Directors, 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 (and where the context so admits means a duly convened meeting of the directors of an EFE Group Company at which a quorum is present in accordance with the articles of association of the relevant company);
"Board Meeting"	means in respect of the Company or any EFE Group Company a duly convened meeting of the relevant Board;
"Business"	means the business as described in clause 2.1 and such other business as the Council and the Company may agree in writing from time to time in accordance with this Agreement;
"Business Day"	any day, other than a Saturday or a Sunday, on which banks are open in Edinburgh for normal banking business;
"Business Plan"	means the business plan prepared in accordance with clause 5 and adopted by the Company in accordance with this Agreement;
"Commercially Sensitive"	means any matter or information the disclosure of which outside of the Company is reasonably likely to be materially detrimental to the Business;
"Confidential Information"	<p>means all confidential information of whatever nature and in whatever form, disclosed or made available, directly or indirectly, by one Party to the other Party, or to such other Party's officers, employees, professional advisers or agents, whether or not such information is labelled or designated as confidential, including but not limited to:</p> <p>(a) any information relating to the other Party's business, finances, operations, products and services, marketing affairs and opportunities, customers, and suppliers, plans, inventions, processes, trade secrets, know how, design rights, software</p>

and Intellectual Property Rights or any other information of a confidential or proprietary nature;

- (b) any information designated as confidential information by the other whether belonging to that Party or a third party;
- (c) the subject matter and provisions of this Agreement and all other documents entered into pursuant to this Agreement; and
- (d) any information obtained by a Party as a result of negotiations and entering into or performing this Agreement;

and "**Confidential Information**" shall include confidential information of any EFE Group Company;

"Director"	means any duly appointed director of the Company for the time being or a duly appointed alternate of any director;
"EFE Group Company"	means any Subsidiary or Subsidiary Undertaking of the Company;
"Encumbrance"	means any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignation, hypothecation, security interest, title retention or any other security agreement or arrangement having similar effect;
"Energy Services"	has the meaning given in clause 2.3;
"External Director"	means a Director appointed under Article 6;
"Financial Year"	means any accounting reference period of the Company, of whatever duration;
"Intellectual Property Rights"	means any and all intellectual property or industrial rights of any description anywhere in the world including but not limited to any patents and supplementary protection certificates, trademarks,

domain names, registered designs, copyright (including but not limited to rights in computer software, object and source code), rights in the nature of copyright, database rights, semi-conductor topography rights, unregistered design rights, any rights in plant varieties, rights in and to trade names, business names, product names and logos, inventions, databases, discoveries, specifications, formulae, processes, know how, trade secrets, confidential information and any analogous or similar right in any jurisdiction (whether any such rights referred to in this definition are registered, unregistered, registerable or not and any applications or rights to apply for registration of any of them, any and all divisions and continuations of said applications and the right to claim priority from any of the applications together with any registered rights resulting from any such applications or rights to apply for registration);

"Material Developments"

means any development, issue or matter that has or is reasonably likely to have a significant effect on financial, reputational or operational risk and/or a significant impact on service delivery or performance;

"Observer"

means the individual appointed pursuant to clause 4.1 or an individual appointed pursuant to Article 19;

"Parties"

means each of the parties to this Agreement;

"Reserved Matter"

means each of the matters set out in Part 1 of the Schedule;

"Project Board"

means the project board established by the Council to provide oversight of the Company's activities;

"Schedule"

means the schedule, in four parts, to this Agreement;

"Subsidiary"

has the meaning given in section 1159 of the Companies Act 2006 provided that for the purpose of that section a company shall be deemed to be a member of another when its shares in the other company are registered in the name of another person either in connection with the taking of security

or as a nominee, and wholly-owned subsidiary shall have the meaning given in that section; and

"Subsidiary Undertaking"

has the meaning given in section 1162 of the Companies Act 2006.

- 1.2 References to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time and any subordinate legislation made under the relevant statute or statutory provision (as so modified, replaced, re-enacted or consolidated) in force prior to the date of this Agreement.
- 1.3 References to any gender include references to each other gender (including neuter) and references to the singular include the plural and vice versa.
- 1.4 References to a person include references to any individual (including that individual's legal personal representatives), firm, company, corporation or other body corporate, government, state, agency of a state, local authority or any unincorporated association, joint venture or partnership (whether or not having a separate legal personality).
- 1.5 The clause and schedule headings in this Agreement do not affect its interpretation.
- 1.6 References to clauses and the Schedule are to clauses and to the Schedule to this Agreement and references to paragraphs are to paragraphs in the Schedule in which such references appear.
- 1.7 The Schedule forms part of this Agreement and has the same force and effect as if set out in the body of this Agreement.
- 1.8 Any phrase introduced by the term "include", "including", "in particular", "other", or any similar general term is not limited by any particular examples preceding or following those general terms.
- 1.9 Where any obligation in this Agreement is expressed to be undertaken or assumed by any Party, that obligation shall be interpreted to require the Party concerned to exercise all rights and powers of control over the affairs of any other person which it is able to exercise (whether directly or indirectly) in order to secure performance of the obligation.
- 1.10 In construing this Agreement the *contra proferentem* rule shall not apply and accordingly wording shall not be given a restricted meaning by operation of such rule.
- 1.11 In deciding whether and, if so, how to exercise any right or discretion conferred upon it by this Agreement, the Council may act in its complete discretion.
- 1.12 A reference to a "notice" is to a notice in writing signed by or on behalf of the person sending it and given in accordance with clause 13.

- 1.13 Unless otherwise expressly provided, all covenants, agreements, undertakings, indemnities, representations and warranties in this Agreement by more than one person are entered into, given or made by such persons severally.

2 Business of the Company

- 2.1 Subject to the Reserved Matters referred to in clauses 6.1.7 and 6.2 and set out in Part 1 of the Schedule, the Business of the Company (carried out itself and through any EFE Group Companies) shall be as specified in Article 3.
- 2.2 The Company undertakes to the Council that for so long as this Agreement remains in effect it will:
- 2.2.1 co-operate and use its reasonable endeavours to promote and develop the Business to the best advantage in accordance with good business practice and the highest ethical standards;
 - 2.2.2 conduct the Business on the basis of, and in accordance with, the Annual Budget and the Business Plan;
 - 2.2.3 generally do, or cause to be done, all acts necessary or desirable to give effect to the terms of this Agreement; and
 - 2.2.4 observe the provisions of the Articles.
- 2.3 The Council and the Company agree that the Company has been established by the Council, among other things, as the vehicle to consider, develop and implement, and revise and update from time to time, a strategy or strategies for delivering energy and resource efficiency, energy savings, reductions in carbon and other emissions, the production of renewable or sustainable energy, district heating, and/or sustainable transport ("**Energy Services**"), and/or income and revenue generation from Energy Services, as set out in Article 3.1.1.
- 2.4 In light of clause 2.3, the Council undertakes to the Company that it shall provide the Company with information about any projects relating to Energy Services that are being considered or discussed by or within the Council and that it shall use all reasonable endeavours to procure that such information is provided in respect of projects relating to Energy Services being considered or discussed by or within arm's length entities established by the Council.
- 2.5 The Council undertakes to the Company that it will provide information about and access to assets of the Council so as to enable the Company to promote and develop the Business. Reference to assets of the Council includes land, buildings, and operational and non-operational property. The Council also undertakes to the Company that it shall use all reasonable endeavours to procure information about and access to such assets as are in the ownership or otherwise under the control of any arm's length entities established by the Council.

- 2.6 The Council shall notify the Company of its policies relating to Energy Services from time to time, and of any amendments to these policies. The Company undertakes to the Council that it will, in carrying on the Business, have regard to these policies and to any amendments to them or replacements of them.
- 2.7 The Council may provide the Company, on request by the Company, with:
- 2.7.1 access to financial support and advice;
 - 2.7.2 access to legal assistance and advice;
 - 2.7.3 access to procurement assistance and advice;
 - 2.7.4 access to the Council's communications and public relations services;
 - 2.7.5 access to IT and telecoms facilities;
 - 2.7.6 access to meeting rooms and office facilities;
 - 2.7.7 access to and use of personnel.
- 2.8 If despite the exercise of all rights and powers of control available to them the parties to this Agreement cannot fully implement the provisions of this Agreement in relation to any particular EFE Group Company, the parties shall implement the provisions of this Agreement in relation to that company to the extent possible, and shall not be in breach of this Agreement in respect of the obligations which cannot be so implemented.

3 Directors

- 3.1 The Company shall procure that:
- 3.1.1 it uses all reasonable endeavours to ensure that each Director completes, signs and delivers to the Company and the Council as soon as reasonably practicable following the date of their appointment to the Board, an undertaking in the form set out in Part 3 of the Schedule;
 - 3.1.2 subject to the Reserved Matters referred to in clauses 6.1.7 and 6.2 all material decisions relating to the Company will be taken at Board Meetings;
 - 3.1.3 Board Meetings will be held at least quarterly in any Financial Year; and
 - 3.1.4 each such meeting will be held in Scotland.
- 3.2 The Company shall give to the Observer:
- 3.2.1 not less than 5 Business Days advance notice of each Board Meeting and of each meeting of any committee of the Board, such notice to be accompanied by a written

agenda specifying the business to be transacted at such meeting together with all papers to be circulated or presented to the same, provided that where a Board Meeting is required to be held on short notice, the Company shall use reasonable endeavours to give advance notice to the Observer; and

3.2.2 as soon as practicable after each such meeting a copy of the minutes of that meeting redacted to the extent required to comply with the terms of the Data Protection Act 1998,

provided that where the subject matter of any paper could reasonably be considered to be Commercially Sensitive the provisions of clause 7.6 shall apply.

3.3 Each Director shall be responsible for dealing with conflicts of interest in accordance with his/her statutory duties and the Articles.

4 Observer rights

4.1 The Council, by its signature of this Agreement, appoints a Senior Manager as an Observer in terms of Article 19 and the Company, by its signature of this Agreement, accepts said appointment as being made in terms of Article 19.

4.2 The Parties agree that the person appointed as an Observer pursuant to clause 4.1, or any other person appointed as an Observer pursuant to Article 19, shall:

4.2.1 subject to clause 7.6, be at liberty from time to time to discuss the proceedings of Board meetings or of meetings of any committees of the Board with other officers and elected members of the Council; and

4.2.2 subject to clause 7.6, in addition to the information to be provided under clause 3.2, be entitled to receive all information, other than sensitive personal information (as defined in the Data Protection Act 1998), provided by the Company or made generally available by the Company to Directors and the Company shall send such information or make such information available to such Observer.

4.3 References to Boards and Board Meetings in clause 4.2 includes Boards and Board Meetings of any EFE Group Companies.

5 Business Plan, accounts, financial and other information

5.1 The Company shall, at all times, maintain accurate and complete accounting and other financial records in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable to the Company.

5.2 The Company shall prepare:

- 5.2.1 quarterly management accounts of the Company and any EFE Group Companies including a profit and loss account, balance sheet and cash flow statement and such other trading and financial information as the Council may reasonably require as well as a comparison against the previous year's information for the relevant quarter and against the Annual Budget, together with an explanation for any material variances to forecasts and shall send a copy to the Council no later than 10 Business Days after the end of each relevant quarter and the Board shall consider such accounts at its following meeting; and
- 5.2.2 audited accounts of the Company and any EFE Group Companies and shall send a copy to the Council within 6 months of the end of the accounting period to which they relate.
- 5.3 The Company shall prepare an Annual Budget for the Company and any EFE Group Companies in respect of each Financial Year and a Business Plan of the Company and any EFE Group Companies annually in each case on an individual and consolidated basis.
- 5.4 Each Annual Budget shall be consistent with the Business Plan and shall include:
 - 5.4.1 a forecast profit and loss;
 - 5.4.2 a forecast revenue projection;
 - 5.4.3 a balance sheet and cash-flow statement on a phased monthly basis;
 - 5.4.4 an operating budget including estimated capital expenditure and working capital on a phased monthly basis;
 - 5.4.5 an analysis of the results of the Company and any EFE Group Companies for the previous Financial Year compared with the Annual Budget for that Financial Year, identifying material variations in revenues and costs;
 - 5.4.6 a summary of the Company's and any EFE Group Companies' business objectives for the forthcoming Financial Year together with financial and non-financial KPIs and appropriate measures of achievement against which the performance of the Company and any EFE Group Companies will be assessed.
- 5.5 Each Business Plan shall include:
 - 5.5.1 a forecast profit and loss;
 - 5.5.2 a forecast revenue projection;
 - 5.5.3 a dividend policy (for the avoidance of doubt, that policy may be that no dividend is expected or anticipated to be payable);

- 5.5.4 a balance sheet and cash-flow statement on an annual basis;
 - 5.5.5 a review of projected business activities and capital investment; and
 - 5.5.6 a summary of the Company's and any EFE Group Companies' business objectives for at least 3 Financial Years following the reference year of the Business Plan.
- 5.6 Each Annual Budget and Business Plan shall be approved by the Board prior to the commencement of the Financial Year to which it relates and the Company shall consult with the Council in a reasonable and proper manner in drawing up the Annual Budget and Business Plan before approval.
- 5.7 Each Annual Budget and Business Plan shall be submitted to the Board in draft and thereafter shall be circulated to the Council not later than 90 days prior to the commencement of the first Financial Year to which it relates; with the intention that each Annual Budget and Business Plan shall then be presented at an appropriate meeting of the Council (or relevant Council committee, or the Project Board, as the Council shall direct) for approval.
- 5.8 If any Annual Budget and/or Business Plan has not been approved pursuant to clause 5.7 by the start of the relevant Financial Year, the Company shall continue to trade in the ordinary course without material interruption but in a manner which is most likely to continue the status quo without materially deviating from the previous Annual Budget and/or Business Plan until such time as a new Annual Budget and/or Business Plan is so approved.
- 5.9 If the Company wishes to amend a Business Plan during the course of any Financial Year it shall present its proposals to the Council (or relevant Council committee, or the Project Board, as the Council shall direct) which, acting reasonably, shall approve or reject such changes.
- 5.10 The Company and the Board shall:
- 5.10.1 upon receipt by the Company of a request in writing by or on behalf of the Council, grant the Council such access to the accounts, books, records, senior employees (if any) and Directors and such other information relating to the business affairs and financial position of the Company and any EFE Group Companies as such request may reasonably require (which shall include all information that the Council requires in order to comply with law and/or regulations);
 - 5.10.2 keep the Council informed of any Material Developments in the Business; and
 - 5.10.3 supply the Council with a copy of a report prepared by the Company in respect of each Financial Year, demonstrating the implementation by the Company and any EFE Group Companies of Adequate Procedures, such report to be provided within 30 Business Days of the end of the Financial Year to which it relates;

- 5.11 The Company acknowledges that the Council is subject to certain external audit requirements and, subject to the provisions of clause 7, shall give any auditors appointed in relation to the Council access to the necessary information and records reasonably requested by them for such purpose from time to time.

6 Undertakings of the Company

- 6.1 The Company undertakes to the Council (to the extent it is legally able to do so and subject to clause 2.8) that it shall:
- 6.1.1 comply with the terms of this Agreement and the Articles;
 - 6.1.2 conduct the Business and procure that it and each EFE Group Company conducts its business in accordance with all applicable legal and administrative requirements, the Annual Budget, the Business Plan, good business practice and in the ordinary course so as to seek to maintain its business as a going concern;
 - 6.1.3 ensure that it files all statutory returns of the Company and any EFE Group Companies on a timely basis;
 - 6.1.4 take out and maintain insurances appropriate to the Business and, on request, to supply the Council with a schedule of such insurances;
 - 6.1.5 if so requested by the Council acting reasonably, enforce, or procure to be enforced, to their full extent all rights and remedies available to the Company under this Agreement and the Articles;
 - 6.1.6 if so requested by the Council acting reasonably, enforce, or procure to be enforced, to their full extent, the obligations of Directors and senior executives (if any) of the Company and any EFE Group Companies under their service or employment agreements (if any);
 - 6.1.7 subject to clause 6.2, ensure that, save with the prior written consent of the Council, it shall not carry out any of the Reserved Matters;
 - 6.1.8 as soon as reasonably possible after becoming aware of the same, notify the Council in writing of any litigation by or against the Company or any EFE Group Company which materially affects or is reasonably likely to materially affect the Business or any dispute or other circumstances which may give rise to any such litigation;
 - 6.1.9 adopt, implement and review annually policies (which policies will have regard to the equivalent policies of the Council in force from time to time) regarding:
 - 6.1.9.1 risk management and maintenance of a risk register;
 - 6.1.9.2 whistle blowing;

- 6.1.9.3 bribery, anti-corruption, fraud and irregularity;
 - 6.1.9.4 formal recruitment and selection;
 - 6.1.9.5 health and safety;
 - 6.1.9.6 equalities;
 - 6.1.9.7 living wage; and
 - 6.1.9.8 such other matters as may be reasonably required by the Council from time to time;
 - 6.1.10 follow and comply with the Council's procedures and rules in respect of the procurement of goods, services and works as in force from time to time;
 - 6.1.11 maintain a Schedule of Notifiable Interests for the Directors in the form set out in Part 2 of the Schedule; and
 - 6.1.12 comply with all applicable laws.
- 6.2 The Company shall procure that no EFE Group Company shall carry out any of the Reserved Matters, with each reference in Part 1 of the Schedule (express or implied) to the Company being construed as a reference to each EFE Group Company, and each such reference to the Business being construed as a reference to the business of the relevant EFE Group Company.
- 6.3 Where consent to a Reserved Matter is required under clause 6.1.7 or 6.2 and the Company reasonably considers that waiting for the next meeting of Council or relevant Council committee or the Project Board before any decision concerning consent can be given would result in a material adverse effect on the trading of the Company (or any EFE Group Company), it shall, by giving notice in writing to the Council, invoke an accelerated procedure for the consent process, whereby:
- 6.3.1 approval or rejection of any Reserved Matter may be given by the Council following consultation on the Reserved Matter with the Council's appointed Senior Manager, the Chief Executive or Executive Director of Resources of the Council, on behalf of the Council; and
 - 6.3.2 if such approval or rejection is not given or withheld within five Business Days of receipt of the Acceleration Notice or any accompanying documentation that the Council may reasonably require, the request for consent will be automatically be deemed to be withheld.
- 6.4 If, for the purposes of promoting and developing the Business, the Company considers that it requires to procure goods, services and/or works above a threshold of £[500,000] in respect of goods and services, and works, it shall seek the approval of the Council (or relevant Council committee, or the Project Board, as the Council shall direct). The Company shall supply to the

Council such information as the Council shall reasonably require in order to consider whether to grant approval, which shall include a detailed business case relating to the proposed procurement.

- 6.5 If the Council approves a procurement in terms of clause 6.4, the Company shall proceed with that procurement in accordance with the Council's procurement procedures and rules as in force from time to time.

7 Confidentiality

- 7.1 Each Party undertakes:

7.1.1 to treat and keep the Confidential Information as secret and confidential and not, without the prior written consent of the other Party, which may be given on such terms as they consider appropriate, directly or indirectly communicate or disclose, or allow to be communicated or disclosed (whether in writing or orally or in any other manner), such Confidential Information to any other person other than to its officers, employees, professional advisers and agents who need to know it strictly for the purposes of considering, evaluating or performing this Agreement; and

7.1.2 not to use the Confidential Information for any purpose other than solely in connection with the performance of this Agreement (including conducting the Business in the ordinary course) and in particular not to use the Confidential Information for any competitive or commercial purpose.

- 7.2 Each Party shall ensure that each of its officers, employees, professional advisers, auditors and agents to whom the Confidential Information is to be made available are made fully aware of the confidentiality obligations set out in this Agreement and each such Party shall procure that such persons will observe the terms of this clause.

- 7.3 Each Party shall keep the Confidential Information safe and secure and shall take the same care to protect and secure the Confidential Information of the other Party as the receiving Party takes with information of its own of similar significance, but on no account less than reasonable care.

- 7.4 Each Party shall take all reasonable and appropriate steps to enforce any duty of confidence owed to it by any person to whom any Confidential Information is made available insofar as such enforcement appears to be necessary for the protection of the confidentiality of the Confidential Information.

- 7.5 The provisions of clause 7.1 shall not apply to Confidential Information to the extent that such Confidential Information:

7.5.1 was lawfully known to the recipient (without obligation to keep the same confidential) at the date of its disclosure;

- 7.5.2 is required to be disclosed by the laws of any relevant jurisdiction, or any governmental or regulatory organisation including, without limitation, the provisions of the Local Government (Access to Information) Act 1985, the Environmental Information (Scotland) Regulations 2004 and the Freedom of Information (Scotland) Act 2002 and other obligations, guidance and provisions concerning access to information by which the Council and/or the Company are bound, but only to the extent and for the purpose of such a disclosure, in which event the recipient shall to the extent it is reasonably able to do so, take all reasonable steps to consult and take into account the reasonable requirements of the other Party in relation to, and prior to, such disclosure;
- 7.5.3 is required to be disclosed in order to complete tax returns or to obtain any relevant tax clearances, but only to the extent and for the purpose of such a disclosure, in which event the recipient shall to the extent it is reasonably able to do so, take all reasonable steps to consult and take into account the reasonable requirements of the other Party in relation to, and prior to, such disclosure; or
- 7.5.4 is in or has come into the public domain otherwise than by reason of the recipient's fault, neglect or breach of the restrictions set out in this Agreement or any other agreement.
- 7.6 Notwithstanding the terms of clause 7.1 but subject to any other restrictions determined pursuant to this clause 7.6:
- 7.6.1 the Observer shall be at liberty from time to time to disclose Confidential Information relating to the Company and any EFE Group Company to the Leader of the Council, to the Chief Executive of the Council, to the Convenor of any committee of the Council which, having regard to its remit, can reasonably be considered to have an interest in such information on matters, or to the Project Board;
- 7.6.2 in relation to information or documentation to be provided to the Council or any official and/or member of the Council:
- 7.6.2.1 if any information or documentation may be reasonably considered to be Commercially Sensitive the following shall apply:
- 7.6.2.1.1 the Chair and/or the Chief Executive of the Company shall (if any) as soon as reasonably practicable (and in any case within 5 Business Days of becoming aware that the information or documentation may be reasonably considered to be Commercially Sensitive) consult with the Chief Executive of the Council to agree whether such information is Commercially Sensitive (pending such consultation the Company shall be

entitled to withhold or restrict access to such information or documentation);

7.6.2.1.2 if, following the consultation in clause 7.6.2.1.1, the Chair and/or the Chief Executive of the Company (if any) and the Chief Executive of the Council resolve that such information is Commercially Sensitive, they shall consider whether it is appropriate to restrict access to such information or documentation; and

7.6.2.1.3 if, following the consideration in clause 7.6.2.1.2, the Chair and/or the Chief Executive of the Company (if any) and the Chief Executive of the Council resolve that it is appropriate to restrict such access, they shall agree appropriate conditions to the supply of such Commercially Sensitive information to the Council and/or transmission of such Commercially Sensitive information within the Council (which may include closed room access to the Commercially Sensitive information at the Council's premises and/or the giving of confidentiality undertakings) (the "**Access Conditions**"); and

7.6.2.2 the Parties shall implement the Access Conditions in respect of the supply of such Commercially Sensitive information to the Council and/or transmission of such Commercially Sensitive information within the Council; and

7.6.3 without prejudice to the provisions of clause 7.6.2, the Company and the Council shall use reasonable endeavours to agree a set of protocols to set out the processes by which it shall be determined that information or documentation is Commercially Sensitive, how such consultation between the Company and the Council shall be conducted and how resolutions of the consultations will be implemented.

8 Disputes

8.1 If there is any dispute between the Parties in relation to this Agreement or any provision of it, the Parties shall first seek to resolve that dispute by discussion at officer level within the Council and at External Director level within the Company.

8.2 If the dispute cannot be resolved as set out in clause 8.1 within 20 Business Days, then it shall be escalated to the Chief Executive of the Council and the Chair and one External Director of the Company, who shall seek to resolve that dispute by discussion.

9 Breach/Termination

- 9.1 If either Party commits a material breach of any provision of this Agreement, the other Party may notify the Party in breach in writing and either require the breach to be remedied within a period of 15 Business Days from the date of such notice, or require that a credible plan be presented within that 15 Business Day period setting out a timescale for remedying the breach.
- 9.2 If a breach of this Agreement notified in terms of clause 9.1 is not remedied within the time period specified in that clause or if a credible plan for remedying the breach is not presented within that time period or if that plan is not implemented within the timescale specified in it, then the Party not in breach may terminate this Agreement by giving not less than 20 Business Days' notice in writing to the other Party.
- 9.3 Any termination of this Agreement is entirely without prejudice to the Council's rights as a shareholder in the Company.

10 Review of Agreement

- 10.1 The Parties shall meet in good faith to discuss and review the operation of this Agreement every three years, the first such review to take place not later than December 2018. The Parties may agree to carry out an interim review of the operation of this Agreement at any time after December 2016. Any such review shall be without prejudice to the three-yearly timetable for scheduled reviews, unless the Parties agree otherwise.
- 10.2 Following any review in terms of clause 10.1, the Parties shall make such amendments to this Agreement as they consider appropriate in light of the review and shall document these either in a variation to this Agreement or in a replacement agreement.

11 Assignment

Neither Party shall be entitled to assign or otherwise transfer the benefit or burden of this Agreement nor all or any of its rights or obligations under it without the prior written consent of the other Party.

12 Waiver

- 12.1 Any waiver of any breach of, or default under, this Agreement shall only be effective if made in writing and shall not be deemed to be a waiver of any subsequent breach or default of this Agreement.
- 12.2 Any failure or delay on the part of either Party to exercise any right or remedy conferred under this Agreement or otherwise shall not in any circumstance operate as a waiver, nor shall any single or partial exercise of any right or remedy preclude or restrict the further exercise of any such right or remedy.

13 Notices

13.1 Subject to any specific provisions elsewhere in this Agreement, any notice, demand or communication in connection with this Agreement shall be in writing and (i) delivered personally or (ii) sent by pre-paid first class post to the recipient's address as set out at the beginning of this Agreement or (iii) sent by email to [address] in the case of the Council, or to [address] in the case of the Company, or to any other address, or email address, which the recipient has notified in writing to the sender not less than 7 Business Days before the notice is despatched.

13.2 The notice, demand or communication is deemed given:

13.2.1 if delivered personally, at the time of delivery to the address provided for in this Agreement;

13.2.2 if sent by pre-paid first class post, on the second Business Day after posting it, or

13.2.3 if sent by email, upon receipt by the sender of a read receipt,

provided that, if it is delivered personally or sent by email on a day which is not a Business Day or after 4pm on any Business Day, it shall instead be deemed to have been given or made on the next Business Day, and further provided that no notice under clause 9 may be given by email.

14 Conflict with the Articles

Where any provisions of the Articles conflict with any provisions of this Agreement, the provisions of this Agreement shall prevail.

15 Unlawful fetter on the Company's statutory powers

15.1 Notwithstanding any other provision contained in this Agreement the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of the Company.

15.2 Nothing in this Agreement shall be construed to be a resolution of all the members of the Company in the absence of a properly passed resolution in accordance with the Articles.

16 Exercise of powers

16.1 Words denoting an obligation on a Party to do any act, matter or thing include, except as otherwise specified, an obligation to use all reasonable endeavours to procure that it be done and words placing a Party under a restriction include an obligation not to permit or allow, so far as the same is possible, infringement of that restriction.

16.2 Nothing in this Agreement will prejudice the statutory rights that the Council has as a shareholder in the Company.

17 General

- 17.1 The Parties do not intend that any of the terms of this Agreement shall be enforceable as a third party right by any person not a party to this Agreement.
- 17.2 Unless otherwise agreed in writing, each Party shall pay its own costs and expenses in connection with the negotiation, preparation or execution of this Agreement.
- 17.3 Nothing contained in this Agreement, and no action taken by the Parties pursuant to this Agreement, is intended or shall be deemed to constitute a relationship between the Parties of partnership, principal and agent or employer and employee. No Party has, nor may it represent that it has, any authority to act or make any commitments on behalf of the other Party, or otherwise bind the other Party in any way.
- 17.4 If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Agreement and shall be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this shall not affect any of the other provisions of this Agreement which shall remain in full force and effect.
- 17.5 Save as otherwise set out in this Agreement, no announcement, circular, advertisement or other publicity in connection with this Agreement or its subject matter shall be made or issued by or on behalf of either Party (save as required by law or any other governmental or regulatory organisation) without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 17.6 This Agreement may only be varied by an agreement in writing signed by or on behalf of each Party to this Agreement.
- 17.7 Each Party shall do, or procure the doing of, at its own cost, all such further acts and things and execute, or procure the execution of, all such further documents as any other party reasonably considers necessary to give full effect to the terms of this Agreement.
- 17.8 This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any previous agreement, understanding, undertaking or arrangement of any nature between the Parties relating to the subject matter of this Agreement, save that nothing in this Agreement shall limit or exclude any liability for fraud.
- 17.9 For the avoidance of doubt, nothing herein contained or implied or done in terms of this Agreement shall prejudice or affect the powers, rights, duties and obligations of the Council or its statutory successors as local authority, planning authority, building control authority, roads authority or similar such authority under or by virtue of any public or local Act, order, statutory instrument, regulation or byelaw or relieve the Company or any EFE Group Company of the necessity of obtaining from the Council or its statutory successors in said capacity all consents, permissions,

warrants or approvals as may be requisite under or by virtue of any such public or local Act or others;

- 17.10 In the event that the Council receives a request under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004 which relates to the Business it shall notify the Company of that request as soon as reasonably practicable and shall consider and take account of any representations made by the Company in respect of the disclosure of information so requested prior to making a decision on whether to disclose the information. The Council shall not be bound by any representations made by the Company and shall have full discretion to disclose information.

18 Governing Law and Jurisdiction

- 18.1 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or any term of it (including non-contractual disputes or claims) shall be governed by the law of Scotland.

18.2 The courts of Scotland shall have exclusive jurisdiction to settle any disputes (including non-contractual disputes or claims), which may arise out of or in connection with this Agreement. The parties irrevocably agree to submit to that jurisdiction.

IN WITNESS WHEREOF these presents consisting of this agreement and the Schedule consisting of four parts have been subscribed as follows:

For and on behalf of)
ENERGY FOR EDINBURGH LIMITED acting)
by:)
at)
on) Director

before the following witness:
..... Witness
(Signature)
.....
(Full Name)
.....
(Address)
.....

For and on behalf of)
CITY OF EDINBURGH COUNCIL acting by:)
at)
on)
Proper Officer

before the following witness:
..... Witness
(Signature)
.....
(Full Name)
.....
(Address)

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING SHAREHOLDER AGREEMENT
BETWEEN THE CITY OF EDINBURGH COUNCIL AND ENERGY FOR EDINBURGH LIMITED**

SCHEDULE

PART 1 - RESERVED MATTERS

The following are the Reserved Matters referred to in clause 6.1.7 and 6.2:

The Business

- 1 do anything which shall or is likely to bring the name of the Company or the Council into disrepute.

Property

- 2 purchase, sell, lease or otherwise deal in heritable property;

Finance

- 3 make any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading) or indemnity other than to any EFE Group Company and only then on the condition that any such loan or credit becomes immediately and automatically repayable on that EFE Group Company ceasing to be an EFE Group Company;
- 4 borrow any money or other funds other than an overdraft facility in the normal course of business and not exceeding £[];
- 5 grant any Encumbrance over any property, right, interest or asset of the Company;
- 6 factor or assign any of the book debts of the Company;

Corporate

- 7 create, allot, issue, grant or agree to grant any option over, acquire, repay or redeem any class of share or loan capital or vary, or agree to vary, the rights of any class of share or loan capital or issue any security convertible into shares or loan capital of the Company;
- 8 permit the registration of any person as a member of the Company;
- 9 pass any resolution to wind up the Company (whether solvent or otherwise), the taking of any corporate action, legal proceedings or other procedure or step in relation to the dissolution of the Company, the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or similar officer in relation to the Company or any of its assets (in each case, whether out of court or otherwise), save where the Board is advised to do so by a licensed insolvency practitioner;
- 10 amalgamate or merge with any other company or undertaking;
- 11 vary or waive in any respect the Articles;
- 12 change the Company's accounting reference date from [31 December] in each year;
- 13 make or permit to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its audited accounts save as may be required to ensure compliance with relevant accounting standards under the Act or any other generally accepted accounting principles in the United Kingdom;

- 14 form or establish any company, undertaking, corporate entity (whether a Subsidiary, a Subsidiary Undertaking or otherwise), partnership or joint venture entity, or participate (whether by way of membership or equity) in any of the foregoing;

Contracts

- 15 enter into any transaction or arrangement of any nature whatsoever (including service agreements) with any of the Directors or any person who is connected (within the meaning of Section 839 of the Income and Corporation Taxes Act 1988) to any of the Directors whether or not any other person shall be party to such transaction or arrangement;
- 16 enter into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms, with the exception of entering into any arrangement, contract or transaction with any EFE Group Company on the condition that any such arrangement, contract or transaction is immediately and automatically terminated in the event that the counterparty EFE Group Company ceases to be an EFE Group Company;

Pensions

- 17 establish any pension scheme as an alternative to becoming an admitted body within the Local Government Pension Scheme; and
- 18 grant any pension rights to any employee, former employee, or any member of any such person's family.

PART 2 - SCHEDULE OF NOTIFIABLE INTERESTS

Clause 6.1.11

Notifiable Interest	Description of Interest
Remunerated Positions	A description of remunerated positions (but not the remuneration itself) by virtue of being:
	<ol style="list-style-type: none"> 1) employed or self employed 2) the holder of an office 3) a director of an undertaking 4) a partner in a firm; and 5) involved in undertaking a trade, profession, vocation or any other work
Non-remunerated Positions	A description of such interests as may be significant to, of relevance to or bear upon, the work or operation of the Company, including, membership of or office in:
	<ol style="list-style-type: none"> a. public bodies; b. clubs, societies and organisations; c. trade unions; and d. Voluntary organisations
Contracts	Disclosure of interests (direct, indirect or proposed) in contracts with the Company at a meeting of the directors in accordance with section 182 of the Companies Act 2006
Houses, land and buildings	A description of any rights of ownership or other interests that may be significant to, of relevance to, or bear upon, the work or operation of the Company
Shares and securities	Disclosure of interest in shares or debentures of the Company
	Disclosure of interest in shares or securities of any company, undertaking or organisation that may be significant to, or relevance to, or bear upon, the work or operation of the Company
Third party gifts/hospitality	Disclosure of third party gifts/hospitality in excess of £100 in value.

[Note: In the table above "Company" includes the Company and any EFE Group Company and other terms shall be construed accordingly.]

PART 3 - DIRECTOR'S UNDERTAKING**Clause 3.1.1**

To: THE CITY OF EDINBURGH COUNCIL
Waverley Court
4 East Market Street
Edinburgh EH8 8BG;
and ENERGY FOR EDINBURGH LIMITED
Waverley Court
4 East Market Street
Edinburgh EH8 8BG

[DATE]

Dear Sirs

Agreement dated [] 2015 between The City of Edinburgh Council (the "Council") and Energy for Edinburgh Limited (the "Company") (the "Agreement")

I confirm that I have been supplied with a copy of the Agreement and the articles of association of the Company (the "**Articles**") and undertake to the Company and the Council that I will, so far as may be permitted by law and for so long as I remain a director of the Company [and its subsidiaries]:

1. be bound by and comply with the terms and conditions of the Agreement and the Articles [(and the relevant articles of the subsidiaries)];
2. comply with the directors' duties which apply as a matter of law;
3. do all within my power as a director to ensure that the Company complies with its obligations under the Agreement and the Articles [(and each subsidiary complies with its articles)];
4. make every reasonable effort to attend (whether in person or by telephone or conference facilities) not less than 75% of all Board Meetings every calendar year; and
5. submit all relevant details to the Company for inclusion in the Company's Schedule of Notifiable Interests.

[In addition, I undertake to the Company that I will attend an induction process and complete any training required by the Company in relation to my role as a Director of the Company [and its subsidiaries] and my fiduciary duties in respect thereof.]

Yours faithfully

Signature

Print Full name

[Note: If, at the time of signing this undertaking, the Company has no subsidiaries, the square bracketed references to subsidiaries should be deleted or scored out.]

ENERGY FOR EDINBURGH

Outline Business Plan

DRAFT

DRAFT 8 February 2016, version 7

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Executive Summary

[To be finalised once final draft agreed by the Board]

Introduction

Energy for Edinburgh (EfE) is to be an arm's length and wholly owned Energy Services Company (ESCO) of the City of Edinburgh Council (CEC). This Business Plan describes why EfE has been set up, highlights what its goals are, and how it plans to achieve these over the next 3 years. It also outlines the structure of the business, how it will be governed and operated, and includes projected financial forecasts, as well as key risks to EfE's success and how these may be mitigated. The Business Plan forms part of a suite of documents (including the Shareholder Agreement, Articles of Association, and Shareholder Group Operating Principles) that provide a framework by which EfE can develop and grow.

Rationale

The Council has made a number of political pledges to the reduction of greenhouse gases and in particular to reducing carbon emissions across the city. A Sustainable Energy Action Plan (SEAP) has been approved by the Council as a key programme for this agenda with a target of a 42% reduction in carbon emissions by 2020. A number of reports have been submitted to Committee presenting the case for the establishment of an energy services company which could deliver the major SEAP projects. These reports have outlined examples of other local authorities setting up ESCOs and the financial and non financial benefits these have delivered. The Council agreed in September 2014 to investigate the setting up of an ESCO.

Objectives

EfE will function as a key vehicle to support delivery of the Council's SEAP and has four key objectives drawn from those of the SEAP:

- reduce carbon emissions;
- deliver affordable energy (with a particular focus on alleviating fuel poverty);
- generate income; and
- encourage wider community benefits.

In addition, a further objective is being suggested:

- access and leverage the use of private sector finance where appropriate.

Added Value and Benefits

While the Council is delivering a number of energy projects, these are usually both service specific and budget constrained. Currently there is no central strategic energy function within the Council that brings projects together to pool expertise, explore synergies or maximise social, environmental and economic benefits. This also misses any opportunities to increase effectiveness of any available resources, avoid duplication and importantly provide a strategic co-ordinating role in terms of reporting on performance. Prospects also of obtaining larger scale funding are reduced when there are numerous smaller and disparate projects. The existence of an ESCO as a single point for all strategic energy initiatives across the Council (and potentially wider across the city) offers a major advantage to the Council in addressing the above issues.

In terms of the current Transformation programme within the Council, the ESCO offers a "different way of doing things with the creation of a company that can focus exclusively on sustainable energy. Potentially EfE can offer a future commercial approach to low carbon initiatives for the Council and wider city.

In addition, other advantages and benefits include:

Area	Benefits
Focus	<ul style="list-style-type: none"> providing greater focus on meeting strategic carbon targets and policy objectives;
	<ul style="list-style-type: none"> can focus exclusively on energy initiatives with no distractions
	<ul style="list-style-type: none"> EfE can focus on addressing any gaps in the Council’s ability to deliver the SEAP
Flexibility	<ul style="list-style-type: none"> can works across service areas with no constraints
	<ul style="list-style-type: none"> optimising use of Council assets that may have unrealised value or where the Council does not have the resources to maximise the value of these assets
	<ul style="list-style-type: none"> EfE could undertake projects with a higher risk level than would typically be considered acceptable by CEC, via the use of non-recourse vehicles owned by EfE
Finance	<ul style="list-style-type: none"> providing a vehicle that could attract private sector finance and commercial expertise that is not available within CEC
	<ul style="list-style-type: none"> potentially can provide a revenue source
Partnership	<ul style="list-style-type: none"> can enable different relationships with private sector developers
	<ul style="list-style-type: none"> can engage a wide range of stakeholders across the city
	<ul style="list-style-type: none"> can act as a “one stop shop” for community activity in the city and provide support
Scale	<ul style="list-style-type: none"> able to accelerate the pace of investment in low carbon projects
	<ul style="list-style-type: none"> able to aggregate smaller projects and create projects at scale

Vision and Strategy

EfE’s vision is:

“Delivering the Council’s energy aspirations, supporting Edinburgh’s citizens and businesses in becoming more sustainable by reducing energy demand and encouraging local energy generation”.

EfE’s strategy will be to identify and take a strategic approach in implementing low carbon energy projects across the city in the following five areas as defined in the SEAP:

- energy efficiency;
- district heating
- renewables;
- resource efficiency; and
- sustainable transport.

An early focus for EfE will be to explore and foster initiatives with public and private sector organisations, community interest companies and other social enterprise bodies in the city which will bring wider benefits, including: economic growth, inward investment and robust renewable energy provision in Edinburgh. A number of initial start up projects will be identified. Income from these projects (potentially in the form of fees, re-charges or investment returns) will be managed and used to promote future expansion and development of further projects. Delivery of individual projects will be managed at an operational level by project managers or teams. These projects may be delivered through a variety of vehicles such as Special Purpose Vehicles (SPVs), partnership Joint Ventures (JVs), Council departments, or simple concession arrangements with private sector suppliers.

Figure 1 illustrates the strategic aims of EfE and what it hopes to achieve and develop over the period of the business plan and beyond. A key element to the success of EfE is developing a ‘foundation of skills, experience and expertise’ in delivering specific low carbon projects in the first 1-2 years of the Business Plan. These can then form a platform from which wider partnership projects with partners, communities and businesses across the city can be progressed in

subsequent years. This will enable CEC to work towards delivering the reduced city wide carbon emissions, above and beyond what could be achieved by CEC working on its own internal projects.

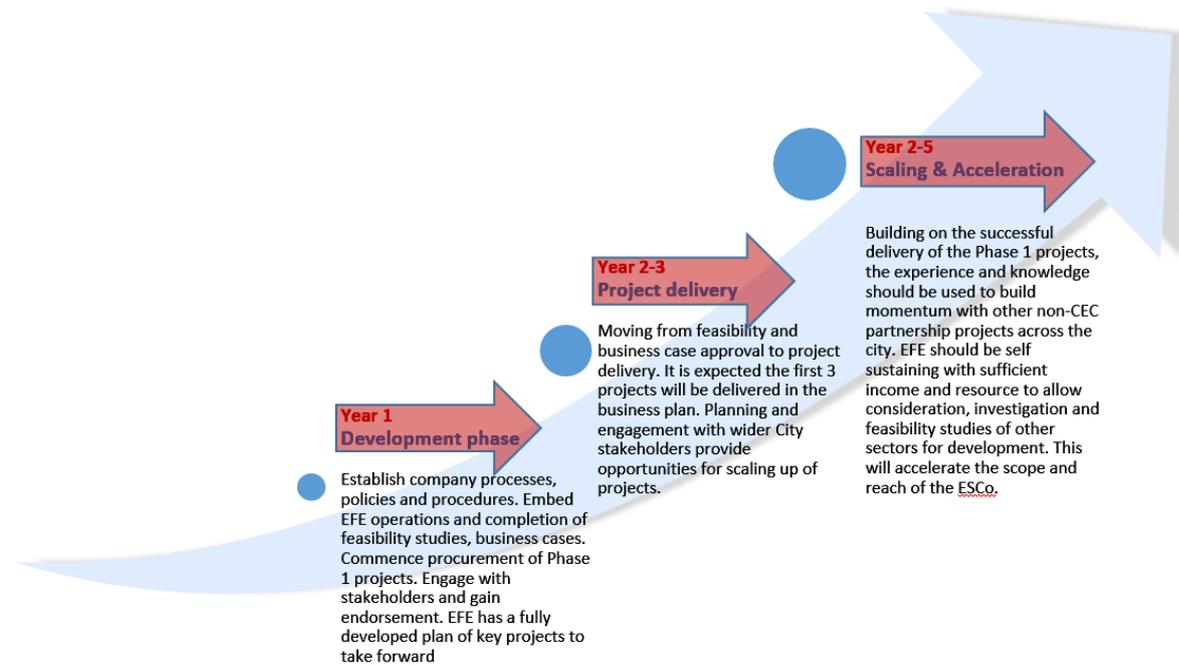


Figure 1: Strategic Approach of Energy for Edinburgh

To assist delivery of the strategy, EfE will have a Board focusing on the direction of the business, with responsibility for overall governance, reporting, monitoring and performance of the ESCo. An internal Council Shareholder Group (comprising senior management) will oversee CEC’s shareholder interests in the company. This is discussed in more detail below.

Operational Management

Having flexibility to operate at two levels – namely strategic and project, will allow EfE to pursue a number of opportunities in parallel whilst maintaining governance over the development of multiple projects and coordinating any pipeline of projects.

Strategic Operations

The Board members of EfE will represent a high level and strategic entity, focusing on the strategic direction of the ESCo. Its key activities will include the following;

- engage with partners;
- review project opportunities and approve feasibility studies;
- establish robust criteria for assessing projects;
- review business cases for each investment and recommend the most appropriate delivery model (eg sole finance, JV, concession arrangement etc);
- recommend the most appropriate means of finance and borrowing for projects;
- approve management arrangements for approved projects including appraisals;
- optimise revenue returns by controlling the mix and timing of project investments and balance the risks and rates of return of underlying projects; and

Crucially for CEC projects, the Board will need to identify how EfE will add value to the project's development over and above what could be achieved internally by CEC.

Notwithstanding Council projects, the Articles of Association allow EfE to engage in any activity that develops energy services provided these are meeting the Company's objectives. Consequently there may be options for EfE to pursue projects outwith the Council's remit for example engaging with other partners in terms of other strategic projects. This may offer the potential for wider commercial activities.

Implementing Projects

The ESCo will not undertake the day to day delivery of projects as these will be delivered by individual project teams and partners. It is anticipated that as part of any Business Case development, project management resource will be approved. These Project Managers would be responsible for the day to day operations of the projects which could be through a variety of potential delivery vehicles such as SPVs, partnership JVs, Council departments, or individual project teams. Utilising appropriate management tools will assist in ensuring appropriate governance and controls are applied. To achieve successful delivery of individual projects, project teams will be responsible (inter alia) for;

- development of full procurement packages (contracts, services, technical specifications);
- supervision of contractors' works during any construction and installation phase;
- reporting on project progress against the original business case to the EfE Board;
- ongoing monitoring of the projects against the original business case;
- ensuring projects are within budgets (including monitoring variances against budget).

Strategic Partners

In terms of delivering projects a further option for EfE is to engage with appropriate strategic delivery partners who would exclusively implement projects on behalf of the ESCo. Currently "Our Power" is a new Scotland wide ESCo fully licensed to supply energy and will also evaluate other projects such as renewables and district heating. Set up as a mutual co-operative this new company could provide a partnership arrangement with EfE by focusing on Edinburgh specific projects where the objectives of both Our Power and EfE are similar in reducing fuel poverty and providing more affordable energy to consumers. A partnering arrangement could be explored further. Similarly however other utilities such as SSE or Scottish Power could offer other opportunities for partnering and there may be other companies which could offer similar services. It is likely however that EfE would have to tender for any such strategic partnering arrangements.

Measuring success

Longer term success of EfE will be measured both qualitatively and quantitatively, through KPIs identified and agreed between EfE and CEC's Shareholder Group. It may be that only two or three KPIs are agreed initially, with further indicators introduced as EfE develops. This will need to be undertaken shortly after EfE is incorporated and initial projects

begin to progress and a better understanding of critical factors impacting them is obtained. There are certain reporting requirements detailed in the Shareholder Agreement under Clause 5 – ‘Business Plan, accounts, financial and other information’ that may need to be modified or waived for the first year of the Business Plan, while EFE becomes established and reporting processes are established. Proposed clauses to be amended or waived during the first year of operation are provided in the Appendices. [The Shareholder Group would need to confirm which clauses may be relaxed initially over the short term].

Operational information and financial results will feed into improving ongoing ESCo activities and improving development of future projects. Feedback from service users, the community and other stakeholders could be useful in supporting the development of these KPIs.

For the purposes of this first Business Plan a number of KPIs will be developed (with agreement between the Shareholder Group and EfE Board) for monitoring performance. A key focus for the Shareholder Group will be on what is going well, what is not being achieved, the reasons for both, and accordingly identifying and implementing changes to ensure the business plan is met.

Initial Operational Plan

The following chart details some of the key operational activities and milestones for EfE during the first 12 months of operation with associated interdependencies. The activities are not exhaustive, and a fully detailed operational plan will need to be created once the Board and key staff members have been recruited. **[The timescales suggested in this plan may be subject to change and will need to be finalised upon final agreement of the Business Plan]**

Energy for Edinburgh key operational activities														
ID	Activity	Start	Finish	Q2 16			Q3 16			Q4 16			Q1 17	
				A	M	J	J	A	S	O	N	D	J	F
1	Establishment of the Operational ESCO													
2	Energy for Edinburgh incorporated	01/05/2016	01/05/2016											
3	External recruitment for EfE staff	01/04/2016	30/06/2016											
4	Internal and external networking with CEC service areas and external stakeholders	01/07/2016	31/12/2016											
5	Continue with feasibility studies for potential projects	01/04/2016	01/07/2016											
6	Continue development of business cases for key initial projects	01/04/2015	30/09/2016											
7	Appointment of external board directors	01/04/2016	30/06/2016											
8	Document, adopt, and implement key policies	01/04/2016	31/08/2016											
9	Establish monitoring and reporting processes, including key KPIs	01/06/2016	31/07/2016											
10	Secure internal staff resource	01/04/2016	30/06/2016											
11	Transfer project management of current projects being developed by CEC staff	01/06/2016	31/07/2016											
12	Energy for Edinburgh fully operational	01/07/2016	01/07/2016											
13	First internal Project Board Meeting	01/07/2016	01/07/2016											
14	Launch and publicise Energy for Edinburgh	01/06/2016	30/09/2016											
15	Establish bank accounts, HMRC registrations, branding literature, website	01/04/2016	30/06/2016											
16	Initiate and undertake project feasibility studies for key opportunities	01/07/2016	31/10/2016											

17	Begin development of Business cases and establish evaluation methodology	01/07/2016	31/12/2016			
18	Monthly financial and operational reporting	01/07/2016	02/04/2019			
19	Project and EfE Board meeting	15/07/2016	15/07/2016			
20	Commence engagement and communication plan	01/06/2016	28/02/2017			
21	Update business plan	10/01/2017	10/01/2017			

Project Planning

The following plan summarises potential projects which EfE may deliver in the future, split between those which are currently being explored; those which are in early stage development with feasibility studies either being undertaken or to be progressed shortly; and those that are more speculative and require further exploration.

Status	Project	EfE role and value addition	Delivery timescale	Implementation speed	CO2 Impact	Achievability	Meeting Objectives	Overall	Capital value	Estimated net EfE income (£)
Active	District Heating at Fountainbridge	Provide expertise, external partnering	Slow	Slow	Medium	Reasonable	High	Medium	5.0	150,000
	Solar farms and Canopies at Edinburgh Park & Ride	Accelerate investment, external partnering and finance	Fast	Fast	Medium	Easy	Medium	High	1.0	35,000
	District Heating at Edinburgh Bioquarter	Provide expertise, co-ordinate partners, external financing	Slow	Slow	High	Difficult	High	Medium	15.0	TBC
Development	NDEE Retrofit, Phase 1 (primary schools, Council buildings, NHS)	Accelerate investment, provide expertise, external financing	Fast	Fast	Medium	Reasonable	High	High	1.4	49,000
	Our Power' affordable energy partnership	Provide partnering and accelerate investment	Fast	Fast	Low	Easy	High	High	0.1	TBC
	NDEE Retrofit, Phase 2 (further Council buildings, NHS)	Accelerate investment, source external partners, scaling	Medium	Fast	Medium	Easy	High	High	2.0	-
Exploratory Phase	District Heating at West of Edinburgh	Provide expertise, external partnering and financing	Slow	Slow	High	Difficult	Medium	Low	15.0	TBC
	NDEE Retrofit, Phase 3 (include private sector partnerships)	Accelerate investment, source external partners, scale	Medium	Fast	Medium	Easy	High	High	3.0	TBC
	Development Community Solar Power Co-operative	Provide expertise, partnering, external financing	Fast	Fast	Low	Reasonable	High	Medium	1.0	TBC
	Streetlight LED replacement programme	Provide expertise, support and co-ordination	Fast	Fast	High	Easy	High	High	TBC	TBC
	Stairlight replacement programme	Provide expertise, support and co-ordination	Fast	Fast	High	Easy	High	High	TBC	TBC
	Use of solar farms on unused CEC land	Accelerate investment, source external partners, scale	Fast	Medium	Medium	Reasonable	High	Medium	TBC	TBC
	Electric vehicle charging	Provide expertise, co-ordinate with other projects, external financing	Medium	Medium	Low	Difficult	Medium	Medium	TBC	TBC
	Domestic building energy retrofit programme	Partnering and community engagement	Slow	Slow	Medium	Difficult	High	Medium	TBC	TBC

Key – Fast, Medium, or Slow – reflects the relative speed of being able to implement (ie start a project) and the timescale required for construction and deliver an operational project.

Project Development

To provide focus for EfE over the next 3 years, it is proposed that efforts are concentrated on three principal workstream areas namely; District Heating, Energy Efficiency, and Renewable Photovoltaics ('PV's). All three areas currently have projects either being actively evaluated or at the point of undertaking feasibility studies. In terms of development, they provide a balanced mix of;

- generating income (eg via management fees) in the short term for EfE to partially offset its operating costs;
- making contributions to all of EfE's objectives.
- providing opportunities to expand their scope across Edinburgh, particularly for developing partnerships with the private & voluntary sectors;
- supporting the ESCo's aim of delivering large scale projects under the SEAP; and
- allowing EfE to have a large degree of control over the development of the projects and achieve 'quick' wins.

The following table illustrates a delivery plan for each of the three areas, where projects are delivered over phased periods. This requires that EfE has 3 projects to develop in this first business plan, but provides flexibility to expand and / or accelerate delivery of future projects depending on the successful operation of the ESCo.

	Phase 1	Phase 2	Phase 3
	1-3 years	2-3 years	3-5 years
Non Domestic Energy & Efficiency	Extend current retrofit programme for nondomestic buildings further across the city, focussing on primary schools and other CEC ancillary buildings. Potential to work with other public sector during this phase such as NHS Lothian.	Further develop the retrofit programme by building partnerships with the wider Edinburgh community, particularly focussing on the private and third sectors where partners during phase 1 have not been involved.	Undertake continued extension of the retrofit programme by growing other partnerships in Edinburgh, building on other private and third sectors where partners during phase 1 and 2 have not been involved.
District Heating	Look to evaluate current heat networks and projects. For example there is a proposed district heating scheme at Fountainbridge. This is a mixed use development in the city centre. A feasibility study has been completed and found that a 10MW scheme could provide carbon savings of 4,700 tonnes carbon per annum. Discussions with EDI as to the proposed options for a Council ESCo.	Take forward the potential district heating scheme at the Bioquarter working with partners with the aim of a scheme up and running by 2020. The feasibility study identifies the opportunity for a DH network, using a gas fired DH system and suggests the carbon savings over the lifetime of the preferred scheme are 144,515 tonnes CO2 – an annual average of 5,780 tonnes per annum.	Development of a heat network south of the tram line running East to West across the International Business Gateway ('IBG'). The IBG site covers 6m sq ft of property where heat can be generated and used, but the ambition, costs and benefits need to be laid out before a business case can be fully developed. This has the potential to connect 4,000 homes, commercial units, as well as other large infrastructure adjacent to the IBG including Gogarburn.
Solar PV	Explore the potential for large scale application of solar photovoltaic (PV) technologies. This will look at the potential for canopies over parking spaces, principally at CEC 'park and ride' sites. There is an opportunity to close the loop for electric vehicle charging, powered locally via pv. If successful, the scheme could be extended to all the 'park and ride' sites across the city. The possibility of developing PV arrays at unused redundant land across the city will also be looked at in parallel.	The Council will lead a review into the potential for solar farms on unused Council land or former landfill sites. Again, this could provide a number of investable assets for the council if packaged and promoted to investors.	Development of new Community Co-operatives for example Edinburgh Solar Co-operative. This co-operative is member owned through share issues and there is potential for the ESCo to replicate this type of special purpose vehicle for other projects.

The projects have also been chosen because they are capable of attracting external private sector financing and therefore are not reliant on funding support from CEC. Also, the project areas allow potential partnerships with other organisations to be developed.

EFE Role in Delivering Projects

For each of the main project areas detailed above, a summary of the initial phase 1 project is provided below, together with potential options for the ESCO's involvement, and why project development is preferable through use of Efe as opposed to internally through CEC service areas.

Solar PV

The initial project will focus on large scale application of solar photovoltaic (PV) canopies over parking spaces at park and ride sites across the city, as well as developing solar farms on unused Council land or former landfill sites. The aim is to maximise value from CEC owned assets and generate income and green electricity for CEC.

Options for ESCO involvement

Option 1 – The ESCO could consider providing leases to potential PV developers for utilising CEC owned land to install PV arrays and for the developer to retain any income from electricity sales or feed-in-tariffs. The ESCO could ascertain what an appropriate lease value for a site could be, negotiate and manage any lease agreements with the developer, and identify future development sites. The ESCO could receive up front project management fees and ongoing administration fees during the tenure of the lease.

Option 2 – The ESCO procures a developer to supply and install PV arrays who receives any associated incentives (eg FIT income) to recoup installation costs. The ESCO receives income for the renewable electricity from an electricity supplier such as 'Our Power', potentially through a long term power purchase agreement.

Option 3 – The ESCO is able to source its own finance via CEC (or potentially in partnership arrangements with other bodies such as Edinburgh University amongst others) who provide capital to finance the PV arrays. Returns from electricity income and Feed in tariffs are used to repay capital provided by these partners. A potential variant could be for the Council just to provide the assets for the PV array.

A feasibility study is being undertaken which will allow the above options to be fully appraised within a business case and hence ascertain which approach would be best for Efe to adopt.

Benefits to the Council and City

A key benefit to the Council is being able to maximise value from CEC sites that currently have little scope for future development. Using these sites allows new income streams, green energy creation and reduced carbon emissions to be achieved. Electricity generated from these arrays could be sold to 'Our Power' a recently established community benefit society that is a licensed energy supplier (and can purchase renewable sources of electricity). This power can then be subsequently sold (at a discount to 'Big 6' prices) directly to low income families across Edinburgh, providing direct support in alleviating fuel poverty. This would provide a mechanism of being able to distribute green electricity generated at remote sites across the city to specific groups (eg low income families, council buildings) and would be an exemplar of generating green energy in Edinburgh but using locally.

Reasons for Efe delivering this project compared to CEC.

CEC have identified assets of unused land and park and ride sites that could adopt PV technologies. However, over the last 1-2 years there has been a lack of resource and appropriate skill set to take this type of project forward. Strategically, future partnerships with entities such as Our Power, Universities, NHS, and the private sector are possible and are envisaged to deliver PV schemes on unused land outside of CEC's estate. Efe can use its expertise to assist developing and managing these projects, potentially sharing in the output of green electricity, or providing a commercial income stream - this could not be achieved internally by CEC. Efe will allow these types of PV projects to be scaled significantly across the city and across different sectors with different organisations.

District Heating

There are a number of potential District Heating opportunities including the extension of existing schemes on the city. One example is Fountainbridge. This is a mixed use development in the city centre. A feasibility study has been completed and

found that a 10MW scheme utilising gas CHP (combined heat and power) generation and ground source heat pumps that could provide carbon savings of 4,700 tonnes carbon per annum.

Options for ESCO involvement

There are three main activities associated with developing a district heating scheme

- design, finance and build the generation and transmission assets of the scheme;
- operate and maintain both the energy centre and pipe network; and
- provide metering and billing services to customers.

Discussion on which option does depends on the specific project. For example, EDI have selected a developer for the site who will be able to finance and build the district heating network and energy centre. However, there could be further discussions on operation and metering of the scheme. A natural partner would be for EfE to take responsibility for the operations (including metering and billing) of the scheme as a minimum.

Whether the ESCo could participate in all or some of these activities will depend on risk. From a risk perspective, it is likely that EfE may only want to take over the operational control of the heating scheme once it has been developed, but may well have to compete for this contract. EfE could earn income through various means for instance, margins on heat / electricity sales, margins on operating and maintenance costs amongst others. Again, the options available to the EfE need to be fully appraised within a business case and hence ascertain what approach provides an appropriate balance of risk and reward to EfE.

Benefits to the Council and City

CEC resource will not be required to undertake such a project, but the Council will receive the benefit of providing low cost heat to scheme participants (both residents and commercial) and reduced carbon emission reductions compared to the use of heat generated via natural gas boilers. Further, partnering with organisations (such as Our Power) may allow electricity generated at the site to be supplied (at a discount) to the development or potentially elsewhere in the city to low income families in fuel poverty. A key benefit to the Council is being able to develop an area of DH expertise that can be accessed by the Council, particularly as this does not currently exist within any CEC service area. Strategically the knowledge and experience obtained by working with developers on this project can be expanded and used on other DH schemes to be developed across the city such as the Edinburgh Bioquarter and the West of Edinburgh. This will not only support the schemes being delivered in a cost effective manner, but accelerate the pace at which they are undertaken.

Reasons for EfE delivering this project compared to CEC.

District Heating schemes are a relatively new area of infrastructure being developed in Scotland, and are recognised as being relatively complex projects to undertake, with potentially high levels of risk associated with heat offtake arrangements. Undertaking projects within a limited company allows potential risks to be limited in their impact on CEC, should difficulties be encountered. However, an ESCO also provides an avenue for CEC to develop a commercial opportunities to sell heat to the private sector (as has been done by Aberdeen Heat and Power), generating new sources of income to EfE and CEC. The Council currently does not have the ability to do this easily.

A district heating project such as Fountainbridge would be the first key project undertaken forming part of a city wide DH strategy that CEC is looking to progress, and within the SEAP, an ESCo is stated as the key vehicle for delivering this strategy for several reasons: Development of DH schemes requires a significant level of collaboration and engagement across various internal service areas (eg education and social housing), as well as with other external organisations such as the NHS or universities, all being potential suppliers and offtakers of heat. Notably, other organisations, particularly the University of Edinburgh, are developing several DH schemes (largely in isolation within their campuses), that could provide additional city wide benefits if the Council can move sufficiently quickly to co-ordinate and involve the University work as part of CEC's wider city strategy for delivering district heat. There is no area within CEC that could undertake this activity effectively.

Non Domestic Energy

EfE could potentially extend the current retrofit programme for non-domestic buildings further across the city. EfE will look for potential opportunities to work with other public sector organisations during this phase and if possible private sector partners who are the largest employers in the City.

Options for ESCO involvement

An initial Phase 1 NDEE project utilising the RE:FIT framework is underway, with preferred bidder stage soon to be appointed to undertake a Phase 1 works during the next couple of months. The ESCo could support this project by providing monitoring and verification assistance at later stages, ensuring that the cost and CO₂ emission savings are being realised in line with the approved business case. For further phases of the NDEE programme, EfE will consider other buildings within the CEC estate, as well as working with other organisations such as the NHS and private sector, providing advice, support and a potential procurement route for these organisations to implement their own energy efficiency measures. It is anticipated project and ongoing management fees could be charged for these services.

The options available to the EfE need to be fully appraised within a business case and hence ascertain which approach would be best for it to adopt.

Benefits to the Council and City

Importantly, EfE could become an area of expertise for sourcing and developing these energy efficiency projects, and could use its experience to encourage joint projects with non CEC organisations in the public and private sector. The SEAP looks to all citizens of the City to reduce carbon emissions, and EfE is a key part of CEC's strategy for assisting organisations outside of CEC in meeting carbon reduction targets. EfE could become a 'one stop' shop for such organisations where there are opportunities for capital investment to reduce revenue/ongoing spend on energy,

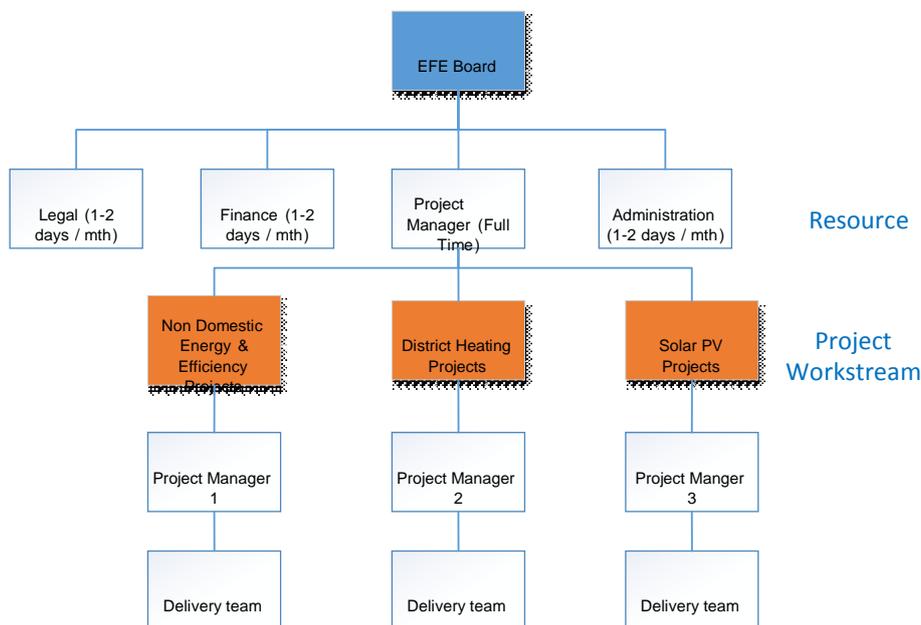
Reasons for EfE delivering this project compared to CEC.

CEC could manage much of the energy efficiency work for its own buildings internally, and there is an initial project where this is the case. Strategically however, expanding these energy efficiency projects across the City's various organisations would prove very difficult for CEC to undertake as a more bureaucratic entity with strict approvals processes. Energy efficiency also forms a key part of district heating initiatives in that buildings are typically made energy efficient before low carbon district heat is supplied to them. EfE can co-ordinate energy efficiency works where required, alongside DH scheme initiatives, and CEC would not be able to do this.

Project Timescales

Resourcing Energy for Edinburgh

EFE Board support



To support the EFE Board in undertaking its key strategic activities, EfE will require a full time resource to take on a project management role. Ideally this would be a resource with skills in finance, commercial experience, ‘low carbon’ technical knowledge, as well as business case development and project management. All of these would be essential to fulfil the role. However recognising that if not all the required skills can be found in one role then some of the supporting roles detailed below may need to be expanded to ensure an appropriate skill set for EfE is obtained. Alternatively, some of the Directors may need to demonstrate expertise in some of these areas to support any full time employee.

Key supporting operational roles and requirements are detailed below, together with indicative costs;

Finance – prepare monthly management and annual statutory accounts; assist in forecasting, strategic planning and budgeting; project option appraisals, HMRC returns, KPI development and monitoring, as well as ongoing business plan development.

Legal – provide company secretarial support, contract drafting and negotiation (as required), establish company policies and practices, co-ordinate external legal advice, support procurement processes.

Commercial – source and identify potential projects, co-ordinate feasibility studies, utilise network of partnership contacts (both internally to CEC and externally) (2-3 days a month).

Administrative – provide general support to EFE in terms of marketing & events organisation, meetings, report and minute drafting etc.

The above services could be provided individually or alternatively amalgamated into one service thus minimising the financial, legal and administrative support costs detailed above.

An estimate for the operational support and resource costs is less than £100K per annum. In the short term over two years the £150k start up funding approved by the Council can be used to recruit staff. CEC staff secondments to the ESCo may be possible for varying periods of time for instance, 2 days a month over a year or a 1 month full time secondment at a critical stage in a project.

Availability of some internal resource from CEC following incorporation of EfE would be preferential to support the company in its early stages of development. Internal legal support may be required for ensuring key CEC policies are adopted, documented and implemented. Overheads such as desk space and IT are expected to be minimal but obviously would be reviewed if the company expanded.

Project resource

Each project will need to be considered individually to assess feasibility and resourcing, and whether project resource can be supported internally, potentially with an associated cost, from CEC (eg for an internally focussed low carbon project), or whether it is more appropriate to obtain external expertise to deliver an individual project (eg where a project is developed in partnership with another organisation). As noted above, the EfE Board will decide on the most appropriate method of managing individual projects and securing the appropriate resource. This will be a key component of any project business case.

Legal

There are a number of key legal documents governing the incorporation and operation of EfE and include the Articles of Association, Shareholder Agreement, and Shareholder Group Operating Principles. These documents are included as Appendices.

Procurement

As an ALEO, CEC will be able to utilise the European case of “Teckal” for contracts with EFE. This case provides for an exemption to the European procurement rules where the Council controls the ALEO and the ALEO carries out the essential part of its activities for the Council. On this basis the Council is free to award work directly to the ALEO without tender, subject to a test for best value. However, in procuring its own external services, EFE as a wholly owned subsidiary will adopt the policies and practices detailed in the Council’s Procurement Handbook.

Code of Conduct and Confidentiality

Comprehensive expectations and requirements of Directors of both EFE and CECs Shareholder Group are documented within the Articles of Association, Shareholders Agreement, Shareholder Group Operating Principles, and CEC’s internal policies.

Communications

A detailed Communications Plan will need to be developed for approval by any new Board as it will be important they have ownership of the activities in promoting the company and developing relationships with partners. Equally important is the need for partners to know who the new Directors will be. It will be critical for EfE, as a newly established company, that communication and engagement with its stakeholders is both robust and effective, particularly as it seeks to inform and educate key stakeholders about the company, its scope of activity, and what it aims to achieve. Key objectives are as follows;

- raising awareness of EFE as widely as possible;
- promoting a clear message about the purpose of EfE with internal and external stakeholders;
- promote engagement with other organisations to form the basis of future partnerships; and
- encourage organisations to use the services of EfE where appropriate.

Resources will need to focus on maximising reach across the City, but with a concentrated effort on key stakeholders through targeted engagements to encourage future collaboration on initiatives. An indicative communications plan is suggested below, focussed on short term actions in the ESCo's first year as it becomes established. A more detailed and longer term campaign will need to be developed once the ESCo is fully operational.

Key stakeholders will include other public sector organisations, internal Council departments, the city's academic institutions, the city's business community, others in the private sector, voluntary and charitable organisations, as well as social enterprise companies. In addition EfE may choose to engage with potential Investors seeking funding for projects. All these stakeholders have a part to play in supporting EfE meeting its objectives and supporting CEC deliver its obligations under the SEAP.

Activity	Example of Audience	Method	Timing	Proactive engagement	Awareness raising
Elected Members, Convenors	Elected Members	Briefings and updates to be scheduled .	TBC		
Corporate Leadership Group	CEO and Directors	Provide update on agenda of CLG	TBC		
Website to be created and branding established	All	Website being developed by CEC. Needs reviewed monthly and linked to SEAP.	TBC		
Social media (EFE Facebook /Twitter)	Interested residents most likely.	Coordinate these when there are key messages to be communicated.	TBC		
Press release on EFE launch.	Internal and interested stakeholders	Coordinate this when due to Committee.	TBC		
SEAP internal working group	Internal – service areas working on energy/low carbon projects.	Regular meetings and updates	TBC		
ESCo Shareholder Group	Internal key contact	Quarterly meetings, with ad hoc correspondence as required.	TBC		
6 monthly progress updates.	All stakeholders	Report on progress (Committees, Shareholder Group etc) and email/orb/web update with the same information.	TBC		
Edinburgh Sustainable Development Partnership (ESDP) and Board	EPB and ESDP members	Meetings and regular updates	TBC		

Activity	Example of Audience	Method	Timing	Proactive engagement	Awareness raising
Key strategic partners	EBF, EDI, SE, SG, Our Power, Heat Network Partnership, Changeworks, ECCI, Academic Institutions, Utilities – SSE, SP	Proactive engagement on potential initiatives	TBC		
External City wide Energy/Low Carbon Industry forums	Interested stakeholders	Identify and attend appropriate forums that will be of benefit to E4E in meeting its objectives	TBC		
Community organisations	Community Energy Scotland, COMAS, Transition Edinburgh groups,	Press release, EfE event/presentation and where appropriate meetings	TBC		
Business associations and organisations	Business Improvement Districts, FSB, Chamber of Commerce, etc.	Press release, EfE event/presentation	TBC		
Key developers and Housing Associations	Murray Estates, New Ingliston, EDI, Castle Rock Edinvar, Dunedin Canmore, Bield etc	Meeting, EfE event/presentation	TBC		
Key industry Investors/funders	Green Investment Bank, large ESCOs, financial institutions, Pension funds etc	Press release, EfE event/presentation, meeting	TBC		

Branding

EfE branding is being looked at internally by CEC and options will be developed for further consideration by the Board. The brand will use a similar style to that developed for the SEAP, so that EfE can be strongly identified and associated with the aims and objectives of this programme. The brand graphics will align with any CEC requirements and be simple, clean, and with a clear link between the different workstream areas.

Financial Planning

Suggested sources of funding include:

1. **Supporting finance** – both externally available through eg Low Carbon Infrastructure Transition Plan (LCITP), RES, Challenge Funds etc as well as internally via direct grant applications to CEC.
2. **Direct investments into the Company**. Contributions to the ESCo through JV initiatives eg community share issues or social investment eg University of Edinburgh.
3. **Commercial loans** from local banks, funds, or other organisations, for instance; the Green Investment Bank, Salix or District heating Loan fund;
4. **Spend to save**. For certain CEC service related projects, it may be possible for CEC to provide financial support via it's 'spend to save' policy.
5. **ESCo Income**. Revenue in the form of management fees, savings or project net income to the ESCo is retained and used to explore and invest into new future projects.

Financial Strategy

The financing strategy for the ESCo is to become a self-sustaining entity over time by utilising the above sources of finance. While its aim will be to remain solvent and maximise the social benefit from funding, EfE will look to where it can maximise and generate revenue. It is anticipated in the early years that income from underlying projects will be retained within EfE and recycled to fund ongoing project feasibility studies and if possible, provide seed funding for pilot schemes and future projects. As such it may be possible that no dividends will be paid to CEC, but this will need to be agreed with the Shareholder Group and reflected in 5.5.3 of the Shareholder Agreement.

Although CEC resource may be utilised in the first 2-3 years of the ESCo, it is expected that as revenue is generated through EfE's commercial arrangements (for example via management fees) the need for 'in kind' support will fall away and the ESCo will move towards either recruiting its own full time staff or outsourcing required core services, allowing it to become fully self-sufficient and independent of CEC resource.

Financial Assumptions

There are a number of assumptions in the development of the financing strategy including the following;

- If there is a lack of investment by CEC into EfE projects this means that the only income available to the ESCo is from management fees or charges for specific services eg operating & maintenance, administration, consultancy etc.
- Start up costs are assumed to be paid from the initial £150K funding approved by the Council. Contributory funding has been assumed from Scottish Government to support feasibility studies, and minimise the use of the start-up costs as far as possible.
- The level of any income received by EfE is based on a conservative 3.5% management fee, charged on the capital cost in underlying projects.
- No distributions are made to CEC from the ESCo in the first 3 years. All income is to be retained and used to progress future projects.
- The timing of income cash flows is based on current best estimates of when initial Phase 1 projects will complete.
- The only expenditure items for the first two years of the company will be operational costs which will be kept as low as possible;
- Although EfE and any subsidiary companies will be subject to corporation tax, any income to EfE will be offset by corresponding expenditure for feasibility work, pilot case studies etc with no profit subject to tax.
- A detailed cashflow projection for the subsequent years of the ESCo will be developed as required by the Shareholders Agreement and Articles of Association.

Governance

The Council is the only shareholder of EfE. A proposed governance structure is shown in Figure 2 below showing the interaction between EfE and CEC with examples of project activities. A more detailed structure chart is provided in Appendix 1. There will be clear governance and approvals processes for both the ESCO and CEC ensuring that key decisions are made collaboratively with principles of openness, integrity and accountability applying to both organisations. This ensures that the strategic direction of EfE remains aligned with the CEC’s key SEAP objectives.

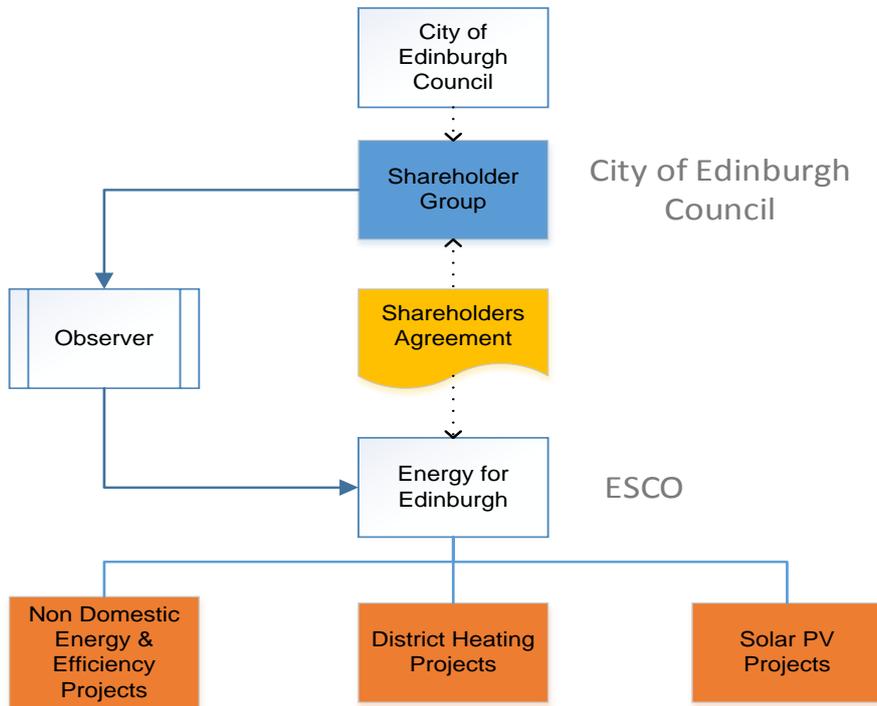


Figure 2 Proposed Governance Structure for Energy for Edinburgh

EfE Board Composition

On Incorporation, the EfE Board will initially appoint three Councillors as Directors. A further 4 external Directors can subsequently be appointed to achieve full Board composition. A key focus will be on ensuring the appropriate blend of skills and experience are brought to the Board. In particular, it will need a broad range of expertise covering financial, legal, commercial, and technical specialists. Further support will be obtained from low carbon industry experts as and when required. The remit and function of the Board is detailed in the Articles of Association which also covers Board meetings and decision making.

Roles and Responsibilities

Identifying appropriate roles and responsibilities in the governance of the ESCO is critical to its success. Each party needs to understand what these are and their significance in achieving EfE’s objectives and key activities. While detailed roles will be developed for Board members a brief summary of key roles is seen in the table below;

Who	Role and Responsibility
EfE Board Directors	Responsible for agreeing the strategic direction of the ESCO, approving Business Cases and guiding development of projects.
Chair of the Board	Responsible for providing leadership of the Company, ensuring compliance with the Shareholders Agreement and that Board decisions are implemented.
EfE Manager	Responsible for the day to day operations of the EfE, developing projects and reporting on overall performance and progress. Key contact with the Council.
Observer to the Board	Senior Manager from CEC and main liaison between the EfE and Shareholders Group.
Shareholders Group	Responsible for ensuring that EfE complies with the Shareholders Agreement. Provides strategic support and advice if required.

CEC Shareholder Group

CEC will establish an internal Shareholder Group that will form the main relationship with EfE and provides oversight of its activities. This structure will comprise four senior managers and will have several key functions and responsibilities. Specific details of all the requirements between both parties are detailed in a separate Shareholders Agreement that will be a formal document between CEC and EfE. However some key responsibilities include:

- provide oversight on behalf of CEC in relation to CEC's interest in EfE;
- facilitate reasonable and appropriate access for EfE to Council owned assets, resources and information and any relevant policy changes;
- review and approve the Business Plan and Annual Budget;
- provide consent for any Reserved Matters that EfE may wish to undertake. (Clause 6.3 Shareholder Agreement).
- review and approve policies and procedures implemented by EfE.
- meet quarterly with EfE to scrutinise performance, risks and ensure EfE is held accountable for meeting its Business Plan;
- approve individual EfE project Business Cases that are within prescribed delegated limits and facilitate approval of projects which require Council committee approval.

The Shareholder Agreement also details the service standards required from EfE to CEC, particularly with regard to financial reporting and dealing with conflicts of interest.

The Shareholder Group will be a key relationship for the Council working with EfE, and will be useful for considering how new low carbon initiatives coming out of local, regional and national strategies will be dealt with and how potential changes impact on the work the ESCo does.

Other key governance arrangements are dealt with in the Articles of Association.

Risk

The following table identifies key risks for EfE in terms of cost, time or quality, their probability of occurring and impact, together with actions that may be taken to assist mitigating them.

Risk & associated consequence / impact	Probability	Impact	Suggested mitigating actions / factors	Residual probability	Residual impact
EfE is unable to develop robust business cases with sufficient income streams to support the viability of the business. The ESCO struggles to become self sufficient.	8	8	The three project areas identified in the Business plan indicated the potential for sufficient income streams.	4	4
			Operating costs will be kept as low as possible. A robust project pipeline will be needed such that questionable projects can be replaced.		
Business cases not yet published which might identify that EfE provides little value beyond that which CEC could achieve by undertaking that projects internally. Lead to reputational damage.	7	7	The three identified project areas currently have insufficient resource or expertise within CEC so the ability of EfE to deliver these will add significant value.	4	4
EfE may not be able to attract personnel of sufficient capability and skill set to undertake the roles of General Manager and underlying project managers	7	7	£100K of funding has been put aside to attract a general manager of sufficient quality with an appropriate skill set	4	4
			Project business cases will need to assess the resource level and skill requirement on a project by project basis and source appropriate funding to attract the correct personnel		
Poor communication and relationships within existing and potential project partners (internally within CEC and externally) results in weak project pipeline opportunities and reluctance to engage with EfE which is perceived as adding no value	6	6	A defined communication strategy used to address PR interactions	3	4
			Pro-active strategy for engaging with CEC service areas and promoting EfE as a value adding entity		
			Providing clear marketing and promotional information (via website / leaflets) that identifies the services and areas in which EfE will operate		
			EfE has MD / CEO / SRO equivalent who acts as ambassador for communicating and promoting EfE's activities		
There is poor or ineffective working relationships between the CEC Project Board and the EfE Board Directors, causing delayed delivery of the operational plan as well as insufficient resource being made available to support delivery of projects	5	5	The Shareholder Agreement provides dispute resolution procedures that can assist resolving particularly contentious issues	2	2
			There is realisation that success of the ESCO is heavily dependent on CEC and EfE working collaboratively		
CEC restricts EfE access to potential project assets across Council departments and other Council owned ALEOs such as Edinburgh Leisure and EDI, limiting EfE in the projects it is able to develop	5	8	The CEC Project Board will facilitate access to CEC department assets, information and resource	3	2
			A memorandum of understanding will be agreed with other CEC ALEOs to promote access to assets		
EfE fails to establish an effective Board of Directors with appropriate knowledge and experience of energy related projects and so fails to govern and manage the strategic direction of the ESCO effectively	4	8	A robust recruitment process will be undertaken by CEC HR to appoint appropriate Board Directors to EfE	3	5
			External support from other public organisations such as GIB, SFT, and SE can support the EfE Board		
There is potential loss of control by CEC over EfE's activities which may result in reputational damage for the Council and failure to support delivery of its SEAP	5	5	The use of a CEC Project Board to approve specific EfE recommendations and review of performance will allow retention of reasonable control	3	3

objectives			Council Members sit on the EfE Board and so contribute to EfE decisions		
			CEC is the controlling shareholder of EfE		
Staff and other resources do not have sufficient skill / capacity to meet EfE and underlying project requirements, resulting in failure to deliver projects and poor operational control of EfE	8	8	Projects will only be approved with appropriate resource requirements secured	4	4
			Quarterly meetings between CEC Project and EfE Boards will provide a forum to raise and address resource issues		
			The Shareholder Agreement includes a financial commitment from CEC to support EfE		
EfE fails to control costs impacting on EfE financial performance and potential project development	4	8	EfE will undertake budget monitoring monthly and quarterly (with Project Board)	2	2
			Most operating costs will be provided 'in kind' by CEC staff		
			External costs (e.g. feasibility studies) will be secured on a fixed cost basis		
The services delivered by EfE are of poor quality, which may adversely impact CEC's reputation	4	4	Project business cases will indicate the service standard levels and require approval by CEC	2	2
			For EfE directly delivered services, CEC and Project Board controls can assist remedy poor performance		
			Contractual remedies where externally provided services exist will be sought		

Shareholder Group Operating Principles for CEC oversight of Energy for Edinburgh ('EFE')

The following operating principles for the Shareholder Group are based on the governance toolkit guidance in Appendix 2 of 'Arm's-length external organisations (ALEOs): are you getting it right?'

Establishing EFE as an ESCo.

- The Shareholder Group provides overall direction and management for development of EFE.
- It ensures appropriate resources, both human and financial, are dedicated to successful establishment of EFE.
- Approves all relevant documentation for establishment of EFE, eg the Shareholder Agreement, Business Plan etc.
- Supports lead staff and the ESCO Internal Working Group with the necessary decisions for EFE to proceed.
- The Shareholder Group will support and provide assistance to resolving any barriers to establishing EFE.
- The Shareholder Group will consider the branding, messaging and profile of EFE both internally and externally.
- It will act as a key liaison with elected members and other senior managers.

Controlling delivery of services provided by EFE.

- The Shareholder Group establishes from the start, clear limits to its involvement, a timetable for achieving objectives and the circumstances in which the shareholder agreement could be terminated.
- The Shareholder Group has a well-developed and soundly based strategy for the delivery of services that EFE may provide and which are clearly linked to the council's wider strategic objectives and priorities.
- Regular quarterly reviews are carried out by the Shareholder Group to ensure that EFE activities remain aligned with the council's current objectives.
- The Shareholder Group identifies specific circumstances that will trigger a review of its involvement with EFE, eg changes in key personnel in EFE.
- The Shareholder Group champions the ESCo and raises its awareness across service areas.
- In undertaking its role, the Shareholder Group adopts CEC policies relating to code of conduct, confidentiality and conflicts of interest.

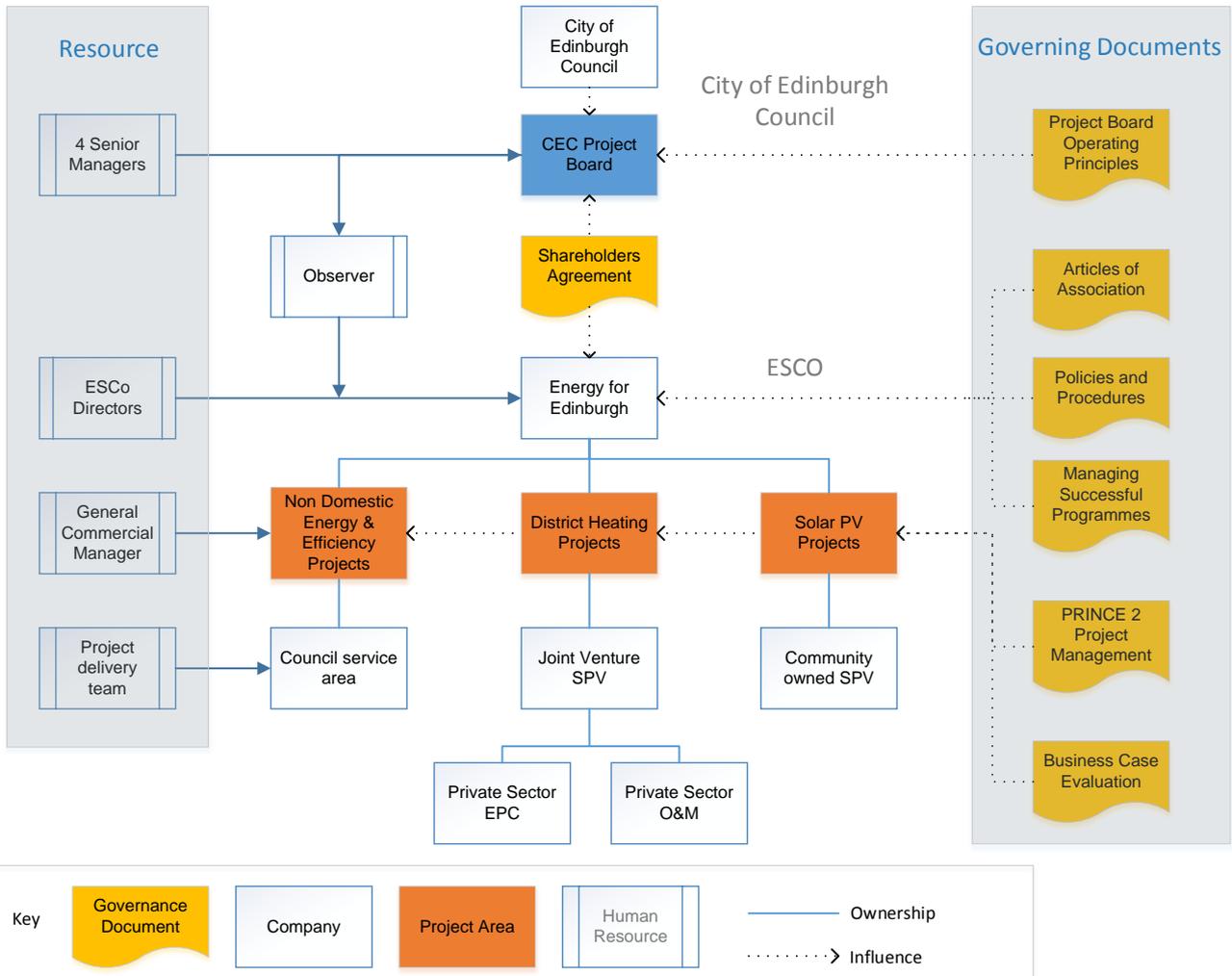
Understanding the financial commitment and risk to which CEC is exposed with EFE.

- The Shareholder Group and shareholder agreement define the nature of the financial relationship and its commitment to EFE.
- There is a written agreement about the use of CEC assets, their title and use.
- Minimum accounting and auditing arrangements are stated in the shareholder agreement.
- The Shareholder Group has evaluated and assessed the risks and documented the results associated with EFE. Risk assessment extends beyond financial risks to other areas, eg reputational risk.
- The Shareholder Group has specific governance, finance and performance indicators that give early warning of potential problems with EFE and acts when required.
- Contingency plans are in place to ensure that service delivery is maintained if the relationship with EFE ends or becomes difficult.

Arrangements for monitoring financial and service performance of EFE.

- Targets (SMART) and methods of measurement are agreed and documented early after incorporation. Monitoring extends beyond financial and service performance to employment practices, equality requirements, purchasing policies and sustainability, amongst others.
- Monitoring reports provide timely and good-quality information about EFE's performance in delivering services and their impact. The Shareholder Group receives and scrutinises forward plans, takes a risk-based approach to monitoring, and targets resources accordingly. The Shareholder Group follows up where performance does not meet agreed standards.
- The Shareholder Group staff responsible for monitoring EFE are clear about their role and are supported in it; those involved in monitoring financial performance are suitably qualified.
- The reasons for providing services through EFE and the impact are clear in reports to stakeholders (internal and external – if appropriate), and these reasons should be reflected in the business cases submitted and approved for underlying projects.

Ownership and Governance Structure



Waiver request / amendments

The terms of proposed waivers are included in brackets [] against the relevant clauses from the Shareholder Agreement, reproduced below.

5 Business Plan, accounts, financial and other information

- 5.1 The Company shall, at all times, maintain accurate and complete accounting and other financial records in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable to the Company.
- 5.2 The Company shall prepare:
- 5.2.1 quarterly management accounts of the Company [and the EFE Group Companies] including a profit and loss account, balance sheet and cash flow statement and such other trading and financial information as the Council may reasonably require as well as a comparison against the previous year's information [***Waived for the first year of operation***] for the relevant quarter and against the Annual Budget [***for the first year of operation the Annual Budget will be the same as the information detailed in the Financial section of the initial Business Plan. The projections have been made on a cash receipts basis and so the cashflow and P&L accounts will mirror each other***] , together with an explanation for any material variances to forecasts and shall send a copy to the Council no later than 10 Business Days after the end of each relevant quarter and the Board shall consider such accounts at its following meeting; and
- 5.2.2 audited accounts of the Company [and the EFE Group Companies] and shall send a copy to the Council within [6] months of the end of the accounting period to which they relate.
- 5.3 The Company shall prepare an Annual Budget for the Company [and any EFE Group Companies] in respect of each Financial Year and a Business Plan of the Company [and any EFE Group Companies] annually [in each case on an individual and consolidated basis]. [***for the first year of operation the Annual Budget will be the same as the information detailed in the Financial section of the initial Business Plan***]
- 5.4 Each Annual Budget shall be consistent with the Business Plan and shall include:
- 5.4.1 a forecast profit and loss; [***nb - The projections have been made on a cash receipts basis and so the cashflow and P&L accounts will mirror each other***]
- 5.4.2 a forecast revenue projection; [***nb - The projections have been made on a cash receipts basis and so the cashflow and P&L accounts will mirror each other***]
- 5.4.3 a balance sheet and cash-flow statement on a phased monthly basis; [***This only needs to be on a quarterly basis for the first year of operation.***]
- 5.4.4 an operating budget including estimated capital expenditure and working capital on a phased monthly basis; [***This only needs to be on a quarterly basis for the first year of operation***]

- 5.4.5 an analysis of the results of the Company [and any EFE Group Companies] for the previous Financial Year compared with the Annual Budget for that Financial Year, identifying material variations in revenues and costs; **[waived for the first year as no historic results will be available]**
- 5.4.6 a summary of the Company's [and any EFE Group Companies'] business objectives for the forthcoming Financial Year together with financial and non-financial KPIs and appropriate measures of achievement against which the performance of the Company [and any EFE Group Companies] will be assessed. **[These are to be agreed and confirmed between the Project and EFE Boards at the first joint meeting, shortly after incorporation]**
- 5.5 Each Business Plan shall include:
- 5.5.1 a forecast profit and loss; **[nb - The projections have been made on a cash receipts basis and so the cashflow and P&L accounts will mirror each other]**
- 5.5.2 a forecast revenue projection; **[nb - The projections have been made on a cash receipts basis and so the cashflow and P&L accounts will mirror each other]**
- 5.5.3 a dividend policy (for the avoidance of doubt, that policy may be that no dividend is expected or anticipated to be payable); **[The current Business Plan states that there will be no dividends distributed to CEC. All retained earning shall be re-invested into feasibility studies and future projects]**
- 5.5.4 a balance sheet and cash-flow statement on an annual basis;
- 5.5.5 a review of projected business activities and capital investment; and
- 5.5.6 a summary of the Company's [and any EFE Group Companies'] business objectives for at least 3 Financial Years following the rEfErEnce year of the Business Plan.
- 5.6 Each Annual Budget and Business Plan shall be approved by the Board prior to the commencement of the Financial Year to which it relates and the Company shall consult with the Council in a reasonable and proper manner in drawing up the Annual Budget and Business Plan before approval.
- 5.7 Each Annual Budget and Business Plan shall be submitted to the Board in draft and thereafter shall be circulated to the Council not later than 90 days prior to the commencement of the first Financial Year to which it relates; with the intention that each Annual Budget and Business Plan shall then be presented at an appropriate meeting of the Council (or relevant Council committee, or the Shareholder Group, as the Council shall direct) for approval.
- 5.8 If any Annual Budget and/or Business Plan has not been approved pursuant to clause 5.7 by the start of the relevant Financial Year, the Company shall continue to trade in the ordinary course without material interruption but in a manner which is most likely to continue the status quo without materially deviating from

the previous Annual Budget and/or Business Plan until such time as a new Annual Budget and/or Business Plan is so approved.

- 5.9 If the Company wishes to amend a Business Plan during the course of any Financial Year it shall present its proposals to the Council (or relevant Council committee, or the Shareholder Group, as the Council shall direct) which, acting reasonably, shall approve or reject such changes.
- 5.10 The Company and the Board shall:
- 5.10.1 upon receipt by the Company of a request in writing by or on behalf of the Council, grant the Council such access to the accounts, books, records, senior employees (if any) and Directors and such other information relating to the business affairs and financial position of the Company [and any EFE Group Companies] as such request may reasonably require (which shall include all information that the Council requires in order to comply with law and/or regulations);
 - 5.10.2 keep the Council informed of any Material Developments in the Business; and
 - 5.10.3 supply the Council with a copy of a report prepared by the Company in respect of each Financial Year, demonstrating the implementation by the Company [and any EFE Group Companies] of Adequate Procedures, such report to be provided within 30 Business Days of the end of the Financial Year to which it relates;
- 5.11 The Company acknowledges that the Council is subject to certain external audit requirements and, subject to the provisions of clause 7, shall give any auditors appointed in relation to the Council access to the necessary information and records reasonably requested by them for such purpose from time to time.