

## MEMBERS AGREEMENT NWUPC Ltd

### **WHEREAS**

- (A) The North Western Universities Purchasing Consortium Ltd (“the Company”) has been established to provide a structure for higher education institutions mutually to secure value for money in matters relating to the procurement of goods and services.
- (B) Membership of the Company is open to higher education institutions and additionally such other bodies as may be approved in accordance with the terms of this Members Agreement.
- (C) This Members Agreement sets out the conditions of operation of the Company and the rights and obligations of those institutions and bodies taking up membership of the Company.

### **1. DEFINITIONS**

1.1 Where used herein the following expressions shall have the meaning attached hereto (unless the context requires otherwise):

‘Articles’	means the Articles of Association of the Company in force at the date hereof, or as they may subsequently be altered from time to time;
‘The Board’	means the Board of Directors of the Company;
‘Budget’	means the annual budget to be approved in accordance with clause 6.2(d) of this Agreement;
‘Code of Conduct’	means the Chartered Institute of Purchasing and Supply Ethical Code, a copy of which is attached as Schedule Two;
‘Category Groups’	means the groups established to carry out the activities set out in the Terms of Reference in respect of particular category;
‘Council’	means the Council of Members established and governed in accordance with the terms of clause 5;
‘Directors’	means the directors at any time and from time to time of the Company;
‘Members’	means each of the institutions and bodies who become Members of the Company; higher education bodies shall be ‘Full Members’ and other bodies shall be ‘Associate Members’ or Affiliate Members as further detailed in this Members Agreement;
‘Memorandum’	means the Memorandum of Association of the Company in force at the date hereof, or as it may subsequently be altered from time to time;

‘Subscription’ means the annual membership payment by a Member to the Company in such sum and at such time as shall be determined from time to time by the Board;

‘Terms of Reference’ means the aims and objectives of the Company as set out in Schedule One;

‘Year’ means the Company’s financial year from 1 August to 31 July.

## **2. EFFECT**

2.1 This Members Agreement in relation to an institution or body shall take effect from the date the institution or body is accepted as a Member of the Company and shall remain in force until terminated in accordance with the provisions set out below.

## **3. MEMBERSHIP**

3.1 Full Membership of the Company is open to any institution in the higher education sector by virtue of its full-time equivalent student enrolment number for courses of higher education exceeding 55% of its total full-time equivalent enrolment number.

3.2 Full Membership entitles the Member to vote at Council meetings and to be represented on each Category Group.

3.3 Associate Membership is open to any other institution or organisation approved for such membership by the Board.

3.4 Associate Membership entitles the Member to attend Council meetings but not to vote and, unless agreed otherwise by the MD, shall not entitle the Member to be represented on Category Group.

3.5 Affiliate Membership entitles the Member to access such services and supply contracts as agreed in writing between the Managing Director and Affiliate for an agreed annual fee. Affiliate Membership does not entitle the Affiliate to attend meetings nor, unless otherwise agreed by the MD, be represented on NWUPC Groups.

3.6 Associate and Affiliate Members are exempted from the following Obligations of Members; 4.1, 4.2a, 4.2c, 4.2e but must accord in so far as they are applicable to the contracts and/or services provided via The Company with 4.2b and 4.2d.

## **4. OBLIGATIONS OF MEMBERS**

Each Full Member agrees and undertakes to each other Member and to the Company:-

4.1 To exercise its respective voting rights at the Council, particularly in respect of the duties of the Council summarised in clause 5 and the further assurances in clause 16

4.2 Each Member will support the aims of the Company by using its best endeavours:

- (a) To ensure that Company agreements and initiatives are used and implemented fully within its own institution or body.
- (b) To promote effectively the Company's Code of Conduct within its own institution or body and in particular to ensure that Company agreements will not be used as a benchmark to obtain lower local prices.
- (c) To appoint an appropriate representative to each Category Group.
- (d) To provide such information as shall be required by the Managing Director regarding its purchasing expenditure.
- (e) To provide appropriate purchasing and contracting input with a view towards the Company's programme of initiatives, contracts and negotiations being achieved.

4.3 Each Member shall with all due expedition:-

- (a) Take any necessary decisions to enable the Company to meet its Terms of Reference and achieve its strategic and business plans.
- (b) Pay the Company Subscriptions.

## 5. **THE COUNCIL**

5.1 There shall be a Council of the Company for the purposes set out below.

5.2 The Council shall be constituted by a representative of each Full Member and the Managing Director and Chair of the Company. The said representative shall be the member of the institutions' Senior Management Team with responsibility for procurement.

5.3 The duties of the Council are:

- (a) To appoint from among its Full member representatives persons to act as Member directors of the Company. Each director so elected shall serve for a period of three years, but shall be eligible for re-election for further periods of three years. If serving for the full period, they shall retire with effect from conclusion of the Annual General Meeting next following the third anniversary of their initial appointment, or of their reappointment, as the case may be. The maximum number of terms shall be three.
- (b) To appoint a Managing Director of the Company to carry out day to day operational responsibilities and to report to the Chair of the Board. The Council shall clearly define the extent and nature of the Managing Director's responsibilities so that at all times the Managing Director shall be able to ascertain whether or not any matter is within the scope of such responsibilities.
- (c) To elect up to one other person to act as an Independent Director, if recommended by the Board. The additional director need not be a member representative or an employee of a Member. The person may be remunerated on terms agreed by the

Board. The initial term of service of the additional director shall not exceed 3 years, but he/she shall also be eligible for re-election.

- (d) To endorse or reject at the next AGM any person appointed as a director by the Board. The Board may appoint a person who is willing to act as a Director, either to fill a casual vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed the maximum number. A Director so appointed (other than the employed Managing Director) shall hold office only until the next following Annual General Meeting. If not reappointed at such Annual General Meeting, he shall vacate office at the conclusion thereof.
  - (e) To elect, from among the member directors or appoint as required under the same principles as the Independent Director, one person to act as Chair of the Council and of the Board. To elect from among the member directors one person to act as Deputy Chair of the Council and the Board. The terms of office will be three years and may be extended on the recommendation of the Board
  - (f) Empower the Board to establish sub-committees to discharge particular functions.
  - (g) To receive the Annual Accounts and Report approved by the Board and to decide whether they should be formally adopted for filing purposes at Companies House.
  - (h) To review the provisions of this Members Agreement at least every five years and to recommend to Members any proposed amendments.
- 5.4 Council decisions shall be made on the basis of majority vote of Council Members present and entitled to vote (including proxies). In the case of the election of a Member Director to fill a casual vacancy, the Company may carry out a poll of members of the Council by email.
- 5.5 The Council shall meet at such intervals as determined by the Council. However, it shall meet not less than once a year as the Annual General Meeting of members and within 15 months of the date of the previous Annual General Meeting.

## **6. THE BOARD**

- 6.1 The Company will be managed by the Board which will meet a minimum of twice a Year, or more frequently at the discretion of the Chair and conduct itself in accordance with the Articles.
- 6.2 The Board shall be responsible for:
- (a) Oversight of Company activities and shall take all necessary decisions and actions to enable the Managing Director to perform his/her duties.
  - (b) Consideration of Company initiatives proposed by the Managing Director.
  - (c) Review of national developments in procurement.
  - (d) Determination of the Budget and subscriptions for the relevant Year.
  - (e) Receipt and consideration of management accounts, budgets and other such reports that may be required and formal approval of the Annual Accounts.
- 6.3 The Chair of the Board and the Managing Director shall represent the Company at national committees.

## **7. FUNDING**

- 7.1 The Company shall be funded through a combination of Subscriptions and income generation. The Board shall determine the basis on which Subscriptions for Full Members are to be calculated and shall set the rate of Subscriptions before the start of the relevant Year. The Subscription levels for Associate and Affiliate Members shall be at the discretion of the Board as advised by the Managing Director.
- 7.2 Income generation will be achieved by means of a combination of:
- (a) Marketing Premiums from suppliers
  - (b) Charges for consultancy, conferences, training or exhibitions
  - (c) Other income generation as determined by the Board.

## **8. TERMINATION OF MEMBERSHIP**

- 8.1 If at any time, a Member ceases to be a Member in the Company this Members Agreement shall terminate with respect to that Member.
- 8.2 This Members Agreement shall continue in full force and effect between the other Members, notwithstanding its termination pursuant to this clause with respect to any one Member.
- 8.3 Termination of this Members Agreement with respect to any or all of the Members shall be without prejudice to the rights of any Member accrued prior to such termination.
- 8.4 Each Full Member agrees to provide a minimum of 18 months written notice if it decides to cease to be a Member and agrees that in such an event it will not be entitled to any rebate of Subscription in respect of unexpired parts of a Year nor entitled to make any claim against the assets of the Company.
- 8.5 When the objectives of the Company appear to a majority of Members to be frustrated through a Member not operating within the provisions of the Members Agreement, the Chair of the Board may convene a working group the members of which shall be agreed by a majority vote of Full Members. The group shall determine whether there has been an irredeemable breakdown in the relationship between the said Member and other Members and shall have the power to recommend to the Council immediate termination of the said Member's membership. The Council's decision shall be final.
- 8.6 An Associate or Affiliate Member agrees to provide written notice if it decides to cease being a Member and agrees that it shall not be entitled to any rebate of subscription in respect of unexpired parts of a Year nor entitled to make any claim against the assets of the Company. On expiry of membership the use of all suppliers contracts via the Company must cease.

## **9. CONFIDENTIALITY**

- 9.1 Subject to the provisos below at all times each Member shall keep secret and confidential all business and trade secrets, methods of doing business and other information and material disclosed by or obtained from any other Member in

connection with this Members Agreement, the Company or the Company's business. Each Member undertakes not to disclose any such material or information to any third party other than its responsible employees who require such disclosure where bona fide necessary for the proper performance of their duties hereunder and who will individually comply with all obligations of confidentiality imposed upon the Members by the provisions of this clause. Each Member undertakes to take all reasonable steps to minimise the risk of disclosure of such confidential information by employees and others.

9.2 The obligations of confidentiality set out above shall not apply to any information or material which the recipient party can prove:

- (a) was already known to it prior to its receipt thereof from the disclosing Member;
- (b) was subsequently disclosed to it lawfully by a third party who did not obtain the same (whether directly or indirectly) from the disclosing Member; or
- (c) was in the public domain at the time of receipt by the recipient or has subsequently entered into the public domain other than by reason of a breach of the provisions of this clause or breach of any obligation of confidence owed by the recipient to the disclosing Member.

## **10. NO PARTNERSHIP OR AGENCY**

10.1 Each Member agrees that it is not the partner or agent of the other Members and undertakes that it will not purport to, pledge the credit of or otherwise bind the other Members. This Members Agreement is not intended to constitute or evidence the existence of a partnership between the Members.

## **11. FORCE MAJEURE**

11.1 No Member shall incur any liability to any of the others in the event that it is delayed in the performance of its obligations hereunder solely by force majeure.

11.2 For the purpose of this Members Agreement force majeure shall mean any cause of delay beyond the reasonable control of the Member liable to perform unless conclusive evidence to the contrary is provided and shall include but not by way of limitation strikes lockouts, riot act of war or piracy destruction of essential equipment by fire explosion storm flood earthquake or delay caused by failure of power supplies or transport facilities.

## **12. IMPLIED TERMS**

12.1 This Members Agreement embodies the entire understanding of the Members as to the subject matter hereof and there are no promises, terms, conditions or obligations (whether oral or written, express or implied) other than those written herein.

## **13. NOTICES**

13.1 Notices shall be served by hand, by email or by pre-paid first class letter post addressed to the other Member at its address as set out above and shall be deemed to be served on

the third day after posting in the above manner.

**14. NO WAIVER**

- 14.1 Failure by any party to enforce at any time any of the provisions of this Members Agreement shall not be construed as a waiver of its rights hereunder. Any waiver of a breach of any provision hereof shall not affect any Member's rights in the event of any additional breach.

**15. WARRANTY**

- 15.1 Each of the Members warrants to each of the others Members of the Company that it has all necessary power and authority to enter into this membership of the Company and that the obligations undertaken by it in this Members Agreement are valid, binding and enforceable upon it in accordance with their respective terms.

**16. FURTHER ASSURANCE**

- 16.1 Each of the Members undertakes to do all such acts and things, and execute all such deeds and documents as shall be necessary to give effect to the provisions of this Members Agreement.

- 16.2 Each Member shall exercise all voting rights and other powers of control available to it in relation to the Company so as to procure (so far as each is respectively able by the exercise of such rights and powers) that at all times during the term of this Agreement the provisions of this Members Agreement are duly and promptly observed and given full force and effect according to its spirit and intention.

- 16.3 Without prejudice to the generality of sub-clause 16.2, if any provision of the Memorandum and Articles of Association of the Company at any time conflict with any provisions of this Members Agreement, the provisions of the Memorandum and Articles shall prevail but the Members shall whenever necessary exercise all voting and other rights and powers available to them to procure the amendment of the

Memorandum and/or Articles of Association to the extent necessary to permit the Company and its affairs to be administered as provided in this Members Agreement.

**17. HEADINGS**

- 17.1 The headings in this Members Agreement are for reference only and do not limit or affect its interpretation.

**18. GOVERNING LAW AND JURISDICTION**

- 18.1 The construction, validity and performance of this Members Agreement shall be governed in all respects by English law and the parties hereto agree to submit to the exclusive jurisdiction of the English Courts.

## SCHEDULE ONE TERMS OF REFERENCE

1. To develop and promote initiatives, contracting strategies and negotiations in order to provide Members with value for money, taking into account price, quality, service and sustainability.
2. To support the development and execution of professional procurement practices and training throughout the Member institutions.
3. To promote and encourage the interchange of procurement information, between Members, to make Member institutions aware of local, regional, or national procurement arrangements and committee group structures.
4. To establish, develop, monitor and (where appropriate) to dissolve individual Category Groups responsible for particular areas of procurement.
5. To generate income to cover the running costs of the Company as far as is practicable and without compromising the requirement to secure overall value for money for its Members.
6. To play a full part in the development and implementation of national higher education initiatives. To meet any reasonable obligations and expectations, as determined by the Board and/or Council, placed upon it by higher education bodies.

This Members Agreement was reviewed, amended by the Board of Directors in July 2018 and agreed by the Management Council on 1<sup>st</sup> February 2019.

**Julie-Ann Garton**  
**Managing Director**