

DATED

2019

OPERATIONAL AGREEMENT

between

(1) MAIDSTONE PROPERTY HOLDINGS LIMITED

(2) MAIDSTONE BOROUGH COUNCIL

Anthony Collins Solicitors LLP

134 Edmund Street

Birmingham B3 2ES

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Ref: OJD 47740.0002

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THIS AGREEMENT IS DATED

2019

PARTIES

- (1) **Maidstone Property Holdings Limited** (Company Registration Number: 10368924 whose registered office is at Maidstone House, King Street, Maidstone, United Kingdom, ME15 6JQ (the “**Company**”);
- (2) **Maidstone Borough Council** of Maidstone House, King Street, Maidstone, United Kingdom, ME15 6JQ (the “**Council**”);

BACKGROUND

- (A) The Company is a private company limited by shares incorporated in England and Wales under the Companies Act 2006 and at the date of this Agreement is wholly owned by the Council.
- (B) The Council has established the Company under section 1 and section 4, Localism Act 2011 to act as a commercial purpose and trading entity.
- (C) The Company is a controlled company within the meaning of the Local Government and Housing Act 1989 and a regulated company within the meaning of the Local Authorities (Companies) Order 1995.
- (D) The Parties have agreed to execute this Agreement to regulate their respective responsibilities, the governance arrangements and the operation and management of the Company and the relationship between the Company and the Council.
- (E) The Council’s role as shareholder is primarily exercised by the Policy & Resources Committee of the Council with power delegated to the Director of Finance and Business Improvement and references in this agreement to decision making on behalf of the Council shall be taken to refer to the Policy & Resources Committee and/or the Director of Finance and Business Improvement unless otherwise stated, or unless the Council otherwise decides.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

“**Act**”: means the Companies Act 2006;

“Adequate Procedures”:	means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;
“Articles”:	means the articles of Association of the Company as amended or superseded from time to time;
“Board”:	means the board of Directors of the Company as constituted from time to time;
“Borough”	means the administrative area of the Council;
“Business”:	has the meaning given in clause 2.1 and as may be further defined in any adopted Business Plan;
“Business Case”:	means any business case for a particular activity by the Company that has been developed by the Company and adopted by the Board (where in accordance with the Business Plan or any other authority given to the Board by the Council) or by the Council;
“Business Day”:	means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;
“Business Plan”:	means the document that may be agreed and adopted by the Company in accordance with clause 6;
“Confidential Information”:	has the meaning given in clause 11;
“Director”:	means a director of the Company;
“electronic form”:	has the meaning given in section 1168 of the Act;
“Encumbrance”:	means 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;

“Financial Year”: in relation to the Company, means the period of 12 months commencing on 1 April and ending on 31 March each year;

“Group”: in relation to a company, means that company, any Subsidiary or Holding Company from time to time of that company and any Subsidiary from time to time of a Holding Company of that company; and each company in a Group is a member of the Group;

“Holding Company and Subsidiary and Wholly-Owned Subsidiary”: mean a "holding company", "subsidiary" and "wholly-owned subsidiary" as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee;

“Named Officer”: the officer or officers of the Council who is/are notified by the Council to the Company from time to time for the purposes set out in this Agreement. As at the date of this Agreement the Named Officer is the Director of Finance and Business Improvement of the Council;

“Party/Parties”: the Council and/or the Company as appropriate;

“Share(s)”: means the 100 £1 shares in the Company;

“Shareholders”: means the holders of Shares in the Company;

“Shareholder Reserved Matters”: means the Shareholder Reserved Matters listed in Schedule 2;

“Support Services”: has the meaning set out in Schedule 1;

“Support Services the agreement(s) made between the Council and

Agreement”: the Company relating to the provision of support services by the Council to the Company,

- 1.2 Clause, schedule and paragraph headings do not affect the interpretation of this Agreement.
- 1.3 A reference to a clause or a schedule is a reference to a clause of, or a schedule to, this Agreement. A reference to a paragraph is to a paragraph of the relevant schedule.
- 1.4 A **person** includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5 Unless the context otherwise requires, references to the singular include the plural and vice versa, and to the whole include part and vice versa.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 All warranties, representations, agreements and obligations expressed to be given or entered into by more than one person are given or entered into jointly and severally by the persons concerned.
- 1.8 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it provided that, as between the Parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party.
- 1.9 A reference to **writing** or **written** includes faxes but no other electronic form.
- 1.10 Documents in **agreed form** are documents in the form agreed by the Parties to this Agreement and initialled by them or on their behalf for identification.
- 1.11 A reference in this Agreement to a document is a reference to the document whether in paper or electronic form.
- 1.12 A reference in this Agreement to **other documents referred to in this Agreement** is a reference to the following documents- the Articles and the Support Services Agreement.
- 1.13 Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words "without limitation" following them.
- 1.14 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 1.15 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.16 References to times of day are, unless the context requires otherwise, to London time and references to a day are to a period of 24 hours running from midnight on the previous day.

2. THE BUSINESS OF THE COMPANY

- 2.1 The business of the Company is to undertake activities for commercial purposes and to trade within the Borough and beyond and in particular, but without limitation, to act as a private market residential landlord with the Borough (the "**Business**"). In undertaking the Business the Company will seek to maximise commercial returns to the Shareholder and to set new standards in terms of the quality of private rented stock offered and service delivered to residents.
- 2.2 The Business may be modified to include such further activities as the Council may designate.
- 2.3 The Business shall be carried out by the Company in accordance with any Business Plan adopted and any Business Case adopted under that Business Plan or otherwise approved by the Council.
- 2.4 The Company shall at all times:
- (a) comply with any adopted Business Plan;
 - (b) comply with the provisions of this Agreement and the Articles.

3. DIRECTORS AND MANAGEMENT

- 3.1 The Directors of the Company are appointed and dismissed by the Council.
- 3.2 The Board has responsibility for the supervision and management of the Company and its business. The Board shall ensure that the Company shall not transact any of the business described in the Shareholder Reserved Matters without first referring the matter to the Council for decision.
- 3.3 Where the Directors are employees or officers of the Council they shall not be entitled to any remuneration from the Company in their capacity as Directors and their expenses shall be reimbursed by the Council (and re-charged to the Company by the Council). Where the Directors are elected members of the Council then they shall only be entitled to remuneration and expenses in accordance with the Local Authorities (Companies) Order 1995.
- 3.4 Any Secretary appointed in accordance with Article 21 who is an employee or officer of the Council shall not be entitled to any remuneration from the

Company in their capacity as Secretary and their expenses shall be reimbursed by the Company.

- 3.5 The Company shall procure that Board meetings occur at least quarterly.
- 3.6 For the purposes of the Articles this Agreement is an operational agreement (as that term is defined in the Articles) and replaces any previous operational agreement in force before the date of this Agreement.

4. LAND AND FINANCE FOR THE COMPANY

- 4.1 There is no obligation on the Council to provide any land, capital or other finance to the Company unless the Parties agree otherwise in writing.
- 4.2 If the Council provides land, capital or other finance pursuant to this clause 4 the Parties shall negotiate in good faith on any terms to apply to such capital or other finance.

5. ANTI-CORRUPTION

- 5.1 The Company undertakes to the Council that:
 - (a) it will not in the course of the operation of the Business, engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
 - (b) it will maintain in place, anti-corruption procedures in substantially the same form as the Council's anti-corruption procedures which the Parties agree constitute Adequate Procedures; and
 - (c) from time to time, at the request of the Council it will confirm in writing that it has complied with its undertakings under clause 5.1(a) and clause 5.1(b) and will provide any information reasonably requested by the Council in support of such compliance.

6. THE BUSINESS PLAN

- 6.1 The Company must adopt a Business Plan for each Financial Year except for any Financial Year where the Council by ordinary resolution disapplies this requirement.
- 6.2 The Board is responsible for preparing, reviewing and updating any Business Plan.
- 6.3 In accordance with the Shareholder Reserved Matters, the Council must approve the adoption of any Business Plan and any revision or update thereof ahead of adoption by the Board.

- 6.4 The Company shall consult the Named Officer of the Council ahead of presenting a Business Plan or revision or update thereof to the Council for approval under clause 6.3.

7. ACCOUNTING

- 7.1 The Company shall at all times maintain accurate and complete accounting and other financial records including all corporation tax computations and related documents and correspondence with HM Revenue & Customs in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable in the United Kingdom.
- 7.2 The Company shall at all times maintain accurate and complete accounting and other financial records to the standard required by the Council including the accounting standards and financial reporting timescales required by the Council.
- 7.3 The Council and its authorised representatives shall be allowed access at all reasonable times to examine the books and records of the Company and to discuss the Company's affairs with the Directors and any employees (if any) of the Company.
- 7.4 The Company shall supply the Named Officer of the Council with the financial and other information necessary to keep the Council informed about how effectively the Business is performing and in particular shall supply the Council with:
- (a) a copy of any proposed Business Plan for approval in accordance with clause 6 and the Shareholder Reserved Matters;
 - (b) a copy of the audited accounts of the Company prepared in accordance with the laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom, within two months of the end of the year to which the audited accounts relate; and
 - (c) quarterly management accounts of the Company to be supplied as soon as reasonably practicable following the end of the months to which they relate and in any event by the final day of the month following the month to which the accounts relate and the accounts shall include a profit and loss account, a balance sheet and a cashflow statement and such other information as the Council may reasonably require.
 - (d) a copy of any report reviewing or monitoring the implementation and operation by the Company of Adequate Procedures such report to be provided within 10 Business Days of it being reported to the Board.
 - (e) copies of any proposed or adopted Business Cases.

7.5 The Council may require the Company, and the Company shall as soon as possible comply with such a request, to provide any documents, information and correspondence necessary to enable the Council to comply with filing, elections, returns or any other requirements of HM Revenue & Customs or of any other revenue or tax authority.

8. DIVIDENDS

8.1 The Parties agree that the Company shall consult and have regard to the views of the Named Officer of the Council prior to:

- (a) the Board recommending any dividend payment/distribution for approval by the Council; and/or
- (b) the Board making any interim dividend payments.

9. TERMINATION

9.1 This Agreement may be terminated at any time by the Council serving notice to terminate on the Company.

9.2 The following provisions of this Agreement remain in full force after termination:

- (a) Clause 1 (Interpretation);
- (b) this clause 9;
- (c) Clause 11 (Confidentiality);
- (d) Clause 13 (Whole Agreement);
- (e) Clause 16 (Variation and Waiver);
- (f) Clause 17 (Costs);
- (g) Clause 21 (Notice);
- (h) Clause 23 (Language);
- (i) Clause 24 (Severance);
- (j) Clause 27 (Governing Law and Jurisdiction); and
- (k) Clause 28 (Dispute Resolution).

9.3 Termination of this Agreement shall not affect any rights or liabilities that the Parties have accrued under it.

10. STATUS OF THE AGREEMENT

10.1 If there is at any time any conflict, ambiguity or discrepancy between the provisions of this Agreement and the Articles, then the provisions of this

Agreement shall prevail over the Articles unless the Council directs otherwise. The Parties shall procure that the Articles are amended to accord with the provisions of this Agreement in the event of any conflict.

11. CONFIDENTIALITY

11.1 In this clause Confidential Information means any information which:

- (a) any Party may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of the Company (including, without limitation, any information provided pursuant to clause 7);
- (b) any Party or any member of its Group may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of another Party or any member of the other Party's Group, as a consequence of the negotiations relating to this Agreement or any other agreement or document referred to in this Agreement or the performance of the Agreement or any other agreement or document referred to in this Agreement; or
- (c) relates to the contents of any adopted Business Plan or Business Case.

but excludes the information in clause 11.2.

11.2 Information is not Confidential Information if:

- (a) it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this Agreement;
- (b) a Party can establish to the reasonable satisfaction of the other Parties that it found out the information from a source not connected with the other Parties or its Group and that the source is not under any obligation of confidence in respect of the information;
- (c) either Party can establish to the reasonable satisfaction of the other Parties that the information was known to the first Party before the date of this Agreement and that it was not under any obligation of confidence in respect of the information; or
- (d) the Parties agree in writing that it is not confidential.

11.3 Each Party shall at all times use all reasonable endeavours to keep confidential (and to ensure that its employees, agents, Subsidiaries and the employees and agents of such Subsidiaries shall keep confidential), any Confidential Information and shall not use or disclose any such Confidential Information except:

- (a) to a Party's professional advisers where such disclosure is for a purpose related to the operation of this Agreement;

- (b) with the written consent of the Party to whom the Confidential Information belongs or relates to or any member of its Group that the information relates to;
- (c) as may be required by law (to include without limitation the Local Authorities (Companies) Order 1995) or by the rules of any recognised stock exchange, or governmental or other regulatory body, when the Party concerned shall, if practicable, supply a copy of the required disclosure to the other before it is disclosed and incorporate any amendments or additions reasonably required by the other Parties and which would not thereby prevent the disclosing Party from complying with its legal obligations;
- (d) to any tax authority to the extent reasonably required for the purposes of the tax affairs of the Party concerned or any member of its Group;
- (e) if the information comes within the public domain (otherwise than as a result of the breach of this clause 11.3)

11.4 Each Party shall inform (and shall use all reasonable endeavours to procure that any Subsidiary informs) any officer, employee or agent or any professional adviser advising it in relation to the matters referred to in this Agreement, or to whom it provides Confidential Information, that such information is confidential and shall require them:

- (a) to keep it confidential; and
- (b) not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement).

11.5 Upon termination of this Agreement, any Party may demand from any other Party the return of any documents containing Confidential Information in relation to the first Party by notice in writing whereupon the second Party shall (and shall use all reasonable endeavours to ensure that its Subsidiaries, and its officers and employees and those of its Subsidiaries shall):

- (a) return such documents; and
- (b) destroy any copies of such documents and any other document or other record reproducing, containing or made from or with reference to the Confidential Information,

save, in each case, for any submission to or filings with governmental, tax or regulatory authorities. Such return or destruction shall take place as soon as practicable after the receipt of any such notice.

11.6 The obligations of the Parties in this clause 11 shall continue without limit in time and notwithstanding termination of this Agreement for any cause.

12. INFORMATION, SCRUTINY AND ACCOUNTABILITY

- 12.1 Subject to clause 12.4, the Parties acknowledge that the Council and the Company are each subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (**Information Legislation**). The Parties shall use reasonable endeavours to assist, within the timescale specified by a Party in receipt of a request for information under the Information Legislation (“the receiving Party”), the receiving Party in responding to any requests for information under that legislation to include the provision of any and all documents that the receiving Party considers reasonably necessary to enable it to respond to the information request.
- 12.2 The Company shall, and shall procure that its employees and agents shall, comply at all times with the Council’s policies and procedures on Freedom of Information.
- 12.3 Notwithstanding clauses 12.1 and 12.2, the Company shall comply at all times with the Information Legislation as that legislation applies directly to the Company.
- 12.4 Where the Company is in receipt of any request for information under the Information Legislation, then it shall as soon as reasonably practicable pass the request to the Council and have regard to the views of the Council before responding to any such request.
- 12.5 The Company shall use reasonable endeavours to assist the Council in complying with any and all transparency obligations including without limitation compliance with the Local Government Transparency Code 2015 and any successor codes, policies or guidance.
- 12.6 The Company shall use reasonable endeavours to assist the Council in responding to any requests for information about the Company and/or the Business submitted by elected members of the Council.
- 12.7 The Company shall, if the Council on reasonable notice so decides, make available officers and/or employees of the Company to attend before and answer questions at any meeting of:
- (a) the [Policy & Resources Committee] of the Council;
 - (b) any other committee or sub-committee of the Council; and/or
 - (c) officers and/or elected members of the Council (other than those in (a) and (b));
- 12.8 The Company shall supply any information to the [Policy & Resources Committee], or any other committee or sub-committee of the Council, or officers and/or elected members of the Council as the Council may reasonably request.

12.9 The Company shall allow one or more representatives of the Council to attend as Observers at meetings of the Board of the Company; or at committees of the Board.

12.10 The Company shall use reasonable endeavours to assist the Council in responding to any inquiry or investigation of/by the Local Government and Social Care Ombudsman (or any successor).

13. LOCAL AUTHORITIES (COMPANIES) ORDER 1995

13.1 The Company shall at all times comply with the Local Authorities (Companies) Order 1995, any successor legislation or statutory instrument and any other laws in force from time to time relation to the operation, management and activities of a local authority owned company.

14. WHOLE AGREEMENT

14.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede all previous arrangements, understandings and agreements between them, whether oral or written, relating to their subject matter.

14.2 Each Party acknowledges that in entering into this Agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents.

14.3 Nothing in this clause 14 shall limit or exclude any liability for fraud.

15. ASSIGNMENTS

15.1 The Company may not assign, or grant any Encumbrance over or sub-contract, or deal in any way with, any of its rights or obligations under this Agreement or any document referred to in it without the prior written consent of the Council in accordance with Schedule 2.

15.2 Each person that has rights under this Agreement is acting on its own behalf.

16. VARIATION AND WAIVER

16.1 A variation of this Agreement shall be in writing and signed by or on behalf of all Parties.

16.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.

- 16.3 A person that waives a right in relation to one person or takes or fails to take any action against that person, does not affect its rights against any other person.
- 16.4 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.
- 16.5 No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.
- 16.6 Unless specifically provided otherwise, rights and remedies arising under this Agreement are cumulative and do not exclude rights and remedies provided by law.

17. COSTS

Unless otherwise provided or agreed in writing, all costs in connection with the negotiation, preparation, execution and performance of this Agreement, shall be borne by the Party that incurred the costs.

18. NO PARTNERSHIP

The Parties to this Agreement are not in partnership with each other and there is no relationship of principal and agent between them.

19. GOOD FAITH

- 19.1 Each Party shall at all times act in good faith towards the other and shall use all reasonable endeavours to ensure that this Agreement is observed.
- 19.2 Each Party shall do all things necessary and desirable to give effect to the spirit and intention of this Agreement.

20. THIRD PARTY RIGHTS

- 20.1 A person who is not a Party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 except where such rights are expressly granted in this Agreement.
- 20.2 The right of the Parties to terminate, rescind or agree any amendment, variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a Party to the Agreement.

21. NOTICE

21.1 A notice given under this Agreement:

- (a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);
- (b) shall be sent for the attention of the person, and to the address, or fax number, given in this clause 21 (or such other address, fax number or person as the relevant Party may notify to the other Party); and
- (c) shall be:
 - (i) delivered personally; or
 - (ii) delivered by commercial courier; or
 - (iii) sent by fax; or
 - (iv) sent by pre-paid United Kingdom first-class post or recorded delivery.

21.2 The addresses for service of notice are:

- (a) The Council and the Company – the addresses stated at the beginning of this Agreement.

21.3 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

- (a) if delivered personally, at the time of delivery; or
- (b) if delivered by commercial courier, at the time of signature of the courier's delivery receipt; or
- (c) if sent or supplied by fax, one hour after the notice was sent or supplied; or
- (d) if sent by pre-paid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted or 5 Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least 5 Business Days was guaranteed at the time of sending and the sending Party receives a confirmation of delivery from the courier service provider; or
- (e) if deemed receipt under the previous paragraphs of this sub-clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of deemed receipt and all references to time are to local time in the place of deemed receipt.

21.4 To prove delivery, it is sufficient to prove that notice was transmitted by fax to the fax number of the Party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

22. INTEREST ON LATE PAYMENT

22.1 Where a sum is required to be paid under this Agreement but is not paid before or on the date the Parties agreed, the person due to pay the sum shall also pay an amount equal to interest on that sum at the rate set out in clause 22.2 for the period beginning with the date on which the payment was due and ending with the date the sum is paid (and the period shall continue after as well as before judgment).

22.2 The rate of interest shall be 2% per annum above the base lending rate from time to time of the Bank of England. Interest shall accrue on a daily basis and be compounded quarterly.

23. LANGUAGE

If this Agreement is translated into any language other than English, the English language text shall prevail.

24. SEVERANCE

24.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

25. FURTHER ASSURANCE

Each Party shall promptly execute and deliver all such documents, and do all such things, as the other Party may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

26. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document.

27. GOVERNING LAW AND JURISDICTION

- 27.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 27.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

28. DISPUTE RESOLUTION

- 28.1 In the event that any dispute arises between the Council and the Company then in the first instance the dispute shall be referred for resolution to the Named Officer of the Council and the Chair of the Board.
- 28.2 If any dispute cannot be resolved by the Named Officer and the Chair of the Board within 20 Business Days then the Parties agree to enter into mediation in good faith to settle such dispute and will do so in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the Parties within 10 Business Days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (**ADR Notice**) to the other Party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 28.3 If there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the Parties cannot agree within 10 Business Days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the Parties having consulted them.
- 28.4 Unless otherwise agreed, the mediation will start not later than 20 Business Days after the date of the ADR Notice. The commencement of a mediation will not prevent the Parties commencing or continuing court proceedings.
- 28.5 Where the Parties are unable to resolve a dispute having followed the procedure at clauses 28.1 to 28.4 then the Council may at any time serve a notice in writing on the Company directing the Company and the Board to take and/or refrain from taking actions specified in the notice – such notice to be lawful and consistent with the Act, any applicable legislation and/or the fiduciary duties of the Directors and the Board shall be permitted a reasonable period of time to seek independent legal advice if they reasonably believe that they may or will be in breach thereof.

28.6 The Company must comply with any notice served pursuant to clause 28.5 within the timescales specified in the notice, provided always that where the relevant Board considers that compliance with any such notice may, in the view of the Board, place the Directors in breach of their fiduciary duties to the Company then the Board shall seek shareholder approval before implementing the requirements of the notice.

29. INTERNAL COUNCIL DECISION MAKING

29.1 The Company acknowledges that the Council in its capacity as the Shareholder will make decisions through the Policy & Resources Committee and the Director of Finance and Business Improvement acting under delegated authority and that the Policy & Resources Committee may report on its activities (and those of the Director of Finance and Business Improvement) and the performance of the Company to the Council (including meetings of the Full Council and other Council committees and sub-committees). References therefore in this agreement to the Council refer to the Policy & Resources Committee and/or the Director of Finance and Business Improvement unless the Council decides otherwise and notifies the Company in writing.

29.2 The Company shall ensure that:

- (a) Copies of Board minutes are made available to the Council following each Board meeting; and
- (b) Not less than twice in every Financial Year, the Board produces a report on the performance and activities of the Company and provides the same to the Council.

29.3 Notwithstanding, clause 12.7 the Company shall make available the Chair of the Board (or a substitute Director) to attend meetings of the Council unless the Council confirms in writing that attendance is not required.

29.4 The Company shall consult the Council prior to adopting any policy or procedure for the operation and management of the Company.

29.5 The Council may require that the Company adopts certain policies or procedures in the Company's operation from time to time.

29.6 Where the Board considers that compliance with any requirement of the Council under this Agreement would place the Directors in breach or at risk of breach of the Act, any applicable legislation and/or their duties to the Company then the Board shall seek shareholder approval of the actions required and the Board shall be permitted a reasonable period of time to seek independent legal advice if they reasonably believe that they may or will be in breach thereof.

This Agreement has been executed and delivered as a deed on the date stated at the beginning of it.

Schedule 1 Support Services

The Council will provide all support services to the Company unless the services provided by the Council does not meet the needs of the Company.

The Council and the Company will enter into a separate services level agreement.

Schedule 2 Shareholder Reserved Matters

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
1. Business Plan	<p>Adopting the first and all future Business Plans.</p> <p>Approving any material change to any previously approved Business Plan, which the Board is unable to approve.</p>	<p>Varying the timing, scale or programme of works or projects that are included in the Business Plan where the change in the budgeted revenue is more than £100,000 but less than £500,000 in any one financial year.</p> <p>Non-material departures from the Business Plan</p>	<p>The Board shall be entitled to delegate decisions as detailed in the Business Plan and/or decisions as follows:</p> <p>One director - commitments up to a value of £20,000.</p> <p>Two or more directors – commitments between £20,000 and £100,000</p>
2. Appointment and Removal of Directors	<p>Appointment and removal of all Directors; including the approval of the list of possible Alternate Directors.</p>	<p>Appointment and removal of all Board advisers (to include terms and conditions of relationship).</p>	<p>None.</p>
3. Variations to the Articles of Association	<p>Any variations to the Company's Articles.</p>	<p>None.</p>	<p>None.</p>

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
4. Executive Director Remuneration	The approval of the terms and conditions of employment of any executive director of the Company (if any).	Non-material alterations to terms and conditions Performance related pay awards	None.
5. Employee Recruitment and Remuneration	Approval of a pay framework and job evaluation scheme for the Company (if any).	Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is greater than £75K and is within the approved pay framework.	Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is no more than £75K and is within the approved pay framework.
6. Shares	The acquisition of any shares or any option over shares in the capital of any company. The creation, allotment, issuing or redemption of any shares or securities, or the granting of any right to require the creation, allotment, issuing or redemption of any such shares or securities.	None.	None.
7. Issuing or Accepting of	Entering into any borrowing, the issuing of any loan capital or	Entering into any borrowing or issuing any loan capital where this is approved in	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
Borrowing / Loan Capital	<p>entering into any commitments with any person regarding the issue of any loan capital outside of the approved Business Plan.</p> <p>Agreeing, as part of the approved Business Plan, the extent of any permitted borrowing delegated for Board approval, and the terms on which that borrowing can be entered into.</p>	the current Business Plan, to the extent and on the terms set out in the approved Business Plan.	
8. Nature of Company Business	Any material changes to the nature of the Company's business, or commencing any new business not contemplated by the approved Business Plan.	Any changes to the nature of the Company's business, or commencing any new business, but only where this is contemplated by the approved Business Plan.	None.
9. Acquisitions or Disposals	The acquisition of any freehold or leasehold land or building or the entering into of any option in respect of any land or building where this is not contemplated	The acquisition of any land or building or the entering in of any option in respect of any land or building specifically contemplated by the approved Business Plan.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
	by the approved Business Plan.		
10. Company / Group Structure	Forming any subsidiary or acquiring an interest in any other company or participating in any partnership or corporate joint venture Amalgamating or merging with any other company or undertaking	None.	None.
11. Stock Exchange Listing	The listing or trading of any shares or debt securities on any stock exchange or market.	None.	None.
12. Appointment of Agents or Subcontractors or Arms' Length Transactions	None	Appointment of contractors or subcontractors where this is in pursuance of the approved Business Plan	Appointment of contractors or subcontractors in pursuance of the approved Business Plan: One director - up to a value of £20,000. Two or more directors – a value between £20,000 and £100,000

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
13. Part sale of the business	Selling any part of the business, unless specifically contemplated and authorised in the approved Business Plan.	None.	None.
14. Business Name and Location	Changing the Company name, trading name, or registered office, or changing the location of any offices outside of the Company's registered office to a location outside of the Borough.	Changing the location of any offices outside of the Company's registered office to another location within the Borough only.	None.
15. Intellectual Property	The disposal, sale, assignment or granting of any rights in the Company's intellectual property outside of the normal course of business.	The granting of any rights (by licence or otherwise) in or over any intellectual property owned or used by the Company in the normal course of business	Where necessary to effect decisions delegated as above: One director – up to £20,000 Two or more directors – between £20,000 and £100,000
16. Encumbrances	Creating or granting any encumbrance over the whole or any part of the Company or its business, undertaking or assets, or over any shares in the Company other than liens	None	None

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
	arising in the normal course of business.		
17. Redundancy	None	Dismissing any employee in circumstances in which the Company will incur or agrees to bear redundancy or other costs (including actuarial costs) in excess of £75K.	Dismissing any employee in circumstances in which the Company will incur or agrees to bear redundancy or other costs (including actuarial costs) no greater than £75K.
18. Pension	<p>Establishing any new pension scheme, or granting any pension rights to any director, former director, or any members of any such person's family.</p> <p>Changes to pension arrangements for staff whether in the Local Government Pension Scheme or otherwise.</p> <p>Any other decisions of the Company which will have an effect on liabilities of the Shareholder under the Local Government Pension Scheme</p>	Establishing any new pension scheme, or amending any pension scheme, provided by the Company to employees.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated by the Board for Approval by individual Directors or another named employee or officer of the Company
	or any associated guarantee.		
19. Company Winding up	Passing any resolution for the winding up of the Company or presenting any petition for its administration (save for in insolvency).	None.	None.

