

Dated _____ **2015**

HARROW COUNCIL
AND
[HOLDING COMPANY]

SHAREHOLDERS' AGREEMENT
IN RELATION TO
[HOLDING COMPANY]

Draft (v.0.4) 10.06.15

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BETWEEN:

- (1) **[HARROW COUNCIL** of Civic Centre, Station Road, Harrow, HA1 2XY (**HC**)]; and
- (2) **[HOLDING COMPANY]** (company number []) whose registered office is at [Civic Centre, Station Road, Harrow, HA1 2XY] (the **Company**).

BACKGROUND

- (A) The Company is a wholly owned subsidiary of HC. HC has established the Company for the purposes of assisting HC with its function of strategic oversight and management of its wholly owned group commercial companies.
- (B) HC and the Company are entering into this Agreement to ensure that HC retains control over the strategic direction and key decisions of both the Company and the Group Companies.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

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

Accounting Reference Date means 31st March

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

Board means the board of directors of the Company from time to time

Business has the meaning given in clause 2

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

Business Plan means any business plan adopted from time to time by a Group Company

Companies Act means the Companies Act 2006

Deed of Adherence means a deed in the form or substantially in the form set out in Schedule 2

Director means a director of the Company

EIR means the Environmental Information Regulations 2004 and any subordinate legislation made under the 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

Financial Year means each financial accounting period of 12 months ending on the Accounting Reference Date other than in relation to the first accounting reference period which shall run on and from the date of this Agreement to and including the Accounting Reference Date in the following calendar year, or such longer or shorter period as HC shall from time to time determine

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

Group Company means any company in which the Company has a shareholding and the term **Group Companies** shall be construed accordingly

Intellectual Property means patents, inventions, registered designs, trademarks, 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, topography rights, trade names, logos, get-up, domain names, know-how and trade secrets, and any similar or equivalent rights arising or subsisting anywhere in the world

Prohibited Act means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by HC 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 HC; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud HC

Reserved Matters means the matters specified in Schedule 3

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 Acts shall have the same meanings when used in this Agreement;
- 1.2.7 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;
- 1.2.8 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;
- 1.2.9 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;
- 1.2.10 any requirement upon HC to procure a particular matter or thing shall be deemed to include an obligation to exercise its powers as a shareholder of the Company, and to use its reasonable endeavours to procure that any Director appointed by it shall (subject to his fiduciary and other legal duties owed to the Company) exercise his powers as a director, to procure such matter or thing; and
- 1.2.11 references to a document in the **agreed form** are to a document in a form agreed by HC and initialled by or on behalf of each of them for the purpose of identification.

2 THE BUSINESS

- 2.1 The business of the Company (the **Business**) shall be:
 - 2.1.1 to hold shares in the Group Companies;
 - 2.1.2 to oversee and control Group Companies in its capacity as a shareholder (pursuant to any relevant shareholders' agreements and articles of association); and
 - 2.1.3 to undertake such other business(es) as HC may from time to time determine in accordance with Schedule 3.

3 ACCESS TO INFORMATION RELATING TO THE COMPANY AND/OR THE BUSINESS

- 3.1 The Company shall promptly provide to HC:

- 3.1.1 any documents or information (including but not limited to board minutes, management accounts and annual accounts) received from any Group Company;
 - 3.1.2 draft annual accounts in accordance with HC's year end timetables as notified by HC;
 - 3.1.3 final audited annual accounts in accordance with HC's year end timetables as notified by HC;
 - 3.1.4 copies of Board meeting papers prior to the meeting of the Board to which they relate, and minutes of Board meetings five (5) Business Days after the relevant Board meeting to which they relate; and
 - 3.1.5 any other information reasonably required by HC from time to time.
- 3.2 HC and its authorised representatives (including internal and external auditors and other inspection bodies) shall have the right, on giving to the Company reasonable advance notice, during normal Working Hours to inspect the books and records of the Company and Group Companies from time to time and to be supplied with all trading, financial management information, monthly reports, quarterly reports and minutes of any progress meetings and other information in such form as it or they may reasonably require to keep it properly informed about the business and affairs of the Company and Group Companies, and shall have the right (at its expense) to take copies of any such books and records or parts thereof.

4 FINANCING THE COMPANY AND RETURNS

- 4.1 The parties envisage that the initial working capital of the Company shall be made up of either equity subscribed by HC or loans made to it by HC.
- 4.2 If it requires any additional finance, HC may (at its entire discretion) provide a loan facility to the Company on terms to be agreed between the parties.

5 MANAGEMENT OF THE COMPANY

- 5.1 Subject to clause 5.2, HC and the Company agree that the Company shall not undertake a Reserved Matter without the approval of HC.
- 5.2 Any Reserved Matter specifically set out in a Business Plan shall be deemed approved via the approval of the Business Plan, and the Board shall have delegated authority to implement such Reserved Matters.
- 5.3 HC and the Company agree to maintain the Board for the duration of this Agreement and agree (and agree to procure) that the Board shall operate in accordance with the provisions of this Agreement.
- 5.4 HC shall procure that both the Company and Group Companies from time to time, and in so far as it may legally do so, the Company agrees that it shall:
 - 5.4.1 carry on and conduct its Business and affairs in accordance with:
 - (a) its Articles;
 - (b) all laws relating to companies as amended from time to time;
 - (c) sound governance and good business practice; and
 - (d) in a proper and efficient manner, for its own benefit; and
 - 5.4.2 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 and operate its assets and to carry on its Business properly and effectively.

6 BOARD OF DIRECTORS

- 6.1 HC agrees to procure that the number of Directors of the Company shall not be less than 3. HC shall determine the maximum number of Directors of the Company from time to time subject to compliance with the provisions of this Agreement and the Articles.
- 6.2 HC shall be entitled to appoint and remove Directors to the Board in accordance with the Articles and this Agreement.
- 6.3 The Board shall be composed of up to 6 Directors who shall be appointed by HC and which shall include at least 3 Directors who shall be officers of HC having suitable experience and skills, one of whom shall be appointed as the finance director.
- 6.4 For the avoidance of doubt, the Company shall not appoint any statutory officers of HC or elected members of HC.
- 6.5 In addition to those roles detail at clause 6.3, HC may allocate specific roles to the Directors including company secretary and such other roles as determined by HC from time to time.
- 6.6 HC may nominate a Director, and remove a Director whom it nominated, by giving notice to the Company. The appointment or removal takes effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date.
- 6.7 HC shall indemnify and keep indemnified the Company against any claim connected with a Director's removal from office.
- 6.8 The Company shall have a company secretary and the Holding Company may appoint and remove the company secretary from time to time by giving notice in writing to the Company. The appointment or removal takes effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date.
- 6.9 The parties intend that meetings of Directors shall take place at least [once]¹ each year.
- 6.10 The quorum at any meeting of the Board (or any committee of the Board) shall be 2 Directors. The parties shall use their respective reasonable endeavours to ensure that any meeting of the Board (or meeting of a committee of the Board) has the requisite quorum.

7 TRANSFER OF SHARES

- 7.1 HC and the Company shall not create any Encumbrance over, transfer, or otherwise dispose of or give any person any rights in or over any share or interest in any share in the Company unless it is (a) permitted under this Agreement (and in particular Schedule 3) or the Articles and (b) carried out in accordance with the terms of this Agreement and the Articles (as the case may be).

8 NEW SHAREHOLDERS

- 8.1 Admitting a person as a new shareholder of the Company is a Reserved Matter and shall also be subject to such person executing a Deed of Adherence.

9 TERMINATION

- 9.1 Subject to the provisions of clause 9.2, this Agreement shall continue in force until HC agrees to terminate it by serving written notice on the Company.
- 9.2 This Agreement shall, unless HC otherwise agrees, automatically terminate on the effective date of a winding up of the Company.
- 9.3 Termination of this Agreement in respect of HC for any reason shall not affect any accrued rights or

¹ TBC

liabilities of any person or any liability or obligation arising under or pursuant to the Articles or any other agreement or arrangement between any of the parties hereto and save where this Agreement expressly provides to the contrary, affect the provisions of:

- 9.3.1 clause 1 (*Definitions and Interpretation*);
- 9.3.2 this clause 9 (*Termination*);
- 9.3.3 clause 11 (*Assignment and Subcontracting*);
- 9.3.4 clause 13 (*Remedies and Waivers*);
- 9.3.5 clause 14 (*Entire Agreement*);
- 9.3.6 clause 16 (*Conflict with the Articles*);
- 9.3.7 clause 17 (*Severance*);
- 9.3.8 clause 20 (*Notices*);
- 9.3.9 clause 21 (*Costs and Expenses*);
- 9.3.10 clause 22 (*Set-off*);
- 9.3.11 clause 23 (*No Partnership or Agency*);
- 9.3.12 clause 24 (*Counterparts*); and
- 9.3.13 clause 26 (*Governing Law and Jurisdiction*),

which shall continue in full force and effect after termination.

9.4 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:

- 9.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;
- 9.4.2 the Company shall not enter into any new contractual obligations;
- 9.4.3 the Company is dissolved and its assets are distributed as soon as practical in accordance with clause 9.5; and
- 9.4.4 any other proprietary information or Intellectual Property Rights belonging to or originating from a party shall be returned to it by the other party and all such proprietary information or Intellectual Property Rights shall be erased from the computer systems (to the extent possible) of the party who is returning it.

9.5 In the event of the Company being wound up, the assets of the Company remaining after payment of all debts and liabilities of the Company and of all costs, charges and expenses of winding up the same, shall be distributed amongst the current shareholders of the Company as unanimously agreed between such shareholders, subject always to the final decision of any liquidator.

10 UNLAWFUL FETTER ON HARROW COUNCIL'S POWERS

10.1 Notwithstanding any other provision contained in this Agreement, HC 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 HC, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

11 ASSIGNMENT AND SUB-CONTRACTING

- 11.1 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 the other party. Each party hereby undertakes and represents to the other party that it is entering into this Agreement only for its own benefit.
- 11.2 This Agreement shall be binding on and shall endure for the benefit of each party's successors.

12 FURTHER ASSURANCE

- 12.1 The parties shall agree a communications protocol prior to commencement of service delivery to HC.
- 12.2 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.

13 REMEDIES AND WAIVERS

- 13.1 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:
- 13.1.1 operate as a waiver of that or any other right, power or remedy; or
 - 13.1.2 affect the other terms of this Agreement or any document referred to in it.
- 13.2 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.
- 13.3 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 will not prevent a party from subsequently requiring compliance with the waived obligation.
- 13.4 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.

14 ENTIRE AGREEMENT

- 14.1 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 Company and supersede all previous agreements between the parties relating to such matters.
- 14.2 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:
- 14.2.1 all rights and remedies which, but for this clause 14.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and
 - 14.2.2 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 14.2, 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 14.2 shall limit or exclude any liability for fraud or dishonesty on the part of any party.

15 VARIATION

15.1 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.

16 CONFLICT WITH THE ARTICLES

16.1 If any provision of this Agreement is inconsistent with a provision of the Articles, then the terms of this Agreement shall prevail and HC agrees to procure the making of any amendment to the Articles at the next general meeting of the Company required in order to make them consistent with the provisions of this Agreement.

17 SEVERANCE

17.1 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.

17.2 Without prejudice to the generality of clause 17.1, 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, HC shall procure that the provision is nevertheless put into effect to the greatest extent possible.

17.3 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.

17.4 The parties agree, in the circumstances referred to in clause 17.1 and if clause 17.3 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.

18 FREEDOM OF INFORMATION

18.1 HC and the Company acknowledge that each of them is subject to the requirements of the FOIA and the EIR and each Party shall, where reasonable, assist and co-operate (at its own expense) with the other Party for the provision of information to enable that Party to comply with these information disclosure obligations.

18.2 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 HC in relation to the Company, it shall:

18.2.1 transfer the request for information to HC as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;

18.2.2 provide HC with a copy of all information requested by HC, which is in its possession or power in the form that HC requires within ten Business Days (or such longer period as HC may specify) of HC requesting that information; and

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

18.3 Where HC receives a request under FOIA or EIR which relates to the operations of the Company, it shall notify the Company and afford it an opportunity to make any comments or representations in respect of the disclosure of the information sought. The Company shall respond within five (5)

Business Days of receipt of this notification. HC shall take into account any such comments or representations in so doing and shall not respond to the request until the five (5) day response period referred to above has passed.

19 PREVENTION OF BRIBERY

19.1 The Company:

19.1.1 shall not, and shall procure that any Director, officer, employee, adviser or representative of the Company shall not, in connection with this Agreement commit a Prohibited Act;

19.1.2 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 HC, 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 HC before execution of this Agreement.

19.2 The Company shall:

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

19.2.2 within five (5) Business Days of the date of this Agreement, and annually thereafter, certify to HC in writing (such certification to be signed by an officer of the Company) compliance with this clause 19 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 HC may reasonably request.

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

19.4 If any breach of clause 19.1 is suspected or known, the Company must notify HC immediately.

19.5 If the Company notifies HC that it suspects or knows that there may be a breach of clause 19.1, the Company must respond promptly to HC's enquiries, co-operate with any investigation, and allow HC to audit books, records and any other relevant documentation.

19.6 HC 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 19.1.

19.7 Any notice of termination under clause 19.6 must specify:

19.7.1 the nature of the Prohibited Act;

19.7.2 the identity of the party whom HC believes has committed the Prohibited Act; and

19.7.3 the date on which this Agreement will terminate.

19.8 Any dispute relating to:

19.8.1 the interpretation of clause 19; or

19.8.2 the amount or value of any gift, consideration or commission;

shall be determined by HC and its decision shall be final and conclusive.

19.9 Any termination under clause 19.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to HC.

20 NOTICES

20.1 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 4 or in any Deed of Adherence (as the case may be).

20.2 Subject to clause 20.3 and in the absence of earlier receipt, any notice or communication shall be deemed to have been served:

20.2.1 if delivered personally, at the time of delivery;

20.2.2 if sent by first class post, two (2) Business Days after the date of posting; and

20.2.3 if sent by email, twenty four (24) hours after the time of sending

20.3 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.

20.4 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, that the facsimile message was transmitted to the facsimile number of the recipient, or in the case of electronic communication, that it was sent in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators.

21 COSTS AND EXPENSES

21.1 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 HC, save for any private advice sought by the Company which shall be for the cost of the Company.

22 SET-OFF

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

23 NO PARTNERSHIP OR AGENCY

23.1 Nothing in this Agreement 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

25.1 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 20. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

AS WITNESS the hands of the parties or their duly authorised representatives the day and year first before written

DRAFT

Executed as a deed by
HARROW COUNCIL
by affixing the common seal in the presence
of an Authorised Officer:

)
)
)
) **Signature**
)
)
) **Full Name**
)
)
) **Position**

Executed as a deed by
[HOLDING COMPANY]
Acting by two directors

)
)
)
) **Director**
)
)
) **Director**
)

DRAFT

SCHEDULE 1– PARTICULARS OF THE COMPANY

- 1 **Registered number:** []
- 2 **Date of incorporation:** []
- 3 **Place of incorporation:** England and Wales
- 4 **Class of company:** Private company limited by shares
- 5 **Registered office:** [Civic Centre, Station Road, Harrow, HA1 2XY]
- 6 **Accounting Reference Date:** []

DRAFT

SCHEDULE 2 – DEED OF ADHERENCE

THIS DEED is made on [] 20[]

(A) 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 [] 20[] made by (1) [], (2) [] and (3) [] Limited (company number: []) (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, except Clauses [] and [], as if the Covenantor were a Shareholder who 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.

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

]

Executed as a deed by affixing the common seal of [• COMPANY NAME] in the presence of
.....) Seal:
Director)
.....)
Director/Secretary)

SCHEDULE 3 – RESERVED MATTERS

All Reserved Matters shall only be effective if approved by HC.

Any dispute relating to whether or not something is material under Reserved Matters 23, 24 or 34 will be determined by HC and its decision shall be final and conclusive.

The following matters are Reserved Matters unless (where relevant) they have been approved in advance in writing by HC:

Constitution of the Company

1. Varying in any respect the Articles or the rights attaching to any of the shares in the Company.

Officers and Shareholders of the Company

2. Agreeing the appointment and the appointment terms (including any remuneration terms) of all Directors.
3. Agreeing the removal of all Directors (including any terms on which Directors are removed from their office as Directors).
4. Agreeing the appointment and the appointment terms (including any remuneration terms) of any company secretary of the Company in the event that the Company decides to appoint an individual as Company Secretary.
5. Approving the admission of further shareholders to the Company or agreeing any rights or restrictions attaching to any shares allocated to such new shareholders.
6. Agreeing the appointment or removal of the chair and vice chair of the Board (except where the chair and vice chair is absent in which case the Board will appoint an alternate chair).
7. Agreeing or approving the maximum size of the Board.
8. Agreeing or approving what (if any) goods or services Directors may provide to the Company.

Future direction and development of the Company

9. Agreeing to enter into or entering into any debt facility or loan agreement.
10. Forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).
11. Amalgamating or merging with any other company or business undertaking.
12. Selling or disposing of any part of the Business.
13. Entering into any arrangement, contract or transaction with either a capital value over £10,000 (ten thousand pounds) or otherwise a value of over £10,000 (ten thousand pounds).
14. Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
15. Agreeing or approving any services to be provided by the Company to HC.
16. Appoint any agent or intermediary to conduct the whole or any part of the Business.
17. Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market.

Management of the business of the Company

18. Changing the Company's registered office.
19. Changing the Company's name.
20. Creating or agreeing to create a charge, security or Encumbrance over the Company's assets, shares or income.
21. Adopting or agreeing any changes to any remuneration and redundancy policies of any employees of the Company.
22. Adopting or agreeing any changes to any pension arrangements of any employees or officers of the Company.
23. Changing the nature of the Business or commencing any new business which is not ancillary or incidental to the Business.
24. Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company.
25. Giving notice of termination of any arrangements, contracts or transactions which are material in the nature of the Business or materially varying any such arrangements, contracts or transactions.
26. Granting rights (by license or otherwise) in or over any intellectual property owned or used by the Company.
27. Appointing and changing the Company's auditors.
28. Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) 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.
29. Changing the financial year end of the Company.
30. Increasing or reducing the amount of its issued share capital, granting any option or other interest over or in its share capital, redeeming or purchasing any of its own shares or otherwise altering, or effecting any reorganisation of, its share capital.
31. Declaring a dividend and adopting the Company's dividend policy and any replacement of or alteration thereto.

Management of the Group Companies

32. Approving any matter which is defined as a 'Reserved Matter' in a shareholders' agreement entered between the Company and any Group Company.
33. Increasing or reducing the amount of issued share capital in any Group Company; granting any option or other interest over or in the share capital of any Group Company; redeeming or purchasing any shares or otherwise altering, or effecting any reorganisation of, the share capital in any Group Company.
34. Agreeing any change to the business of a Group Company.
35. Selling or disposing of any part of the business of any Group Company.
36. Agreeing to enter into or entering into any debt facility or loan agreement.

37. Appointing any agent or intermediary to conduct the whole or any part of the business of any Group Company.
38. Agreeing to enter into or entering into any acquisition or disposal of any material assets of any Group Company.
39. Adopting and/ or agreeing any amendments or variations to a Business Plan.
40. In respect of all Group Companies, their declaration of a dividend and adopting a dividend policy and any replacement of or variations thereto.

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SCHEDULE 4 – CONTACT DETAILS

HARROW COUNCIL

Address: [Civic Centre, Station Road, Harrow, HA1 2XY]
For the attention of: []
Facsimile number: []
Email address: []

[] LIMITED

Address: [Civic Centre, Station Road, Harrow, HA1 2XY]
For the attention of: []
Facsimile number: []
Email address: []

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

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