

# HEADS OF TERMS – TECKAL COMPANY

## MONMOUTHSHIRE COUNTY COUNCIL

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ADVICE RE HEADS OF TERMS FOR THE  
GOVERNANCE/SHAREHOLDER  
AGREEMENT

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**Anthony Collins**  
solicitors

1. The Agreement will identify who are the parties – one will be the company itself Monlife Plus Ltd and the second will be the Council.
2. The Agreement will set out that:
  - The Company is a private company wholly owned by the Council;
  - The Council has established it as a “commercial purpose and trading entity”;
  - It is a controlled and regulated company under the Local Government and Housing Act 1989 and within the Local Authority (Companies) Order 1995;
- The parties have agreed this Agreement to regulate their responsibilities, the governance arrangements and the operating and management of the Company and its relationship with the Council;
- It is usual to state in the Agreement that the Council (in this case Cabinet as it is an Executive function) have delegated their role and where to. As this is an executive matter the Council may wish the Shareholder Committee to be either the Cabinet itself or a Cabinet committee – if the second, the voting members of the committee can only be members of the Cabinet, although the Cabinet can agree to co-opt a member who is not on the Cabinet as a non-voting member. It should be remembered that there is a difference between the Shareholder Committee and the Board of the Company.
3. The heads of terms will set out the interpretation which is to be used – for the purposes of these heads of terms that is excluded at present until further documentation is agreed
4. The Heads of Terms will be clear about the business of the Company which have to fit in with the Articles and which should also provide that the Company business needs to be carried out in accordance with the business plan approved by the Council and that the company will always comply with the business plan and the provisions of the agreement and the Articles.

5. Where the Council has delegated its shareholder responsibilities to an Executive Committee (see above) the Agreement should make it clear that references to the Council are references to the Shareholder Committee to which the Council/Cabinet have delegated their responsibilities unless otherwise noted.
6. In the Heads of Terms it should be clear that the directors are appointed and dismissed by the Council and that the Company must ensure the Board does not go beyond its responsibilities in terms of any reserved matters.
7. It is usual to explain how any directors of the Company who are also employees or members of the Council are to be remunerated by the Company – usually not at all - and also the Articles should state when the Board meetings are meant to take place and the frequency of these. Non-Executive Directors who are not either members of officers will be entitled to remuneration if agreed.
8. The agreement will provide for an undertaking from the Company not to engage in activity which would constitute an offence under the Bribery Act or in respect of anti-corruption procedures.
9. The Agreement will require the company to adopt a business plan for each financial year unless the Council disapplies this provision. This requirement is that the Council must approve the business plan and any revision or update before the Board adopts it. Often it is useful for the Agreement to provide that before the Company submits a business plan to the Council for approval that they have consulted an officer (the Council can decide who this is) of the Council beforehand.
10. The Agreement will require the Company to keep the necessary accounting rules but require that the Council's representatives are allowed reasonable access to look at the books and records of the Company and discuss the Company's affairs with the directors of the Company. It should require the Company to supply the named officer of the Council with the necessary information to keep the Council informed about how effectively the business is performing and list the documents in particular which the Council will need such as:

- A copy of the proposed business plan;
- A copy of the audited accounts;
- The quarterly management accounts for the Company;
- The report prepared by the company each year demonstrating the approval by the Company of the adequate procedures;
- Copies of any proposals or business cases that the Company may wish to enter into, (this could be for example if the Company wishes to invest in any particular products or work with other organisations at a significant level);
- The Agreement should provide that the Company will comply with the requests of the Council to meet its requirements in relation to HMRC etc.
- The Company will not be required to recommend any dividend payments or distribution without the views of the named officer being taken into account. In practice this is relating to any payment of any dividend back to the Council as shareholder. The Council may of course prefer that any profits made by the Company are reinvested into services or that if the company is making a profit the Council is able to reduce the amount it pays to the Company to take into account the surplus the company makes. This will need to be the subject of a discussion during the business plan and budget processes.
- The Agreement will go into how the agreement can be terminated by the Council (but not by the Company).
- The Agreement should take precedence over the articles if there is any conflict.
- The Agreement will include the requirement the Company to comply with the Council's policies and procedures on Freedom of Information (as a wholly owned Council company it is subject to the same FOI rules as the Council). The Agreement will require the Company to comply with the Council's policies and procedures on Freedom of Information (as a wholly owned Council company it is subject to the same FOI rules as the Council).
- If the Company receives a request for information it must pass the request to the Council and use reasonable endeavours to assist the Council in complying with all transparency obligations, responding to any requests about the Company or the business submitted by elected members of the Council and make officers available to attend before and answer questions about meetings of the full Council / the joint select committee / the cabinet and the

Shareholder Committee; and will supply such information to the above bodies as the Council may reasonably request.

- The Company will use reasonable endeavours to assist the Council in responding to inquiries or investigations by the Public Services Ombudsman for Wales.
- The Company will comply with the Local Authority Companies Order 1995 and any other legislative requirements.
- The Parties will act in good faith towards each other at all times and do everything necessary to give effect to the spirit and intention of the agreement.
- The Company is not able to assign or grant incumbrances over any of the rights and obligations in the agreement without the written consent of the Council.
- Any dispute that arises between the Council and Company will be referred in the first instance the agreement provide that any dispute arises then it will be referred for resolution in the first instance to the named officer at the Council (usually the Chief Executive, but the Council can decide) and the Chairman of the Board and then if the dispute is unable to be resolved in this way the agreement will provide that the Council may then serve a notice in writing on the Company directing them to take or refrain from taking actions specified with which the Company must comply. The agreement will then deal with reference to the internal Council decision making in respect of the Company and relate back to the delegation to the Shareholder Committee.
- The Agreement will set out the usual “boiler plate” conditions in relation to language, governing law etc.
- The Agreement will detail that the Council will be providing support services to the Company (I think this is to be the case, certainly initially) and refer to a separate service level agreement (s) which can be appended if this is required but need not be.