

**AGENDA ITEM NO. 10**

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**TITLE: GREATER CAMBRIDGE, GREATER PETERBOROUGH LOCAL ENTERPRISE PARTNERSHIP**

Committee: Development and Transport Committee

Date: 20<sup>th</sup> March 2013

Author: Darren Hill, Business Development Manager

[M375]

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1.0 ISSUE

1.1 To consider Council representation on the Greater Cambridge/Greater Peterborough (GCGP) Local Enterprise Partnership (LEP).

2.0 RECOMMENDATIONS

- 2.1
- a) To include the GCGP LEP as an outside body.
  - b) To appoint a Member representative to liaise with the GCGP LEP for the remainder of the Council year.
  - c) That a paper on ECDC Corporate Membership of the LEP is brought back to this Committee once details have been finalised.

3.0 BACKGROUND/OPTIONS

- 3.1 The GCGP LEP has been established since October 2010 and a private/public sector board has been appointed alongside a small core management team. A new chair (Grahame Nix) has recently been installed.
- 3.2 The geography of the GCGP LEP covers the cities of Cambridge and Peterborough together with the neighbouring market towns of East Cambridgeshire, Fenland, Huntingdonshire and South Cambridgeshire Districts which make up the core local authority sponsors. Beyond these administrative boundaries, the real economic geography extends into parts of North Hertfordshire, Uttlesford, St Edmundsbury and Forest Heath; South Kesteven, South Holland, Rutland and Kings Lynn & West Norfolk.
- 3.3 The member representative to the GCGP LEP would not be able to vote under this appointment as it is for observer purposes only (due to insurance restrictions.) There are only five local authority positions on the board (Cambridgeshire County Council, Cambridge City Council, Peterborough City Council, Huntingdonshire District Council and Rutland County Council.)
- 3.4 All local authorities in the LEP have been invited to become Corporate Members. However, we are still awaiting final clarification from the GCGP LEP as to what this means for ECDC. Corporate Membership is likely to include the following terms:

Up to two scrutiny, performance or business planning review meetings between local authorities and GCGP LEP

Confidentiality: Corporate Members are able to access information classified as confidential, but are bound by agreed corporate confidentiality and information protocols.

Emergency measures: LA corporate members can assume the board role and governance of GCGP LEP Limited under the specific circumstances of:

- Normal board membership and functioning insufficient to meet corporate governance requirements set out in the company mems and arts - e.g. insufficient board membership for quorate decisions, no chair (seek legal advice on specific criteria)
- Company being wound-up or dissolved without functioning board governance in place
- Direct instruction by existing board for corporate members to reconstitute board or company governance
- Long stop clauses relating to asset disposal: If GCGP LEP limited is being wound up - that, in the event of an absence of prior board directives concerning asset disposal, any decisions about disposal of net assets would revert to Corporate Members.

#### 4.0 ARGUMENTS/CONCLUSIONS

4.1 The Public Sector Corporate Members of the GCGP will be admitted to membership once approval has been obtained through each local authority's decision making processes. The Corporate Members will not be admitted as directors and will therefore have limited rights under the proposed membership agreement. This is consistent with the aim of ensuring the LEP is a business-led organisation.

4.2 However, as members, they are still able to participate in the LEP's broad governance through regular meetings with the GCGP LEP Chair (which will be a requirement of the Membership Agreement), by invitation to participate in board or ad hoc committees set up by the board and through any general meetings of the company members.

4.3 Darren Hill and Doug Perkins, the Council's Business Development Manager/Economic Development Officer, will provide officer support as and when required.

#### 5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

5.1 Minor financial implications from mileage claims for travel to meetings

5.2 Equality Impact Assessment (INRA) not required.

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<b><u>Background Documents</u></b>	<b><u>Location</u></b>	<b><u>Contact Officer</u></b>
Note on Director's and members rights responsibilities	Room FF102 The Grange, Ely	Darren Hill Business Development Manager (01353) 616450 E-mail: <a href="mailto:darren.hill@eastcambs.gov.uk">darren.hill@eastcambs.gov.uk</a>
Members framework agreement		
Corporate Governance and proposed changes to company articles		

**DATED \_\_\_\_\_ 2011**

- (1) **GREATER CAMBRIDGE AND GREATER PETERBOROUGH ENTERPRISE PARTNERSHIP LIMITED**
- (2) **[5 x Public Sector Members]**
- (3) **[Education Sector Member]**
- (4) **[Third Sector Member]**
- (5) **[7 x Private Sector Members]**
- (6) **[13 Local Authority 'corporate' members]**

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**MEMBERS' FRAMEWORK AGREEMENT FOR THE  
GREATER CAMBRIDGE AND GREATER PETERBOROUGH ENTERPRISE  
PARTNERSHIP**

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8620818v1

THIS AGREEMENT is dated [ ] 2011

## **PARTIES**

- 1 **GREATER CAMBRIDGE AND GREATER PETERBOROUGH ENTERPRISE PARTNERSHIP LIMITED** whose registered address is at [address], registered company number [number] ("**GCGPEP**");
- 2 **[5 x Public Sector Members]** [Names, addresses];
- 3 **[Education Sector Member]** [Name, address];
- 4 **[Third Sector Member]** [Name, address];
- 5 **[7 x Private Sector Members]** [Names, addresses] ([2-5, collectively, the "**Members**")
- 6 **[13 Local Authority 'corporate' members]**

## **BACKGROUND**

- 1 The GCGPEP (in this Agreement called the "Company") was incorporated in England and Wales as a private company limited by guarantee under the Companies Act 2006.
- 2 The Members have agreed to operate as Members of the Company in accordance with the Company's Articles of Association and the terms of this Agreement on a collaborative basis.
- 3 The Members have agreed to enter into this Agreement for the purpose of recording the terms and conditions of their understanding and of regulating their relationship with each other and certain aspects of the affairs of and their dealings with the Company.
- 4 The Company has agreed with the other Members that it will comply with the terms and conditions of this Agreement insofar as they relate to the Company, and to the extent that they do not conflict with the said Memorandum and Articles or with the Company obligations under the Acts.

## **1 DEFINITIONS AND INTERPRETATION**

- 1.1 The Definitions and Interpretations provisions applicable to this Agreement are set out at Schedule 1.

## **2 THE COMPANY BOARD**

- 2.1 The Company and the Members shall appoint directors to its Board and the Chair of the Board in accordance with its Articles.
- 2.2 The Company and the Members shall require all Board members, including the Chair, to conduct their affairs in relation to the Company in accordance with the Seven Principles of Public Life as attached at Schedule 2.

### **3 POWERS AND DUTIES OF THE MEMBERS**

- 3.1 The Members and the Company recognise the important role that the Company has to play in the development and delivery of sustainable economic growth of the GCGPEP area (as defined in the Articles of Association), and accordingly the Members shall use their reasonable endeavours to work with the Company and others in support of the Company's objectives and will take all reasonable measures to support the Company's Board in the delivery of the Company's objectives.
- 3.2 In exercising their powers and otherwise when acting in this capacity, the Members undertake to act at all times in the best interests of the Company and in accordance with the Seven Principles of Public Life.
- 3.3 Each Member covenants with the other(s) and the Company that so long as this Agreement remains in full force and effect that Member will:
  - 3.3.1 be just and true to the others and act in good faith;
  - 3.3.2 not require the Company to pursue any course of action which would or could cause any interests of any other Member/s to be materially prejudiced;
  - 3.3.3 promptly notify the other Members of any matters of which it becomes aware which may materially affect the Company; and
  - 3.3.4 generally do all things necessary to give effect to the terms of this Agreement.
- 3.4 Subject always to the terms of clause 4.3, the Company shall procure that all new members admitted to membership of the Company agree to be bound by the terms of this Agreement.

### **4 STATUS OF THIS AGREEMENT AND THE PARTIES' OBLIGATIONS**

- 4.1 Each Member shall exercise all voting rights and other powers of control lawfully available to him as a member of the Company so as to procure that, at all times during the term of this Agreement, the provisions of this Agreement are duly and promptly observed and given full force and effect according to its spirit and intention.
- 4.2 Subject to clause 4.3, if any provisions of the Articles of Association of the Company at any time conflict with any provisions of this Agreement, this Agreement shall prevail as between the parties to it and each of the Members shall, whenever necessary, exercise all voting and other rights and powers lawfully available to him as a member of the Company so as to procure the amendment, waiver or suspension of the relevant provision of the Articles of Association to the extent necessary to permit the Company and its affairs to be administered as provided in this Agreement.
- 4.3 Nothing in clause 4.2 shall require the Company to be bound by any provision of this Agreement that would constitute an unlawful fetter on any of its statutory powers under the Act.

### **5 RESERVED MATTERS**

- 5.1 The Company and the Members agree that decision-making concerning the expenditure of Public funds shall be carried out as follows:

- 5.1.1 Decisions about the expenditure of Public funds by the Company shall be reserved to the Members who are also directors, acting in their capacity as directors of the Company. For the avoidance of doubt this excludes Corporate members whether Local Authority or Private Sector members.
- 5.1.2 From time to time the Members shall require the senior executives of the Company to prepare a schedule of proposed expenditure setting out the projects or other matters upon which the Public funds are planned to be spent. This may take the form of a long term schedule, but should at least include proposals for spending during the forthcoming 12 months;
- 5.1.3 In relation to decisions on matters under this clause, there shall be convened an Investment sub-group of the Board. The sub-group shall be comprised of at least 5 Members, a majority of whom shall be Public Sector Members.
- 5.1.4 The sub-group shall convene meetings of the group as necessary for the purposes of carrying out their functions under this clause. For this purpose, the quorum shall be 5 members, a majority of whom are composed of Public Sector Members. Meetings may be conducted by teleconference or similar means provided that all members are able to hear and participate in discussion. Proposals for the spending of public funds as described at 5.1.2 shall be considered by this sub-group and may then be amended or accepted by the sub-group prior to submission to the Board for ratification.
- 5.1.5 The Investment sub-group shall be responsible for putting accepted proposals for spending forward for ratification by the Board as a whole. If the Board rejects the Investment sub-group's proposals. in whole or in part, the sub-group shall reconvene to consider alternative options for those parts (or whole) of the proposed schedule. The Investment sub-group may then present alternative proposals to the Board. No final decisions can be made without ratification of the whole Board, but the Investment sub-group retains the sole right of preparation of schedules of proposed expenditure under 5.1.2 above..

## **6 TERMINATION OF THIS AGREEMENT**

- 6.1 This Agreement shall continue in full force and effect from the date hereof until:
  - 6.1.1 All the Members or their successors in title agree in writing to its termination;
  - 6.1.2 Membership of the Company becomes vested in any one party alone;
  - 6.1.3 The Company goes into liquidation whether voluntary or compulsory (other than for the purpose of an amalgamation or reconstruction approved by all the Members).
- 6.2 Termination of this Agreement pursuant to this clause shall be without prejudice to any accrued rights and liabilities of any of the Members.
- 6.3 If at any time a party ceases to be a member of the Company, this Agreement shall terminate with respect to that party save in respect of matters which remain to be resolved with or in relation to such party.

## **7 CONFIDENTIALITY**

- 7.1 Subject to clause 7.2, all Confidential Information shall be treated as confidential to the parties. Except in the proper course of business or as otherwise set out in

this Agreement, the Members agree that they shall not, except as required by law:

- 7.1.1 Use or disclose Confidential Information to any other person, company or other organisation;
- 7.1.2 Make (other than for the benefit of the Company) any record (whether on paper, computer memory, disc or otherwise) containing Confidential Information or use such records (or allow them to be used) other than for the benefit of the Company. All such records (and any copies of them) shall be the property of the Company;
- 7.1.3 Ensure that no person obtains access to Confidential Information from it, its officers, employees or agents unless authorised to do so; and
- 7.1.4 Inform the Company immediately upon becoming aware, or suspecting, that an unauthorised person has received Confidential Information.
- 7.2 The obligations set out in clause 7.1 will not apply to any Confidential Information:
  - 7.2.1 Which is publicly available or becomes publicly available through no act or omission of that party;
  - 7.2.2 Which a party already has in its possession other than as a result of a breach of this clause 7;
  - 7.2.3 Which is disclosed to a party's professional advisers in the normal course of business;
  - 7.2.4 Which a party is required to disclose by order of a court of competent jurisdiction or otherwise by operation of law.

## **8 NO PARTNERSHIP**

- 8.1 The Members are not in partnership with each other, nor are they agents of each other.

## **9 CONSIDERATION**

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

## **10 COUNTERPARTS**

- 10.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of that Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each party has executed at least one counterpart.

## **11 THIRD PARTY RIGHTS**

- 11.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**12 GOVERNING LAW AND JURISDICTION**

- 12.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England.
- 12.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

## SCHEDULE 1

### DEFINITIONS AND INTERPRETATION

- 1 The following expressions will have the following meanings
- 1.1 **“the Act”** the Companies Act 2006 and any subsequent amendment or addition thereto or re-enactment thereof.
- 1.2 **“the Articles”** the Articles of Association of Company and references to an Article shall mean a specific Article in the Articles.
- 1.3 **“the Board”** the company Directors of the Company, or such of those Directors present at a duly convened meeting of the Directors at which a quorum is present in accordance with the Articles.
- 1.4 **“the Public funds”** funds allocated to the Company by central government, or drawn from general taxation such as retained business rates.
- 1.5 **“Confidential Information”** all information in respect of the business of any party to this Agreement including, but not limited to, any ideas, business methods, finance, prices, plans, details of actual or potential clients customers, suppliers or associates or their needs or requirements, computer systems and software, products or services, know-how, intellectual property and any other information which, if disclosed, will be liable to cause harm to the party to whom it belongs.
- 1.6 **“Corporate members”**: any incorporated entity or corporation of whatever kind which becomes a member of the Company.
- 1.7 **“Deadlock Situation”** any dispute between the parties to this Agreement which is incapable of resolution by unanimous agreement between them.
- 1.8 **“Director”** any duly appointed company director of the Company from time to time.
- 1.9 **“Members”**[5 X Public Sector Members], [Education Sector Member], [Third Sector Member], [7 x Private Sector Members], [13 Local Authority ‘corporate members], and in any such case their successors or assigns, and any other party who takes on the rights and obligations of membership of the Company as set out in this Agreement and/or in accordance with the Acts.
- 1.10 **“the Object”** the objects of the Company as set out in the Articles and any other activities which the parties to this Agreement may agree from time to time in writing should be carried on by the Company.
- 1.11 **“Seven Principle of Public Life”** means those principles set out in the attached Schedule 2.
- 1.12 **“Taxes Act”** the Income and Corporation Taxes Act 1988.
- 1.1 Unless otherwise specified above, the Definitions utilised in the Articles apply to this Agreement.

## **SCHEDULE 2**

### **THE SEVEN PRINCIPLES OF PUBLIC LIFE**

The Members of the Company and the Board recognise the responsibilities of managing the business of Company and undertake to conduct themselves in accordance with the Seven Principles of Public Life.

The Seven Principles are:

#### **1 Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

#### **2 Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

#### **3 Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

#### **4 Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

#### **5 Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

#### **6 Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

#### **7 Leadership**

Holders of public office should promote and support these principles by leadership and example

# **ITEM 5: CORPORATE GOVERNANCE AND PROPOSED CHANGES TO COMPANY ARTICLES**

## **FOR DECISION**

### **SUMMARY: FOR DECISION**

1. The board are requested to approve the following changes to corporate governance and the company articles:

- creation of the post of Vice Chair on the LEP board
- Creation of new subcommittee: “Business Planning, Programme and Performance Committee”
- Creation of new subcommittee: “Appointments and Remuneration Committee”
- Suggested improvements to company articles with regard to legal advice

2. Instruct GCGPEP’s solicitors to implement the necessary changes to GCGPEP’s company articles

### **Board positions and committees**

3. Vice Chair position: creation of the post of Vice Chair on the LEP board, with the following responsibilities:

- Undertakes similar responsibilities of Chair when Chair unavailable
- Representation of GCGPEP at key meetings and events
- Responsibilities in line with the Corporate Scheme of Delegation (can act as signatory/approval across a range of items in absence of Chair, or in addition to Chair as required)

4. Creation of new subcommittee: “Business Planning, Programme and Performance Committee”, with the following responsibilities and features:

- Active participation in shaping and informing all aspects of business and financial planning and making recommendations to the board
- Reviewing the performance of GCGPEP and making reports and recommendations to the board
- Overseeing and informing the development of programmes for use of GCGPEP administered funds and activities; and making recommendations to the board
- Membership of 5 board members, including the Chair

5. Creation of new subcommittee: “Appointments and Remuneration Committee”, with the following responsibilities and features:

1. Finalising staffing structures and role descriptions for personnel
2. Setting remuneration policy and terms of employment for the LEP as a whole
3. Setting remuneration levels for individual posts and roles
4. Monitoring human resources issues and expenditure
5. Membership of 5 board members

## **Corporate membership**

6. All local authorities in the LEP have been invited to be Corporate Members. Most have ratified this through their councils. However, the terms or benefits of Corporate Membership were never put into any meaningful detail. There is an opportunity to deal with some of the past concerns of local authorities (such as access to confidential information and scrutiny) through defining Corporate Membership. It is recommended that Corporate Membership includes the following terms:
  6. Up to two scrutiny, performance or business planning review meetings between local authorities and GCGPEP
  7. Confidentiality: Corporate Members are able to access information classified as confidential, but are bound by agreed corporate confidentiality and information protocols (note: we will need to take legal advice on their definition, conditions and penalties for disclosure of confidential materials, whether need non-disclosure agreements etc.)
  8. Emergency measures: LA corporate members can assume the board role and governance of GCGPEP Limited under the specific circumstances of:
    - Normal board membership and functioning insufficient to meet corporate governance requirements set out in the company mems and arts - e.g. insufficient board membership for quorate decisions, no chair (seek legal advice on specific criteria)
    - Company being wound-up or dissolved without functioning board governance in place
    - Direct instruction by existing board for corporate members to reconstitute board or company governance
  9. Long stop clauses relating to asset disposal: If GCGPEP limited is being wound up - that, in the event of an absence of prior board directives concerning asset disposal, any decisions about disposal of net assets would revert to Corporate Members.

### **Legal advice on improvements to the company articles**

10. The original company articles were compiled on a pro-bono basis by solicitors in order to help GCGPEP get established, and were basic company articles. Subsequently, we have retained solicitors to act on our behalf who have given us legal advice on some aspects of the company articles which in their view could be improved, which include:
  - Clarification of appointments as directors and members
  - Including the possibility of local authorities themselves becoming corporate members, on application
  - Including the possibility of admitting other corporate bodies as members, at the discretion of the board; and
  - Clarification of the provisions relating to winding up or dissolution of the company, and the liability of its members

**Greater Cambridge and Greater Peterborough Enterprise Partnership Limited  
("GCGPEP")**

**Note on roles, rights and responsibilities of members and directors**

**1 OVERVIEW**

1.1 The GCPEP is a limited company structure. It is limited by guarantee of its members and has no shares. It is a 'not for profit' entity. Within it, there are two types of constitutional role: director and member. These are explained below.

**2 GOVERNANCE STRUCTURE OF THE GCGPEP**

**2.1 Directors**

2.2 Directors are the persons responsible for managing the GCGPEP and for setting its strategic direction. They have specific legal responsibility for its success of the LEP. In essence, as interpreted by the courts, this means acting in the best interest of the LEP. Directors must carry out their duties using reasonable skill and care, they have a duty to avoid any conflicts of interest or loyalty, and they must exercise independent judgement in their work as a director. The Directors make up the Board of the company. The LEP articles contain the administrative rules regarding how the Board should operate.

2.3 The GCGPEP is currently designed so that its directors are individuals and will be non-executive. The board of directors needs to be comprised of individuals with a broad range of skills and experience in order to ensure that, as a group, the directors are well-placed to run the LEP. The directors to be appointed at the time of adoption of the Articles have been selected on that basis.

2.3.1 The board comprises Public Sector Directors (the articles require there to be at least 5 in office; when vacancies arise in the future, replacement directors will be appointed by the Public Sector Members) and Non-Public Sector Directors (appointed through an open recruitment process, overseen by a nominations board) (see articles 10-11). In order to ensure that the board has a mix of skills and experience, the articles require that an Education Sector Director, a Third Sector Director and some Private Sector Directors are appointed as Non-Public Sector Directors.

2.3.2 The board should comprise 14 directors in total (article 18.1), at least five of whom must be individual Public Sector Directors, drawn from the Local Authorities (article 10.2).

2.3.3 The rules regarding disqualification and removal of directors are set out in article 12.

2.3.4 A board meeting must be quorate in order for the board of directors to make decisions. Article 13.2 notes that the quorum is eight directors. Meetings may be held remotely (i.e. by telephone or videophone) as long as all participants can hear each other and are able to participate in the meeting (article 13.5). Minutes of meetings and any resolutions passed must be kept with the LEP's statutory books.

2.3.5 Article 13 sets out the procedure to be followed in the event that a director considers that he/ she has a conflict of interest and the options available to the

board in addressing that conflict.

## **2.4 Members**

- 2.4.1 It is intended that the GCGPEP will have two types of member: individual and corporate. Initially corporate membership will be confined to the Local Authorities within the LEP area. Each individual director will automatically become an individual member on appointment as a director. Directors' and individual members' powers and responsibilities are therefore united within a single group of people. This means that the same people will occupy both roles and so will need to be mindful of which role they are performing when they take decisions.
- 2.5 The character of membership of the GCGPEP is akin to, but significantly different from, that of shareholders in a 'for profit' company. In particular, the LEP members have no entitlement to dividends or a share of the LEP 'profits'. The members have certain limited rights under company law, for example, the right to attend the AGM (if one is held), and the right to vote on any changes to the LEP's constitution. There is also to be a Membership agreement which creates additional contractual rights and responsibilities as between the members and the company.
- 2.5.1 The membership will comprise Public Sector Members (individuals who are directors or become appointed to directorship by the Local Authorities), Private Sector Members, an Education Sector Member and a Third Sector Member (also individuals who are or become appointed as directors) and Public Sector **Corporate** Members, i.e. the 13 local authorities. At present, article 3 requires there to be five Public Sector Members, seven Private Sector Members, one Education Sector Member and one Third Sector Member. It is proposed that this will be amended, in the near future, to require the appointment in addition of Public Sector Corporate Members to reflect the Local Authorities making up the LEP area.
- 2.6 The Public Sector Corporate Members will be admitted to membership once approval has been obtained through each local authority's decision making processes. The Corporate Members will not be admitted as directors and will therefore have limited rights under the proposed membership agreement. This is consistent with the aim of ensuring the LEP is a business-led organisation. However, as members, they are still able to participate in the LEP's broad governance through regular meetings with the GCGPEP Chair (which will be a requirement of the Membership Agreement), by invitation to participate in Board or ad hoc committees set up by the Board and through any general meetings of the company members.

**Taylor Vinters**  
**27 January 2012**