

DATED _____ **2023**

- (1) MEDWAY COUNCIL
- (2) [NAME OF COMPANY]
- (3) [NAME OF SUBSIDIARY]¹

MEMORANDUM OF UNDERSTANDING
relating to the
[NAME OF COMPANY]
[GROUP OF COMPANIES]

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BETWEEN:

- (1) **MEDWAY COUNCIL** whose office is at Gun Wharf, Dock Road, Chatham, Kent ME4 4TR (the "Council");
- (2) **[NAME OF COMPANY]** a company incorporated in England and Wales (registered with number []) and whose registered office is at [] (the "Company");
- (3) **[NAME OF SUBSIDIARY 1 Limited]** a company incorporated in England and Wales (registered with number []) and whose registered office is at []; and
- (4) **[NAME OF SUBSIDIARY 2]** a company incorporated in England and Wales (registered with number []) and whose registered office is at []

BACKGROUND:

- (A) The Company [and the Subsidiaries] are private companies limited by shares, incorporated in England and Wales under the Companies Act 2006 on []. Details of each company are set out in Schedule 1.
- (B) The Council is the sole Shareholder of the Company [and the Company is the sole Shareholder of the Subsidiaries as set out in Schedule 1].
- (C) This Agreement sets out the terms and conditions on which the Council will participate in the Company as its shareholder ([and the relationship between the Company, the Subsidiaries and the Council]) and is made pursuant to the Council's powers under Sections 1 and 4 of the Localism Act 2011, Section 95 of the Local Government Act 2003 and the Local Government (Contracts) Act 1997, section 1.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND DEFINITIONS

1.1 In this Agreement the following expressions have the following meanings:

"Act"	means the Companies Act 2006
"Articles"	the articles of association of the Company [(or, if the context so requires, of a Subsidiary)], as may be amended or replaced from time to time
"Annual Accounts Date"	the accounting reference date of the Company [(and each Subsidiary)] from time to time currently being 31 March in each year
"Appointment Protocol"	means the protocol for each Group Member dealing with the process for the appointment of the Non Executive Directors to the Board as approved, updated and amended by the Council in writing from time to time
"Approved Business Plan"	any Business Plan approved by the Shareholder
"Auditors"	means auditors of the Company [(and each Subsidiary)] from time to time

"Board"	the Board of the Company [(or, where the context so requires, of a Subsidiary)]
"Business"	the business of the Company [and Subsidiaries] described in Clause 3 and such other business as the Council may agree from time to time in writing should be carried on by the Company
"Business Day"	a day other than a Saturday or Sunday or public holiday in England and Wales
"Business Plans"	means the business plans consisting of the Group Business Plan, [each Subsidiary Business Plan] [any specific Business Plans e.g. project Business Plans where relevant] (or any of them as the context may require) in each case as agreed by the Council in accordance with the provisions of this Agreement and as the same may be varied or updated from time to time in accordance with the provisions of this Agreement
"Business Plan and Reporting Guidance"	means the guidance in the form notified by the Council to the Company from time to time setting out the form and content of each type of Business Plan and the Council MI
"Cabinet"	the executive of the Council within the meaning of the Local Government Act 2000
"Cabinet Member"	a member of the Cabinet
"COI Policy"	means the Conflicts of Interest Policy of the Group in the agreed form by each Group Member, as may be updated in accordance with the Scheme of Delegation
"Completion"	completion of the matters set out in Clause 2
"Conflict Matter"	has the meaning set out in the COI Policy
"Conflict Matter Documentation"	has the meaning set out in the COI Policy
"Cost to Complete Report"	means a report prepared for the Shareholder Board on an agreed basis in each case commencing one month after the start of activities on a project in accordance with the Business Plan and Reporting Guidance.
"Council MI"	means the management information to be sent to the Shareholder Board in accordance with Clause 13.3 as detailed in the Business Plan and Reporting Guidance
"Council Nominee Directors"	means the Directors appointed by the Council
"Director"	any director for the time being of the Company (or, if the context so requires, of a Subsidiary),
"Environmental Information Regulations"	the Environmental Information Regulations 2004
"FOIA"	the Freedom of Information Act 2000

“Council Reserve Power”	Means the right to make decisions reserved to the Council as set out in Clause 7 (<i>Council Reserve Power</i>) and the Scheme of Delegation
"Group"	means the Company [and the Subsidiaries]
“Group Member”	means [the Company][any one of the Company or a Subsidiary as the context so requires and “Group Members” means any two or more of them as the context requires]
"Group Business Plan"	means the [5 year or less if agreed] business plan of the Group prepared in accordance with the Business Plan and Reporting Guidance, and as the same may be varied or updated from time to time in accordance with the provisions of this Agreement
Non executive Director	means a Director who is not employed by, an officer of, or an elected member of the Council]
"Laws"	means: <ul style="list-style-type: none"> (a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of; (b) the common law and laws of equity as applicable to the parties from time to time; (c) any binding court order, judgment or decree; (d) any applicable industry code, policy or standard; or (e) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party’s assets, resources or business, <p>and "Law" shall be construed accordingly</p>
"New Articles"	the new articles of association to be adopted by the Company [and each Subsidiary] in the form agreed between the parties
"Objectives"	means those identified as such and agreed by the shareholder board
"Original Project Business Plan"	means the first Project Business Plan adopted in relation to a Project
"Parent Undertaking"	a parent undertaking as defined in section 1162 of the Companies Act 2006

"Policies"	means each of the policies in the agreed form adopted by a Group Member from time to time or otherwise notified to any Group Member in writing by the Council and including: <ul style="list-style-type: none"> (a) the COI Policy; (b) Remuneration (c) any other document identified and approved by the shareholder board as policy
"Relevant Finance Agreement"	means any agreement entered into between the Council and a Group Member or the Group relating to the provision of any funding whether loan or grant or any other financial arrangement
"Request for Information"	has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environmental Information Regulations
"Resolution"	means: <ul style="list-style-type: none"> (a) a Special Resolution (having the meaning given in section 283 of the Companies Act 2006); or (b) an Ordinary Resolution (having the meaning given in section 282 of the Companies Act 2006)
"Scheme of Delegation"	means the scheme setting out how decisions of each Group Member are to be made as set out in Schedule 2
"Shares"	means a share in the capital of the Company (or, if the context so requires, of a Subsidiary)
"Shareholder"	means (in respect of the Company) the Council, and (in respect of each Subsidiary) the Company and/or any person to whom they may properly transfer any Shares in accordance with this Agreement and the Articles, and "Shareholder" shall mean any of them
"Shareholder Board"	means the relevant shareholder board established by the Council to oversee this Company [and its Subsidiaries] at the Cabinet meeting on 11 July 2023 or from time to time and "Shareholder Boards" shall mean all of the shareholder boards established by the Council at the Cabinet meeting on 11 July 2023 or subsequently
"Shareholder Board Terms of Reference"	means the terms of reference for the Shareholder Board as determined by the Council from time to time
"Shareholder Consent"	the prior written consent of the Shareholder given in accordance with the Scheme of Delegation which may be evidenced either:

- (a) by the passing of a shareholder resolution in accordance with the Company's Articles of Association;
- (b) where a shareholder resolution is not required, by way of letter or other written communication addressed to the Company from an authorised signatory of the Council, including an authorised signatory acting on behalf of the Shareholder Committee; or
- (c) by a specific and clearly identifiable reference to the matter requiring consent in an Approved Business Plan.

Shareholder nominee An officer of the council appointed by the shareholder who is entitled to receive all board agendas, papers / briefings etc to be considered at board meetings and or to attend board meetings.

Project means a specific stream of work identified as such and agreed as such by the shareholder board

Project **Business Plan** means a business plan relating to a project, prepared in accordance with the Business Plan and Reporting Guidance, and as the same may be varied or updated from time to time in accordance with the provisions of this Agreement]

["**Subsidiaries**"] means any corporate structure wholly or partly owned by the company

"**Subsidiary Business Plan**" means the [5 year or less if agreed] business plan of each of the Subsidiaries prepared in accordance with the Business Plan and Reporting Guidance, and as the same may be varied or updated from time to time in accordance with the provisions of this Agreement

["**SLA Agreement**"] the agreement to be entered into between the Shareholder and the Company on or around the date of this agreement in relation to services to be provided by the Council to the Company]

"**Teckal Non-Compliance**" has the meaning given in Clause 4.10

"**Update Trigger**" means the triggers for updating the Business Plans as set out in the Business Plan and Reporting Guidance

1.2 In this Agreement, a reference to:

1.3 a Clause or Schedule is a reference to a clause of or schedule to this Agreement

1.4 a Part or paragraph is, unless otherwise stated, a reference to a part of the Schedule or paragraph of the Schedule or Part (as the case may be) in which the reference appears

1.5 a document "in the agreed form" is a reference to a document in the form approved and, for the purposes of identification only, initialled by or on behalf of the Shareholders (in each case with such amendments as may be agreed by or on behalf of the Shareholders)

1.6 a statutory provision includes a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it

- 1.7 any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or other legal concept or thing will in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English term and any English statutory provision will be construed so as to include equivalent or analogous laws of any other jurisdiction
- 1.8 any gender includes a reference to the other genders and the singular shall include the plural and vice versa
- 1.9 "costs" includes a reference to costs, fees, charges and expenses of every description
- 1.10 a "person" includes a reference to an individual, partnership, unincorporated association, body corporate, government, state or agency of a state, local or municipal Council or government body or any joint venture wherever incorporated or situated (in each case whether or not having separate legal personality) and includes a reference to that person's legal personal representatives and successors
- 1.11 a "subsidiary", "holding company" or "body corporate" has the respective meaning set out in sections 1159 and 1173 of the Act save that for the purposes of section 1159 of the Act, a company shall be treated as a member of another company if any shares in that other company are registered in the name of
- 1.12 a person by way of security (where the company has provided the security) or
- 1.13 a person as nominee for the company
- 1.14 "company" shall be construed so as to include any company, corporation or other body corporate wherever and however incorporated or established
- 1.15 a "parent undertaking" has the meaning set out in section 1162 of the Act
- 1.16 a "group undertaking" has the meaning set out in section 1161 of the Act
- 1.17 a "connected person" is a reference to a person connected with another within the meaning of section 1122 CTA 2010
- 1.18 an "associated company" and "control" shall be construed in accordance with sections 449 and 1124 of the CTA 2010 (and "controls" and "controlled" shall be construed accordingly)
- 1.19 "equity share capital" has the meaning set out in section 548 of the Act
- 1.20 "eligible member" has the meaning set out in section 289 of the Act
- 1.21 something being "in writing" or "written" shall include a reference to that thing being produced by any legible and non-transitory substitute for writing (excluding, unless otherwise expressly permitted by this Agreement or the Articles, in electronic form as defined in section 1168 of the Act)
- 1.22 a "day" (including within the phrase "Business Day") shall mean a period of twenty four (24) hours running from midnight to midnight
- 1.23 any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented (other than in breach of the provisions of this Agreement) from time to time and
- 1.24 a "party" is a reference to a party to this Agreement from time to time (either by virtue of having executed this Agreement or having entered into a Deed of Adherence) and includes a reference to that party's legal personal representatives, successors and permitted assigns, and "parties", "party to this Agreement" and "parties to this Agreement" shall be construed accordingly.

- 1.25 Save where otherwise defined in this Agreement or the context requires otherwise, words and expressions defined in the Articles have the same meanings when used in this Agreement, and a reference in this Agreement to a numbered Article shall be to the corresponding Article in the Articles.
- 1.26 The Schedules form part of this Agreement and shall be interpreted and construed as though they were set out in this Agreement.
- 1.27 The headings to the Clauses, Schedules, Parts and paragraphs are for convenience only and shall not affect the interpretation or construction of this Agreement.
- 1.28 The rule known as the ejusdem generis rule shall not apply and accordingly general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things.
- 1.29 Any phrase introduced by the words "include", "includes", "including" or similar words are to be construed as illustrative only and without limitation to the related general words.

2. COMPLETION

Completion shall take place immediately following execution of this Agreement, when the parties shall procure that meetings of the Board are held as may be necessary to adopt the New Articles;

3. THE BUSINESS OF THE COMPANY

- 3.1 The Shareholder acknowledges and agrees that unless and until they agree otherwise, the Shareholder has entrusted (within the meaning of Regulation 12(1)(b) of the Public Contracts Regulations 2015 (or any similar replacement thereof)) the Company with the delivery of the objectives of, and the projects anticipated by, the Approved Business Plan or otherwise approved by the Council, both in and outside of Medway and on sound commercial profit-making principles.
- 3.2 The Company will in consultation with the Council make decisions relating to the overall strategy for any Subsidiary and their respective businesses, will communicate such decisions to those Subsidiaries, and (insofar as they are legally able) procure that those Subsidiaries operate in accordance with such decisions.

4. CONDUCT OF THE GROUP'S AFFAIRS

- 4.1 Without prejudice to the specific provisions of this Agreement, each of the Shareholders agrees to act in good faith to promote the interests of the Company [and the Subsidiaries] as applicable for the benefit of all of the Shareholders.
- 4.2 Each Group Member and the Shareholders shall exercise their respective powers to procure (so far as they are legally able) that each Group Member shall use all reasonable endeavours to ensure that their respective appointees as Directors shall:
- 4.2.1 carry on the Business in accordance with Good Industry Practice;
 - 4.2.2 transact all its business on arm's length terms.
 - 4.2.3 carry on the Business in a manner that complies with:
 - (a) all Laws
 - (b) the Objectives
 - (c) the provisions of this Agreement and the Articles (to the extent it is reasonably within their respective powers to do so);
 - (d) the applicable Business Plan(s);

(e) the Policies.

- 4.3 No Group Member shall carry out any activity which would render the holding of Shares by the Shareholder unlawful.
- 4.4 Where any Group Member requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.
- 4.5 Each Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its Subsidiaries with the Shareholder's designated officers and executives at any time. All books, records, accounts and documents relating to the business and the affairs of the Company and its Subsidiaries shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Shareholder properly informed about the business and affairs of the Company and its Subsidiaries or to protect its interests as the Shareholder. Any confidential information secured as a consequence of such discussions and examinations shall be kept confidential by the requesting Shareholder and its designated officers and executives in accordance with the terms of Clause 19.
- 4.6 Each Group Member agrees with the Shareholder that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Group and will generally keep the Shareholder informed of the progress of each Group Member's business and affairs and in particular will procure that the Shareholder is given such information and such access to the officers, employees and premises of the Group as it may reasonably require for the purposes of enabling it to monitor its investment in the Group and to comply with its obligations under the Prudential Code for Local Authorities.
- 4.7 No Group Member shall breach nor cause the Shareholder to be in breach of the Local Authorities (Companies) Order 1995, Part V of the Local Government and Housing Act 1989, the Local Government Public Involvement in Health Act 2007 or its obligations under the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 (together with any statutory modifications or replacement legislation on procurement by public bodies introduced on or after the date the United Kingdom ceased to be a Member State of the European Union) and the Company (including its officers) shall assist the Council in compliance with its governance, audit and scrutiny responsibilities and procedures, and to provide all and any documents, information or data required by the Council to enable such compliance.
- 4.8 The Company shall use its reasonable endeavours to ensure that:
- 4.8.1 no more than 19.99% of the total average annual turnover of each Group Member in any period of three financial years shall derive from activities other than those entrusted (within the meaning of Regulation 12(1)(b) of the Public Contracts Regulations 2015 (or any similar replacement thereof)) to it by the Shareholder or a person over which the Shareholder exercises Control (and for the purposes of this obligation only Control shall have the meaning attributed to it in Regulation 12(3) or 12(5) of the Public Contracts Regulations 2015); and
- 4.8.2 the Company shall not accept any direct private capital participation.
- 4.9 If any of the parties become aware that, for whatever reason, that any Group Member no longer fulfils any of the requirements of Regulation 12(4) of the Public Contracts Regulations 2015 ("**Teckal Non-Compliance**") or such Teckal Non-Compliance is likely to occur, it shall immediately notify the other parties. Following such notification, the parties shall work together to ensure action is taken to either:
- 4.9.1 remedy the Teckal Non-Compliance; or
- 4.9.2 take steps to prevent such Teckal Non-Compliance occurring.
- 4.10 Each of the parties undertakes to keep books, accounts and records that properly, fairly and accurately record and report all transactions with respect to the matters which are the subject of this

Agreement, or are in connection with this Agreement, and any matters resulting therefrom, to comply with Laws in relation to such record keeping requirements and to keep such books, accounts and records for the period required by Law and/or government policy or for at least six (6) years (whichever is the longer) following the period to which they relate. Each of the Shareholders shall be entitled, having given reasonable notice, to have access to, inspect and audit all invoices and accompanying documents issued by, and the financial books and records of the relevant Company in order to verify compliance with this Clause 4.

5. **THE BOARD**

5.1 **Overview**

Subject to the Scheme of Delegation and Clause 7 (Council Reserve Power), the management of each Group Member shall be vested in its Board.

5.2 **The Company**

5.2.1 Unless otherwise agreed by the Shareholder, the Board of the Company shall comprise:

- (a) Council Nominee Directors;
- (b) Non-Executive Directors

5.2.2 One of the Non-Executive Directors shall be appointed as the Company Chair and another Non-Executive Directors shall be appointed as Vice Chair, such appointments being made by the Company Board. If such appointees no longer serve as Chair or Vice Chair for whatever reason, the Board may appoint a Director to act as interim Chair or Vice Chair on a temporary basis until such time as the Board appoints a replacement Independent Director as Chair or Vice Chair.

5.2.3 Any individual to be appointed as a Non-Executive Director of the Company shall be appointed in accordance with the Appointment Protocol.

5.2.4 The Council shall from time to time be entitled to appoint, maintain in office and remove by notice to the Company at its registered office any Director of the Company [(including any Non-Executive Directors selected pursuant to the Appointment Protocol.

5.2.5 No Director shall be entitled to any remuneration from the Company in their capacity as Directors save as provided for in the Company Articles and the remuneration policy.

5.2.6 Unless otherwise agreed by the Board, the Company shall procure that meetings of the Board shall be held not fewer than six (6) times per year and otherwise as circumstances require. No meeting of the Board shall normally be convened on less than five (5) Business Days' notice, but a meeting of the Board may be convened on short notice if at least two Directors of the Company and the shareholder nominee agree in writing.

5.2.7 The quorum for the transaction of business at any meeting of the Board shall be three Directors inclusive of the company Chief Executive.

5.3 **The Subsidiaries**

Each of the Subsidiaries shall within one calendar of the company entering into this MOU enter into an MOU that mirror this

The provisions at 5.2 will apply to the Subsidiary as well as to the Company.

5.4 **Alternates**

5.4.1 Subject to Clause 5.5.2, any Director may, by giving notice in accordance with the Articles, appoint the company Chief Executive or another Director, to be his alternate and may, in

the same way, remove an alternate so appointed by him. An alternate shall be entitled to receive notice of all meetings of the Board and to attend and vote as such at any meeting at which the Director appointing him is not personally present, and generally in the absence of his appointor to do all the things which his appointor is authorised or empowered to do. An appointed Director, who is also an alternate, shall be entitled, in the absence of his appointor:

- (a) to a separately vote on behalf of his appointor in addition to his own vote; and
- (b) to be counted as part of the quorum of the relevant Board on his own account and in respect of the Director for whom he is the alternate.

5.4.2 Where a person has been appointed as an alternate by a Director ("**Director A**"), such alternate shall not be entitled to act as alternate for any other Director, until such time as Director A has removed such person as his alternate by giving notice in accordance with the Articles.

5.5 Meetings

5.5.1 A reasonably detailed agenda of the business to be discussed and documents relating to issues to be considered at any meeting of the Board shall be distributed with the notice of the meeting of the Board in accordance with the Articles (save that Conflict Matter Documentation in relation to a Conflict Matter which is being distributed with the agenda shall not be distributed to any Director who is conflicted with respect to that Conflict Matter nor, save as provided in Clause 6 (Conflict of Interest), shall such Director have access at any other time to that Conflict Matter Documentation).

5.5.2 If within fifteen (15) minutes from the time appointed for a meeting of the Board a quorum is not present, the meeting shall be adjourned to the same day of the next week at the same time and place. Each Director not present at the meeting shall be notified within forty eight (48) hours of the adjournment by the Company by notice in writing of the date, time and place of the adjourned meeting.

5.6 Taking decisions

5.6.1 All resolutions of the Board (except those relating to Conflict Matters (in respect of which Clause 5.8 (Conflict Matters) and Clause 6 (Conflict of Interest) shall apply) [and those which shall require a Shareholder recommendation as set out in Scheme of Delegation] shall be decided by majority vote of those Directors present and entitled to vote.

5.6.2 The Chair of any meeting of the Board shall be entitled to a casting vote.

5.6.3 A resolution (which may be in counterparts) in writing (including by email) signed (which, in respect of electronic resolutions, may be by way of electronic signature) by a majority of the Directors who would be entitled to vote on the matter at a meeting of the Board shall be as valid as if it had been passed at a meeting of the Board duly convened and held.

5.7 Conflict Matters

Where there is a Conflict Matter to be considered by the Board, the relevant Directors who are conflicted shall be entitled to attend any meeting of the Board at which the Conflict Matter is to be considered to speak and present their views but shall not be entitled to vote on or count in the quorum in respect of such Conflict Matter, and shall absent themselves before any discussions regarding the Conflict Matter take place between the Directors who are not conflicted, and any votes on the Conflict Matter are taken. In such circumstances:

5.7.1 at least two (2) Directors who are not conflicted, shall constitute a quorum for the purposes of considering the Conflict Matter. Directors who are not conflicted shall be entitled to vote on a resolution of the Board in respect of the Conflict Matter;

5.7.2 any written resolution of the Directors in respect of the Conflict Matter which is signed by a majority of the Directors who are not conflicted shall be as valid as if it had been passed at a meeting of the Board duly convened and held and

5.7.3 this Clause 5 and Article [13] of the Articles (Quorum for Directors' Meetings) (in respect of the Company) (and any equivalent provisions in the articles of association of the Companies) shall be construed accordingly.

6. **CONFLICTS OF INTEREST**

6.1 Each Group Member shall adopt the COI Policy.

6.2 Without prejudice to the provisions of the COI Policy, a Director must:

6.2.1 declare the nature and extent of any interest, direct or indirect, which he has in any proposed transaction or arrangement with the Company of which it is a Director or any arrangement entered into by that Company which has not been previously declared; and

6.2.2 (subject to Clause 5) absent himself from any discussions of the Board in which it is possible that a conflict of interest will arise between his duty to act solely in the interests of the Company and any personal interest (including but not limited to financial interest).

7. **COUNCIL RESERVE POWER**

7.1 The Council may direct the Directors of the Company and or any Subsidiary to take, or refrain from taking, specified action, to the extent that such direction may not require such Group Member to do anything not permitted by Law, or refrain from doing anything required by Law. This can be communicated to the directors by the shareholder nominee and the validity of such direction shall not be challenged

7.2 No such decision invalidates anything which the Directors have done before the passing of the resolution.

8. **FINANCE FOR THE COMPANY**

8.1 The Group Members and the Council acknowledge that there is no obligation on the Council to provide funding to any Group Member, except as provided for in a Relevant Finance Agreement.

8.2 Any funding by the Council will be to the extent compliant with UK Subsidy Control Legislation.

8.3 Where a Group Member requires funding or other financial support from the Council, it must request approval of an amendment to the Business Plan in accordance with the terms of this Agreement and any Relevant Finance Agreement and must comply with any further requirements in accordance with the Council's constitution, standing orders and financial regulations.

9. **SCHEME OF DELEGATION**

9.1 The Council has established each Shareholder Board as a Cabinet subcommittee in accordance with the decision of the Cabinet on 11 July 2023 as more particularly set out the Terms of Reference. Contained in the councils constitution

9.2 The role of the Shareholder Board includes:

9.2.1 Receiving /monitoring information on the company's performance against budget, finances, business plan, staffing, risks and such other matters as determined by them from time to time as appropriate;

9.2.2 exercising decisions relating to the Council's role as shareholder, member, owner, lender, or other position of significant control over the subsidiaries, where those decisions have been delegated to the relevant Shareholder Board;

- 9.2.3 making reports and recommendations to the Council on areas outside of the Shareholder Board's delegated authority.
- 9.2.4 making reports and recommendations to the Board on proposed projects/ policies or any other matters to be considered by the board
- 9.3 Authority to make certain decisions on behalf of the Council is delegated to the Shareholder Committee.
- 9.4 Decisions which are not delegated to the Shareholder Committee will be taken through the Council's usual decision-making processes in accordance with the Council's governance and constitutional framework as amended from time to time.
- 9.5 Subject to the matters reserved to the Council pursuant to the Scheme of Delegation (and save to the extent otherwise expressly provided in the Act) the Shareholders of each Group Member have vested the management and operations of those companies in their respective Boards.
10. **BUSINESS PLANS**
- 10.1 **The Business Plans**
- 10.1.1 The Group Business Plan shall apply to each Group Member from time to time.
- 10.1.2 The Company shall adopt the first Group Business Plan within 56 days of Completion.
- 10.1.3 The Board shall procure that the Business Plans are prepared and updated in accordance with the Business Plan and Reporting Guidance and additionally shall review the Group Business Plan:
- (a) no less than each council financial year
 - (b) at least thirty (30) business days prior to the Group acquiring a project
 - (c) where a Subsidiary Business Plan is updated pursuant to Clause 10.2; or
 - (d) if an Update Trigger is evoked
- 10.1.4 No more than thirty (30) days] following such review the parties shall procure that the Board finalise and circulate updated revised Business Plans to the Shareholder Board and in circumstances in which the Board fails to do so, the Shareholder Board may circulate updated revised Business Plans and instruct the Board to adopt them pursuant to Clause 7 (Council Reserve Power).
- 10.1.5 The Shareholder Board shall use reasonable endeavours to seek to agree such Business Plans (making any amendments they consider appropriate) and to adopt them as the formal Business Plans within thirty (30) days of the date they are first circulated to the Shareholder Board in accordance with Clause 10.1.4.
- 10.1.6 The revised Business Plans circulated under Clause 10.1.4 with such amendments thereto as may be agreed by the Shareholder Board (in accordance with Clause 10.1.5) shall replace then current Business Plans as the formal Business Plans of the Group upon the later of:
- (a) the start of the period to which it relates; and
 - (b) the date on which the Shareholders approve such variations in accordance with Clause 10.1.5.
- 10.1.7 Until such time as draft Business Plans circulated under Clause 10.1.4 are approved by the Shareholder Board (or notified and adopted following the use of the Council Reserve

Power), the Business Plans that have most recently been adopted as the formal Business Plans shall continue to be the formal binding Business Plans applicable to all Shareholders of the Group [(including any Site Business Plans then in existence)].

10.2 **Subsidiary Business Plans**

10.2.1 The Board of each Subsidiary shall prepare a draft Subsidiary Business Plan for approval by the Council within 56 days of Completion.

10.2.2 The Board of the Company shall procure that any existing Subsidiary Business Plan is reviewed and updated:

(a) generally, when the Group Business Plan is updated in accordance with Clause 10.1;

(b) if a project Business Plan is controlled by a Subsidiary it is updated in accordance with Clause 10.3;

(c) if an Update Trigger is evoked by a Subsidiary.

10.2.3 The provisions of Clauses 10.1.4 to 10.1.7 inclusive shall apply to the Subsidiary Business Plan as to the Group Business Plan.

10.3 **Project Business Plans**

10.3.1 Where a Group Member identifies a suitable project for development by the Group, the Board of the relevant Group Member will procure the preparation of a draft project Business Plan for approval by the Council.

10.3.2 If approved by the Council, the project Business Plan will be adopted by the relevant Group Member and incorporated into the Overarching and/ or Subsidiary Business Plan as applicable.

10.3.3 The Board of the relevant Group Member shall procure that any existing project Business Plan is reviewed and updated:

(a) generally, when the Overarching Business Plan is updated in accordance with Clause 10.1; and

(b) if an Update Trigger is evoked by a Subsidiary.

10.3.4 The provisions of Clauses 10.1.4 to 10.1.9 inclusive shall apply to any project Business Plan.

11. **PROJECT DEVELOPMENT AND ADDITIONAL PROJECTS**

11.1 Where the company identifies a project that it wishes to progress it will obtain authority from the shareholder board which will determine the request following the submission of a report inclusive of a business plan with detailed financial projections, opportunity costs, return on investment risks, detailing the project and benefits sought to delivered.

12. **PROGRESS MONITORING**

12.1 Progress against the Business Plans of the Company and the Subsidiaries shall be regularly reviewed at least quarterly at meetings of the Board of the Company and shared with the Shareholder Board. In particular, such reviews shall include consideration of:

12.1.1 whether any amendments are desirable to any Site Business Plan;

- 12.1.2 the detailed programmes for each project, relevant KPIs, KLOE, milestones, gateways, financial updates, risk assessments and the latest Cost-to-Complete Reports prepared for each project; and
 - 12.1.3 any reporting required against outputs and outcomes to be delivered for any Council funding under the terms of a Relevant Finance Agreement and
 - 12.1.4 funding proposals
 - 12.1.5 The Chairperson of the Board and the Chief Executive of the company shall present the monitoring reports to the shareholder board (or upon request a overview and scrutiny committee of the council) and answer an questions raised by the shareholder board or councils officers supporting the board (or members of an overview and scrutiny committee or councils officers supporting such committee).
- 12.2 If, at any meeting of the Board reviewing matters under Clause 12.1, any Director reasonably considers that there has been a material failure of any Group Member to comply with the Business Plans, the Board shall discuss, or convene a further meeting of the Board to discuss, appropriate action to rectify such breach or failure and/or mitigate the effects of the breach or failure as far as possible, and to determine whether there has been a breach of a Project Agreement.
- 12.3 Without prejudice to the generality of Clause 12.2, the Board shall notify the Council:
- 12.3.1 immediately upon any change (whether actual or estimated) required to the projects other than a change permitted under the Approved Business Plan;
 - 12.3.2 immediately upon becoming aware of any event which:
 - (a) has or might have a material adverse effect on the Group; or
 - (b) has a detrimental effect on any aspect of the Business of the Group; or
 - (c) prejudices or might prejudice the Group's ability to deliver the projects in accordance with the Approved Business Plan;
 - (d) may need to be reported to a regulator and or HSE
 - 12.3.3 as soon as reasonably practicable on becoming aware of any claim being threatened or brought against the Group or any Group Member;
 - 12.3.4 immediately upon there being a proposed change to:
 - (a) any Project Document which is material; or
 - (b) the identity or business of any supplier to the Group;
 - 12.3.5 immediately upon becoming aware of any investigations into or findings of any breach of:
 - (a) any equality or anti-discrimination legislation or regulations directly or indirectly related to the Business whether or not the Group and/or any third party is responsible for the breach or is the subject of the investigation (as appropriate); and/or
 - (b) the Data Protection Laws whether or not the Group and/or any third party is responsible for the breach or is the subject of the investigation (as appropriate);
 - (c) health and safety legislation, financial irregularity, criminal activity, concerns raised under whistleblowing
 - 12.3.6 immediately upon becoming aware of:

- (a) any audit or statutory or regulatory investigation in relation to any aspect of the projects under the Approved Business Plan; or
 - (b) the occurrence of any act/omission of the Group or of any contractors, developers or subcontractors that harms or has the potential to harm the reputation of the Council or to bring it into disrepute;
- 12.3.7 if there is an act, omission, or change which a director acting with all reasonable skill and expertise may consider a material risk to the projects in the Approved Business Plan or to the Business of the Group.

13. FINANCIAL INFORMATION

- 13.1 The Council (or a representative of the Council) shall be entitled to reasonable access to examine the separate books, records and accounts to be kept by the Company and any Subsidiary and to be supplied with all information, including monthly management accounts and operating statistics and other trading and financial information, in such form as the Council may reasonably require, to keep it properly informed about the Business and affairs of the Group and the Company and generally to protect its interests as a Shareholder and otherwise.
- 13.2 Each Group Member separately undertakes to the Council that it will allow the Council (or a representative of the Council) from time to time to carry out an audit or review of all or any part of the Business or any of the affairs of the Group and to designate a person to carry out such audit or review on the Council's behalf. Such person (which may, but need not be, employed by the Council) shall be entitled on reasonable notice (subject to any restrictions contained in Clause 18):
- 13.2.1 to visit and inspect any premises of any Group Member and to discuss the relevant affairs, finances and accounts of the Group with its officers and senior employees;
 - 13.2.2 to inspect any books, records or other documents relating to the Business;
 - 13.2.3 to access any of the Company's or a Subsidiary's premises, personnel, information and communications technology systems and relevant records and data (including Personal Data) as the relevant Shareholder, acting reasonably, considers necessary (subject to such person complying with such security and other procedures which are notified to them and which may be necessary in order to safeguard the information being used in respect of an audit and to comply with the Data Protection Laws);
 - 13.2.4 to access all books, records, documents, materials, information and data (including Personal Data and original or source materials) relating to or used by the Company or a Subsidiary, its personnel, operations or business and any oral or written explanation relating thereto; and
 - 13.2.5 to interview personnel, make copies of any and all documentation (including original or source materials) and have access to and make copies of any computer or other electronic data held by or on behalf of the Company or a Subsidiary,
- and the Company and each Subsidiary shall afford such access and co-operation as may be reasonable in the circumstances to facilitate the carrying out of such audit or review. the Company and the Company shall procure that each Subsidiary shall instruct all relevant personnel to co-operate with all reasonable requests made by the Council (and its auditors and other advisers).
- 13.3 The Company shall procure that the Council MI is prepared in relation to the Company and each Subsidiary which shall contain a report on the revenue and expenditure of the Company [and each Subsidiary during the previous month, month end cash resources and any borrowings, a comparison of the actual revenue and expenditure against that forecast for the corresponding period and the Cost-to-Complete Report for each project. Such information shall be delivered to the Directors within fifteen (15) Business Days of the end of the month to which it relates.

13.4 The Council and the Company agree to use their respective rights under this Agreement (where lawful to do so) to procure compliance with this Clause 13 by each Subsidiary.

14. DISTRIBUTIONS

14.1 Determination of Net Profits

14.1.1 Subject to Clause 14.1.2, the Board shall recommend to the shareholder board with respect to each Financial Year, acting in the best interests of the relevant Company as applicable and having taken into account the prohibitions on Net Profits distribution set out in Clause 14.2 and having taken the advice of the Auditors (if appropriate), what amount (if any) of the Net Profits shall be retained by the Company in respect of:

- (a) reserves for general working capital requirements of the company for the following Financial Year; and/or
- (b) reinvestment back into the company in accordance with the Business Plan; and/or
- (c) any other debt (or part thereof) falling due for repayment in the following Financial Year together with any interest accrued thereon.

14.1.2 The Board shall make payment to the Shareholders in accordance with any Dividend Policy as agreed by the Council from time to time or where no Dividend Policy has been approved by the Council and subject always to the Council Reserve Power, as the Board determines.

14.2 Distributions of Net Profits

14.2.1 Subject to Clause 14.2.2, a Group Member shall not make any profit distribution pursuant to this Clause 14 (to the extent proposed) if:

- (a) there is insufficient cash available;
- (b) it would render the company insolvent;
- (c) the Board resolves that the company would be left with insufficient funds to meet any current or future contemplated obligations or contingencies;
- (d) it would materially adversely affect the ability of the company to comply with the Business Plan during the following Financial Year;
- (e) it would be a distribution in specie;
- (f) it would be in contravention of the Act;
- (g) it would be in contravention of the view of the shareholder board
- (h) it would be in contravention of the Scheme of Delegation; or
- (i) the Directors have acted contrary to their duties.

15. **ANTI-CORRUPTION**

15.1 In this Clause the following words have the following meanings:

"Adequate Procedures" adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010

"Associated Person" in relation to a party to this Agreement, any person (including an officer, employee, agent or subsidiary) who performs services for or on behalf of that party

"Corrupt Activity" extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including without limitation any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 Bribery Act 2010

15.2 Each party declares and undertakes to the other parties that:

15.2.1 it has not and will not in relation to the Company or any Group Member or the operation of the Business, engage in any Corrupt Activity;

15.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;

15.2.3 it has and will maintain in place, or in the case of a Group Member it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;

15.2.4 it has not and will not engage in any activity, practice or conduct which could place a Group Member or any other party in breach of section 7(1) Bribery Act 2010;

15.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this Clause 15.2 and will provide any information reasonably requested by the other party in support of such compliance; and

15.2.6 it will ensure that its Associated Persons will comply with its commitments under this Clause 15.

15.3 Breach of any of the undertakings in this Clause shall be deemed to be a material breach of this Agreement.

16. **CONFLICT WITH THE ARTICLES**

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles, then it is the intention of the Shareholder that the provisions of this Agreement shall prevail. Accordingly, the Shareholder (so far as it is able) shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company or, where relevant, Subsidiary, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the Articles.

17. **NO FETTER**

Nothing in this Agreement shall operate to bind the Council to the extent that it constitutes an unlawful fetter on any statutory power of the Council (but this shall not affect the validity of the relevant provision as between the other parties to this Agreement or the respective obligations of such other parties as between themselves under Clause 16).

18. **DURATION AND TERMINATION**

18.1 Unless it is agreed otherwise in writing by the Council, the Company and each Subsidiary shall be wound up in accordance with this Clause 18 and, without prejudice to any rights and obligations which are expressed to survive termination of this Agreement, this Agreement shall terminate following the occurrence of any of the following events ("**Termination Events**" and each event a "**Termination Event**"):

18.1.1 the insolvency, dissolution or liquidation of any Group Member;

18.1.2 by notice from the Council to each Group Member; or

18.1.3 the parties hereto agree to voluntarily wind up the relevant Group Member (including where there has been a change in Law as a result of which the parties agree the continuation of such company becomes unlawful, impractical or inadvisable), in which case the following provisions of this Clause 18 shall apply in respect of that company that is the subject of such written agreement.

18.2 On the occurrence of a Termination Event parties hereto will procure that, and will do all such acts and execute all such documents as may be necessary to ensure that, the winding up procedure set out in this Clause 18 is followed.

18.3 With effect from the date of the Termination Event:

18.3.1 no further activities or operations of each Company as applicable will be conducted, except as required to wind down the company and its Business

18.3.2 subject to Clause 18.3.1, the parties will use all reasonable endeavours to procure the termination of all other agreements and contracts to the relevant Company is party (including any other Project Documents) as far as possible avoiding such termination being a breach of the relevant contract and

18.3.3 a Winding-up Practitioner shall be appointed in accordance with Clause 18.4

18.4 **Appointment of a Winding-up Practitioner**

The parties hereto shall within ten (10) Business Days of a Termination Event (save that such time period shall be automatically extended by a time period equal to the time taken for the President of the Institute of Chartered Accountants to nominate the Winding-up Practitioner) take such steps as are necessary to commence the appointment of a Winding-up Practitioner over the relevant company in order to wind up that company and its Business in an efficient manner and to ensure that the its assets shall be distributed in accordance with Law (including the Act and/or the Insolvency Act 1986).

19. **CONFIDENTIALITY**

19.1 This Clause applies to:

19.1.1 all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to one of the other parties whether before or after the date of this Agreement;

19.1.2 any information concerning the business affairs of one party or any member of its Group or other information confidential to that party or its Group which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement;

including any information relating to any party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, "**Confidential Information**").

- 19.2 In this Clause, in relation to a particular item of Confidential Information:
- 19.2.1 the Disclosing Party means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and
- 19.2.2 the Receiving Party means the other party.
- 19.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:
- 19.3.1 keep the Confidential Information confidential;
- 19.3.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this Clause 19; and
- 19.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.
- 19.4 Notwithstanding Clause 19.3, the Receiving Party may disclose Confidential Information as follows:
- 19.4.1 to its professional advisers (each, a Recipient) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and
- 19.4.2 to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body.
- 19.5 This Clause 19 shall not apply to any Confidential Information which:
- 19.5.1 is at the date of this Agreement in, or at a later date comes into, the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
- 19.5.2 was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the same pursuant to this Agreement) and which had not previously been obtained under an obligation of confidence; or
- 19.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.
- 19.6 The Company acknowledges that the Company and the Shareholder is subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation, and shall facilitate the Shareholder's compliance with its information disclosure requirements pursuant to and in the manner provided for in Clauses 19.7 and 19.10.
- 19.7 If the Shareholder receives a Request for Information in relation to Information that the Company is holding and which the Shareholder does not hold itself, the Shareholder shall refer to the Company such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the Company shall:
- 19.7.1 provide the Shareholder with a copy of all such Information in the form that the Shareholder requires as soon as practicable and in any event within 10 Business Days (or such other period as the Shareholder acting reasonably may specify) of the Shareholder's request; and

- 19.7.2 provide all necessary assistance as reasonably requested by the Shareholder to enable the Shareholder to respond to a Request for Information within the time for compliance set out in Section 15 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 19.8 Following notification under Clause 19.7, and up until such time as the Company has provided the Shareholder with all the Information specified in Clause 19.7, the Company may make representations to the Shareholder as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Shareholder shall be responsible for determining, at its absolute discretion:
- 19.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 19.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information.
- 19.9 The Company acknowledges that (notwithstanding the provisions of Clause 19.1) the Shareholder may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Managers or the Company:
- 19.9.1 in certain circumstances without consulting with the Company; or
- 19.9.2 following consultation with the Company and having taken its views into account.
- 19.10 The Company shall transfer to the Shareholder any Request for Information received by it as soon as practicable and in any event within 5 Business Days of receiving it.
- 19.11 The Company acknowledges that any lists provided which list or outline Confidential Information are of indicative value only and that the Shareholder may nevertheless be obliged to disclose Confidential Information in accordance with Clause 19.9.
- 19.12 Where the Company is subject to a Request for Information in its own right, the Shareholder shall comply with the provisions of Clause 19.9 to 19.11 as if it were the Company and the Company shall comply with the provisions of Clauses 19.9 to 19.11 as if it were the Shareholder and Clauses 19.9 to 19.11 shall be construed accordingly.
20. **GENERAL**
- 20.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.
- 20.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 20.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.
- 20.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.
- 20.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

- 20.6 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.
- 20.7 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.
- 20.8 The provisions of this Agreement insofar as they have not been performed at Completion shall remain in full force and effect notwithstanding Completion.
- 20.9 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:
- 20.9.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- 20.9.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 20.10 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.
- 20.11 Each of the parties acknowledges and agrees that:
- 20.11.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or those documents;
- 20.11.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement;
- 20.11.3 nothing in this Clause shall operate to limit or exclude any liability for fraud.
- 20.12 No person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

21. **INDEMNITY AND INSURANCE**

- 21.1 Subject to Clause 21.2 but without prejudice to any indemnity to which he is otherwise entitled, a Relevant Director shall be indemnified out of the relevant Company's assets (as applicable) against:
- 21.1.1 any liability incurred by that Director in connection with any negligence, default, breach of duty or breach of trust in relation to that company; and/or
- 21.1.2 any other liability incurred by that Director as an officer of the relevant company.
- 21.2 This Clause does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of Law.
- 21.3 The Directors may decide to purchase and maintain insurance, at the expense of the relevant Company, for the benefit of any Relevant Director in respect of any Relevant Loss.
- 21.4 In this Clause:-
- 21.4.1 a "**Relevant Director**" means any Director or secretary or former Director or secretary of any Group Member;

21.4.2 a "**Relevant Loss**" means any loss or liability which has been or may be incurred by a relevant Director in connection with that Director's duties or powers in relation to the relevant Group Member or any pension fund or employees' share scheme of the Group Member.

22. **ASSIGNMENT**

This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

23. **NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall have authority to act in the name or on behalf of or otherwise to bind the other party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. **NOTICES**

24.1 Any notice given under this Agreement:

24.1.1 shall be in writing;

24.1.2 shall be signed by or on behalf of the party giving it;

24.1.3 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post (or registered airmail in the case of an address for service outside the United Kingdom) and marked for the attention of the person named in Clause 24.2 (or at such other address marked for the attention of such other person as last notified in writing to the other parties);

24.1.4 shall be deemed to have been received:

(a) if delivered by hand, at the time of actual delivery;

(b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting; and

(c) in the case of registered airmail, five Business Days after the date of posting.

24.2 The addresses of the parties for the purposes of Clause 24.1 are:

Council

FAO: []

Address: []

Company

FAO: []

Address: []

Land and Property Subsidiary

FAO: []

Address: []

PRS Subsidiary

FAO: []

Address: []

24.3 To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in Clause 24.2 (or as otherwise notified in writing by that party under Clause 24.2) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, of the relevant party set out in Clause 24.2 (or as otherwise notified in writing by that party under Clause 24.2).

24.4 In this Clause if deemed receipt occurs before 9 am on a Business Day the notice shall be deemed to have been received at 9 am on that day, and if deemed receipt occurs after 5 pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9 am on the next Business Day.

24.5 For the avoidance of doubt, a notice or other communication given under this Agreement shall not be validly served if sent by e-mail.

25. SUSPENSION OF THE SHAREHOLDER'S RIGHTS

25.1 If the Secretary of State exercises his functions under sections 15(6) and/or 15(5) of the Local Government Act 1999 (to the extent either of these affects: the Shareholder's ownership of shares in the Company; the exercise of its rights as a holder of the Company's shares; the Company's ownership rights in any Subsidiary; or under this Agreement) then until such time as the Secretary of State (or his nominee) ceases to exercise the relevant statutory function of the Shareholder or withdraws any direction made to it (as the case may be)(the "**Suspension Period**"):

25.1.1 the Shareholder shall not be entitled to exercise its rights under this Agreement;

25.1.2 to the extent that any of [[Line 11 – amending or approving a Business Plan] or [Line 19 – borrowing outside normal trade credit] of the Scheme of Delegation] requires Shareholder Consent then subject to Clause 24.2 such approval or consent shall be deemed to have been given by the Shareholder;

25.1.3 the Shareholder shall not under Clause 17 or otherwise terminate or agree to amend this Agreement;

25.1.4 the Shareholder agrees that it shall not support, vote for or sign any Resolution whose effect would amend the Articles or result in a voluntary winding up of the Company;

25.1.5 the Shareholder agrees that it shall not exercise its rights under [article 18(4)] of the Articles to appoint or remove any Director (save that it may remove a Director who, after the date he became a Director, has subsequently been convicted of a criminal offence); or

25.1.6 the Shareholder shall not transfer or dispose of the legal or beneficial ownership of any Shares it owns.

25.2 During any Suspension Period no Group Member shall:

25.2.1 increase the amount of its issued share capital nor permit the registration of any third party as a shareholder of such Group Member;

25.2.2 materially increase its borrowings unless such an increase was set out in the Business Plan which subsisted at the commencement of the relevant Suspension Period; or

25.2.3 materially amend a Business Plan save that any such amendments made in order to enable the Group Member to continue to operate and meet its liabilities and undertake its ordinary business shall not be material.

26. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

27. **APPLICABLE LAW**

27.1 The parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English law.

27.2 Each of the parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

THIS AGREEMENT has been executed on the date stated at the beginning of this Agreement.

IN WITNESS whereof the parties have executed this Agreement as a deed.

[EXECUTION BLOCKS TO BE ADDED]

SCHEDULE 1
GROUP MEMBERS

The Company

Company number:

Former name(s):

Date of incorporation:

Place of incorporation: England and Wales

Accounting reference date:

Issued share capital:

Amount paid up:

Shareholder: The Council

Registered office:

Secretary:

Auditors: None

Subsidiary one

Company number:

Former name(s):

Date of incorporation:

Place of incorporation: England and Wales

Accounting reference date:

Issued share capital:

Amount paid up:

Shareholder: The Company

Registered office:

Secretary:

Auditors: None

Subsidiary Two

Company number:

Former name(s):

Date of incorporation:

Place of incorporation: England and Wales

Accounting reference date:

Issued share capital:

Amount paid up:

Shareholder: The Company

Registered office:

Secretary:

Auditors: None

SCHEDULE 2
SCHEME OF DELEGATION

Reference	Activity	Cabinet Approval	Shareholder Board (cabinet sub committee) Approval	Board of Directors (whether of the Company or any other Group Member – consider whether to split out)	CEO or their appointee
1.	Altering in any respect the Articles of Association or the rights attaching to any of the shares in the relevant Group company		Approval	Recommendation	
2.	Permitting the registration of any person as a shareholder of any Company	Approval	Recommendation		
3.	Appointment of specific Council positions (as the same may be amended and updated) to fulfil the role of directors of any Company		Approval	Recommendation	
4.	Appointment and removal of Non Executive Directors		Approval		
5.	Appointment and removal of Chief Executive/ Executive Directors		Approval	Recommendation	
6.	Increasing the amount of a Company's issued share capital	Approval	Recommendation	Recommendation	

Reference	Activity	Cabinet Approval	Shareholder Board (cabinet sub committee) Approval	Board of Directors (whether of the Company or any other Group Member – consider whether to split out)	CEO or their appointee
7.	Issuing any loan capital in a Company or entering into any commitment with any person with respect to the issue of any loan capital	Approval	Recommendation		
8.	Approving/ authorising any intra-group loans	Approval	Recommendation		
9.	Passing any resolution for a Company's winding up or presenting any petition for its administration	Approval (if not on insolvency)	Recommendation		
10.	Altering the name of any Group company	Approval	Recommendation		
11.	Adopting or amending the Group Business Plan		Approval	Recommendation	
12.	Adopting or amending the Subsidiary Business Plan provided such proposed adoption or amendments are within the contemplation of the Group Business Plan			Approval	

Reference	Activity	Cabinet Approval	Shareholder Board (cabinet sub committee) Approval	Board of Directors (whether of the Company or any other Group Member – consider whether to split out)	CEO or their appointee
13.	Undertaking action in accordance with the Group Business Plan or Subsidiary Business Plan including contract expenditure of the relevant Company within the parameters of the Group Business Plan. For the avoidance of doubt, any action which would otherwise require Shareholder approval under one of the other provisions of this Scheme of Delegation but which is set out in either of the Group Business Plan or Subsidiary Business Plan will not require such approval but will instead be within the remit of the relevant Board(s) of Directors				Approval
14.	Taking any action outside the parameters of the Group Business Plan including but not limited to contract expenditure of the relevant Company outside the parameters of the Group Business Plan		Approval	Recommendation	
15.	Changing the nature of the relevant Group Member's business or commencing any new business which is not ancillary or incidental to the Group Member's business.	Approval	Recommendation		

Reference	Activity	Cabinet Approval	Shareholder Board (cabinet sub committee) Approval	Board of Directors (whether of the Company or any other Group Member – consider whether to split out)	CEO or their appointee
16.	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).	Approval	Recommendation		
17.	Amalgamating or merging with any other company or business undertaking	Approval	Recommendation		
18.	Acquiring, disposing or agreeing to acquire or dispose of any asset, any interest in any asset (including the exercise of an option) or any other land or buildings		Approval if not set out in Business Plan	Recommendation	
19.	Making any loan or advance or giving credit (other than trade credit in the ordinary course)	Approval	Recommendation		
20.	Giving notice of termination of any arrangements, contracts or transactions which are material in the nature of the relevant Group Member's Business, or materially varying any such arrangements, contracts or transactions.		Report for information	Approval	

Reference	Activity	Cabinet Approval	Shareholder Board (cabinet sub committee) Approval	Board of Directors (whether of the Company or any other Group Member – consider whether to split out)	CEO or their appointee
21.	Passing any resolution for reducing a Group Member's share capital or the amount (if any) for the time being standing to the credit of its share premium account or capital redemption reserve or for reducing any uncalled liability in respect of partly paid shares.	Approval	Recommendation		
22.	In respect of Subsidiaries only, declaring or paying any distribution in respect of profits, assets or reserves		Approval	Recommendation	
23.	In respect of the Subsidiaries only, declaring or paying any distribution in respect of profits, assets or reserves		Approval	Recommendation	
24.	Approval of statutory accounts and appointment of auditors		Approval (re appointment of auditors).	Approval (re statutory accounts)	
25.	Negotiating and agreeing the terms of any material contracts		Approval if such terms are outside the Group Business Plan	Approval if within the Group Business Plan and/or Subsidiary Business Plan	Negotiation and recommendation
26.	Submission of any major Planning Application		Approval if outside the Group Business Plan		Approval if within the Subsidiary Business Plan and/or Group Business Plan

Reference	Activity	Cabinet Approval	Shareholder Board (cabinet sub committee) Approval	Board of Directors (whether of the Company or any other Group Member – consider whether to split out)	CEO or their appointee
27.	Entering into contracts with external consultants				Approval of appointment and terms for contracts
28.	Appointment and dismissal of staff		Approval reserved in respect of Chief Executive / Executive Directors		Approval for all officers other than those reserved to shareholder board
29.	Appointment of asset valuers and approval of valuations in respect of scheme wide valuations			Approval in respect of valuations other than scheme wide valuations	Recommendation
30.	Giving a guarantee, suretyship or indemnity to secure the liabilities of any person or assume the obligations of any person	Approval if outside the Group Business Plan			
31.	Write down of asset value			Approval	Recommendation
32.	Writing off debts		Approval if such debt (owed to any individual debtor) is in excess of £10,000	Approval of any debt between £5000 and £10000.	Approval of any debt up to £5000.
33.	Commencing any claim, proceedings or other litigation brought by or settling or defending any claim, proceedings or other litigation brought against the relevant Group Member, except in relation to debt collection in the ordinary course of the business		Approval	Recommendation	

Reference	Activity	Cabinet Approval	Shareholder Board (cabinet sub committee) Approval	Board of Directors (whether of the Company or any other Group Member – consider whether to split out)	CEO or their appointee
34.	Entering into any transaction, contract or arrangement which is not on an arm's length basis or outside the normal course of business		Approval if outside the Group Business Plan	Recommendation	
35.	Approval to procurement of outside the provisions of the Procurement Policy		Approval if outside of the Group Business Plan	Approval within the Group Business Plan and/or Subsidiary Business Plan	
36.	Disposing of a substantial part of the business and/or assets of a Group Member	Approval if outside the Group Business Plan		Approval if within the Group Business Plan and recommendation if outside Group Business Plan	
37.	Entering into (or agreeing to enter into) any borrowing arrangement on behalf of the relevant Group Member and giving any security in respect of any such borrowing	Approval if outside the Group Business Plan		Approval within the parameters of the Group Business Plan	
38.	Changes to the scheme of delegation	Approval for those matters reserved to Cabinet	Approval for those matters reserved to Shareholder Board	Approval for those matters reserved to the Board of Directors	