

Appendix: D

London Borough of Lewisham

and

Head of Housing and Refugee Services

DRAFT

Deed of Indemnity

relating to the carrying out of Head of Housing and Refugee Service's
duties

as a Director for Capital Letters Limited

This Deed

dated

Parties

- (1) The Mayor and Burgesses of the London Borough of Lewisham of 1st Floor, Lewisham Town Hall, Catford, London SE6 4RU (the **Council**); and
- (2) Head of Housing and Refugee Services, Lewisham Town Hall, Catford, London SE6 4RU (the **Individual**).

1 Introduction

- 1.1 On [date] the Council agreed to be an "A" Member of Capital Letters Limited ("the Company"). The Members have established the Company as a vehicle through which services are delivered to the "A" Members; and to any other customers (including "B" Members) as considered appropriate by the Members from time to time
- 1.2 On [date] the Council nominated the Individual as the Council's Representative on the Board of the Company.
- 1.3 Under the Local Authorities (Indemnities for Members and Officers) Order 2004 the Council has power to indemnify its members and officers and insure them where they carry on functions when acting as the Council's representatives at the Council's request.
- 1.4 In exercising that power the Council has agreed to enter into this Deed of Indemnity with the Individual.

It is agreed as follows:

2 Definitions and Interpretation

- 2.1 In this Deed, unless the context otherwise requires, the following definitions apply:

Act means the Local Authorities (Indemnities for Members and Officers) Order 2004;

Relevant Liability means a liability falling within clause 3.1.

- 2.2 In this Deed (except for the context otherwise requires):

2.2.1 words in the singular include the plural and vice versa;

2.2.2 references to clauses are the clauses of this Deed;

2.2.3 the clause headings are included for ease of reference only and shall not affect the interpretation of this Deed; and

2.2.4 a reference to a statute or statutory provision includes a reference to such a statute or statutory provision as from time to time amended, re-enacted or replaced (whether before or after the date of this Deed).

3 Indemnity

- 3.1 Subject to the Act and the provisions of this Deed, the Council shall indemnify and keep indemnified the Individual against all liabilities (other than the liability set out in clause 3.2) attaching to him in connection with any negligence, default, breach of duty or breach of trust by him as a result of his acts and/or omissions relating to his role as the Council's Representative on the Board of the Company.
- 3.2 Clause 3.1 shall not apply to any liability incurred by the Individual as a result of any action by or failure to act by him which:
- 3.2.1 constitutes a criminal offence; or
 - 3.2.2 is the result of fraud, or other deliberate wrong doing or recklessness on his part.
- 3.3 Notwithstanding clause 3.2 and subject to clause 3.4 and clause 5, the Council shall provide an indemnity in relation to the defence of any criminal proceedings brought against the Individual and any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence provided that the Individual believed that the action, or failure to act, in question was within the powers of the Company and it was reasonable for him to hold that belief at the time when he acted or failed to act.
- 3.4 Any indemnity payment by the Council to the Individual pursuant to clause 3.1 is conditional upon:
- 3.4.1 compliance by the Individual with clause 5 to the extent applicable in the circumstances; and
 - 3.4.2 the Individual having made an application in writing to the Council supported by the production of documentation which is, in the reasonable opinion of the Council satisfactory evidence that the Relevant Liability has been incurred by the Individual and of the date that it was incurred.
- 3.5 The obligation of the Council to indemnify the Individual pursuant to clause 3.1 shall (subject to clauses 3.2 and 3.4 and 5) remain in full force and effect in respect of any Relevant Liability arising from the acts or omissions of the Individual at any time during his period of office as the Council's Representative on the Board of the Company including, without limitation, any Relevant Liability arising from the Individual's acts or omissions during such period but incurred after he ceases to hold the office set out above.

4 **Insurance**

- 4.1 The Council shall secure in relation to this indemnity professional indemnity insurance cover for the Individual which will include arranging for and paying for that insurance.

5 **Conduct of Claims and Recovery**

5.1 If the Individual becomes aware of any circumstances which may lead to the Council being liable to make a payment or advance funds under this Deed, the Individual shall:

5.1.1 as soon as practicable, give written notice of such circumstances;

5.1.2 keep the Council informed of any developments in relation to such circumstances (including by providing the Council with such information and copies of such documents as the Council may reasonably request) and consult the Company regarding the conduct of any claim arising in connection with such circumstances; and

5.1.3 not make any admission of liability, agreement or compromise with any person in relation to any such circumstances without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).

5.2 In the event that the Council makes any payment pursuant to this Deed, the Council shall be subrogated to the extent of such payment to all of the Individual's rights of recovery against third parties (including any claim under any applicable directors' and officers' insurance policy) in respect of the payment and the Individual shall do everything that may be necessary to secure any rights including:

5.2.1 the execution of any documents necessary to enable the Company effectively to bring an action in the name of the Individual, and

5.2.2 the provision of assistance as a witness.

5.3 If the Council makes any payment to or for the benefit of the Individual pursuant to this Deed and the Individual subsequently recovers or becomes entitled to recover from a third party any amount which is referable to any part of the liability for which payment was made by the Council, the Individual shall immediately repay or procure the repayment to the Council of so much of the amount paid by the Council as does not exceed the amount recovered (or entitled to be recovered) by the Individual, less any reasonable costs and expenses incurred by the Individual in effecting any such recovery which are not recoverable from any third party.

5.4 The Individual shall not be entitled to recover more than once pursuant to this Deed in respect of any matter giving rise to a Relevant Liability.

6 **General**

6.1 This Deed shall be binding on and shall inure for the benefit of the successors of the parties to this Deed.

6.2 A party may not (whether at law or in equity) assign, transfer, grant any security interest over, hold on trust or deal in any other manner with the benefit of the whole or any part of this Deed, nor purport to do any of the same.

6.3 A person who is not a party to this Deed (a third party) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

- 6.4 No variation of this Deed shall be effective unless it is in writing and signed by or on behalf of each of the parties to this Deed.
- 6.5 Any notice or other communication to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or receipted courier (marked, in the case of communications to the Council, for the attention of the [Executive Director of Resources and Regeneration] to the parties' respective addresses set out in this Deed or as otherwise notified by the relevant party from time to time (in accordance with the provisions of this clause). A notice or other communication given under this Deed shall be deemed to have been received upon delivery to the address referred to in this Deed.
- 6.6 This Deed shall be governed by and construed in accordance with the laws of England.
- 6.7 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Deed.

In witness of which this document has been executed by each of the Council and the Individual as a **Deed** on the date set out at the head of this document.

THE COMMON SEAL of)
THE LONDON BOROUGH)
OF LEWISHAM was)
hereunto affixed in)
the presence of:-)

Authorised Signatory

Executed as a deed by)
X)
))
))
in the presence of [])

witness signature

name

address

occupation