Appendix 2C

Alternative Delivery Models – Options Appraisal
Unincorporated Association

Option Being Explored	**Unincorporated Association**
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Description of model	HM Revenue and Customs stipulates that although the term 'unincorporated association' is not defined in the Taxes Acts it can be described as an association of individuals formed for a particular purpose, but having no distinct legal personality with the following characteristics: - It is not a legal entity, - It is an organisation of persons or bodies with an identifiable membership (possibly changing), - It has a membership who are bound together for a common purpose by an identifiable constitution or rules (which may be written or oral), - It is an organisation where the form of association is not one which is recognised in law as being something else (for example, an incorporated body or a partnership), - It must have an existence distinct from those persons who would be regarded as its members, - The tie between the persons need not be a legally enforceable contract.
Legal considerations	**Legal status** of an unincorporated association: - individuals agree or 'contract' (by oral or written agreement) to come together for a common purpose which may be of a social nature - It is formed for a particular purpose, but has no distinct legal personality - Cannot sue or be sued. - The association can only appear in court in the name of participating individuals, such as officers, directors or members - If filing a lawsuit related to the unincorporated association, the officers, directors or members would be required to individually file a joint lawsuit **Property** - The unincorporated association cannot own property directly, but can own property through a trust. Title should be taken in the name of individuals such as officers, directors or members. **Member's unlimited liability** - The exposed individual assets of the officers, directors and members could be seized to pay for damages associated with the association's activities, as well as to satisfy debts and other contractual obligations of the association (which are generally held to be the joint obligations of the members). **Governance** - The individuals in the association make their own rules for running the organisation and, therefore, have greater control and flexibility of its establishment and development. **Taxation** - Each member is responsible for their individual tax and accounts. There is no requirement to submit annual returns. **Trade** - Unincorporated associations can trade or have other business objectives, or carry on commercial activities, but would be ineligible to apply for funding aimed at more regulated organisations, such as charities **Sequestration** - Can be sequestrated (the act of removing, separating or seizing anything from the possession of its owner, particularly in law, the taking possession of property under process of law for the benefit of creditors

	or the state) **Dissolution -** When a corporation formally dissolves, except in unusual circumstances, all liabilities of the corporation are released and there need be no concern about whether closure has occurred. By contrast, when an unincorporated association dissolves, there is no such formal legal closure, and certain liabilities may be asserted against former officers, directors and/or members of the association years later. **Merger -** If an unincorporated association at some future point desires to merge with another organisation, the merger process is safer and more well-defined if both entities are corporations. **Insurance -** Obtaining insurance, however, is often more difficult for an unincorporated association. In certain circumstances, the insurance company may not be able to determine the precise authority for the organisation and its operation.
Procurement considerations	• An unincorporated association has no separate legal identity. This means that members will have to sign loans and contracts as individuals and carry the risk of personal liability. • Although an unincorporated association cannot own property, it may be able to set up a trust to legally hold property and assets for the community they are intended to benefit.
HR and ICT considerations	• In the past, Unincorporated Associations would have had the benefit of a wide range of schemes providing HR and ICT technical support to the third sector (particularly the local authority). Unfortunately, due to the current economic climate most funded projects have been unable to secure further funding and the services discontinued. The alternative then became paying via the Private sector, which for some unincorporated associations is an unaffordable option. Thus, instead of ICT being an asset to the organisation it becomes more of a burden. Similarly, the lack of HR expertise would lead to untold hardship for staff and legal issues for the association. • The more sustainable solution at present is to buy into the ever increasing number of ICT and HR social enterprises which are able to offer a high quality service at affordable cost due to their social status and in turn provide support at lower costs.
Equality considerations	• Subject to one member one vote • A management committee is elected to run the organisation on behalf of the members. They make their own rules for running the organisation and set these down in a democratic constitution • Not subject to any reliable and consistent set of rules concerning formation, administration and governance, which can create difficulties and uncertainty when questions in these areas arise.
Initial overview of costs to be considered	• Unincorporated associations are relatively straightforward to run and cost nothing to set up. • Allocation of association operating costs among the owners. • Founders of the association may provide start-up funds or apply for a grant • Typically, dues have been used to subsidise services and pay for operating expenses. But most groups find there is a ceiling on what members will pay, and that ceiling does not usually allow for all desired activity. Thus, the importance of ‘non-dues’ income the rules for generating such income will be decided by the management committee.

Comment on model for local authority	• Would meet the requirement of an alternative delivery model in terms of being autonomous from the local authority, but particularly unstable in many respects due to issues around legal status, assets, liability, insurance, accountability and governance structure/ policy. • Although, the unincorporated association is useful to test the viability of a model, this structure is probably not a long-term solution nor a suitable model for the local authority as it does not provide robust and consistent mechanisms to enter into contracts, protect assets, employ staff or expand the enterprise.
Comment on model for community	• Not a particularly suitable model for the community for the same reasons listed above for the local authority • As the members have legal responsibility for the association the legal nature of the association changes each time the membership changes. This may lead to instability and reservations from those considering business prospects within the association. • The Unincorporated Association structure is most suitable for - The majority of small local clubs - Clubs without significant buildings, equipment, or financial assets - Clubs that provide services primarily for their own members (rather than the general public) - Clubs that are not engaged in high-risk activity where accidents are far more likely and potentially costly if negligence could be proved - Clubs that protect themselves against third party liability and negligence through a standard insurance policy for their activity
Can assets be protected?	• Assets generally unprotected in the event members unable to meet the cost of losses personally. However, unincorporated associations may be subject to sequestration whereby property is taken under due process of law for the benefit of creditors or the state. • A common problem concerning unincorporated associations is the distribution of their assets when they are dissolved. Where the assets are funds that have been raised by public subscription the prevailing view is that there is no obligation to return these funds to their contributors. However, such a return should be affected where the number of contributors was small and readily ascertainable. • Assets are usually uninsurable due to the fact that the association is not a legal entity recognisable to insurance companies.
Advantages	**Tax exemption** (See notes on page 3) - possible but not guaranteed**.** HMRC may treat some unincorporated associations with very small tax liabilities, (collectively known to HMRC as 'small clubs'), as dormant for Corporation Tax purposes. **Trade** – Unincorporated associations can trade or have other business objectives, or carry on commercial activities. However, they are ineligible to apply for funding aimed at more regulated organisations such as charities. **Set-up** - they are simple to set up, being founded by agreement between the members, no further steps such as registration with Companies House or the Financial Services Authority are required. Also, there are no costs involved in set up.

	Dissolution - Simple to dissolve. Good means of testing whether a group's aims and objectives can be achieved and whether its management committee will be effective before applying to become a registered charity or other form of social enterprise **Privacy** - No obligation to make their affairs public. However, those providing funds / grants will often request information such as annual accounts and names/contact details of management committee members as a condition of funding.
Disadvantages	**Legal status** - It is not a body corporate and does not have a separate legal existence from its individual members, accordingly it can neither sue nor be sued other than through its officers and members. **Liability** - Members have unlimited liability for the association. Thus, management committee members entering into contracts can be personally sued and may have to meet the costs of any legal action / payment of any debt personally. Any contract which has been entered into in an association's name may be declared null and void. **Trade** – Although unincorporated associations can trade, they are ineligible to apply for funding aimed at more regulated organisations, such as charities **Accountability** - Lack of accountability to the public as an unincorporated association does not have to file accounts and other information with Companies House. Neither is it registered with or regulated by either Companies House or the Financial Services Authority, which regulate companies, charities and co-operatives. Also, they do not have to submit annual returns. **Policy** – Unincorporated associations are not subject to any reliable and consistent set of rules concerning formation, administration and governance. This can create difficulties and uncertainty when questions in these areas arise from within the local authority, the judicial system or the public. **Intellectual Property Rights** - Ownership of trademarks, copyrights and other intellectual property can be complicated as members may disagree over ownership rights in the property. **Assets** -Land and investments cannot be held other than in the name of officers or trustees. **Liquidation procedure** - No statutory liquidation procedures exist. Therefore, an unincorporated association association cannot be voluntarily wound up under the Insolvency Act 1986.

***Notes on tax exemption:**

To qualify, both of the following must apply:

- The association's annual Corporation Tax liability must not be expected to exceed £100
- The association is run exclusively for the benefit of its members

This may limit the level of advantage gained as for each year the association is treated as dormant, it must not have any:

- trading losses available for offsetting against profits
- chargeable gains or disposals
- anticipated payments from which tax is deductible and payable to HMRC, for example if the association is an employer responsible for deducting and paying over the PAYE tax to HMRC