

DATED

2020

(1) THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE

(2) OTTERPOOL PARK DEVELOPMENT COMPANY LTD

(3) OTTERPOOL PARK LLP

MEMBERS' AGREEMENT
Relating to Otterpool Park LLP

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THIS MEMBERS' AGREEMENT is made by Deed on

2020

BETWEEN:

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE** of Civic Centre, Castle Hill Avenue, Folkestone, CT20 2QY ("the **Council**"); and
- (2) **OTTERPOOL PARK DEVELOPMENT COMPANY LTD** (registered number 12158104) whose registered office is at Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Nominee Company**");

together the "**Members**"; and
- (3) **OTTERPOOL PARK LLP** (registered number OC428493) whose registered office is at Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Delivery Vehicle**");

together the "**Parties**" and each a "**Party**".

RECITALS:

- (A) The Delivery Vehicle was incorporated in England and Wales as a limited liability partnership on 15th August 2019 under the Act. The Council and the Nominee Company wish to participate as members of the Delivery Vehicle for the purposes of delivering the Otterpool park Garden Town Project ("the Project") which shall (amongst other things)
 - a) Be the planning applicant for the Project delivery.
 - b) If appropriate act as the manager of community infrastructure created as part of the Project.
 - c) Lead and coordinate development activity at the Project site, potentially via subsidiary vehicles.
 - d) Where appropriate, facilitate partnership development arrangements to bring forward housing and employment opportunities at the Project site, including joint ventures with other organisations.
 - e) Where appropriate, hold and manage residential, commercial, agricultural and/or industrial land and buildings at the Project site in advance of, during and following Project delivery (as applicable).
 - f) Lead and coordinate the delivery of such infrastructure works as are necessary as part of Project delivery.
 - g) Commission any necessary professional services relating to either the Council's objectives for the Project and/or the business objectives of the Delivery Vehicle.
 - h) Carry out such trading activities as will be identified in the Delivery Vehicle's Business Plan (which will be subject to periodic update/review/approval)
- (B) In order to facilitate its activities, the Delivery Vehicle may (amongst other things) may take such action as are necessary, conducive or incidental to the furtherance of the objective of delivering the Project.
- (C) The Parties have agreed to execute this Agreement (defined below) to regulate the responsibilities and dealings between them in relation to the conduct of the business, management and affairs of the Delivery Vehicle, and its subsidiaries from time to time.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

This Agreement shall be interpreted in accordance with the provisions of Schedule 1.

2. COMPLETION

On the Effective Date, in relation to the Delivery Vehicle:

- 2.1 the Board shall be formed by the Delivery Vehicle (or shall be deemed to have been formed by the Delivery Vehicle) in accordance with Clause 7;
- 2.2 the Council shall procure that the Council Nominees (note: the nominees are commonly known as "directors") shall each deliver to the Delivery Vehicle a duly signed Letter of Appointment; and
- 2.3 the Nominee Company shall procure that the Nominee Company Nominees shall each deliver to the Delivery Vehicle a duly signed Letter of Appointment;

3. THE PARTNERSHIP AND BUSINESS OF THE DELIVERY VEHICLE AND EACH DELIVERY VEHICLE PARTY

- 3.1 The name of the Delivery Vehicle shall be Otterpool Park LLP or such other name as may be agreed between the Members.
- 3.2 The Council and the Nominee Company shall be Members who are "designated members" of the Delivery Vehicle for the purposes of the Act and shall comply with all obligations which are required of them under the Act. The designated members of the Delivery Vehicle shall not be entitled to any remuneration or reimbursement in connection with their status as designated members.
- 3.3 The Council and the Nominee Company hereby delegate to their respective Nominees from time to time the responsibility for delivering any document on behalf of the Delivery Vehicle which is required to be delivered to the Registrar of Companies in England and Wales in connection with the Delivery Vehicle.
- 3.4 The Delivery Vehicle may from time to time establish subsidiary limited liability partnerships (under and in accordance with the Act) in which the Delivery Vehicle shall be the designated member in addition to a nominee company established by the Delivery Vehicle exclusively for that purpose. The designated members of any such Delivery Vehicle Subsidiary, (and any other Delivery Vehicle Party that is a limited liability partnership from the date of its incorporation) shall not be entitled to any remuneration or reimbursement in connection with their status as designated members of such entities.
- 3.5 The Delivery Vehicle hereby delegates to the Nominees of the board of any such Delivery Vehicle Subsidiary from time to time the responsibility for delivering any document on behalf of such entity which is required to be delivered to the Registrar of Companies in England and Wales in connection with such entity.

4. OBJECTIVES

- 4.1 The following shall be the objectives of the Delivery Vehicle ("**Delivery Vehicle Objectives**"):-
 - 4.1.1 To ensure that the Otterpool Park Garden Town, a settlement that will in time consist of 10,000 dwellings is delivered in accordance with the business plan approved from time to time including but without prejudice to the generality of the following generating the required commercial return to the Members.
- 4.2 The Delivery Vehicle Objectives shall also be the objectives of any subsidiary established by the Delivery Vehicle.

5. CAPITAL CONTRIBUTIONS AND FUNDING REQUIREMENTS

- 5.1 The Council is the owner of the entire capital in the Delivery Vehicle as at the date of this Agreement, in the total sum of £1, which has been credited to Council's Capital Account. The Nominee Company has no capital in the Delivery Vehicle as at the date of this Agreement and no Capital Account.
- 5.2 Neither Member shall be required or entitled to provide any additional Capital Contribution to the Delivery Vehicle in addition to the amount set out in Clause **Error! Reference source not found.**, save in circumstances where the Members unanimously agree otherwise. Any agreed additional Capital Contribution shall be made by both Members simultaneously in the same amount and shall be provided on the same terms unless the Members unanimously agree otherwise.
- 5.3 No interest shall be payable on a Member's Capital Contribution.
- 5.4 No Member shall have the right to the return of its respective Capital Contribution save as provided under the terms of Clause 24 (Duration, Termination and Winding Up).
- 5.5 Each Member's liability as a member of the Delivery Vehicle shall be limited to the aggregate amount of that Member's Capital Contribution provided subject to and in accordance with this Clause 5.
- 5.6 The Business Plan shall identify the envisaged funding requirements of the Delivery Vehicle and any Delivery Vehicle Subsidiary.
- 5.7 Save as expressly provided otherwise in this Agreement, no Member shall be obliged to provide any additional Capital Contribution or provide any other funding to the Delivery Vehicle or any Delivery Vehicle Party except without their express prior written consent.

6. [NOT USED]

6.1.1 []

7. CONSTITUTION OF THE BOARD

7.1 Constitution and authority of the Board

- 7.1.1 The Board is hereby constituted by the Delivery Vehicle (acting by its Members) for the purposes of carrying out the Business of the Delivery Vehicle. The Members and the Delivery Vehicle agree to maintain the Board for the duration of this Agreement. The Members and the Delivery Vehicle further agree that the Board shall operate in accordance with this Agreement and the Business Plan.
- 7.1.2 Save to the extent this Agreement expressly provides otherwise, the management and operations of the Delivery Vehicle shall be vested in the Board.
- 7.1.3 Subject to Clauses 7.1.4 and 7.1.5 and the Delegations Matrix, the decision making of the Delivery Vehicle shall be governed by this Agreement, provided that the Board may from time to time delegate to a sub-committee of the Board and/or named individuals, authority to make decisions and/or take action on behalf of the Board (and therefore on behalf of the Delivery Vehicle).
- 7.1.4 Where there is any ambiguity, uncertainty or inconsistency in relation to how any decision of the Delivery Vehicle is to be properly made (in relation to whether it should properly be made by the Members, the Board or otherwise), the matter shall first be referred to the Board for determination, provided that at any time before the Board makes the relevant determination, any Nominee shall be entitled, by notice in writing to the Delivery Vehicle and the other Nominees, to refer such matter to the Council for determination in which case the matter shall be determined by the Council in place of the Board.

7.1.5 Where there is any ambiguity, uncertainty or inconsistency in relation to the Delegations Matrix and the main body of this Agreement, the terms of the Delegations Matrix shall prevail.

7.2 Nominees

7.2.1 The Council shall be entitled to elect and appoint six members to the Board and the Nominee Company one.

7.2.2 Subject to Clauses 7.2.1, 7.2.3, 7.2.4 and 10 each Member is entitled to:-

(a) remove and replace the Nominees appointed by it and appoint further Nominees at any time;

(b) appoint persons as alternate nominees to the Board to act as a substitute for any absent Nominee appointed by it (an "**Alternate Nominee**") to do all such things as the absent Nominee would be entitled to do in their capacity as Nominee and to remove or replace any Alternate Nominee appointed by it and, unless otherwise expressly stated or unless the content requires otherwise, subsequent references in this Agreement to a Nominee shall be interpreted as also referring to any Alternate Nominee.

7.2.3 No appointment of a Nominee shall be valid unless that person has accepted and signed a Letter of Appointment or such other terms as the Board may agree from time to time.

7.2.4 Any appointment, replacement or removal by a Member of a Nominee appointed or intended to be appointed by that Member shall be effected by notice in writing to the Delivery Vehicle signed by or on behalf of the relevant Member and, subject to any contrary intention expressed in the notice, shall take effect with effect from that date and time that the notice is delivered to the Delivery Vehicle.

7.2.5 No Nominee shall receive any remuneration or expenses reimbursement from the Delivery Vehicle for its services as a Nominee other than reasonable expenses incurred when carrying out their duties as a Nominee and provided that nothing in this clause shall prohibit the Council from paying or authorising the payment by the Delivery Vehicle of such remuneration as it sees fit to a Nominee.

7.2.6 Unless otherwise determined by the Board, the Board shall have a Chairman and such position shall be occupied either by a Council Nominee or an independent Chairman appointed pursuant to this Clause 7.2.6. The first Chairman shall be appointed at the first meeting of the Board. The Chairman shall not have a second or casting vote. The Parties hereby agree that an independent Chairman may be appointed by way of a unanimous decision of the Board and, in the event that an independent Chairman is appointed, the provisions of this Clause 7.2.6 shall cease to apply for such time as an independent Chairman is so appointed save that it is acknowledged that the independent Chairman shall not be entitled to vote.

7.2.7 The Parties hereby agree that the Nominees shall have a duty of care to act in good faith towards the Delivery Vehicle and to act in the best interests of the Delivery Vehicle and the Business when acting in their capacity as a Nominee.

7.2.8 The Parties hereby agree that the Nominees in acting on behalf of Delivery Vehicle and the nominees in acting on behalf of any Delivery Vehicle Subsidiary shall act in the best interests of the relevant Delivery Vehicle Party on whose behalf they are acting and shall avoid conflicts of interest.

7.3 Delivery Vehicle Parties

7.3.1 The provisions of this Clause 7 shall apply *mutatis mutandis* to each Delivery Vehicle Party, provided that references in this Clause 7 to the Delivery Vehicle shall be construed as being

references to such Delivery Vehicle Party; references to Board shall be construed as being references to a board of nominees of such Delivery Vehicle Party; and references to Nominees shall be construed as being references to the nominees on the board of such Delivery Vehicle Party or, where applicable, as being references to directors on the board of a nominee company.

- 7.3.2 The Parties shall procure that the Council Nominees and the Nominee Company Nominees on the Board from time to time shall also be nominees or directors (as applicable) on the board of each Delivery Vehicle Party.
- 7.3.3 For the avoidance of doubt, any reference to a Member in this Clause 7 (insofar as it applies to an Delivery Vehicle Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such Delivery Vehicle Party.
- 7.3.4 In relation to any nominee company, where there is any inconsistency or conflict between the terms of this Clause 7 and a nominee company's articles of association, this Clause 7 shall take precedence.

8. BOARD MEETINGS AND RESOLUTIONS

- 8.1 At the first Board Meeting and annually thereafter the Nominees shall agree a programme for Quarterly Board Meetings which shall be supplemented with such additional Board Meetings as may be required to deal appropriately with the business of the Delivery Vehicle or any Delivery Vehicle Party as applicable.
- 8.2 At least 10 Working Days' prior written notice of any proposed meeting of the Board shall be given to each of the Nominees, provided that a shorter period of notice may be agreed by the Nominees. Unless otherwise agreed by all of the Nominees, each such notice shall specify the date, time and place of the meeting (save in those circumstances set out in Clause 8.3.2) and a meeting agenda identifying the matters to be discussed at the meeting and shall be accompanied by copies of any materials to be discussed at the meeting. Any matter to be decided at a Board Meeting not appearing in the agenda shall not be decided upon unless agreed by all of the Nominees entitled to attend and vote at the meeting.
- 8.3 Unless otherwise agreed by the Board:-
 - 8.3.1 meetings of the Nominees shall be held not less than Quarterly on such dates as they may agree;
 - 8.3.2 a telephone conference call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants shall be valid as a Board Meeting provided that at all times at that telephone or video conference (or combination as appropriate) a quorum of the Nominees is able to so participate;
 - 8.3.3 a resolution (which may be in counterparts) in writing (which includes email or other electronic format) signed by two Council Nominees (which, in respect of electronic resolutions shall be by way of electronic signature) entitled to receive notice of and vote at a Board Meeting shall be as valid as if it had been passed at a Board Meeting duly convened and held in person; and
 - 8.3.4 any Nominee is entitled to convene a meeting of the Nominees called in accordance with Clauses 8.1 and 8.2.
- 8.4 The quorum for any meeting of the Board shall be at least two Council Nominees. If there is no quorum within 30 minutes following the start time of the meeting or if there ceases to be a quorum at any time when business is to be transacted during the meeting, the meeting shall be adjourned for 5 Working Days or such other period as the Nominees may unanimously decide;
- 8.5 At any quorate meeting of the Board, each of the Nominees shall have one vote.

- 8.6 Resolutions of the Board shall be passed only by a unanimous vote in favour of the resolution.
- 8.7 Except as otherwise agreed by the Members or the Board pursuant to a resolution of the Members or the Board, all documents, agreements and deeds to be executed by the Delivery Vehicle must be signed by a duly authorised signatory of each Member.
- 8.8 Unless otherwise agreed by all the Nominees, draft minutes of meetings of the Board shall be prepared and sent to each Nominee as soon as practicable after each meeting. Responsibility for the preparation of such draft minutes shall be agreed between the Nominees.

8.9 **Delivery Vehicle Parties**

- 8.9.1 The provisions of this Clause 8 shall apply *mutatis mutandis* to each Delivery Vehicle Party, provided that references in this Clause 8 to the Delivery Vehicle shall be construed as being references to such Delivery Vehicle Party; references to Board shall be construed as being references to a board of nominees of such Delivery Vehicle Party; and references to Nominees shall be construed as being references to nominees on the board of such Delivery Vehicle Party save that any documents, agreements and deeds to be executed by a Delivery Vehicle Party must be duly signed by a member of the relevant Delivery Vehicle Party (as authorised by the relevant Delivery Vehicle Party Board).
- 8.9.2 For the avoidance of doubt, any reference to a Member in this Clause 8 (insofar as it applies to a Delivery Vehicle Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such Delivery Vehicle Party.
- 8.9.3 In relation to any nominee company, where there is any inconsistency or conflict between the terms of this Clause 8 and a nominee company's articles of association, this Clause 8 shall take precedence.

9. **[NOT USED]**

- 9.1.1 []

10. **REMOVAL OF A NOMINEE**

- 10.1 If a Member removes (or is deemed to have removed) a Nominee appointed by it then such Member shall procure that such Nominee vacates office without any claim to the Delivery Vehicle for loss of office or otherwise relating to his removal and the removing Member shall indemnify and hold harmless, to the fullest extent permitted by law, the Delivery Vehicle against any loss, cost, damage, expense or liability suffered or incurred:-

- 10.1.1 by reason of any claim by the vacating Nominee for wrongful or unfair dismissal or redundancy; and
- 10.1.2 in connection with it having been or being a party or having been or being threatened to be made party to any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative by reason of any of the matters referred to in Clause 10.1.1 above,

provided always that the Delivery Vehicle shall not be so indemnified with respect to any matter resulting from its wilful default, negligence or fraud.

- 10.2 The indemnities contained in this Clause 10 shall continue notwithstanding the termination (in whole or in part) of this Agreement and/or the winding up of the Delivery Vehicle (for any reason whatsoever).

- 10.3 Notwithstanding any other term of this Agreement, a Member shall immediately remove a Nominee appointed by it (by written notice to the Delivery Vehicle and the other Member) if:
- 10.3.1 the Nominee exercises his voting rights in contravention of this Agreement (in which circumstances the Members shall co-operate with each other as appropriate to rectify any adverse consequences of that Nominee's actions or omissions);
 - 10.3.2 the Nominee becomes bankrupt or makes any arrangement or composition with his creditors generally (or any step is taken towards the same);
 - 10.3.3 the Nominee is, or may be, suffering from mental disorder and either:-
 - (a) is admitted to hospital under an application for admission for treatment under the Mental Health Act 1983; or
 - (b) an order is made (by a court having jurisdiction) for the Nominee's detention or for the appointment of a receiver or other person to exercise powers with respect to the Nominee's property or affairs due to the Nominee's mental disorder;
 - 10.3.4 the Nominee resigns from office of Nominee by providing 20 Working Days' written notice to the Delivery Vehicle; or
 - 10.3.5 the Nominee is convicted of any offence of fraud or dishonesty;
- and the relevant Member shall be deemed to have removed a Nominee immediately upon the occurrence of the relevant event listed above.

10.4 **Delivery Vehicle Parties**

- 10.4.1 The provisions of this Clause 10 shall apply *mutatis mutandis* to each Delivery Vehicle Party, provided that references in this Clause 10 to the Delivery Vehicle shall be construed as being references to such Delivery Vehicle Party; references to Board shall be construed as being references to a board of nominees of such Delivery Vehicle Party; and references to Nominees shall be construed as being references to nominees on the board of such Delivery Vehicle Party.
- 10.4.2 For the avoidance of doubt, any reference to a Member in this Clause 10 (insofar as it applies to a Delivery Vehicle Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such Delivery Vehicle Party.
- 10.4.3 In relation to any nominee company, any reference to a Nominee in this Clause shall be construed as a reference to a Director, and where there is any inconsistency or conflict between the terms of this Clause 10 and a nominee company's articles of association, this Clause 10 shall take precedence.

11. **MEMBERS**

- 11.1 Subject to Clauses 19 (Assignment/Transfer of Interests) and 21 (Default):
- 11.1.1 a person shall only be admitted to the Delivery Vehicle as a new Member if his admission is unanimously approved in writing by the Members and such person executes a Deed of Adherence; and
 - 11.1.2 a Member may only resign or withdraw from the Delivery Vehicle (and/or otherwise cease to be a member of the Delivery Vehicle) with the prior written agreement of the remaining Member.

11.2 **Delivery Vehicle Parties**

11.2.1 A person shall only be admitted to a Delivery Vehicle Party as a new member thereof if his admission is unanimously approved in writing by the Members and such person executes a Deed of Adherence.

11.2.2 A member of a Delivery Vehicle Party may only resign or withdraw from the Delivery Vehicle Party (and/or otherwise cease to be a member thereof) with the prior written agreement of the Members.

12. **MEMBERS' MEETINGS AND RESOLUTIONS**

12.1 Subject to the matters reserved to the Council pursuant to the Delegations Matrix and save to the extent otherwise expressly provided in this Agreement, the Members have vested the management and operations of the Delivery Vehicle in the Board.

12.2 Notwithstanding any other provisions of this Agreement, each Member shall procure (so far as it is legally able) that none of the Consent Matters shall be effected or permitted whether in relation to the Delivery Vehicle or any Delivery Vehicle Party save with the prior written consent of the Council.

12.3 Unless otherwise agreed by the Members acting unanimously, at the first Members' Meeting and annually thereafter the Members shall agree a programme for quarterly Members' Meetings which shall be supplemented with such additional Members' Meetings as may be required to deal appropriately with the business of the Delivery Vehicle or any Delivery Vehicle Party as applicable.

12.4 At any Members' Meeting and additional Members' Meetings (as applicable) the affairs and direction of the Delivery Vehicle shall be discussed and an account of the Delivery Vehicle's Business and progress against the Business Plan shall be given to the Members.

12.5 At least 10 Working Days' prior written notice of any proposed meeting of the Members (in relation to the Delivery Vehicle) shall be given to each Member, provided that a shorter period of notice may be given with the written approval of each Member. Unless otherwise agreed by each Member, each such notice shall specify the date, time and place of the meeting (save in the circumstances set out in Clause 12.9) and a meeting agenda identifying the matters to be discussed and shall be accompanied by copies of any materials to be discussed at the meeting. Any matter to be decided at the Members' Meeting not appearing in the agenda shall not be decided upon unless each of the Members agrees.

12.6 The quorum for any meeting of the Members shall be all of the Members and there shall be no quorum unless all of the Members are represented by a duly authorised person.

12.7 No business shall be transacted at any Members' Meeting unless there is a quorum.

12.8 Resolutions of the Members of the Delivery Vehicle shall only be passed where each Member votes in favour of the resolution.

12.9 Unless otherwise agreed unanimously by the Members:-

12.9.1 a telephone conference call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants and at which for all times a quorum of the Members is able to so participate, shall be valid as a Members' Meeting provided that such medium of communication for the Members' Meeting has been approved unanimously by both Members; and

12.9.2 a resolution in writing (which includes e-mail or other electronic format and which may be in counterparts) signed by each Member (which in respect of electronic resolutions shall be by way of electronic signature) shall be as valid as if it had been passed at a Members' Meeting duly convened and held.

12.10 **Delivery Vehicle Parties**

12.10.1 Subject to Clause 12.10.2, the provisions of this Clause 12 shall apply *mutatis mutandis* to each Delivery Vehicle Party, provided that references in this Clause 12 to the Delivery Vehicle shall be construed as being references to such Delivery Vehicle Party, references to Board shall be construed as being references to the board of such Delivery Vehicle Party; and references to the Delivery Vehicle Business shall be construed as being references to the business of such Delivery Vehicle Party.

12.10.2 For the avoidance of doubt, any reference to a Member in this Clause 12 (insofar as it applies to a Delivery Vehicle Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such Delivery Vehicle Party. As set out in the Consent Matters decisions of Members are taken by the Members regardless of whether the relevant decision is to be made by or on behalf of Delivery Vehicle or any other Delivery Vehicle Party.

12.10.3 In relation to any nominee company, where there is any inconsistency or conflict between the terms of this Clause 12 and a nominee company's articles of association, this Clause 12 shall take precedence.

13. **[NOT USED]**

14. **MANAGEMENT OF THE DELIVERY VEHICLE'S AFFAIRS**

14.1 **Business of the Delivery Vehicle**

The Members and the Delivery Vehicle shall procure that the business of the Delivery Vehicle shall consist exclusively of the Business.

14.2 **Member Obligations**

14.2.1 Each Member undertakes to the other that, in its capacity as a Member, it shall use its reasonable endeavours (insofar as it is lawfully able by the exercise of its rights and powers) to procure that:-

- (a) it at all times carries out its duties as a Member observing the highest standards of efficiency, economy and integrity;
- (b) it acts in a manner that is consistent with and exercises all voting rights and other powers of control available to it in relation to the Delivery Vehicle and each Delivery Vehicle Party so as to procure (insofar as it is lawfully able by the exercise of such rights and powers) that the Delivery Vehicle and each Delivery Vehicle Party complies with the provisions of any agreements to which it is a party;
- (c) it, the Delivery Vehicle and each Delivery Vehicle Party complies at all times with the Business Plans in all material respects (except to the extent that any of the foregoing contradicts the main body of this Agreement);
- (d) it, the Delivery Vehicle and each Delivery Vehicle Party acts in a manner consistent with achievement of its Objectives (as applicable to such Delivery Vehicle Party, in accordance with the terms of this Agreement);
- (e) it notifies the Delivery Vehicle and each Delivery Vehicle Party immediately on becoming aware of any matter which it considers (acting reasonably) is likely to materially affect the Delivery Vehicle and relevant Delivery Vehicle Party (where applicable) and/or the Delivery Vehicle's and relevant Delivery Vehicle Party's (where applicable) business or any arrangement or proposed arrangement between the Delivery Vehicle (or any Delivery Vehicle Party) and any of the Members;

- (f) each Nominee it appoints will, at all times, act in the best interests of the Delivery Vehicle and the Business when acting in its capacity as Nominee and will, at all times, comply with the terms of this Agreement;
- (g) each nominee it appoints to the board of any Delivery Vehicle Party will, at all times, act in the best interests of such Delivery Vehicle Party and its business when acting in its capacity as a nominee and will, at all times, comply with the terms of this Agreement;
- (h) it acts in a manner that shall promote the business of and acts at all times in good faith towards, and co-operates with, the Delivery Vehicle, each Delivery Vehicle Party and the other Members;
- (i) the Delivery Vehicle and each Delivery Vehicle Party maintains true and accurate accounts of all transactions in accordance with UK GAAP, the Act and (to the extent that the same applies to the relevant party) Part 15 of the Companies Act and makes available both draft and final copies of such accounts to Members on reasonable request;
- (j) the Delivery Vehicle and each Delivery Vehicle Party maintains adequate insurance (with a reputable insurer) against risks as determined by the Delivery Vehicle as appropriate including third party liability insurance and otherwise in accordance with Clause 42;
- (k) the Delivery Vehicle and each Delivery Vehicle Party (where applicable) opens the accounts specified in Clause 15 (Financial Matters and Financial Information) in its name with National Westminster Bank plc and that any transactions carried out by the Delivery Vehicle or such Delivery Vehicle Party (as applicable) are carried out through one of these accounts in accordance with the provisions of Clause 15 (Financial Matters and Financial Information);
- (l) the Delivery Vehicle and each Delivery Vehicle Party shall take appropriate action (including, without limitation, pursuing legal proceedings) in the event of negligence or material misconduct on the part of any of its contractors, advisors or agents or any other third party;
- (m) the Delivery Vehicle shall adopt the Business Plan and update the Business Plan at least annually, subject always to Clause 16.1.1 ;
- (n) the Delivery Vehicle and each Delivery Vehicle Party shall not knowingly do anything which does not comply with the Act, the Regulations and (to the extent that the same applies to the Delivery Vehicle) the Companies Act and all other applicable laws, regulations and requirements of any competent jurisdiction or authority affecting them, their businesses and the content of the Business Plan;
- (o) any person employed, engaged or contracted by the Delivery Vehicle and each Delivery Vehicle Party complies with the terms of their engagement and (to the extent relevant) the Business Plan;
- (p) the Delivery Vehicle and each Delivery Vehicle Party procures works, equipment, goods and services in accordance with the principles of market testing and competitive process;
- (q) the Delivery Vehicle and each Delivery Vehicle Party shall document its decision-making process and maintain appropriate audit trails for decisions made; and
- (r) the Delivery Vehicle and (to the extent applicable) each Delivery Vehicle Party complies with the Delivery Vehicle Policies in all material respects.

14.3 Delivery Vehicle Obligations

- 14.3.1 The Delivery Vehicle shall comply with the Act, the Regulations and (to the extent that the same applies to the Delivery Vehicle) the Companies Act and all other applicable laws, regulations and requirements of any competent jurisdiction or authority affecting the Delivery Vehicle, its Business and the content of the Business Plan.
- 14.3.2 Without prejudice to the provisions of Clause 14.2, the Delivery Vehicle undertakes to the other Parties to this Agreement to use all reasonable endeavours to enforce the terms of any agreements to which the Delivery Vehicle is a party from time to time, save where the Board resolves that to enforce the terms of any such agreement is not in the best interests of the Delivery Vehicle.
- 14.3.3 No payment shall be made by the Delivery Vehicle and no cheque or payment instruction of the Delivery Vehicle shall be signed other than in accordance with the mandates (general or specific) authorised by the Board from time to time and subject to the Consent Matters and the Delegations Matrix.
- 14.3.4 The Delivery Vehicle shall conduct its Business and affairs in a proper and efficient manner for its own benefit:-
- (a) in accordance with the Consent Matters and the Delegations Matrix;
 - (b) in accordance with the Delivery Vehicle Policies;
 - (c) in a manner consistent with its Objectives;
 - (d) in a manner consistent with achieving value for money under its procurement activities; and
 - (e) otherwise in accordance with the terms of this Agreement.
- 14.3.5 The Delivery Vehicle shall at all times exercise its powers and shall use best endeavours to comply with the Business Plan (for the avoidance of doubt including any outlined or detailed planning obligations contained in them) in all material respects (except to the extent that the same contradicts the terms of the main body of this Agreement).
- 14.3.6 The Delivery Vehicle shall, if it requires any statutory or third party approval, consent or licence for the carrying on of its Business in the places and 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, comply with and maintain the same in full force and effect.

14.4 Delivery Vehicle Parties

- 14.4.1 The Members and the Delivery Vehicle (insofar as they are able by the exercise of their rights and powers) shall procure that each Delivery Vehicle Party shall (from the date of its incorporation) comply with the provisions of Clause 14.3 as if it applied *mutatis mutandis* to each Delivery Vehicle Party, provided that references in Clause 14.3 to:-
- (a) the Delivery Vehicle shall be construed as being references to such Delivery Vehicle Party;
 - (b) the Board shall be construed as being references to the board of nominees of such Delivery Vehicle Party;
 - (c) Nominees shall be construed as being references to nominees on the board of such Delivery Vehicle Party;
 - (d) the Delivery Vehicle's Business shall be construed as being references to the Delivery Vehicle Party's business;

- (e) the Objectives shall be construed as being references to the Objectives of the relevant Delivery Vehicle Party; and
- (f) the Business Plan shall be construed as being references to the Business Plan insofar as they apply to the relevant Delivery Vehicle Party.

14.4.2 In relation to a nominee company, where there is any inconsistency or conflict between the terms of this Clause 14.4 and a nominee company's articles of association, this Clause 14.4 shall take precedence.

14.5 **Delivery Vehicle Authority**

Subject always to the provisions of this Agreement, the Delivery Vehicle shall have full power and authority to carry out all and any of the Objectives of the Delivery Vehicle and do all acts and things which the Delivery Vehicle may in its absolute discretion consider necessary or desirable (including, without limitation, executing, delivering and performing all contracts and other undertakings and participating in any activities and transactions) pursuant to the Business.

15. **FINANCIAL MATTERS AND FINANCIAL INFORMATION**

15.1 The Delivery Vehicle shall (and shall procure that each Delivery Vehicle Party shall), in relation to its financial statements, adopt accounting policies and/or principles in accordance with Generally Accepted Accounting Practice in the UK ("**UK GAAP**") or its successors and shall comply with the Act, the Regulations and (to the extent that the same applies to the Delivery Vehicle) Part 15 of the Companies Act.

15.2 Each of the Members shall be entitled to:-

15.2.1 examine (and take copies of) at any time upon the provision of reasonable notice all documents, information, records, separate books and accounts of any description held by the Delivery Vehicle and each Delivery Vehicle Party and each Member shall be allowed access to the building premises of any Delivery Vehicle Party for these purposes;

15.2.2 be supplied with all information regarding the Business, including (without limitation) monthly management accounts and operating statistics records and other trading and financial information relating to the Delivery Vehicle and the other Delivery Vehicle Parties, in such form as the Members may reasonably require; and

15.2.3 be kept properly informed about the business and affairs of the Delivery Vehicle and each Delivery Vehicle Party.

15.3 The Delivery Vehicle's annual budget for each Accounting Period shall form part of the Business Plan and shall be reviewed by the Board at least every three months.

15.4 The Delivery Vehicle and each Delivery Vehicle Party shall at all times keep proper books of account and make true and complete entries of all its dealings and transactions of and in relation to its business.

15.5 The Delivery Vehicle shall supply each of the Members with the following information:-

15.5.1 the management accounts for each Delivery Vehicle Party for each Accounting Period forthwith on their completion; and

15.5.2 the audited statutory accounts of the Delivery Vehicle and each Delivery Vehicle Party for each Accounting Period as soon as practicable and, at the latest, by four months after the Accounting Period to which they relate.

- 15.6 Notwithstanding the provisions of Clause 29 (Confidential Information and Freedom of Information):-
- 15.6.1 each Member may disclose information received from the Delivery Vehicle, any Delivery Vehicle Party or a Nominee to its auditors and/or (in the case of the Council), to its external auditors; and
- 15.6.2 the Delivery Vehicle and each Delivery Vehicle Party shall permit all records thereof to be examined and copied from time to time by a Member's auditor and its or their representatives and/or by the Council's external auditors (or their representatives).
- 15.7 Without prejudice to Clause 21 (Default), a Member shall immediately notify the other in writing if it becomes aware of anything which it considers (acting reasonably) is likely to adversely affect its ability to comply with its obligations in accordance with this Agreement.

16. **BUSINESS PLAN AND PROGRESS MONITORING**

16.1 **Business Plan**

- 16.1.1 The Board shall, every five years prepare (or procure the preparation of), finalise, agree and circulate a draft Business plan (the 'Initial Business plan') to the "**Approving Person**" being the Council
- 16.1.2 The Board shall annually, prepare (or procure the preparation of), finalise, agree and circulate a draft Further Business Plan to the "**Approving Person**", being the Council.
- 16.1.3 The Approving Persons shall use all reasonable endeavours to seek to agree such draft Further Business Plan (making any amendments they may unanimously agree) and to adopt it as the formal Business Plan within 30 Working Days of the date it is first circulated to the Approving Persons.
- 16.1.4 The draft Further Business Plan circulated under Clause 16.1.2 (with such amendments thereto as may be agreed by the Approving Persons) shall replace the then current Business Plan as the formal Business Plan of the Delivery Vehicle upon the later of:-
- (a) the start of the period to which it relates; and
- (b) the date of the Approving Persons approval to it in accordance with Clause 16.1.3.
- 16.1.5 Until such time as it is replaced in accordance with Clause 16.1.4, the Business Plan that has most recently been adopted as the formal Business Plan pursuant to Clause 16.1.4 shall continue to be the formal binding Business Plan.
- 16.2 Progress against each Business Plan shall be reviewed at meetings of the Board called in accordance with Clause 8.
- 16.3 For the avoidance of any doubt, any material amendment to the Business Plan shall be effective only if approved by the Council.

17. **ACCOUNTS**

Current Accounts

- 17.1 The Delivery Vehicle shall establish and thereafter maintain a current account ("**Delivery Vehicle Current Account**") to be utilised by the Delivery Vehicle to hold Delivery Vehicle monies prior to any determination (pursuant to Clause 18) of apportionment of Net Profit.
- 17.2 The Delivery Vehicle shall establish and thereafter maintain an account ledger in the name of each Member ("**Member's Current Account**") and hold the contents of each Member's Current Account

on trust for the relevant Member. For the avoidance of doubt, the Delivery Vehicle shall not be required to open up a separate bank account for each Member.

- 17.3 The Delivery Vehicle shall credit to each Member's Current Account that Member's share of the Net Profits (if any) in accordance with Clause 18 (Receipts and Profits).
- 17.4 For the avoidance of doubt, the only amounts which shall be credited to a Member's Current Account shall be such amounts as the Board determines in accordance with Clause 18 and there shall be no accrual of any amounts constituting the profits of the Delivery Vehicle during the course of an Accounting Period. Any amounts allocated to the credit of a Member's Current Account which are distributed to that Member shall be debited from the balance of that Member's Current Account ledger.
- 17.5 Subject to Clause 18, the Delivery Vehicle may at any time, where approved by the Council, distribute the whole or part of any amounts allocated as standing to the credit of Members' Current Accounts to the Members. Any such distribution shall be made to the Members in amounts pro-rata to the amounts at that time allocated as standing to the credit of their respective Current Accounts.
- 17.6 The Members shall procure that each Delivery Vehicle Party shall establish and thereafter maintain a Current Account and hold the contents of the Current Account on trust for the Delivery Vehicle.

18. **RECEIPTS AND PROFITS**

Delivery Vehicle Receipts

- 18.1 Subject to Clauses 6.6 and 6.12, where the Delivery Vehicle receives Receipts such money shall be applied by Delivery Vehicle in accordance with the following order of priority:-
- 18.1.1 to discharge any third party debt and/or liabilities; and
- 18.1.2 any remaining balance shall be paid into the Delivery Vehicle Current Account.

Delivery Vehicle Profits

- 18.2 Subject to Clause 18.1 the Net Profits of the Delivery Vehicle shall be apportioned between the Members in accordance with the Member Proportions.
- 18.3 The Board shall decide (having taken the advice of the Auditors, if appropriate) not later than 20 Working Days before the beginning of each Accounting Period what amount (if any) of the Net Profits shall be retained by the Delivery Vehicle in respect of:-
- 18.3.1 reserves for general working capital purposes of the Delivery Vehicle (or another Delivery Vehicle Party) for the following Accounting Period; or
- 18.3.2 reinvestment back into the Delivery Vehicle (or another Delivery Vehicle Party) in accordance with the Business Plan,

and each Member's share of the Net Profits (after deducting any retentions as determined by the Board pursuant to Clauses 18.3.1 and 18.3.2) for any Accounting Period shall be paid to that Member or (depending on the cash flow position of the Delivery Vehicle as the Board determines, if appropriate, having taken the advice of the Auditors) allocated to the credit of the relevant Member's Current Account within 30 days after the signing of the annual audited accounts of the Delivery Vehicle for that Accounting Period.

- 18.4 Subject to Clause 18.5, if it is apparent that there has been over-payment of Net Profit to a Member, the amount of such over-payment shall either be carried forward as a debit on such Member's Current Account or, where the Delivery Vehicle so determines, be repaid on demand by the relevant Member in whole or in part (if in part and if there has been over payments of Net Profits to more than one Member, each such Member shall be liable to contribute such proportion of the repayment to be

made pursuant to this Clause 18.4 as is equal to the proportion of the total overpayment received by it).

18.5 The Delivery Vehicle shall not make any Net Profit distribution under this Clause 18:-

18.5.1 unless there is sufficient cash available;

18.5.2 in circumstances where the same would render the Delivery Vehicle insolvent;

18.5.3 in circumstances where, in the reasonable opinion of the Council, the same would or might leave the Delivery Vehicle with insufficient funds to meet any future contemplated obligations or contingencies;

18.5.4 in circumstances where, and to the extent that, a Member requests that the Delivery Vehicle withholds its share of Net Profit until after it requests payment of such amount (in whole or in part) provided that the withheld share of Net Profit shall continue to accrue to the ledger of the Member's Current Account of the relevant Member and shall not delay or otherwise affect distributions to a Member that has not requested any such withholding of their share of Net Profit. Upon a request for payment of a withheld amount by the relevant Member, the Delivery Vehicle shall distribute the requested amount as soon as reasonably practicable (and in any event within 10 Working Days of the request);

18.5.5 in circumstances where, and to the extent that, the same would be to any Member who has committed a Default Event until the earlier of (i) (where the Default Event is capable of remedy in accordance with this Agreement) remedy of the Default Event; or (ii) waiver by the Non-Defaulting Member of the Default Event; or

18.5.6 in a manner which would constitute a distribution in specie.

19. **ASSIGNMENT/TRANSFER OF INTERESTS**

19.1 **General prohibition on transfers**

Save as expressly provided for in this Agreement, a Member shall not sell, assign, transfer, exchange, pledge, encumber or otherwise dispose of all or any part of its rights and obligations under this Agreement, or voluntarily dissolve or voluntarily withdraw or resign as a member of the Delivery Vehicle.

19.2 **Permitted Intra-group transfers**

19.2.1 Notwithstanding any other provision of this Agreement, the Council may at any time transfer the whole (but not part only) of its Member Interest to a Public Sector Body provided that:

(a) prior to any such transfer taking place, the Council shall procure that the transferee shall execute and deliver to the Nominee Company and the Delivery Vehicle a Deed of Adherence (which shall become effective as at the date of the relevant transfer) in the form set out in Schedule 4 (Deed of Adherence); and

(b) if the first transferee or any subsequent transferee (in each case being, as at the date of such transfer to it, a Public Sector Body) ceases, at any time thereafter to be a Public Sector Body, the Council (or, where the Council is no longer existing in law, any successor body thereof) shall procure that such entity will, immediately prior to so ceasing, transfer all of the Member Interest held by it to such other Public Sector Body that is nominated by the Council (or its successor, as applicable) subject to the Nominee Company's prior written approval thereto (such approval not to be unreasonably withheld or delayed).

19.3 Permitted Transfers to a Third Party

19.3.1 Save as provided in Clause 19.2 or as otherwise expressly agreed in writing by the Members, no transfer of any Member Interest, in whole or part shall take effect:

- (a) in circumstances where the proposed transferee is not resident in the United Kingdom for the purposes of UK taxation;
- (b) to a Prohibited Party; and/or
- (c) in circumstances where the proposed transferee has not executed a Deed of Adherence (which shall become effective as at the date of the relevant transfer) in the form set out in Schedule 4 (Deed of Adherence).

19.4 Residency

The Members agree and undertake that they shall remain resident in the UK for the purposes of UK taxation and each Member agrees to indemnify and keep the other Member indemnified for any direct loss; liability; cost; claim; and/or expense whatsoever suffered or incurred as a result of any breach of this undertaking.

20. [NOT USED]

20.1 []

21. DEFAULT

21.1 The following events shall each be a "**Default Event**":-

21.1.1 in the case of the Council only, the Council commits a Material Breach, and such event shall be a "**Council Default Event**";

21.1.2 in the case of the Nominee Company:

- (a) the Nominee Company commits a Material Breach;
- (b) the Nominee Company is insolvent within the meaning of paragraph (1) of section 123 of the Insolvency Act 1986 and for the purposes of paragraph 1(a) of Section 123 of the Insolvency Act 1986 the amount of £750 shall be replaced by £10,000;
- (c) the Nominee Company ceases payment on all or any class of its debts or a moratorium is agreed or declared in respect of its indebtedness;
- (d) the Nominee Company enters into a voluntary arrangement with any of its creditors as is described in the relevant insolvency legislation or any step (including any corporate action, legal proceedings or other procedure or step) is taken with a view to a composition, assignment, reconstruction or arrangement with any of its creditors, or it enters into such composition, assignment or arrangement (other than a scheme of arrangement which is a bona fide business reorganisation not in any way linked or pursuant to any financial difficulty);
- (e) a petition is presented for the winding-up, administration or dissolution (except for the purposes of and followed by a bona fide solvent commercial reorganisation, amalgamation or reconstruction) of the Nominee Company (other than a frivolous or vexatious petition); and
- (f) a liquidator, provisional liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or other similar officer is appointed in respect of any of the assets and/or undertaking or any part thereof of the Nominee Company;

- (g) the enforcement of any security over any material assets of the Nominee Company;
- (h) any litigation, arbitration or administrative proceedings are successfully concluded against (and successfully concluded in this Clause 21.1.2(h) shall mean that the relevant judge, arbitrator or relevant decision making individual or body finds in favour of the claimant) the Nominee Company which in the Council's opinion (acting reasonably) will have a material adverse effect on the activities or business of the Council or the Delivery Vehicle or any Delivery Vehicle Party;
- (i) the Nominee Company is in the reasonable opinion of the Council or the Delivery Vehicle or any Delivery Vehicle Party, determined no longer to be resident in the United Kingdom for the purposes of UK taxation;

and each such an event shall be a "**Nominee Company Default Event**".

21.2 Consequences of a Default Event

Any Member who has committed a Default Event (the "**Defaulting Member**") shall notify the other (the "**Non-Defaulting Member**") as soon as practicable after becoming aware that a Default Event has occurred and unless the Default Event is waived by the Non-Defaulting Member or remedied in accordance with Clause 21.3 or 21.4, the Winding Up Procedure set out in Clause 24 shall automatically be triggered.

21.3 The Council's opportunity to remedy

- 21.3.1 If a Council Default Event occurs which is capable of remedy (to be determined by the Nominee Company acting reasonably) the Nominee Company will, within 20 Working Days after becoming aware of the Council Default Event serve a written notice on the Council identifying the Council Default Event ("**Nominee Company Grievance Notice**"). The Nominee Company Grievance Notice shall specify that the Council Default Event must be remedied within a specified period of at least 20 Working Days after the date of service of the Nominee Company Grievance Notice (the "**Council Remedy Period**").
- 21.3.2 The Council shall not be required to wait until the Nominee Company Grievance Notice is received before attempting to remedy any Council Default Event.
- 21.3.3 Where a Council Default Event is either not deemed capable of remedy or has not been remedied to the reasonable satisfaction of the Nominee Company within the Council Remedy Period the Winding Up Procedure set out in Clause 24 shall automatically be triggered.

21.4 Nominee Company's opportunity to remedy

- 21.4.1 If a Nominee Company Default Event occurs which is capable of remedy (determined by the Council acting reasonably) the Council will, within 20 Working Days after becoming aware of the Nominee Company Default Event serve a written notice on the Nominee Company identifying the Nominee Company Default Event (the "**Council Grievance Notice**"). The Council Grievance Notice shall specify that the Nominee Company Default Event must be remedied within a specified period of at least 20 Working Days after the date of service of the Council Grievance Notice (the "**Nominee Company Remedy Period**").
- 21.4.2 The Nominee Company shall not be required to wait until the Council Grievance Notice is received before attempting to remedy the Nominee Company Default Event.
- 21.4.3 Without prejudice to any other Nominee Company Default Event(s), where a Nominee Company Default Event is either not deemed capable of remedy or has not been remedied to the reasonable satisfaction of the Council within the Nominee Company Remedy Period, the Winding Up Procedure set out in Clause 24 shall automatically be triggered.

21.5 Remedy on a Default Event

21.5.1 Each Member undertakes to the other that, in circumstances where it has breached any obligation on its part that is specifically set out in this Agreement and:-

- (a) the Delivery Vehicle and/or other Member (as the case may be) has informed it in writing of the relevant breach and the Member in breach has agreed to enter into discussions regarding a resolution of that breach and/or an out of court settlement in relation to it, the Member in breach hereby agrees to co-operate and act in good faith with the other Parties in relation to such discussions and not to unreasonably prolong such discussions; and/or
- (b) the Delivery Vehicle and/or the other Member (as the case may be) has brought a claim against it in respect of such breach, the Member in breach hereby agrees to co-operate and act in good faith in relation to the conduct of such claim (or defence of it) and not unreasonably prolong the litigation process.

22. DISPUTE/DEADLOCK

22.1 Subject to Clause 22.8, if:

22.1.1 the Nominees by reason of disagreement between themselves are unable to arrive at a unanimous decision on any matter relating to the Delivery Vehicle which requires their approval and consideration within 10 Working Days after the date on which the matter was first presented to them at a meeting of the Board; or

22.1.2 the Members by reason of disagreement between themselves are unable to arrive at a unanimous decision on any matter relating to the Delivery Vehicle which requires their approval and consideration within 10 Working Days after the date on which the matter was first presented to them,

then such matter shall constitute a "**Deadlock Matter**" and within 20 Working Days after the Deadlock Matter first being presented to the Board or the Members (as applicable), either Member may give notice to the other in writing (a "**Deadlock Notice**") setting out, in detail, its position on the Deadlock Matter and proposed course of action. The Members shall use all reasonable endeavours to resolve the Deadlock Matter within 10 Working Days after receipt of the Deadlock Notice.

22.2 In no circumstances shall any Member or any Nominee create or insofar as it is reasonably able to influence the same, permit to be created or subsist, an "artificial deadlock". For the purposes of this Clause 22, an "artificial deadlock" shall be a deadlock caused by any Member or any Nominee, deliberately and without good reason, voting against or failing to consent to an issue or proposal in any case where the approval of the same is reasonably required to enable the Delivery Vehicle to carry on the Business in a manner consistent with this Agreement, the Business Plan and which does not cause any of the Members to incur any additional liabilities, nor diminish or otherwise materially adversely affect their respective interests in the Delivery Vehicle. An "artificial deadlock" shall be deemed not to be a Deadlock Event for the purposes of this Clause 22.

22.3 Referral to Council Senior Officer

22.3.1 If the Deadlock Matter is not resolved to the reasonable satisfaction of either of the Members within 10 Working Days after receipt of the Deadlock Notice then the Deadlock Matter shall be referred to the Council's Senior Officer.

22.3.2 If the Council's Senior Officer resolves a Deadlock Matter referred to them pursuant to Clause 22.3.1, they will as soon as practicable draft and sign a statement setting out the terms of such resolution and serve the same on the Delivery Vehicle. Following receipt of such statement by the Delivery Vehicle, the Nominees shall procure that such resolution is fully and promptly carried into effect.

22.3.3 If the Council's Senior Officer does not resolve the Deadlock Matter within 20 Working Days then the Deadlock Matter shall be referred back to the Members and the provisions of Clause 22.4 shall apply.

22.4 Referral to Expert

22.4.1 If the Members agree the Deadlock Matter is reasonably capable of being determined by an appropriate Expert then it shall be referred by the Members to an appropriate Expert and the provisions of Clauses 22.4.2 and 22.4.3 shall apply. Where the Members are unable to agree whether the matter is reasonably capable of being determined by an appropriate Expert within 5 Working Days of the referral referred to in Clause 22.3.3 Clause 22.5 shall apply, and the Members shall refer the Deadlock Matter to mediation.

22.4.2 The Expert shall act as an independent and impartial expert and not as an arbitrator and shall be entitled to seek and rely upon such other independent professional advice and assistance as he shall in his absolute discretion deem desirable when considering the Deadlock Matter. The Expert shall be required to reach his decision and notify this decision to the Members within 30 Working Days of the date of his appointment or such other date as agreed by both Members in writing. The decision of the Expert (including his decision as to the payment of his fees) shall be final and binding upon the Members without appeal (provided it is notified to the Members within the specified or agreed timescale) and the Members shall implement such decision in relation to the Delivery Vehicle and its Business as soon as reasonably practicable after the Expert informs the Members of his decision.

22.4.3 If the Expert relinquishes his appointment or dies or if it becomes apparent that he shall be unable to complete their duties under their appointment then any Member may apply to the appropriate President (or the next the most senior available officer) of the Royal Institution of Chartered Surveyors or the Law Society of England and Wales or the Institute of Chartered Accountants in England and Wales (as appropriate to the subject of the Deadlock Matter) for a substitute to be appointed in the Expert's place (which procedure may be repeated as many times as necessary).

22.4.4 For the avoidance of doubt, the Members shall bear their own costs in respect of the process set out in this Clause 22.4.

22.4.5 The Members agree that matters not suitable for determination by an Expert shall include (but not be limited to) decisions relating to:-

- (a) the Business of the Delivery Vehicle (which is a subjective decision regarding the activities and Objectives of the Delivery Vehicle (and not one of fact) and which shall not be appropriate for third party determination); and
- (b) any decision to adopt, amend or update any Business Plan.

22.5 Mediation

22.5.1 If the Members agree that the Deadlock Matter is not suitable for decision by an Expert or if the Members are unable to reach agreement on this point within 10 Working Days of this matter being first presented to the Members or if the Expert fails to notify the Members of his/her decision within the specified or agreed period as set out in Clause 22.4.2, then the Members shall attempt to settle the Deadlock Matter by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Members, the mediator will be nominated by CEDR. To initiate the mediation a Member must give notice in writing ("**Mediation Notice**") to the other Member requesting a mediation. A copy of the request should be sent to CEDR. The mediation will take place in London, and will start not later than 20 Working Days after the date of the Mediation Notice.

22.5.2 If the dispute is not settled by mediation within 40 Working Days of commencement of the mediation or within such further period as the Members may agree in writing, then the provisions of Clause 22.6 shall apply.

22.6 **Deadlock Event**

22.6.1 If a Deadlock Matter relating to the Delivery Vehicle has been referred to mediation pursuant to Clause 22.5 and the Deadlock Matter has not been resolved within the relevant time period specified in Clause 22.5, then the Deadlock Matter shall crystallise into a "**Deadlock Event**" in relation to the Delivery Vehicle and the provisions of Clause 24 shall apply.

22.7 **Good faith**

Each of the Members hereby covenants with and undertakes to the other at all times to act in good faith towards each other and the Delivery Vehicle and each Delivery Vehicle Party in connection with this Agreement generally and the performance of their respective obligations under it.

22.8 **Matters not giving rise to a Deadlock Matter**

22.8.1 This Clause 22 shall not apply to (and no Deadlock Matter shall arise in relation to):-

- (a) any decision to amend the Objectives; or
- (b) any decision to amend this Agreement;
- (c) any proposed variation to or adoption of the Business Plan,

which in the absence of a unanimous decision to amend, shall remain as drafted.

22.9 **Delivery Vehicle Parties**

22.9.1 The provisions of Clause 22 shall apply *mutatis mutandis* to each Delivery Vehicle Party (save for a nominee company, in relation to which this Clause 22 shall not apply), provided that references in Clause 22 to:-

- (a) the Delivery Vehicle shall be construed as being references to such Delivery Vehicle Party;
- (b) Board shall be construed as being references to the board of nominees of such Delivery Vehicle Party;
- (c) references to Nominees shall be construed as being references to the nominees on the board of such Delivery Vehicle Party;
- (d) the Delivery Vehicle's Business shall be construed as being references to the Delivery Vehicle Party's business;
- (e) the Objectives shall be construed as being references to the Objectives of the relevant Delivery Vehicle Party; and
- (f) the Business Plan shall be construed as being references to the Business Plan insofar as they apply to the relevant Delivery Vehicle Party,

provided that any reference to a Member in this Clause 22 (insofar as it applies to a Delivery Vehicle Party) shall continue to be a reference to such Member, and shall not be construed as a reference to the members of such Delivery Vehicle Party.

23. **[NOT USED]**

23.1.1 []

24. **DURATION, TERMINATION AND WINDING UP OF THE DELIVERY VEHICLE PARTIES**

24.1 The winding up procedure set out in this Clause 24 ("**Winding Up Procedure**") shall apply on the occurrence of any of the following "**Termination Events**":-

24.1.1 a Deadlock Event occurring under Clause 22.6, in which case the Winding Up Procedure shall apply in relation to the Delivery Vehicle Group;

24.1.2 any Default Event occurring which is not capable of remedy or is not remedied or waived by the Non-Defaulting Member in accordance with Clauses 21.3 or 21.4, in which case the Winding Up Procedure shall apply in relation to the Delivery Vehicle Group;

24.1.3 the insolvency, dissolution or liquidation of any Delivery Vehicle Party (the "**Insolvent Delivery Vehicle Party**") (other than for the purposes of an amalgamation or reconstruction), in which case the Winding Up Procedure shall apply to the relevant Insolvent Delivery Vehicle Party only;

24.1.4 the written agreement of the Members to voluntarily wind up the relevant Delivery Vehicle Party or Delivery Vehicle Parties, in which case the Winding Up Procedure shall apply in relation to the Delivery Vehicle Group; and

24.1.5 the thirtieth anniversary of the Effective Date (save in circumstances where, prior to such thirtieth anniversary, the Members agree in writing to extend this Agreement by an additional period of not more than 10 years), in which case the Winding Up Procedure shall apply in respect of the Delivery Vehicle Group.

24.2 **Wind Up Transfers and Winding Up Procedure**

On the occurrence of any Termination Event, each Delivery Vehicle Party and the Members shall procure that, and shall 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 24 is followed.

24.3 **Consequences of Termination Events (Deadlock Event)**

24.3.1 Subject to and without prejudice to Clause **Error! Reference source not found.**, on the occurrence of a Deadlock Event, each Member shall have the option to offer to purchase the Member Interest held by the other Member in accordance with the terms of this Clause 24.3.

24.3.2 Within 20 Working Days of the occurrence of a Deadlock Event ("**Deadlock Offer Period**") each Member shall have the right to deposit at the registered office of Delivery Vehicle and addressed to the Board, a Sealed Bid in writing under which that Member shall unconditionally offer to purchase all (but not some only) of the Member Interest held by the other Member at the cash price, payable on completion of the purchase and sale of the relevant Member Interest, stated in the bid.

24.3.3 The Sealed Bids shall be opened by the Board at the expiry of the Deadlock Offer Period or if earlier once each Member has deposited a Sealed Bid at the registered office of the Delivery Vehicle in accordance with Clause 24.3.2.

24.3.4 Subject to Clause 24.3.5, the Member who shall deposit the Sealed Bid which names the highest price within the Deadlock Offer Period shall become bound to purchase and the other Member shall become bound to sell its Member Interest at the price stated in such bid and in accordance with Clauses 24.3.2 and 24.5 and the provisions of Clauses 24.5.4 and 24.6 shall not apply.

- 24.3.5 In the event that a single Sealed Bid is received by the expiry of the Deadlock Offer Period, the price payable shall be the higher of the price stated in the Sealed Bid and the valuation by an Expert pursuant to the provisions of paragraph 24.3.6 (subject to the relevant Member's ability to revoke the offer pursuant to Clause 24.3.7).
- 24.3.6 The Board shall instruct an Expert and shall procure that the Expert shall:
- (a) within 30 Working Days after the expiry of the Deadlock Offer Period determine the Member Interest Value of the relevant Members' Member Interest and notify the Board; and
 - (b) within 5 Working Days of such notification by the Expert, notify the purchasing Member of the Member Interest Value of the relevant Member's Member Interest determined by the Expert pursuant to this Clause 24.3.6.
- 24.3.7 In the event that the Member Interest Value determined pursuant to Clause 24.3.6 exceeds the price stated in the Sealed Bid, the relevant Member shall have 10 Working Days from the notification pursuant to Clause 24.3.6(b) (the "**Revocation Period**") to revoke the offer by serving written notice on the Delivery Vehicle (the "**Revocation Notice**"). If the Revocation Notice is served within the Revocation Period the provisions of Clause 24.3.9 shall apply.
- 24.3.8 The costs of any Expert and any professionals consulted by the Delivery Vehicle pursuant to Clause 24.3.6 shall be borne by the Delivery Vehicle.
- 24.3.9 Where, neither Member exercises the option to purchase the other Member's Member Interest pursuant to this Clause 24.3 or where a Member has revoked its offer to purchase the other Member's Member Interest pursuant to Clause 24.3.7, the Winding Up Procedure set out in Clause 24.5.4 shall apply in respect of the Delivery Vehicle Group.

24.4 **Consequences of Termination Events (Default Event)**

- 24.4.1 Subject to and without prejudice to Clause **Error! Reference source not found.**, on the occurrence of a Default Event which is not capable of remedy or is not remedied or waived by the Non-Defaulting Member in accordance with Clauses 21.3 or 21.4 ("**Default Termination Event**") the Non-Defaulting Member shall have the option to purchase the Member Interest held by the Defaulting Member in accordance with the provisions of this Clause 24.4.
- 24.4.2 If the Non-Defaulting Member wishes to acquire the Defaulting Party's Member Interest it shall give notice in writing of such intention to the Board and the Defaulting Member within 20 Working Days of the Default Termination Event ("**Default Offer Period**").
- 24.4.3 In the event that the Non-Defaulting Member serves a written notice pursuant to Clause 24.4.2, the Board shall instruct an Expert to determine the Member Interest Value of the Defaulting Party's Member Interest and to notify the Board of such determination within 30 Working Days of the date of written notice issued pursuant to Clause 24.4.2.
- 24.4.4 The price payable by the Non Defaulting Party shall be the Member Interest Value determined by an Expert minus a sum equal to ten per cent (10%) of the Member Interest Value so determined, save that where the Termination Event arises pursuant to Clause 21.1.2(h), the deduction of a sum equal to ten per cent (10%) of the Member Interest Value shall not apply.
- 24.4.5 Where, on the occurrence of a Default Event, the Non-Defaulting Member does not exercise its option to purchase the Member Interest held by the Defaulting Member pursuant to this Clause 24.4, the Winding Up Procedure set out in Clause 24.5.4 shall apply in respect of the Delivery Vehicle Group.

24.5 Transfer of Member Interest

- 24.5.1 The price determined pursuant to clauses 24.3 or 24.4 (as applicable) shall be known as the "**Purchase Price**" for the purpose of this Clause 24.5.
- 24.5.2 On completion of a purchase by one Member of another Member's Member Interest:
- (a) the Purchase Price shall be paid by telegraphic transfer to a bank account designated by the relevant Member;
 - (b) duly executed deeds of novation in relation to the relevant Member Interest in the form agreed in writing between the Members shall be delivered to the purchasing Member; and
 - (c) the selling Member shall execute, deliver and do all such other deeds, documents, acts and things as may be necessary in such form as the purchasing Member may reasonably request to complete the transfer and to ensure that the relevant Member Interest passes with full title guarantee and free from any option, lien, charge, equity or other encumbrance and together with all rights and liabilities attaching to the relevant Member Interest at the date of such transfer.
- 24.5.3 The completion of a transfer or novation of a Member Interest (as the case may be) shall take place at the registered office of the Delivery Vehicle, or at such other address as may be agreed between the Members, as soon as reasonably practicable following the date of the determination of the Purchase Price.
- 24.5.4 In circumstances where, pursuant to the terms of this Agreement the Winding Up Procedure shall apply and the option to acquire the Member Interest of the other Member pursuant to Clauses 24.3 and 24.4 is not exercised, the Parties shall procure that (notwithstanding any other term of this Agreement) the following procedure shall apply in respect of the relevant Delivery Vehicle Party or Delivery Vehicle Parties specified in Clause 24.1 (each a "**Winding Up Delivery Vehicle Party**").
- (a) properties already transferred to the Delivery Vehicle Group shall be developed out/completed (or sold if applicable) where possible in accordance with the Business Plan;
 - (b) no further contracts for works or otherwise to third parties will be awarded or entered into save as required to complete such works and realise development proceeds;
 - (c) no further activities or operations of the Winding Up Delivery Vehicle Party shall be conducted except as required pursuant to and in accordance with this Clause 24.5;
 - (d) unless the board of the Winding Up Delivery Vehicle Party agrees otherwise (taking into account the provisions of Clause 24.6(b) and acting in the best interests of the Winding Up Delivery Vehicle Party) the Parties shall use all reasonable endeavours to procure the termination of all other agreements and contracts to which the Winding Up Delivery Vehicle Party is party provided that such termination shall not constitute a breach of the relevant contract; and
 - (e) where the Delivery Vehicle is a Winding Up Delivery Vehicle Party, a Winding Up Practitioner shall be appointed in accordance with Clause 24.6, to ensure that the Partnership Assets shall be distributed in accordance with Clause 24.6 and Clause 25.

24.6 **Winding Up Practitioner's appointment**

24.6.1 **Winding Up of Delivery Vehicle**

Where the Delivery Vehicle is a Winding Up Delivery Vehicle Party, a Winding Up Practitioner shall be appointed in respect of the Winding Up Delivery Vehicle Parties within 30 Working Days of the date upon which Clause 24.1.3 first applies in respect of the Delivery Vehicle, and shall be instructed to wind up the Delivery Vehicle and its Business (and the business of each Winding Up Delivery Vehicle Party) in an efficient manner and to ensure that its Partnership Assets (and those of the other Winding Up Delivery Vehicle Parties) shall be distributed in accordance with Clause 25.

24.6.2 **Other Delivery Vehicle Party Winding Up**

Where any other Delivery Vehicle Party is a Winding Up Delivery Vehicle Party (in circumstances where the Delivery Vehicle is not a Winding Up Delivery Vehicle Party), a Winding Up Practitioner shall be appointed in respect of such Delivery Vehicle Party within 30 Working Days of the date upon the later of the relevant Termination Event first occurs and, if applicable, the date upon which Clause 24.1.3 first applies in respect of such Delivery Vehicle Party, and shall be instructed to wind up the relevant Delivery Vehicle Party and its business (only) in an efficient manner and to ensure that its Partnership Assets shall be distributed in accordance with Clause 25.

24.7 **Consequences of Termination Events (Voluntary winding up or effluxion of time)**

Where a Termination Event arises pursuant to Clause 24.1.4 or 24.1.5, the Parties will take such steps as are reasonably required (including transferring relevant part(s) of the Development Site, if appropriate) to reflect the agreed long term strategy contained in the Business Plan.

25. **DISTRIBUTION OF ASSETS**

25.1 In relation to any return of capital or assets to Members, including, but not limited to, following the completion of the process set out in Clause 24.6 in relation to the Delivery Vehicle or Delivery Vehicle Party, subject to:-

25.1.1 the Act, the Regulations, the Companies Act 2006 and the Insolvency Act 1986; and

25.1.2 the terms of any third party funding;

(save as otherwise agreed in writing by the Members) the Parties shall procure that and the Members shall exercise all voting rights and other powers of control available to them to procure that any such Partnership Assets, capital or assets shall be distributed in the descending order of priority and in the proportions set out in Clause 25.

25.2 The distributions and order of priority in relation to Delivery Vehicle shall be as follows (to the extent not already paid):-

25.2.1 repayment of the expenses of the winding up (if any);

25.2.2 repayment of any third party debt;

25.2.3 distribution to each Member of amounts allocated as being credited to its Current Account;

25.2.4 repayment to each Member of its Outstanding Capital Contribution; and

25.2.5 subject to Clause 25.3, distributions of profits due to the Members pro rata to their Member Proportions.

25.3 For the purposes of section 74 Insolvency Act 1986 as it is applied to limited liability partnerships under the Act and the Regulations no Member is liable to contribute any amount to the assets of the Delivery Vehicle on a winding up to cover any of the matters set out in that section.

25.4 Where a payment is made pursuant to Clause 25.3, the Parties agree that the Termination Event shall not give rise to any other remedy to the Nominee Company, Delivery Vehicle or any Delivery Vehicle Party.

26. **INTELLECTUAL PROPERTY**

26.1 Any Intellectual Property created or discovered by a person while a Member, or employed or engaged by a Member, which is being used or adopted for use by an Delivery Vehicle Party ("**Relevant Intellectual Property**"), shall be disclosed to such Delivery Vehicle Party immediately and shall belong to and be the absolute property of such Delivery Vehicle Party. This does not affect any rights of a Member, who is also an employee of the Delivery Vehicle, under the Patents Act 1977.

26.2 To the extent that the legal title in any Relevant Intellectual Property fails to vest in the relevant Delivery Vehicle Party, the relevant Members agree to hold such rights on trust for such Delivery Vehicle Party. Each Party further agrees to use his reasonable endeavours to do (or procure the doing of) all such acts and execute (or procure the execution of) all such documents as may be reasonably required by each Delivery Vehicle Party (the relevant Delivery Vehicle Party paying any reasonable expenses incurred by doing so) in order to vest the legal title in the relevant Delivery Vehicle Party.

26.3 If requested by an Delivery Vehicle Party (and at its expense), each Member shall give all necessary assistance to such Delivery Vehicle Party to enable it to enforce its Intellectual Property rights against third parties and apply for registration of the rights, where appropriate throughout the world, for the full term of those rights.

27. **[NOT USED]**

27.1.1 []

28. **LOCAL AUTHORITY POWERS**

28.1 Nothing contained or implied in this Agreement or any consent or approval granted pursuant to it shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as the local authority or local planning authority or as the highway authority or as any other statutory authority and such rights powers duties and obligations under Statutory Requirements may be as fully and effectually exercised as if it were not party to this Agreement and any approval consent direction or authority given by the Council as local or other statutory authority shall not be or be deemed to be an approval consent direction or authority given under this Agreement and vice versa.

29. **CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION**

29.1 During the term of this Agreement and for a period of 3 years after the termination or expiry of the Agreement for any reason whatsoever (the "**Confidentiality Period**"), the Receiving Party (as defined in Clause 29.2) will:-

29.1.1 keep Confidential Information (as defined in Clause 29.2) confidential;

29.1.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party (as defined in Clause 29.2) or in accordance with Clauses 29.2 to 29.5; and

29.1.3 not use Confidential Information for any purpose other than the performance of its obligations under this Agreement.

29.2 For the purposes of this Clause 29, "**Confidential Information**" means all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly

or indirectly) by one Party (the "**Disclosing Party**") to another Party ("**Receiving Party**") whether before or after the date of this Agreement including, without limitation, any information relating to the Disclosing Party's operations, processes, plans, proposals or intentions, its tenants (both existing and prospective), customers, existing and potential clients, know-how, design rights, trade secrets, any investment, development business or market opportunities and its business affairs.

- 29.3 During the Confidentiality Period, the Receiving Party may disclose Confidential Information to its employees, its own members, contractors, sub-contractors, agents and advisers (and its Group members) under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Agreement, or any other Project Agreement and may disclose Confidential Information under conditions of confidentiality to its funders, prospective funders, prospective Members of the Delivery Vehicle, prospective funders of any Delivery Vehicle Party, and prospective purchasers of its or their assets (in each case, to the extent reasonably necessary). In each case the permitted recipient of such Confidential Information shall be known as a "**Recipient**". In this Clause 29.3 "**Group**" shall refer to the Council Group, or Nominee Company Group (as the context shall require).
- 29.4 The Receiving Party shall so far as practicable procure 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 were a Party to this Agreement.
- 29.5 The obligations contained in Clauses 29.2 to 29.4 shall not apply to any Confidential Information which:-
- 29.5.1 is at the date of this Agreement in, or at any time after the date of this Agreement comes into, the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;
 - 29.5.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party and not subject to any obligations of confidentiality before disclosure by the Disclosing Party to the Receiving Party;
 - 29.5.3 subsequently comes lawfully into the possession of the Receiving Party from a third party and not subject to any obligations of confidentiality;
 - 29.5.4 is required to be disclosed by the relevant Party's audited and published accounts or is required to be disclosed to a tax authority in connection with the tax affairs of the Receiving Party; and/or
 - 29.5.5 is required to be disclosed by law or regulation having force of law or for the purposes of proceedings in any court arbitration or any tribunal or is required by any stock exchange or any or a regulatory authority or body or any Government Department to be disclosed.
- 29.6 The Parties acknowledge that the Council is subject to the requirements of the FOIA and the EIR. For the purpose of Clauses 29.6 to 29.12 (inclusive) only, Information has the meaning given under section 84 of the FOIA and the meaning attached to "environmental information" contained in Section 2 of the EIR as appropriate.
- 29.7 Where the Council receives a Request for Information, to the extent that it comprises Information that the Delivery Vehicle or any Delivery Vehicle Party is holding on behalf of the Council (as deemed by FOIA or EIR as the case may be), the Council shall notify the Delivery Vehicle of the requested Information in writing as soon as practicable and the Delivery Vehicle will:-
- 29.7.1 if necessary to identify and / or locate the Information, as soon as reasonably practicable and in any event within 5 Working Days notify the Council in writing of what reasonable additional information or clarification (if any) is required by it (or any relevant Delivery Vehicle Party) in order to enable the Delivery Vehicle or Delivery Vehicle Party to identify and locate the Information requested (which additional information and / or clarification the Council shall obtain and provide as soon as possible); and

29.7.2 provide the Council with a copy of all such requested Information held by the Delivery Vehicle and / or and Delivery Vehicle Party on behalf of the Council in the form that the Council requires (acting reasonably) (or procure the provision of the same to the Council by an Delivery Vehicle Party, where applicable) as soon as reasonably practicable and within 10 Working Days after the Council's notification or provision by the Council of the requested additional information and / or clarification (whichever is the later).

29.8 Where the Council receives a Request for Information in relation to Information relating to this Agreement, the Nominee Company, the Delivery Vehicle, any Delivery Vehicle Party and/or any of the Project Agreement, (and / or any Confidential Information directly or indirectly provided by any one or more of the Nominee Company, Delivery Vehicle, and / or any Delivery Vehicle Party), the Council shall, where reasonably practicable, provide both Nominee Company and Delivery Vehicle in writing with the relevant details of the Request.

29.9 Following any notification under Clause 29.8, the Nominee Company, and Delivery Vehicle (on its behalf and on behalf of each Delivery Vehicle Party) may make written representations to the Council within a period of 5 Working Days from the date of the Council's notification as to whether or not or on what basis Information requested should be disclosed, and if to be withheld, or redacted, to what extent and on what basis and the Council agrees that it shall consider such representations before making its decision on the relevant Request provided always that the Council shall be responsible for determining at its absolute discretion:-

29.9.1 whether the Information is exempt from disclosure under the FOIA or the EIR as applicable; and

29.9.2 whether the Information is to be disclosed in response to a Request for Information,

and in no event shall the Nominee Company, Delivery Vehicle or any Delivery Vehicle Party respond directly or allow its subcontractors to reply directly to such a Request for Information in relation to this Agreement or the Council unless expressly authorised to do so by the Council.

29.10 The Delivery Vehicle shall procure that all Information held on behalf of the Council (whether by itself or any other Delivery Vehicle Party) is retained for disclosure for at least 6 years from the date it is required and shall permit the Council between 9am to 5pm on Working Days and on reasonable prior written notice, to inspect such Information as requested from time to time (or procure the same, in relation to Information held by another Delivery Vehicle Party).

29.11 The Delivery Vehicle shall transfer to the Council any Request for Information in relation to this Agreement or the Council received by the Delivery Vehicle as soon as practicable and in any event within 5 Working Days of receiving it (and shall procure that each other Delivery Vehicle Party shall transfer to the Council any Request for Information in relation to this Agreement or the Council received by it as soon as practicable and in any event within 5 Working Days of receiving it.

29.12 The Delivery Vehicle acknowledges (on behalf of itself and every other Delivery Vehicle Party) that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information.

30. **RELATIONSHIPS WITH GROUPS**

30.1 Each Party shall procure that any contracts between (i) the Delivery Vehicle and (ii) the Council Group or Nominee Company (as applicable) shall be made on an arm's length commercial basis and on terms that are not unfairly prejudicial to the interests of any other Party. Each Member undertakes to the other to use all reasonable endeavours to ensure that such terms are negotiated and settled in good faith.

30.2 The Council acknowledges and agrees that any approval consent direction or authority given by the Council pursuant to this Agreement shall be exercised independently from the Council's functions as local planning authority or any other statutory function.

31. **[NOT USED]**

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32. **ANNOUNCEMENTS**

32.1 Subject to Clause 32.2, no Member shall make nor send any announcement, communication or circular relating to the subject matter of this Agreement unless such Member has first obtained the other Member's written consent to the form and content of such announcement, such consent not to be unreasonably withheld or delayed.

32.2 Clause 32.1 does not apply to an announcement, communication or circular required by Law or by the rules of any stock exchange or by any governmental authority, in which event the Member required to make or send such announcement, communication or circular shall, where practicable, first consult with the other Members as to the content of such announcement.

33. **NOTICES**

33.1 Any notice or other communication pursuant to, or in connection with, this Agreement shall be in writing and delivered personally to the Party due to receive such notice at its registered office from time to time (or to such other address as may from time to time have been notified in writing to the other Parties in accordance with this Clause):-

- Council Attention: Head of Paid Service
- Nominee Company Attention: Director of Place
- Delivery Vehicle Attention: the Chairman of the Board

33.2 Subject to Clause 33.3, any notice or other communication shall be deemed to have been served:-if delivered personally, when left at the address referred to in Clause 33.1.

33.3 If a notice is given or deemed given at a time or on a date which is not a Working Day, it shall be deemed to have been given on the next Working Day.

34. **INVALIDITY AND SEVERANCE**

If any provision of this Agreement is held to be invalid, unenforceable or illegal, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall remain unaffected. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving so nearly as possible the same commercial effect, to be substituted for the provision so found to be invalid, unenforceable or void.

35. **WAIVER**

35.1 The failure by a Party to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies such Party may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

35.2 Subject to the provisions of Clauses 21 and 25.4, the Parties' rights and remedies contained in this Agreement are in addition to, and not exclusive of, any other rights or remedies available at Law.

36. **THIRD PARTY RIGHTS**

Save to the extent expressly set out in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce

any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act. No party may declare itself as a trustee of the rights under this Agreement for the benefit of any third party save as expressly provided in this Agreement.

37. OBLIGATIONS OF THE DELIVERY VEHICLE

To the extent to which it is able to do so by Law, the Delivery Vehicle undertakes with each of the Members that it shall comply with each of the provisions of this Agreement. Each undertaking by the Delivery Vehicle in respect of each provision of this Agreement shall be construed as a separate undertaking and if any of the undertakings is unlawful or unenforceable, the remaining undertakings shall continue to bind the Delivery Vehicle.

38. [NOT USED]

[]

39. ENTIRE AGREEMENT

39.1 This Agreement and the Business Plan set out the entire agreement and understanding between the Parties. Accordingly this Agreement and the Business Plan supersede and extinguish any heads of agreement or memorandum of understanding or other preliminary documents as between the Parties. It is agreed that:-

39.1.1 no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of any other Party which is not expressly set out or referred to in this Agreement;

39.1.2 a Party may claim in contract for breach of warranty under this Agreement but shall have no claim or remedy in respect of any misrepresentation (whether negligent or otherwise, and whether made before or in this Agreement) or any untrue statement made by any other Party;

39.1.3 this Clause shall not exclude any liability or remedy for fraud or fraudulent misrepresentation by a Party; and

39.1.4 save as expressly set out in this Agreement or in any other agreement or document referred to in this Agreement, no Party shall owe any duty of care to any other Party.

40. AMENDMENTS

This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each of the Parties, provided that the amendment of any provision of this Agreement solely affecting any of the respective rights or obligations of the Parties or either of them inter se shall not require the agreement of the Delivery Vehicle.

41. FURTHER ASSURANCE

41.1 Each Party will:-

41.1.1 execute any document and do anything; and

41.1.2 use all reasonable endeavours to procure that any third party (where necessary) executes any deed or document and does anything,

reasonably necessary to implement the terms of this Agreement.

41.2 Where there is any contradiction, ambiguity or inconsistency between any of the following documents referred to in this Agreement they shall be interpreted in the following descending order of priority:-

41.2.1 the Consent Matters;

41.2.2 the Delegations Matrix; and

41.2.3 the then current Business Plan.

42. INSURANCE

From the Effective Date the Delivery Vehicle shall take out and maintain with reputable insurers all insurances required to be maintained by Law and such other prudent insurances against such risks as are normally insured against by businesses carrying on activities similar to those of the Delivery Vehicle (including, but not limited to, an appropriate level of third party liability insurance) and (without prejudice to the generality of the foregoing) shall insure its assets of an insurable nature for their full replacement or reinstatement value.

43. SUCCESSORS AND ASSIGNS

Except as otherwise specified in this Agreement, the provisions of this Agreement shall be binding on and enure to the benefit of the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

44. LAW

44.1 This Agreement shall be governed by and construed in accordance with English law.

44.2 Each Party hereby submits to the exclusive jurisdiction of the English courts to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement and each Party irrevocably waives any objection which it may have to the Courts of England being nominated as the forum to hear and determine any such proceedings and to settle any such disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

45. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts, each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.

46. PREVENTION OF BRIBERY

46.1 The Nominee Company and the Council:-

46.1.1 shall not commit a Prohibited Act;

46.1.2 warrants, represents and undertakes that it is not aware of any improper financial or other advantage being given to any person working for or engaged by the Nominee Company or the Council as the case may be in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Nominee Company or the Council as the case may be before execution of this Agreement;

46.1.3 shall have and comply with Adequate Procedures; and

46.1.4 shall provide evidence of its Adequate Procedures to the Nominee Company or the Council as the case may be within 30 days of written request.

46.2 The Nominee Company and the Council shall operate and maintain through the term of this Agreement an anti-bribery policy (which shall be disclosable to the Nominee Company or the Council as the case may be within 7 days of written request) to prevent any employee from committing a Prohibited Act and shall enforce it where appropriate.

46.3 If any breach of Clause 46 is suspected or known by the Nominee Company or the Council, that Party must notify the Nominee Company or the Council as the case may be immediately.

- 46.4 If the Nominee Company or the Council notifies the other that it suspects or knows that there may be a breach of Clause 46.1 the notifying Party must respond promptly to related enquiries, co-operate with any investigation of the Nominee Company or the Council as the case may be and allow the Nominee Company or the Council as the case may be to audit books, records and any other relevant documentation on request.
- 46.5 The Nominee Company or the Council may, without prejudice to any other rights and remedies available under this Agreement, terminate this Agreement by written notice with immediate effect to the Nominee Company or the Council as the case may be for breach of Clause 46.1 and recover from the Party in breach any loss suffered arising from such termination. In determining whether to exercise the right of termination under this Clause 46, the Nominee Company or the Council as the case may be shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by an individual or a member of the Nominee Company Group or Council Group not acting independently of the Party in breach. The expression "not acting independently of" (when used in this Clause) shall be construed as acting:-
- 46.5.1 with the authority; or
- 46.5.2 with the actual knowledge
- of any one or more of the directors of the Party in breach, or
- 46.5.3 in circumstances where one or more of the directors of the Party in breach ought reasonably to have had knowledge.
- 46.6 Any notice of termination under Clause 46.5 must specify:-
- 46.6.1 the nature of the Prohibited Act;
- 46.6.2 the identity of the party believed to have committed the Prohibited Act; and
- 46.6.3 the date on which this Agreement will terminate.
- 46.7 Any termination under Clause 46.5 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Party terminating the Agreement.
- 46.8 Any termination under Clause 46.5 as a result of a breach of Clause 46.1 by the Council shall be a Council Default Event and the provisions of Clause 21 shall apply.
- 46.9 Any termination under Clause 46.5 as a result of a breach of Clause 46.1 by the Nominee Company shall be a Nominee Company Default Event and the provisions of Clause 21 shall apply.
- 46.10 For the avoidance of doubt, the Nominee Company and the Council shall be responsible for the acts and omissions of members of the Nominee Company Group and the Council Group (as applicable) and for the purpose of this Clause 46 any act, default or omission of any such group member shall be deemed to be an act, default or omission of the Nominee Company or the Council as applicable.
- 46.11 Delivery Vehicle will, and the Nominee Company and the Council will use all their powers in relation to Delivery Vehicle to ensure that Delivery Vehicle will:-
- 46.11.1 not do or omit to do any act or thing which would constitute a Prohibited Act; and
- 46.11.2 within 30 days of completion prepare and implement an anti-bribery policy to prevent any employee from committing a Prohibited Act and shall enforce it where appropriate and have in place Adequate Procedures; and
- 46.11.3 comply with the Adequate Procedures and the anti-bribery policy.

EXECUTED AS A DEED by the Parties on the date which first appears in this deed.

[NOTE: EXECUTION BLOCKS TO BE INSERTED]

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:-

"Accounting Date"	means 31 March in each year or such other date as the Members may from time to time agree
"Accounting Period"	means any period of 12 calendar months from and including one Accounting Date up to but excluding the next Accounting Date
"Act"	means the Limited Liability Partnerships Act 2000
"Adequate Procedures"	adequate procedures designed to prevent persons associated with it from undertaking conduct causing it to be guilty of an offence under section 7 of the Bribery Act 2010
"Agreement"	means this deed (including any Schedule or Appendix to it), as amended, varied, supplemented or replaced from time to time in accordance with its terms
"Alternate Nominee"	has the meaning in Clause 7.2.2(b)
"Auditors"	means the auditors of the Delivery Vehicle and Delivery Vehicle Parties from time to time
"Bank"	means the bank of the Delivery Vehicle and Delivery Vehicle Parties from time to time
"Board Meeting"	means any meeting of the board of Nominees in accordance with the provisions of Clause 8
"Board"	means the board of Nominees established in accordance with Clause 7
"Bribery Act"	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued from the relevant government department concerning the legislation
"Business Plan"	means the Initial Business Plan, or any Further Business Plan that has been adopted pursuant to Clause 16.1.4, subject to Clause 16.1.5
"Business"	means the business of the Delivery Vehicle as described in recital (A) and all matters reasonably ancillary to any such matters pursuant to the Delivery Vehicle Objectives
"Capital Account"	means the account ledger maintained by the Delivery Vehicle in the name of a Member against which its Capital Contribution is credited in accordance with Clause Error! Reference source not found. and

	which, shall not require (for the avoidance of doubt, a separate bank account
"Capital Contribution"	means, in respect of a Member, any financial contribution made by that Member to the Delivery Vehicle in accordance with Clause 5
"Chairman"	means the chairman from time to time of the Board or the board of the relevant Delivery Vehicle Party (as applicable) who shall appointed in accordance with the provisions of Clause 7.2.6
"Companies Act"	means the Companies Act 1985 (as amended by the Companies Act 2006)
"Confidential Information"	has the meaning given in Clause 29.2
"Confidentiality Period"	shall have the meaning set out in Clause 29
"Consent Matters"	means the matters reserved for a Council approval in Schedule 3 (Delegations Matrix)
"Council Nominees"	means the nominees appointed by the Council to the Board or the board of the relevant Delivery Vehicle Party (as applicable) pursuant to Clause 7, which may include persons contractually engaged by the Council for this purpose who are neither an officer of the Council nor an elected member of the Council;
"Council Remedy Period"	has the meaning given in Clause 21.3.1
"Council Senior Officer"	means the head of Paid Service;
"Current Account"	in respect of each Member, each Member's Member Current Account ledger (as defined in Clause 17 (Accounts) and which shall not require, for the avoidance of doubt, a separate bank account
"Deadlock Event"	has the meaning given in Clause 22
"Deadlock Matter"	has the meaning given in Clause 22
"Deadlock Notice"	has the meaning given in Clause 22
"Deed of Adherence"	means a deed of adherence in substantially the same form as that set out at Schedule 4 (Deed of Adherence)
"Default Event"	means a Council Default Event or a Nominee Company Default Event as the context so requires
"Defaulting Member"	has the meaning given in Clause 21.2
"Delegations Matrix"	means the document contained in Schedule 3 identifying how certain decisions will be made by the Delivery Vehicle (as amended from time to time in accordance with this Agreement)
"Director"	means a director of a nominee company

"Disclosing Party"	has the meaning given in Clause 29.2
"Delivery Vehicle Current Account"	means the current account to be established by Delivery Vehicle in accordance with Clause 17 (Accounts)
"Delivery Vehicle Group"	means the Delivery Vehicle and any Delivery Vehicle Party
"Delivery Vehicle Objectives"	means the objectives of the Delivery Vehicle as set out in Clause 4.1
"Delivery Vehicle Party"	means the Delivery Vehicle, any nominee company, and each other Delivery Vehicle Subsidiary from time to time (or any such entities as the case may be)
"Delivery Vehicle Policies"	such policies for the Delivery Vehicle and each Delivery Vehicle Party which are adopted by the Delivery Vehicle and each Delivery Vehicle Party from time to time
"Delivery Vehicle Subsidiary"	means a subsidiary or subsidiary undertaking of an Delivery Vehicle Party from time to time and "subsidiary" has the meaning given to it by section 1159 of the Companies Act amended to include any limited liability partnership which would fall within that meaning if it were a company
"Effective Date"	means the date of this Agreement
"EIR"	means the Environmental Information Regulations 2004
"Expert"	means:- <ul style="list-style-type: none"> (a) (where a dispute, difference or matter hereunder is on a point of law or legal drafting) a Queen's Counsel practising in English real property law or construction law or partnership law or banking law (as applicable) being such Counsel as may be appointed by the Members (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the Members by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society of England and Wales; or (b) (where a dispute, difference or matter hereunder concerns a planning matter) a Queen's Counsel practising at the planning bar being such Counsel as may be appointed by the Members (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the Members by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society of England and Wales;

- (c) (where a dispute, difference or matter hereunder is in relation to finance) a senior Chartered Accountant having at least 10 years' post qualification experience in relation to dealing with disputes of a kind of those which may be referred to him or her hereunder as may be jointly appointed by the Members (acting unanimously) or, failing agreement, such Chartered Accountant as shall be appointed at the request of either or both of the Members by or on behalf of the President for the time being (or the next most senior available officer) of the Institute of Chartered Accountants in England and Wales;
- (d) ((where a dispute, difference or matter hereunder concerns potential third party funding), a professional adviser, expert or investment banker with at least 10 years' experience of advising borrowers in relation to the commercial aspects of debt funding packages or, failing agreement, such adviser, expert or investment banker as shall be appointed at the request of either or both of the Members by or on behalf of the President for the time being (or the next most senior available officer) of the Institute of Chartered Accountants in England and Wales;
- (e) (in the case of any other matter) a senior Chartered Surveyor having at least 10 years' post-qualification experience in the development and/or management of premises in the London area as may be jointly appointed by the Members (acting unanimously) or, failing agreement, such surveyor as shall be appointed at the request of either or both of the Members by or on behalf of the President for the time being (or the next most senior available officer) of the Royal Institution of Chartered Surveyors, such experience to be in relation to dealing with disputes of a kind of those which may be referred to him or her hereunder,

and "**failing agreement**" shall for these purposes mean failing any such joint appointment by the Members within 5 Working Days of notice by one Members to the other that the dispute or difference is to be referred to an Expert

"FOIA"

means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time

"Further Business Plan"

means an updated and or amended version of the Business Plan containing such further information

	and/or detail as is required to progress the Project (or any part thereof) at the relevant time
"Group"	Shall have the meaning given in Section 1161 of the Companies Act 2006
"Indebted Person"	has the meaning given in Clauses Error! Reference source not found. and Error! Reference source not found. (each to be construed as required in each Clause)
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000
"Initial Business Plan"	means the Business Plan adopted pursuant to Clause 16.1.1
"Insolvent Delivery Vehicle Party"	has the meaning given in Clause 24.1.3
"Intellectual Property"	means all patents, trade marks, service marks, goodwill, registered designs, utility models, design right, copyright (including copyright in computer software), semi-conductor, topography, rights, inventions, trade secrets and other confidential information, know how, and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the works, whether registered or not or capable of registration or not and including the right to apply for and all applications for any of the foregoing rights and the right to sue for past infringements of any of the foregoing rights
"Law"	means any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable Community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body with which any Party is bound to comply and/or which relate to or affect this Agreement
"Letter of Appointment"	means a letter of appointment of a Nominee or a Director of a nominee company in the form set out in Schedule 5 (Letter of Appointment of a Nominee/Director).
"Material Breach"	means a breach of any of the terms of the this Agreement which is material and/or persistent having regard to all relevant circumstances including, without limitation, the nature of the relationship between the parties to this Agreement the need for each such party to maintain the confidence of the others, the nature of the breach (and in particular whether it be intentional, negligent or otherwise), the regularity with which the obligation which has been breached falls to be performed under this Agreement and the consequences of the breach

"Mediation Notice"	have the meaning given in Clause 22.5.1
"Member Interest Value"	means, in relation to a Member Interest, the price which a third party would pay in the open market to acquire such Member Interest and all other rights and liabilities comprised in the relevant Member Interest, as such value may be agreed between the Members or, in the absence of agreement, as determined by an Expert
"Member Interest"	means the entire legal and beneficial interest a Member has in the Delivery Vehicle from time to time including that Member's rights and obligations under this Agreement and the Finance Agreements
"Member Proportion"	means: Council: 99.9% Nominee Company: 0.1%
"Members' Meeting"	means a duly convened meeting of the Members in accordance with Clause 12
"Members"	(subject to any such persons ceasing to be a Member in accordance with this Agreement) the Council, the Nominee Company and any other persons who may from time to time and for the time being be admitted as Members of the Delivery Vehicle in accordance with the terms of this Agreement
"Net Profits" or "Net Profit"	the profits of the Delivery Vehicle for an Accounting Period as shown in the audited accounts of the Delivery Vehicle after all expenditure and provisions (including the payment of all interest, if any, accrued and payable on moneys borrowed by the Delivery Vehicle and any salaries or drawings paid or payable by the Delivery Vehicle (but, for the avoidance of doubt, before providing for reserves in working capital and re-investment in the Delivery Vehicle)
"Nominee Company Nominees"	means the nominees appointed by the Nominee Company to the Board or the board of the relevant Delivery Vehicle Party (as applicable) pursuant to Clause 6.1.1
"Nominee Company Remedy Period"	has the meaning given in Clause 21.4.1
"Nominees"	means the Council Nominees and/or the Nominee Company Nominees as the context may require
"Non-Defaulting Member"	has the meaning given in Clause 21.2
"Objectives"	means the Delivery Vehicle Objectives
"Offer Period"	has the meaning given in Clause Error! Reference source not found.
"Offer"	has the meaning given in Clause Error! Reference source not found.

"Outstanding Capital Contribution"	means, in respect of any Member, an amount equal to its Capital Contribution less the sum of any repayments of Capital Contributions by the Delivery Vehicle to that Member
"Partnership Assets"	means any property held by the Delivery Vehicle or any of the Delivery Vehicle Parties (as the context shall require) and, for the avoidance of doubt, including any Intellectual Property
"Prohibited Act"	<p>the following constitute Prohibited Acts:-</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence:- <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts relating to this Agreement or any other contract with the Council or Nominee Company (as applicable); or
"Prohibited Party"	<p>means in the remaining Member's absolute discretion a third party that would not be appropriate for that Member to contract with because:</p> <ul style="list-style-type: none"> (a) such party's business or parent's business is substantially concerned with the sale, distribution or manufacture of arms or weapons, tobacco or tobacco related products, alcoholic beverages, gaming or gambling, or pornography; (b) in the case of the Council, such party would not be a fit and proper person for the Council to contract with having regard to the Council being a public sector body;

"Public Sector Body"	means any UK person classified as falling within the public sector for the purposes of the national accounts by the Office of National Statistics or any entity controlled by one or more such persons
"Quarter"	each period from 1 January to 31 March, 1 April to 30 June, 1 July to 30 September or 1 October to 31 December, and "Quarterly" shall be construed accordingly
"Receipt"	means all sums received of whatever nature
"Receiving Party"	shall have the meaning given in Clause 29.2
"Recipient"	shall have the meaning given in Clause 29.3
"Regulations"	means the Limited Liability Partnerships Regulations 2001 as amended by the Limited Liability Partnerships (Application of the Companies Act 2006) Regulations 2009 (in turn as amended by the Limited Liability Partnerships (Amendment) Regulations 2009)
"Relevant Intellectual Property"	has the meaning given in Clause 26.1
"Requests for Information"	has the meaning set out in the FOIA or the EIR as relevant
"Revocation Notice"	has the meaning given in Clause Error! Reference source not found.
"Revocation Period"	has the meaning given in Clause Error! Reference source not found.
"Sealed Bid"	means a bid made in writing and sealed in an envelope
"Statutory Requirements"	means all or any of the following:- <ul style="list-style-type: none"> (a) Acts of Parliament and any statutory instruments, rules, orders, regulations and bye-laws for the time being made under or deriving validity from an Act of Parliament, in each case whether public or private; (b) European directives or regulations and rules; and (c) regulations, rules, orders, codes of practice, notices, policies or bye-laws imposed by any statutory agency, body or authority (whether local, regional, national or European) (a "Regulatory Requirement") but excluding any Regulatory Requirement imposed by the Council unless and to the extent that the Council is required to impose such Regulatory Requirement as a direct consequence of and so as to comply with:- <ul style="list-style-type: none"> (i) a Statutory Requirement falling under (a) or (b) above; or

- (ii) a Regulatory Requirement of any such agency, body or authority other than the Council; and/or
- (iii) a Regulatory Requirement imposed by the Council acting in its capacity as a planning authority (provided it is acting impartially);

and in each case either having the force of law in England and/or with which the Council is required to comply

"Subsidiary"	save where expressly extended or it is stated to the contrary in this Agreement, has the meaning ascribed to it by section 1159 of the Companies Act and includes any limited liability partnership which would fall within that meaning if it were a company
"Termination Event"	means an event listed in Clause 24.1
"Winding Up Delivery Vehicle Party"	has the meaning given in Clause 24.5.4
"Winding Up Practitioner"	means an agreed independent third party appointed by the Members to administer a winding up of the Delivery Vehicle including distributing the assets of the Delivery Vehicle to those entitled and, in the case of a voluntary insolvent winding up, means a liquidator as referred to under section 91 of the Insolvency Act 1986
"Winding Up Procedure"	has the meaning given in Clause 24.1
"Working Day"	means 9.00 am to 5.00 pm on any day (other than a Saturday) on which clearing banks in the City of London are open for the transaction of normal sterling banking business with the exception of 24th December to 1st January inclusive which shall never be deemed to be Working Days for the purposes of this Agreement.

1.2 Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:-

- 1.2.1 the headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement;
- 1.2.2 a statutory provision includes a reference to:-
 - (a) the statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and
 - (b) any subordinate legislation made under the statutory provision (whether before or after the date of this Agreement);

provided that any such modification, re-enactment or legislation made after the date of this Agreement does not materially change the relevant provision.

- 1.2.3 except where the context expressly requires otherwise, references to Clauses, sub-Clauses, paragraphs, sub-paragraphs, parts and Schedules are references to Clauses, sub-Clauses, paragraphs, sub-paragraphs and parts of and Schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement;
- 1.2.4 the Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules. In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence;
- 1.2.5 words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, companies, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity;
- 1.2.6 where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa;
- 1.2.7 the language of this Agreement is English. All correspondence, notices, and information shall be in English;
- 1.2.8 references to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation;
- 1.2.9 the words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed *contra proferentem*;
- 1.2.10 in construing this Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word other or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- 1.2.11 where this Agreement states that an obligation shall be performed **no later than** or **within** or **by** a stipulated date or event which is a prescribed number of Working Days after a stipulated date or event the latest time for performance shall be noon on the last Working Day for performance of the obligations concerned;
- 1.2.12 unless expressly stated otherwise, where consent or approval of any party to this Agreement is required for any purpose under or in connection with the terms of this Agreement it shall be given in writing and within a reasonable time following a receipt for a request in writing for such consent or approval;
- 1.2.13 unless otherwise specified or the context otherwise requires, a reference to a document, instrument or agreement (including, without limitation, to this Agreement) is a reference to any such document, instrument or agreement as modified, amended, varied, supplemented or novated from time to time and as it may be adhered to by other parties from time to time.

SCHEDULE 2

[NOT USED]

SCHEDULE 3

DELEGATIONS MATRIX

The following are Consent Matters:

1. making any material amendment to the Business Plan or undertaking activities outside the scope of the Business Plan;
2. entering into any contract, liability or commitment (or series of connected contracts, liabilities or commitments) which unless expressly provided for in the Business Plan approved by the Council exceeds £500,000 of the aggregate budgeted expenditure of the Delivery Vehicle and the Delivery Vehicle Parties for the relevant Accounting Period;
3. ceasing to carry on the Business or the carrying on of the Business on any materially reduced scale or the commencement of any new business not being ancillary or incidental to the Business;
4. a material change to the Business;
5. creating any borrowings or other indebtedness or obligation in the nature of borrowings (including obligations pursuant to any debenture, bond, note, loan stock or other security and obligations pursuant to finance leases) except as specifically provided for in the annual budget for the relevant Accounting Period;
6. acquiring, or investing in, another company or business or the incorporation of any Subsidiary under Clause 3.4 (or otherwise);
7. creating any encumbrance (or allowing one to subsist) over all or any part of the business, undertaking, property or assets of the Delivery Vehicle or any of the Delivery Vehicle Parties save as may be otherwise agreed in any Business Plan;
8. giving any guarantee, indemnity or security in respect of the obligations of any other person;
9. entering into or participating in any joint venture, partnership or other profit-sharing arrangement with any person or making any amendment or variation to any such arrangement;
10. amalgamating, merging, consolidating, selling, transferring or entering into a lease or licence which, in any case, materially alters, or in any other way disposes of, all or a substantial part of its business, undertaking, property or assets, whether by a single transaction or series of transactions related or not (save in respect of sales (or equivalent) in pursuit of the Objectives and within the scope of an approved Business Plan);
11. selling or otherwise disposing of any Delivery Vehicle Party;
12. making any change to the accounting policies and principles otherwise than as recommended by the Auditors to comply with generally accepted accounting standards;
13. appointment of and making any change to its Auditors or its accounting reference date;
14. expanding, developing or evolving the Business other than through the Delivery Vehicle or any Delivery Vehicle Party;
15. amending the Members' Agreement;
16. the initiation, conduct, settlement or abandoning of any claim, litigation, arbitration or other proceedings with a quantum (excluding interest and costs) in excess of £50,000 involving the Delivery Vehicle or any of the Delivery Vehicle Parties or any admission of liability by or on behalf of the Delivery Vehicle or any of the Delivery Vehicle Parties in respect of the same;

17. approving any proposal for its winding-up or liquidation save as expressly contemplated by this Agreement or as required by Law;
18. appointing or removing any Nominee otherwise than in accordance with Clause 7; and
19. agreeing to do any of the above.

ACTIVITY	COUNCIL	BOARD
CORPORATE MATTERS		
Approval and adoption of each Business Plan of the Delivery Vehicle (and any amendments/ variations thereto)	Approval	Recommendation
Alteration of the Objectives or the nature/scope of the Business, closing down/commencing any business which is not ancillary or otherwise incidental to the Business of the Delivery Vehicle.	Approval	Recommendation
Taking any action outside the parameters of the Business Plan (unless otherwise specified in this Delegations Matrix).	Approval	Recommendation
Taking any action which would incur expenditure in excess of the annual budget of the Delivery Vehicle	Approval if the relevant amount is equal to or greater than £100,000	Approval if the relevant amount is lower than £100,000
Acquiring, disposing or agreeing to acquire or dispose of any asset of the Delivery Vehicle, any interest in any asset of the Delivery Vehicle (including the exercise or release of any option) or any other land or buildings	Approval if not expressly set out in an approved Business Plan	Approval if expressly set out in an approved Business Plan Recommendation if not expressly set out in approved Business Plan.
Declaring or paying any distribution in respect of profits, assets or reserves of the Delivery Vehicle or in any other way reducing the reserves of the Delivery Vehicle.	Approval if outside the process set out in the Members' Agreement.	Approval if in accordance with process set out in the Members' Agreement. Recommendation if outside of process set out in Members Agreement.
Forming a subsidiary of the Delivery Vehicle, acquiring shares in any other company (subscription or transfer) or any other similar interest in another entity including a limited liability partnership or limited partnership, entering into joint ventures or partnerships or profit sharing arrangement	Approval if not expressly set out in an approved Business Plan.	Approval if expressly set out in an approved Business Plan. Recommendation if not expressly set out in an approved Business Plan.

ACTIVITY	COUNCIL	BOARD
Alteration of authorised or issued partnership capital, or classification thereof, allotment of partnership capital or securities, granting options or rights to subscribe to the Delivery Vehicle issuing loan capital of the Delivery Vehicle.	Approval	Recommendation
Admitting new Members or the expulsion of any then existing Member (other than in accordance with the provisions of the Members' Agreement).	Approval	
Appointing persons as additional Nominees of the Delivery Vehicle, save where such Nominees are Council Nominees and/or Nominee Company Nominees appointed in accordance with the Members' Agreement	Approval	Recommendation
Approval of statutory accounts and appointment of auditors		Approval
Changing accounting and reporting policies of the Delivery Vehicle		Approval
Granting or entering into any intellectual property license agreement or arrangement concerning the trading names of the Delivery Vehicle or partnership and goodwill attached thereto		Approval
Waiving or delaying the rights of the Delivery Vehicle and/or those of the Delivery Vehicle to be exercised by the Delivery Vehicle under any agreement		Approval
Capitalising, repaying or otherwise distributing any amount standing to the credit, or any reserve, of the Delivery Vehicle.	Approval if outside the process set out in the Members' Agreement.	Approval if in accordance with the process set out in the Members' Agreement. Recommendation if outside the process set out in the Members' Agreement.

ACTIVITY	COUNCIL	BOARD
Making any petition or passing any resolution to wind up the Delivery Vehicle or making any application for an administration or winding up order or any order having similar effect in relation to the Delivery Vehicle or giving notice of intention to appoint an administrator or file a notice of appointment of an administrator	Approval	
Changing the name of the Delivery Vehicle	Approval	Recommendation.
Making any loan or advance or giving credit (other than trade credit in the ordinary course)	Approval if: <ul style="list-style-type: none"> a) not expressly set out in an approved Business Plan; b) the loan or advance is not between the Delivery Vehicle and any subsidiary of the Delivery Vehicle. 	Approval if expressly set out in an approved Business Plan. Approval if the loan or advance is to a subsidiary of the Delivery Vehicle. Recommendation if not expressly set out in an approved Business Plan
OPERATIONAL MATTERS		
Negotiating and approving terms of any material contracts to be entered into by the Delivery Vehicle.	Approval if entry into contract not expressly set out in an approved Business Plan or where potential liability of the Delivery Vehicle is equal to or exceeds £250,000	Approval if entry into contract expressly set out in an approved Business Plan provided potential liability of the Delivery Vehicle is less than £250,000
Approval of concept design		Approval
Submission of any planning application (or appeals) (and material variation and s106 heads of terms)		Approval
Agreeing or carrying out the sale or letting of any part of any Site.	Approval if not in accordance with the Business Plan	Approval if in accordance with the Business Plan
Entering into deeds (easements, wayleave, consents or other impact on title)		Approval
Approving the terms of engagement of a Development Manager (including amendments to those terms) or changing the Development Manager	Approval	Recommendation
Entry into confidentiality agreements		Approval

ACTIVITY	COUNCIL	BOARD
Amendments to contracts		Approval
Appointment of asset valuers and Auditors and approval of valuations		Approval
Giving a guarantee, suretyship or indemnity to secure the liabilities of any person or assume the obligations of any person	Approval if not expressly set out in an approved Business Plan.	Approval if expressly set out in an approved Business Plan. Recommendation if not expressly set out in an approved Business Plan.
Write down of value of any asset of the Delivery Vehicle.		Approval
Writing off debts	Approval if not expressly envisaged by an approved Business Plan and where write down is equal to or exceeds £10,000ar.	Approval if expressly envisaged by an approved Business Plan or where write down is less than £10,000 .
Making any agreement with any relevant authority for tax purposes in relation to the Delivery Vehicle, its's business, assets or undertakings or making a claim, disclaimer, election or consent of a material nature.		Approval
Commencing any claim, proceedings or other litigation brought by or settling or defending any claim, proceedings or other litigation brought against the Delivery Vehicle, except in relation to debt collection in the ordinary course of the business of the Delivery Vehicle		Approval
Entering into any transactions or arrangements of any nature with parties connected with Members or which are not in the ordinary and normal course of business of the Delivery Vehicle and/or which are not on an arm's length basis	Approval	
Terminating any agreements which are material to the Delivery Vehicle Business	Approval if terminating relevant agreement is not expressly set out in an approved Business Plan	Approval if terminating relevant agreement is expressly set out in an approved Business Plan. Recommendation if terminating relevant agreement is not expressly set out in an approved Business Plan.

ACTIVITY	COUNCIL	BOARD
Disposing of a substantial part of the Delivery Vehicle Business and/or partnership assets (i.e. comprising in excess of 5% of the balance sheet surplus credit figure from time to time)	Approval	Recommendation
Making any announcements or releases of whatever nature in relation to the Delivery Vehicle Business		Approval
FINANCE MATTERS		
Entering into (or agreeing to enter into) any borrowing arrangement on behalf of the Delivery Vehicle and giving any security in respect of any such borrowing (including creating any encumbrance over the whole or any part of the undertaking or assets of the Delivery Vehicle or over any capital of the Delivery Vehicle)	Approval if not expressly set out in an approved Business Plan.	Approval if expressly set out in an approved Business Plan. Recommendation if not set out within an approved Business Plan.
GENERAL MATTERS		
Any other matters not covered in this Delegation Policy	Approval	
The making of any charitable donation	Approval if outside of any corporate social responsibility contributions expressly set out in an approved Business Plan.	Recommendation if outside of any corporate social responsibility contributions expressly set out in an approved Business Plan. Approval if expressly envisaged by an approved Business Plan.
Varying the Delegations Matrix or any other Delivery Vehicle Policies.	Approval	Recommendation.

SCHEDULE 4

DEED OF ADHERENCE

THIS DEED is made on

20[]

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE** of Civic Centre, Castle Hill Avenue, Folkestone, CT20 2QY ("the **Council**");
- (2) **OTTERPOOL PARK DEVELOPMENT COMPANY LTD** (registered number 12158104) whose registered office is at Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Nominee Company**");
- (3) **OTTERPOOL PARK LLP** (registered number OC428493) whose registered office is at Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Delivery Vehicle**"),
- (4) the parties listed at (1) to (3) above being the "**Original Parties**"; and
- (5) **[NAME OF NEW PARTY]** a [company / limited liability partnership] registered in [England] ([Company/LLP Number] []) whose registered office is at [] ("**New Party**").

[DN: Parties who have executed earlier deeds of adherence also to be listed.]

1. This Deed is supplemental to the members' agreement (the "**Members' Agreement**") dated [] 2020 and made between the Original Parties (as such Members' Agreement has been amended, varied and/or supplemented).
2. Other words and expressions defined in the Members' Agreement have the same meanings when used in this Deed.
3. The New Party and each of the Original Parties undertake with each other and with any other person who becomes a party to the Members' Agreement after the date of this Deed to be bound by, observe and perform the Members' Agreement as if the New Party had been an original party to the Members' Agreement and was named in the Members' Agreement.
4. The address and details for notices of [name] for the purposes of Clause 33 (Notices) of the Members' Agreement are: []. All of the other terms of the Members' Agreement shall be unamended.
5. This Deed, and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims), are governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).
6. This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

In witness whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written

[Execution Clauses to be inserted for Parties to Members' Agreement including those who have executed earlier deeds of adherence.]

SCHEDULE 5

LETTER OF APPOINTMENT OF A NOMINEE / DIRECTOR

[on the headed notepaper of the Delivery Vehicle]

[Name and address of Nominee/Director]

[Date]

Dear []

Terms of your appointment to the boards of Otterpool Park LLP (the "Delivery Vehicle") and Otterpool Park Development Company Ltd("Nominee Co")

1. This letter contains the terms which we have discussed and agreed for your appointment as a [] Nominee on the Board and Director on the Nominee Co Board. Your appointment is made pursuant to and is subject to the terms and conditions set in the Members' Agreement dated [] and made between (1) the Council; (2) the Nominee Company; and (3) the Delivery Vehicle ("**Members' Agreement**").
2. You shall not be entitled to any other fees or remuneration in connection with your appointments to such boards unless expressly agreed in writing by the Council.
3. You shall be expected to attend board meetings and Members' Meetings of each of the Delivery Vehicle and Nominee Co (respectively), as required. You shall receive details of all such meetings in advance.
4. You shall not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Delivery Vehicle and/or Nominee Co and/or any Delivery Vehicle Subsidiary or of any dealings, transactions, or affairs of such party or any client, customer or supplier thereof which comes to your knowledge during the course of this appointment and shall comply with the provisions of Clause 29 (Confidential Information and Freedom of Information) of the Members' Agreement as if it applied to you. You will, however, be entitled to disclose information to the Member appointing you as permitted under the Members' Agreement.
5. The appointment as Nominee/Director shall automatically cease in relation to the Delivery Vehicle, Nominee Co and any other Delivery Vehicle Subsidiary in the event that:-
 - 5.1 you resign as a Nominee/Director; or
 - 5.2 upon the lodgement or delivery of a notice from the Member(s) removing you as Nominee/Director; or
 - 5.3 in any of the circumstances set out in (and in accordance with) Clause 10 (Removal of a Nominee) of the Members' Agreement.

Without limitation to the paragraphs above, in signing this letter, you acknowledge that your position as Nominee/Director is subject to the terms of and you shall comply with the Members' Agreement and may be terminated as permitted under the terms of the Members' Agreement and that upon such termination you shall vacate your position as Nominee/Director in relation to the Delivery Vehicle, Nominee Co and any other Delivery Vehicle Subsidiary forthwith without raising any claim whatsoever against any such party in relation to such vacation (otherwise than in respect of any properly incurred and unpaid expenses due to you up to the date you vacate your position as Nominee/Director).

6. On termination of your appointment as Nominee/Director, you agree that you shall promptly return to the Delivery Vehicle Chairman all papers and property of the Delivery Vehicle, Nominee Co and any other Delivery Vehicle Subsidiary which are in your possession or under your control.
7. Upon request, you agree that you shall promptly enter into a letter addressed to each and every Delivery Vehicle Subsidiary in the form requested by the Delivery Vehicle or such Delivery Vehicle Subsidiary, provided that such form is substantially similar to the form of this letter (amended to the extent necessary).

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at the first board meeting.

Yours sincerely

.....
Signatory, duly authorised
for and on behalf of [xxxx] LLP

.....
Signatory, duly authorised
for and on behalf of [xxxx]LLP

.....
Signatory, duly authorised
for and on behalf of [Insert name of any other Delivery Vehicle Subsidiary in existence at the time]

I agree to and acknowledge the terms and conditions set out above relating to my appointment as a nominee of [xxxx] LLP, [xxxx] LLP, [xxxx] LLP and [Delivery Vehicle Subsidiary/ies].

Signed

Dated