

# APPENDIX

**CAMBRIDGESHIRE COUNTY COUNCIL**

**AND**

**THIS LAND LIMITED**

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**SHAREHOLDERS AGREEMENT**

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## PARTIES

- (1) **CAMBRIDGESHIRE COUNTY COUNCIL** of New Shire Hall, Emery Crescent, Enterprise Campus, Alconbury Weald, Huntingdon PE28 4YE (the **Shareholder**)
- (2) **THIS LAND LIMITED** (company number 10237292) whose registered office is at Compass House Vision Park, Chivers Way, Histon, Cambridge, England, CB24 9AD (the **Company**)

## RECITALS

- (A) The Shareholder established the Company for the purposes of the Business.
- (B) As at the date of this Agreement, the Shareholder holds 100% of the shares in the Company.
- (C) The Shareholder and the Company are entering into this Agreement to set out and clarify the relationship and understanding between the Shareholder and the Company for the purposes of conducting the Business.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

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

**Accounting Reference Date** means 31 March

**Annual Remuneration Report** has the meaning given in clause 4.1.5

**Articles** means the articles of association of the Company as amended or replaced from time to time in accordance with this Agreement

**Shareholder Representative** has the meaning given in the Articles

**Board** for the purposes of this Agreement means the board of directors of the Company

**Business** has the meaning given in clause 3

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for business in England

**Business Plan** means a five-year operational business plan and budget of the Company to be adopted pursuant to clauses 3.3 and 3.4

**Confidential Business Information** means, in relation to a person, all technical, commercial, financial or other information of whatever nature relating to that person's business, products, developments, services, trade secrets, know-how, personnel, supplies or historic current or potential customers, whether or not designated as confidential and whether disclosed orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or by any other means

**Deed of Adherence** means a deed in the form or substantially in the form set out in Schedule 1

**Director** for the purposes of this Agreement shall mean a director of the Company, including any person occupying the position of director, by whatever name called

**EIR** means the Environmental Information Regulations 2004 and any subordinate legislation made under those Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**Encumbrance** includes any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect

**Executive Director** means a director who is a full or part time employee of the company engaged in an executive office to manage the day to day operations of the Company

**Financial Year** means each financial accounting period of 12 months ending on the Accounting Reference Date other than in relation to the first Financial Year which shall run on and from incorporation of the Company to and including the Accounting Reference Date in the following calendar year, or such longer or shorter period as the Board shall from time to time determine in accordance with clause 7.4 and Schedule 2 (*Reserved Matters*)

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**Independent Chair** has the meaning given in the Articles

**Insolvency** means any of the following:

- (a) the presentation of a petition or giving of a notice, or the convening of a meeting for the purpose of considering a resolution, for the winding up or dissolution of, the passing of any resolution for the winding up or dissolution of, or the making of a winding up order against or order for the dissolution of, a party, other than for the sole purpose of a scheme for a solvent reconstruction of a party;
- (b) the appointment of a receiver, administrative receiver, receiver and manager, administrator, sequestrator or similar officer over all or any of the assets or undertaking of a party, the making or the giving of a notice for the intention of the making of an administration application or the presentation or the giving of a notice for the intention of the presentation of a petition for an administration order, or the making of an administration order, in relation to a party;
- (c) the proposal of, application for or entry into of a compromise or arrangement or voluntary arrangement, or any other scheme, composition or arrangement in satisfaction or composition of any of its debts or other arrangement for the benefit of its creditors generally, by a party with any of its creditors (or any class of them) or any of its members (or any class of them) or the taking by any party of any action in relation to any of the same or the filing of any documentation for the purpose of obtaining a moratorium pursuant to section 1A and paragraph 7 of schedule A1 of the Insolvency Act 1986 in relation to a party, other than for the sole purpose of a scheme for a solvent reconstruction of the party;
- (d) the taking by any creditor (whether or not a secured creditor) of possession of, or the levying of distress, execution, sequestration or enforcement or some other process upon, all or part of the property, assets or undertaking of a party;
- (e) the deemed inability of a party to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or a party which is an individual appearing to be unable to pay a debt or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986;

- (f) the suspension or threat of suspension of payment of debts by a party or the inability or admission of inability of a party to pay its debts as they fall due;
- (g) the ceasing or suspension or threat of ceasing or suspending, by a party to carry on the whole or a substantial part of its business;
- (h) the presentation of a petition for bankruptcy, or the making of a bankruptcy order, in respect of a party, the occurrence of circumstances in respect of a party which would enable the presentation of a bankruptcy petition under part IX of the Insolvency Act 1986 or the making of an application for an interim order or the making of an interim order under section 252 of the Insolvency Act 1986 in relation to a party;
- (i) the commencement by a party, of negotiations with all or any class of creditors of a party with a view to rescheduling any of the party's debts; and
- (j) the occurrence of any event or circumstance in relation to a party which has an effect equivalent or similar to any of the events mentioned in paragraph (a) to (i) above in any jurisdiction other than England and Wales

and **Insolvent** shall be construed accordingly

**Intellectual Property Rights** means any and all patents, inventions, registered designs, trademarks, service marks, applications for any of the foregoing or the right to apply therefor in any part of the world, design rights including community designs, database rights, copyrights, rights in the nature of copyright, moral rights, topography rights, trade names, logos, get-up, domain names, know-how and trade secrets, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto

**Nominations and Remuneration Committee** means a committee of the board formed pursuant to clause 7.4.1 to perform the function detailed at clause 7.4.2(a)

**Non-Executive Director** is a director who is not a full or part time employee of the Company or holder of an executive office

**Prohibited Act** means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by a Member a financial or other advantage to: (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: (i) under the Bribery Act 2010; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with a Member; (iv) or defrauding, attempting to defraud or conspiring to defraud the Member

**Reserved Matters** means the matters specified in Schedule 2 (*Reserved Matters*)

**Senior Management Team** are the senior executive group that actively participate in the daily supervision, planning and administrative processes required by the business to help meet its objectives. The Senior Management Team is made up of the statutory executive directors (the Chief Executive Officer and the Chief Financial Officer), along with such other members of the management team as the Board determines from time to time.

**Shareholder/Member** means Cambridgeshire County Council and/or any other or additional persons subsequently admitted as a shareholder of the Company in accordance with clause 7.1 but excluding any person who ceases to be a member in the Company at any time

**Shareholder Review Group** means the group established by the Shareholder to support the Shareholder Representative

**Shareholder Representative** means the Shareholder's Section 151 Officer (or designated representative)

**Working Hours** means 9.00 a.m. to 5.00 p.m. on a Business Day

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 references to clauses, paragraphs, recitals and Schedules are references to clauses and paragraphs of, and recitals and schedules to, this Agreement. The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules. The recitals and headings to clauses and Schedules are for convenience only and shall not affect the construction or interpretation of this Agreement;

1.2.2 a reference to a statute or a statutory provision includes a reference to:

- (a) the statute or 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 statute or 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 references to a **person** shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality);

1.2.4 references to any gender shall include every gender, and the singular shall include the plural and vice versa;

1.2.5 a person shall be deemed to be **connected** with another if that person is connected with that other within the meaning of section 1122 Corporation Tax Act 2010;

1.2.6 words and expressions defined in the Companies Act 2006 shall have the same meanings when used in this Agreement;

1.2.7 references to **writing** or **written** shall include any mode of reproducing words in a legible and non-transitory form including email;

1.2.8 references to a **party** or the **parties** are to a party or the parties to this Agreement from time to time and any person who agrees to be bound by the provisions of this Agreement from time to time but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time;

1.2.9 in construing this Agreement, the rule known as 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(s) **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; and

references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month;

## 2 WARRANTIES AND COMPLETION

- 2.1 Each party warrants and represents to each other party that:
- 2.1.1 it is duly organised and validly existing under the laws of England;
  - 2.1.2 it has full power and authority and has obtained all necessary authorities and consents to enter into and perform its obligations under this Agreement and such other agreements and arrangements referred to in this Agreement;
  - 2.1.3 it is entering into this Agreement for its benefit only; and
  - 2.1.4 the signing of this Agreement and the performance of its obligations under this Agreement and the other agreements and arrangements referred to in this Agreement shall not result in a breach of any other agreement or arrangement to which it is a party, nor give rise to any right of termination of any other agreement or arrangement to which it is a party.

## 3 THE BUSINESS AND BUSINESS PLAN

- 3.1 The business of the Company (the **Business**) shall be to promote and procure the completion of developments of property and to dispose of and / or lease out the same in order to generate profit and to do all such other lawful things as are necessary for or incidental to or conducive to the achievement of the same.
- 3.2 The Company agrees that it shall:
- 3.2.1 carry on and conduct its business and affairs in a proper and efficient manner for its own benefit in accordance with:
    - (a) its shareholder approved and current Business Plan;
    - (b) the Articles;
    - (c) all laws relating to companies as amended from time to time; and
    - (d) sound governance and good business practice; and
  - 3.2.2 use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own, occupy and/or operate assets and to carry on the Business properly and effectively and in accordance with the Business Plan.
- 3.3 The Company shall prepare on an annual rolling basis and for the approval of the Shareholder an updated Business Plan to cover the next five Financial Years and to include (amongst other matters):
- 3.3.1 a strategy for the use of surpluses generated by the Company;
  - 3.3.2 a cashflow statement giving an estimate of the working capital requirements;
  - 3.3.3 consideration of the reliability of funding sources and the potential impact on the Company's cashflow requirements;
  - 3.3.4 a monthly projected profit and loss account;
  - 3.3.5 an operating budget (including capital expenditure requirements) and balance sheet forecast;

- 3.3.6 a management report giving detailed business objectives, linked to performance indicators, for the period ;
- 3.3.7 a written narrative explaining the source and provenance of any figures along with any assumptions which underpin them, including but not limited to inflation and pay awards;
- 3.3.8 operational approach for the Financial Year and estimated roles and resourcing required to be contributed by the Shareholder; and
- 3.3.9 a financial report which shall include an analysis of the estimated results of the Company for the previous Financial Year compared with the Business Plan for that year, identifying variations in sales, revenues, costs and other material items.
- 3.4 The Company shall consult the Shareholder Representative during the preparation of the Business Plan or any revision or update thereof.
- 3.5 The Business Plan must include comprehensive, accurate financial forecasts and financial modelling to the satisfaction and approval of the Shareholder Representative.
- 3.6 Unless otherwise agreed between the Company and the Shareholder, no later than 28th February before the end of each Financial Year, the Board shall prepare and circulate for approval comments and challenge by the Shareholder a draft updated Business Plan for the next Financial Year.
- 3.7 Ahead of its adoption by the Board, the draft updated Business Plan or any revision or update thereof must be approved by the Shareholder.
- 3.8 Once approved by the Shareholder, the draft updated Business Plan shall become the Business Plan and, where applicable, in place of the then current Business Plan on and from the start of the first Financial Year to which it relates.
- 3.9 Any variations or updates to a Business Plan shall only be effective if approved by the Shareholder.
- 3.10 Once a Business Plan has been adopted as regards the matters specifically contained in that Business Plan or any matter which has been delegated through that Business Plan for decision- making purposes to the Board the Company shall not undertake any business or action which is inconsistent with the Business Plan then in force or omit to undertake any action which is required by that Business Plan.
- 3.11 If a Reserved Matter is either not specifically contained in the Business Plan then in force or not delegated through that Business Plan or in Schedule 2 to this Agreement for decision-making purposes to the Board or any other person, such Reserved Matter shall not be undertaken by the Company without the approval of the Shareholder.
- 3.12 Any approval to be provided by the Shareholder in respect of a Reserved Matter shall be provided by the Shareholder Representative. The Company shall provide notice of any proposed action constituting a Reserved Matter to the Shareholder Representative. As soon as reasonably practicable and with an operational target of within 10 Business Days after the receipt by the Shareholder Representative of such notice, the Shareholder Representative shall confirm the Shareholder's decision in respect of such Reserved Matter, subject, where appropriate, to Committee approval by the Council according to its own constitution.

#### **4 PROGRESS MONITORING**

- 4.1 The Company shall provide to the Shareholder:
  - 4.1.1 draft annual accounts in accordance with a timetable unanimously approved by the Board from time to time;
  - 4.1.2 final audited annual accounts within 60 Business Days from the date each set of accounts are finalised;
  - 4.1.3 draft agenda and papers of all Board and committee meetings five 5 Business Days before

the relevant meeting to which they relate;

- 4.1.4 copies of minutes of all Board and committee meetings 15 Business Days after the relevant meeting to which they relate;
- 4.1.5 an annual remuneration report (**Annual Remuneration Report**) to contain (but not be limited to) a statement on the Nomination and Remuneration Committee's approach to remuneration, recruitment and retention;
- 4.1.6 copies of each audit report received along with action plans agreed;
- 4.1.7 annual risk management report, including latest Company risk registers and associated action plans;
- 4.1.8 annual assurance statements from the Chief Executive Officer, the chair of the Audit and Risk Committee, the Board and internal audit to give the Shareholder assurances that corporate governance arrangements are fit for purpose, effective and operating well in practice.
- 4.1.9 any other information required by the Shareholder from time to time.

4.2 Any right of the Shareholder to any information or document pursuant to this clause 4 shall be exercisable on behalf of the Shareholder by its Shareholder Representative or Shareholder Review Group.

4.3 The Chief Executive Officer shall attend such meetings with the Shareholder Representative as are requested by the Shareholder Representative and at which he/ she shall present such information as requested by the Shareholder Representative.

4.4 The chair of the Nominations and Remuneration Committee shall attend such meetings with the Shareholder as are requested by the Shareholder and at which he/ she shall present and answer questions in respect of the Annual Remuneration Report.

## **5 FINANCING THE COMPANY**

5.1 The Shareholder may provide additional capital and/ or loans to the Company. Any such investment or loan shall be subject of separate agreement(s) between the Shareholder and the Company.

## **6 PRINCIPLES FOR STRUCTURING AND SUPPORTING THE BUSINESS**

6.1 The parties agree that they intend for the following principles to govern the ways in which the Business shall be structured and supported, subject in each case to the relevant counterparties entering into binding legal agreements in respect of the same:

- 6.1.1 terms and conditions of employment for the Company's employees shall be a Company matter. The Company shall ensure that terms and conditions offered to employees are compliant with all laws (including equal pay legislation and case law);
- 6.1.2 any variation in the rights of employees in respect of their pensions is a Reserved Matter and shall require a business case assessing the costs and financial risks associated with the proposed increase. The costs of any additional pension rights will be met solely from the Company's resources; and
- 6.1.3 the appointment of the Company's auditors is a Reserved Matter.

## **7 MANAGEMENT OF THE COMPANY**

### **7.1 The Shareholder**

- 7.1.1 The Shareholder is the ultimate owner of the Company.
- 7.1.2 Admitting a person as a new Shareholder is a Reserved Matter and shall also be subject



to such person executing a Deed of Adherence.

- 7.1.3 Each person admitted as a Shareholder and shall be entitled to the same rights and subject to the same obligations as all other Shareholders at that time as detailed in this Agreement.

## **7.2 The Board**

- 7.2.1 Subject always to any direction given by a shareholder resolution where required and the Reserved Matters, the Board shall have full and complete authority, power and discretion to direct, manage and control the Business and the affairs and property of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Business in accordance with this Agreement and the Business Plan then in force.
- 7.2.2 The Board shall act as a steward of the Business and the Company on behalf of the Shareholder and therefore shall be accountable to the Shareholder.
- 7.2.3 The Board shall hold the Senior Management Team to account.
- 7.2.4 The Directors and Non-Executive Directors shall be appointed and/ or removed either pursuant to the approval of a Reserved Matter by the Shareholder or in accordance with the Articles. Any such appointment or removal actioned by approval of a Reserved Matter shall be made by notice in writing and shall take effect on the date on which the notice is received by the Company.

## **7.3 The Senior Management Team and employees of the Company**

- 7.3.1 The Senior Management Team shall run the day-to-day operations of the Company and the Business. The Senior Management Team shall be accountable to the Board. All members of the Senior Management Team may be employees of the Company.
- 7.3.2 The Senior Management Team shall be led by a Chief Executive Officer.
- 7.3.3 The Senior Management Team shall be appointed and removed pursuant to clause 7.2.4.
- 7.3.4 Nothing in clauses 7.2 and 7.3 shall be taken:
- (a) as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his employment or of any appointment terminating with that as employee; or
  - (b) as derogating from any power to remove an employee that may exist apart from clauses 7.2 and 7.3.

## **7.4 Committees**

- 7.4.1 The Board may from time to time appoint (and/ or remove) committees consisting of such members of the Non-Executive Directors, with suitable skills and experience, to provide advice to the Board (or a committee of the Board) on certain matters, each committee shall be convened in accordance with the following terms:
- (a) Unless otherwise determined by the Board, meetings of a committee shall be called, convened and conducted in the same way as Board meetings in accordance with the Articles;
  - (b) each committee shall be chaired by a Non-Executive Director;
  - (c) the maximum term of a member of a committee shall be three years, following the expiry of which term the member shall retire;
  - (d) a retiring Non-Executive Director shall be eligible for re-appointment for up to two additional periods of up to three years, although the Board shall not be obliged to re-appoint that Non-executive Director or indeed make an appointment to replace the

retiring Non-Executive Director;

- (e) for the avoidance of doubt nothing in this clause 7.4 shall require the Board to act in accordance with any recommendations or decisions of any committee which are and are intended to be used by the Directors for information purposes only; and
- (f) any decision of a committee may be given in writing or by way of a resolution passed at a meeting of that committee.

7.4.2 The following committees with the attendant responsibilities shall be maintained at all times:

(a) Nominations and Remuneration Committee:

- (i) make appropriate recommendations to the Board regarding remuneration of the Directors and Senior Management Team;
- (ii) advise the Board in respect of the expenses policy of the Directors and Senior Management Team for approval by the Board;
- (iii) advise the Board in respect of any profit-sharing, bonus or other incentive scheme of any nature for Directors and Senior Management Team;
- (iv) review and advise the Board in respect of any pension scheme or the grant of any pension rights to any Director, officer, employee, former director, officer or employee, or any member of any such person's family;
- (v) keep under review the structure, size, composition and functioning of the board as against the needs and demands of the company in the short, medium and long term;
- (vi) assess the effectiveness and performance of the Board, collectively and individually, and ensure evaluation of Board to be undertaken independently at least once every three years, and report to the board on the outcomes of such evaluation;
- (vii) find suitable candidates for future appointments to the Senior Management Team including the role of Chief Executive Officer and make recommendations on this to the Board;
- (viii) be responsible for the undertaking of any disciplinary, or potential disciplinary, action against Executive Directors;
- (ix) make appropriate recommendations to the Board to dismiss an Executive Director, against which dismissal:
  - A the Chief Executive Officer shall have a right of appeal which shall be heard by a panel of Directors (made up of Directors who are not members of the Nominations and Remuneration Committee) as determined by the Shareholder;
  - B any Executive Director other than the Chief Executive Officer shall have a right of appeal which shall be heard and determined by the Chief Executive Officer; and
- (x) may, by notice in writing from time to time and subject to such conditions as it may impose, delegate its responsibilities to find and recommend members of the Senior Management Team other than the Chief Executive Officer to the Chief Executive Officer or his/her nominee.

(b) Audit and Risk Committee:

- (i) monitor the integrity of the financial statements of the Company, including its annual report, trading updates and any other formal announcements relating to

the Company's financial performance, reviewing and reporting to the board on significant financial reporting issues and judgements which they contain;

- (ii) evaluate, determine and approve the accounting policies and consider the policies' appropriateness in relation to GAAP;
  - (iii) review the content of the annual report and accounts and advise the board on whether, taken as a whole, it is fair, balanced and understandable and provides the information necessary for the shareholder to assess the Company's performance, business model and strategy;
  - (iv) consider, review and monitor the Company's overall risk appetite, tolerance (including stress testing) and strategy, and assess the level of risk the Company is willing to take in order to achieve its long-term strategic objectives;
  - (v) monitor and review the adequacy and effectiveness of the Company's procedures and systems established to identify, assess, manage, monitor, and mitigate risk;
  - (vi) keep under review the adequacy and effectiveness of the Company's internal financial controls and internal control and risk management systems;
  - (vii) review the Company's compliance function and its arrangements and controls in respect of whistleblowing, fraud prevention and prevention of bribery;
  - (viii) monitor and review the effectiveness of the Company's internal audit activities in the context of the Company's overall risk management system;
  - (ix) oversee the relationship with the external auditor and review the findings of the external audit;
- (c) Finance and Investment Committee:
- (i) draft, review and recommend for Board approval financial policies, including the investment and treasury policies;
  - (ii) assess and agree investment strategy to meet the Company's investment objectives;
  - (iii) review progress against key financial and operational targets;
  - (iv) oversee the Company's treasury management strategy and borrowing arrangements;
  - (v) review plans for revenue and capital and make recommendations to the Board;
  - (vi) review management's presentations of real estate transaction proposals and the financial model and make proposals to the Board.

## **8 TERMINATION**

8.1 Subject to the provisions of clause 8.2, the provisions of this Agreement shall continue in force until the Parties unanimously agree in writing to terminate it.

8.2 This Agreement shall, unless the Parties otherwise agree, automatically terminate on the first to occur of the following dates:

8.2.1 the effective date of a winding up of the Company; or

8.2.2 the date the Company is owned by more than a single Shareholder.

- 8.3 Where the Company is to be wound up and its assets distributed, the parties shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:
- 8.3.1 all existing contracts of the Company are performed to the extent that there are sufficient resources of the Company to do so;
  - 8.3.2 the Company shall not enter into any new contractual obligations;
  - 8.3.3 the Company is dissolved and its assets are distributed as soon as practical in accordance with the Articles.

## **9 UNLAWFUL FETTER ON THE COMPANY'S POWERS**

Notwithstanding any other provision contained in this Agreement, the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of the Company, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

## **10 CONFIDENTIALITY**

- 10.1.1 Each party undertakes that it shall not at any time hereafter use or disclose to any person, except in the proper course of its duties as a party to this Agreement, any Confidential Business Information of another party which may have or may in future come to its knowledge, provided that a party may share such information with its professional advisers or to those of its directors, shareholders, officers, employees, advisers and representatives who are directly concerned with the Company (or any subsidiary of the Company from time to time) or the Business; or
  - 10.1.2 as may be required by any applicable law or by any supervisory or regulatory body with whose rules it is necessary for that party to comply; or
  - 10.1.3 in connection with any proceedings arising out of or in connection with this Agreement; or
  - 10.1.4 once it becomes generally known otherwise than by reason of a breach of this clause 10.1.
- 10.1 Each party shall (so far as it is able procure that any of its directors, officers, employees, advisers and representatives coming into receipt of Confidential Business Information of another party shall be informed upon receipt that such information is confidential and (so far as such party is able to procure the same) shall comply with the provisions of this clause 10 respect of such Confidential Business Information as if they were parties.
- 10.2 Where any party is required by any law, regulation or governmental or regulatory authority to retain any information (or copies of such information) of another party, it shall notify the other party in writing of such retention giving details of the information that it has been required to retain.

## **11 FREEDOM OF INFORMATION**

- 11.1 The Shareholder and the Company acknowledges that the Shareholder is subject to the requirements of the FOIA and the EIR, and the Shareholder and the Company shall where reasonable, assist and co-operate (at their own expense) with the party receiving the request for information to enable the Shareholder to comply with its information disclosure obligations.
- 11.2 Where the Company receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of the Shareholder in relation to the joint arrangements, it shall:
  - 11.2.1 transfer the request for information to the Shareholder as soon as practicable after receipt and in any event within 2 Business Days of receiving a request for information;
  - 11.2.2 provide the Shareholder with a copy of all information in its possession or power in the form that the Shareholder requires within 10 Business Days (or such longer period as the

Shareholder may specify) of the Shareholder requesting that information; and

11.2.3 provide all necessary assistance as reasonably requested by the Shareholder to enable the Shareholder to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

11.3 Where the Shareholder receives a request under FOIA or EIR which relates to the operations of the Company, it shall notify the Board and afford them an opportunity to make any comments or representations in respect of the disclosure of the information sought. The Board shall respond within 5 Business Days of receipt of this notification. The Shareholder when responding to the request shall take into account any such comments or representations in so doing and shall not respond to the request until the 5 day response period referred to above has passed.

## **12 PREVENTION OF BRIBERY**

12.1 The Company:

12.1.1 shall not, and shall procure that no Director, officer, employee, adviser or representative of the Company shall, in connection with this Agreement commit a Prohibited Act;

12.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Company, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Shareholder before execution of this Agreement.

12.2 The Company shall:

12.2.1 if requested, provide the Shareholder with any reasonable assistance, at that the Shareholder's cost, to enable the Shareholder to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

12.2.2 within 5 Business Days of the date of this Agreement, and annually thereafter, certify to the Shareholder in writing (such certification to be signed by an officer of the Company) compliance with this clause 12 by the Company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Company shall provide such supporting evidence of compliance as the Shareholder may reasonably request.

12.3 The Company shall have an anti-bribery policy (which shall be disclosed to the Shareholder) to prevent any Director, officer, employee, adviser or representative of the Company from committing a Prohibited Act and shall enforce it where appropriate.

12.4 If any breach of clause 12.1 is suspected or known, the Company must notify the Shareholder immediately.

12.5 If the Company so notifies the Shareholder that it suspects or knows that there may be a breach of clause 12.1, the Company must respond promptly to any enquiries by the Shareholder, co-operate with any investigation, and allow the Shareholder to audit books, records and any other relevant documentation.

12.6 The Shareholder may terminate this Agreement by written notice with immediate effect if the Company, Director, officer, employee, adviser or representative of the Company (in all cases whether or not acting with the Company's knowledge) breaches clause 12.1.

12.7 Any notice of termination under clause 12.6 must specify:

12.7.1 the nature of the Prohibited Act;

12.7.2 the identity of the party whom the Shareholder believes has committed the Prohibited Act; and

12.7.3 the date on which this Agreement shall terminate.

12.8 Any dispute relating to:

12.8.1 the interpretation of clause 12; or

12.8.2 the amount or value of any gift, consideration or commission

shall be determined by the Shareholder which has given the notice of termination under clause 12.6 and its decision shall be final and conclusive.

12.9 Any termination under clause 12.6 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Shareholder.

### **13 NOTICES**

13.1 Any notice or other communication to be served under this Agreement shall be delivered or sent by first class post or electronic communication to the party to be served at its address or email address as set out in Schedule 3 or in any Deed of Adherence (as the case may be).

13.2 Subject to clause 13.3 and in the absence of earlier receipt, any notice or communication shall be deemed to have been served:

13.2.1 if delivered personally, at the time of delivery;

13.2.2 if sent by first class post, 2 Business Days after the date of posting; and

13.2.3 if sent by email, 48 hours after the time of sending.

13.3 Any notice or communication served under this Agreement outside Working Hours in the place to which it is addressed shall be deemed not to have been served until the start of the next period of Working Hours in such place.

13.4 In proving service of a notice or communication, it shall be sufficient to prove that delivery was made or that the envelope containing the notice or communication was properly addressed and posted as a prepaid first class letter or in the case of electronic communication, that it was sent in accordance with the guidance issued by the Chartered Governance Institute.

### **14 COSTS AND EXPENSES**

All costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other documents referred to in it shall be borne by the Company, save for any private advice sought by the Shareholder which shall be at the cost of the Shareholder.

### **15 ASSIGNMENT AND SUB-CONTRACTING**

15.1 This Agreement is personal to the parties and no party shall assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of each other party.

15.2 This Agreement shall be binding on and shall endure for the benefit of each party's successors.

### **16 FURTHER ASSURANCE**

16.1 Each party shall at its own cost and expense, on being required to do so by another party now or at any time in the future, do or procure the doing of all such acts and things and/or execute or procure the execution of all such deeds and documents in a form satisfactory to such other party which such other party may reasonably consider necessary for giving effect to this Agreement.

### **17 REMEDIES AND WAIVERS**

17.1 No delay by any party in exercising, or failure by any party to exercise, any right, power or remedy

provided by law or under this Agreement or any document referred to in it shall:

17.1.1 operate as a waiver of that or any other right, power or remedy; or

17.1.2 affect the other terms of this Agreement or any document referred to in it.

17.2 The single or partial exercise of any right, power or remedy provided by law or under this Agreement or any document referred to in it shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.

17.3 A waiver of any breach of or default under this Agreement or any document referred to in it shall not constitute a waiver of any other breach or default and shall not prevent a party from subsequently requiring compliance with the waived obligation.

17.4 The rights, powers and remedies provided in this Agreement or any document referred to in it are in addition to and (subject as otherwise provided in this Agreement) not exclusive of any rights, powers and remedies provided by law.

## **18 ENTIRE AGREEMENT**

18.1 This Agreement and the documents referred to in it (including the Articles and any Deed of Adherence) constitute the entire agreement between the parties relating to the matters contained in those documents and supersede all previous agreements between the parties relating to such matters.

18.2 Each of the parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and/or the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement. Each of the parties waives:

18.2.1 all rights and remedies which, but for this clause 18, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and

18.2.2 all rights and remedies, other than remedies for breach of contract available in respect of a breach of this Agreement and/or the documents referred to in it, which, but for this clause 18, might otherwise be available to it in respect of the falsity of any representation or warranty set out in this Agreement and/or the documents referred to in it,

provided that nothing in this clause 18 shall limit or exclude any liability for fraud or dishonesty on the part of any party.

## **19 VARIATION**

No variation to the terms of this Agreement shall be effective unless made in writing and signed by each of the parties and any person who agrees to be bound by this Agreement.

## **20 CONFLICT WITH THE ARTICLES**

If any provision of this Agreement is inconsistent with a provision of the Articles, then the terms of this Agreement shall prevail and the Shareholder agrees to procure that the Articles are promptly amended as required.

## **21 SEVERANCE**

21.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

21.2 Without prejudice to the generality of clause 21.1, if any provision of this Agreement or the Articles shall be found by any court or administrative body of competent jurisdiction to be unenforceable against or by the Company, the Shareholder shall procure that the provision is nevertheless put into effect to the greatest extent possible.

21.3 If any provision of this Agreement is found to be invalid or unenforceable but would be valid or

enforceable if some part of the provision were deleted, the provision in question shall apply with such deletions as may be necessary to make it valid or enforceable.

- 21.4 The parties agree, in the circumstances referred to in clause 21.1 and if clause 21.3 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision but for such invalidity or unenforceability.

## **22 SET-OFF**

All amounts falling due under this Agreement shall be paid in full without any set-off or counterclaim.

## **23 NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement, including the use of the word "Shareholder", is intended to or shall operate to create a partnership between the parties or any of them, or to authorise any party to act as agent for any other party, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way.

## **24 COUNTERPARTS**

- 24.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each person who is a party at the date hereof has executed at least one counterpart.
- 24.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

## **25 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Agreement do not intend that any of its terms should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.

## **26 GOVERNING LAW AND JURISDICTION**

- 26.1 This Agreement is governed by and shall be construed in accordance with the laws of England and each party submits to the exclusive jurisdiction of the courts of England for all purposes relating to this Agreement.
- 26.2 Each party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this Agreement being served on it in accordance with the provisions of clause 13. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

**THIS AGREEMENT** has been executed as a deed on the date stated at the start of this Agreement

Executed as a deed by affixing	)	Seal:
the common seal of	)	
<b>CAMBRIDGESHIRE COUNTY COUNCIL</b>	)	
	)	
in the presence of	)	
	)	
.....	)	
<b>Authorised signatory</b>	)	



Executed as a deed by )  
**THIS LAND LIMITED** )  
acting by..... )  
a director, in the presence of ) **Director** .....

Signature: .....

Name of witness: .....

Address: .....

.....  
.....

Occupation of witness: .....

## SCHEDULE 1 – DEED OF ADHERENCE

**THIS DEED** is made on

BY ● of ● (the **Covenantor**) in favour of the persons whose names are set out in the schedule to this deed and is SUPPLEMENTAL to the Shareholders Agreement dated ● and made by (1) Cambridgeshire County Council and (2) This Land Limited (the **Shareholders Agreement**)

**THIS DEED WITNESSES** as follows:

- 1 The Covenantor confirms that it has been given and read a copy of the Shareholders Agreement and covenants with each person named in the schedule to this deed to perform and be bound by all the terms of the Shareholders Agreement as if the Covenantor were a Shareholder and is party to the Shareholders Agreement.
- 2 This deed is governed by the laws of England and Wales.

**IN WITNESS WHEREOF** this deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

[Schedule - Parties to Shareholders Agreement including those who have executed earlier deeds of adherence.]

[Covenantor's execution block to be confirmed]

Executed as a deed by affixing	)	Seal:
the common seal of	)	
●	)	
in the presence of	)	
	)	
.....	)	
<b>Authorised signatory</b>	)	

## SCHEDULE 2 – RESERVED MATTERS

**Note: Copies of all Board and Committee papers for matters requiring the approval of the Board will be provided to the Shareholder Representative or Shareholder Review Group in advance of decisions pursuant to clause 3.12.**

<b>Reserved matter</b>	<b>Approval of the Board</b>	<b>Approval of the Shareholder representing 100% of the voting rights of the Company (i.e. unanimous decision)</b>
<b>Company constitution</b>		
Altering the Articles		✓
Taking any action or resolution inconsistent with the Articles		✓
Changing the name (or trading name) of the Company and/ or any subsidiary of the Company		✓
<b>The Business</b>		
Approving the Business Plan and any variation or replacement thereof		✓
Approving the timetable for the preparation and production of the draft Business Plan by the Board		✓
Changing the nature of the Business or commencing any new business by the Company which is not ancillary or incidental to the Business		✓
Selling, leasing, licensing or transferring business assets up to a value of £500,000 or in the current Business Plan	✓	
Selling, leasing, licensing or transferring business assets with a value of £500,000 or more in a single transaction or linked transaction and not included in the Business Plan		✓
Adopting any corporate governance policy in connection with the operation of the Company, including any policies in connection with contract procurement	✓	
Acquiring, purchasing, subscribing or acquiring another interest in the shares, debentures or securities of another company, or amalgamating with another company within the approved Business Plan	✓	
Acquiring, purchasing, subscribing or acquiring another interest in the shares, debentures or securities of another company, or amalgamating with another company not included in the Business Plan		✓
Creating, acquiring or disposing of a subsidiary within the approved Business Plan	✓	
Creating, acquiring or disposing of a subsidiary not included in the Business Plan		✓

Passing a resolution to place the Company in administration or for it to be wound up (unless it has become insolvent)		✓
Altering any mandate given to the Company bankers relating to any matter concerning the operation of the Company bank accounts other than by the substitution of any person nominated as a signatory by the Party entitled to make such nomination	✓	
Instituting, settling or compromising any legal proceedings (other than debt recovery proceedings in the ordinary course of business) instituted or threatened against the Company or submitting to arbitration or alternative dispute resolution any dispute involving the Company	✓	
Making any agreement with any revenue or tax authorities or making any claim, disclaimer, election or consent for tax purposes in relation to the Company or its Business	✓	
Making or agreeing to make any political donation to a political party or other political organisation, or to an independent election candidate, or incurring or agreeing to incur any political expenditure (each of 'political organisation' and 'political expenditure' shall have the meaning given in Companies Act 2006)		✓
<b>Membership of the Company</b>		
Admitting a person as a new Member		✓
<b>Directors and employees</b>		
Increasing or decreasing the size of the Board		✓
Appointing or removing the Independent Chairman		✓
Appointing or removing any Executive Directors	✓	
Appointing or removing any Non-Executive Director		✓
Setting or changing Non- Executive Directors' remuneration		✓
Setting or changing Executive Directors' remuneration	✓	
Adopting or amending a policy relating to expenses of the Directors	✓	
The approval of policies and / or procedures which the Board considers likely to damage the Shareholder's reputation.		✓
Establishing or amending any profit-sharing, bonus or other incentive scheme of any nature for Non-Executive Directors		✓
Establishing or amending any profit-sharing scheme for Executive Directors or employees		✓
Establishing or amending any bonus or other incentive scheme of any nature for Executive Directors or employees	✓	

Establishing or amending any pension scheme or granting any pension rights to any Non-Executive Director or any member of any such person's family		✓
Establishing or amending any pension scheme or granting any pension rights to any Executive Director, officer, employee, former director, officer or employee, or any member of any such person's family	✓	
Dismissing any director, officer or employee in circumstances in which the Company incurs or agrees to bear redundancy or other costs in excess of £20,000 in total, with the exception of where the liability falls to an individual member	✓	
<b>Finance, treasury and security</b>		
Creating loans or issuing of loan capital in pursuance of the approved Business Plan	✓	
Making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading) or giving any guarantee (other than in the normal course of trading) or indemnity	✓	
Creating any Encumbrance over the whole or part of the Company's property or other assets	✓	
Appointing or removing the Company's auditors		✓

### **SCHEDULE 3 - CONTACT DETAILS**

#### **CAMBRIDGESHIRE COUNTY COUNCIL**

Address: New Shire Hall, Emery Crescent, Enterprise

Campus, Alconbury Weald, Huntingdon PE28 4YE

For the attention of: Service Director: Finance and Procurement

Email address: [tom.kelly@cambridgeshire.gov.uk](mailto:tom.kelly@cambridgeshire.gov.uk)

#### **THIS LAND LIMITED**

Address: Compass House Vision Park, Chivers Way, Histon, Cambridge, England, CB24 9AD

For the attention of: the Chief Executive Officer

Email address: [hello@this-land.co.uk](mailto:hello@this-land.co.uk)

or, in each case, such other address as may be notified by the relevant party to the other parties from time to time.