

Dated

2022

EAST SUFFOLK COUNCIL

EAST SUFFOLK HOLDINGS LIMITED

EAST SUFFOLK CONSTRUCTION SERVICES LIMITED

EAST SUFFOLK PROPERTY INVESTMENTS LIMITED

EAST SUFFOLK PROPERTY DEVELOPMENTS LIMITED

EAST SUFFOLK SERVICES LIMITED

SHAREHOLDER AGREEMENT

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PARTIES

- (1) **EAST SUFFOLK COUNCIL** having its principal place of business at Ground Floor, West Wing, East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge IP12 1RT (the **Council**)
- (2) **EAST SUFFOLK HOLDINGS LIMITED** incorporated and registered in England and Wales with registered number 12280262 whose registered office is at Ground Floor, West Wing, East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge IP12 1RT (**HoldCo**)
- (3) **EAST SUFFOLK CONSTRUCTION SERVICES LIMITED** incorporated and registered in England and Wales with registered number 12334919 whose registered office is at Ground Floor, West Wing, East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge IP12 1RT
- (4) **EAST SUFFOLK PROPERTY INVESTMENTS LIMITED** incorporated and registered in England and Wales with registered number 12334865 whose registered office is at Ground Floor, West Wing, East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge IP12 1RT
- (5) **EAST SUFFOLK PROPERTY DEVELOPMENTS LIMITED** incorporated and registered in England and Wales with registered number 12334993 whose registered office is at Ground Floor, West Wing, East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge IP12 1RT
- (6) **EAST SUFFOLK SERVICES LIMITED** incorporated and registered in England and Wales with registered number 14001825 whose registered office is at Ground Floor, West Wing, East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge, IP12 1RT

INTRODUCTION

- (A) This Agreement sets out the terms and conditions on which the Council will participate in HoldCo as its shareholder and the Council (or HoldCo, as the case may be) will participate in each SPV as its shareholder (or in an equivalent capacity, where the SPV is established as another form of body corporate).
- (B) Where an SPV is intended to be a Teckal Company, this Agreement sets out the manner in which the Council will retain influence over both the strategic objectives and significant decision of that SPV.
- (C) Where the Council (or HoldCo, as the case may be) participates in a joint venture relationship, that joint venture relationship will be subject to separate arrangements.

AGREED TERMS**1 INTERPRETATION AND DEFINITIONS¹****1.1** In this Agreement

Articles means the articles of association of a Company, as may be amended or replaced from time to time

Annual Accounts Date means the accounting reference date of a Company from time to time

Boards means the HoldCo Board (in relation to HoldCo) and the SPV Board (in relation to each SPV), and **Board** means any one of them

Board Meeting means a meeting of the Directors

¹ Definitions to be reviewed for redundancies, as drafting develops.

Business means the business of a Company described in clause 2

Business day means a day (other than a Saturday, a Sunday or a public holiday in the United Kingdom) on which banks in the United Kingdom are ordinarily open to effect transactions of the kind contemplated in this Agreement and, if a payment is to be made in euros, on which such payment system as the Council chooses is operating for the transfer of funds for the same day value

Business Plan means the business plan for a Company as prepared and adopted from time to time in accordance with clause 3

Companies means HoldCo and the SPVs, and **Company** means any one of them

Consolidated Business Plan means the consolidated business plan for HoldCo and the SPVs as prepared and adopted from time to time in accordance with clause 3

Council Directors shall have the meaning given in the Articles

Deed of Adherence means a deed of adherence in substantially the same form as set out in Schedule 2

Directors means the HoldCo Directors (in relation to HoldCo) and the SPV Directors (in relation to an SPV), and **Director** means any one of them

Encumbrance means:

- (a) a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person; or
- (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts so as to effect payment of sums owed or payable to any person; or
- (c) any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect

Environmental Information Regulations 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

Financial Year means each accounting reference period of 12 months ending on the Annual Accounts Date (other than in relation to any Company incorporated after the date of this Agreement, where its first accounting reference period shall run on and from the date of incorporation to and including the Annual Accounts Date in the following calendar year) or such longer or shorter period as the Council 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

HoldCo Board means the HoldCo Directors or such of them as are present at a duly convened and quorate meeting of the HoldCo Directors

HoldCo Business has the meaning given in clause 2.1

HoldCo Director means a director of HoldCo and includes any person occupying the position of director of HoldCo, by whatever name called

Reserved Matters means the matters specified in Schedule 1, as updated from time to time

Shareholder Representative means the person nominated by the Council from time to time to act as its authorised representative in accordance with its constitution and notified to each Company in writing

SPV means any direct or indirect wholly-owned subsidiary of the Council, other than HoldCo, including any Teckal Company

SPV Board means, in relation to an SPV, its Directors or such of them as are present at a duly convened and quorate meeting of its Directors

SPV Business has the meaning given in clause 2.2

SPV Director means a director of an SPV and includes any person occupying the position of director of an SPV, by whatever name called

Teckal means the codified rule of EU procurement law as set out within Directive 2014/24/EU and Regulation 12 of the Public Contracts Regulations 2015, deriving from the Teckal case (*Teckal Srl v Comune de Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia* (C-107/98) [1999] ECR I-8121) pursuant to which the requirement for open advertisement and tendering for public contracts in accordance with the Public Contracts Regulations 2015 does not apply

Teckal Company means an SPV which is intended to be Teckal-compliant

1.2 In this Agreement:²

- 1.2.1 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Agreement and a reference to a paragraph is to a paragraph of the relevant Schedule. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement;
- 1.2.2 a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular, and a reference to one gender shall include a reference to the other genders;
- 1.2.4 a reference 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 by executing a Deed of Adherence 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. A reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.2.5 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.6 a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.7 a reference to **writing** or **written** includes email but not fax;

² Interpretation provisions to be reviewed alongside Commissioning Agreement to ensure consistency as far as possible.

- 1.2.8 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.9 any requirement upon the Council or HoldCo to procure a particular matter or thing does or does not occur in relation to a Company shall be deemed to include an obligation to exercise its powers as a member of HoldCo or the relevant Company (so far as the same is lawful and reasonable) to seek to ensure that the particular matter or thing occurs or does not occur (as the case may be);
- 1.2.10 a reference to **this Agreement** (or any provision of it) or to any other agreement or document referred to in this Agreement is a reference to this Agreement, that provision or such other agreement or document as varied, amended or supplemented (in each case, other than in breach of the provisions of this Agreement) from time to time;
- 1.2.11 any words following the **terms including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.12 a reference to an amendment includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- 1.2.13 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- 1.2.14 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; and
- 1.2.15 the expressions **body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the first person) shall be treated as a member of another company or undertaking if:
- (a) any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
 - (b) any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
 - (c) any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (i) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (ii) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the

constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the relevant company or undertaking as it is at that time.

- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2 THE BUSINESSES

- 2.1 The **HoldCo Business** shall be to:

2.1.1 act as a holding company in relation to its SPVs from time to time;

2.1.2 provide such goods, works and services to any person as may be agreed in its Business Plan then in force and on terms agreed between the HoldCo and that person.

- 2.2 **SPV Business**, in relation to an SPV, shall be to provide such goods, works and services to any person as may be agreed in its Business Plan then in force and on terms agreed between the SPV and that person.

- 2.3 The parties intend that each Teckal Company shall be governed in a manner which ensures that the each of them:

2.3.1 is and remains controlled (both by way of ultimate ownership and decisive influence over both their strategic objectives and significant decisions) by the Council;

2.3.2 carries out the essential part of its activities for the Council and other legal persons controlled by the Council;

2.3.3 carries out those activities in furtherance of the Council's public service tasks; and

2.3.4 is not market-orientated.

- 2.4 Subject to the provisions of this Agreement, each Company shall use all reasonable and proper means to maintain and improve its business.

3 BUSINESS PLANS

- 3.1 A Business Plan shall cover three Financial Years and be updated annually.

- 3.2 Each:

- 3.2.1 Teckal Company's Business Plan shall be:

(a) prepared by that SPV in accordance with any requirements specified by the Council and the timetable agreed under the relevant governance arrangements of that SPV from time to time; and

(b) considered and, if thought fit, approved by the Council as part of the approval of the Consolidated Business Plan pursuant to clause 3.3; and.

- 3.2.2 other SPV's Business Plan shall be:

(a) prepared by that SPV in accordance with any requirements specified by HoldCo and the timetable agreed under the relevant governance arrangements of that SPV from time to time; and

(b) considered and, if thought fit, approved by HoldCo.

3.3 HoldCo shall prepare a Consolidated Business Plan which shall include the Business Plan of each of its Teckal Companies as drafted in accordance with clause 3.2.1 and a summary of each other SPV's Business Plan as approved by HoldCo in accordance with clause 3.2.2. The Consolidated Business Plan for a given Financial Year shall be:

3.3.1 prepared by HoldCo in accordance with the timetable approved by the Council from time to time; and

3.3.2 considered and, if thought fit, approved by the Council (except in relation to the SPV Business Plans approved by HoldCo, which are included for information purposes).

3.4 The parties agree to work both together and with any third parties where required in good faith, to procure that each Business Plan is prepared and approved in accordance with clause 3 and that the business of each Company is carried out, where appropriate, to interface as seamlessly as possible with the operations and services of the Council.

3.5 If at any time there is a requirement for a body corporate to be established other than a private company limited by shares, such as a private company limited by guarantee or a limited liability partnership, the Council intends that such vehicle shall be governed as far as possible in the manner in which a Company is governed, subject always to any necessary changes to reflect the law relating to such alternative vehicle.

4 COUNCIL'S ROLE AS ULTIMATE OWNER OF THE COMPANIES

4.1 The Council will monitor and control the business and operations of each Company through the Reserved Matters, through receiving periodic reports, through its Directors on each Board (appointed in accordance with the Articles and this Agreement) and through information received following ad hoc information requests made of the relevant Company.

4.2 The Council may structure its role as ultimate owner of the Companies in any manner it chooses, including via a shareholder reference group or similar group (howsoever named) (a **Shareholder Reference Group**). Where the Council constitutes a Shareholder Reference Group, the Shareholder Reference Group, subject to its terms of reference, may exercise all the rights, powers and privileges of the Council under this Agreement on behalf of the Council.

4.3 The Council:

4.3.1 shall, upon request, have unlimited, unrestricted and prompt access to any Company information and documents pursuant to clause 5;

4.3.2 will not usurp the functions of any Board but will monitor the activities of each Company to ensure that they are acceptable and accountable to the Council as ultimate owner of each Company; and

4.3.3 may, in addition to those matters requiring Council consent pursuant to clause 5:

(a) make recommendations from time to time to any Board; and/or

(b) give directions by notice in writing from time to time to any Board.

4.4 Any notice to or from the Council shall be sent to or from the Shareholder Representative. Where a consent or approval is expressed in this Agreement to be required of the Council, it shall be given through the Shareholder Representative (and by the Shareholder Representative where delegated authority to do so is in force). Such consent or approval shall be given in writing in advance of the relevant Board's decision relating to the matter requiring consent or approval. The Council shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company within a period of 30 days from receipt of the requests provided that the Council shall not be deemed to have made a decision or given its

consent or approval by virtue of the fact that it has not communicated the same within that time limit. Where the Company requires the Council to make any decision or provide any consent or approval, the Company shall provide such material information as the Council may require to enable it to consider the decision, consent or approval in question.

- 4.5 Once a consent or approval is given in accordance with clause 4.4 then, to the extent a special or an ordinary resolution is required pursuant to the Companies Act 2006 or otherwise and unless the consent or approval was not already given in the form of such a resolution, the relevant Company shall prepare and circulate to its member a draft resolution for consideration and, if thought fit, approval by that member. The relevant Company's member shall approve any resolution which is in line with a consent or approval of the Council.
- 4.6 Each Company shall ensure that the Board chair and and/or any employees of each Company as requested by the Council shall attend such meetings or parts of meeting(s) of the Council as the Council may require and shall answer questions put by the Council and provide information regarding the activities of each Company as reasonably requested. It is intended that HoldCo reports back to the Council on a formal basis at least once every 3 months in relation to progress against the Consolidated Business Plan and the Council shall provide HoldCo from time to time with a timetable of meetings which one or more of its Directors shall be expected to attend together with a statement of the required information which should form part of any such report.

5 CONDUCT OF A COMPANY'S AFFAIRS

- 5.1 Except as set out in clause 5.2, no Company shall make any decision in relation to, or undertake, a Reserved Matter except with the prior written consent of the Council or HoldCo as the case may be.
- 5.2 Clause 5.1 shall not apply in connection with any decision or action relating to a Reserved Matter:
- 5.2.1 approved in the Business Plan relating to the Company then in force;
 - 5.2.2 which has been properly delegated in accordance with this Agreement to a particular Board or person; or
 - 5.2.3 to the extent the same decision has been taken by the Council in accordance with an agreement between the Council and the relevant Company,

and in those circumstances only, the approval or consent of the Council or HoldCo (as the case may be) shall be deemed to have been given.

- 5.3 Any variation to the list of Reserved Matters must be approved by the Council in writing. For the avoidance of doubt, the Reserved Matters may be varied and/or replaced in part or entirely, by the Council at its absolute discretion and any such variation and/or replacement shall take effect upon the Council giving notice to the Companies of the fact.
- 5.4 In relation to a Teckal Company, if the Council Directors notify the Board in writing that they consider a particular matter (not currently a Reserved Matter) is sufficiently important to the Council to justify it being classed as a Reserved Matter, then the matter shall become a Reserved Matter and governed by clause 5.1.
- 5.5 If any agreement between the Council and a Company is validly varied in accordance with its terms, the relevant sections of the Business Plan(s) shall be deemed amended on and with effect from the date of the variation of the agreement to the extent (but only to the extent) such amendment is necessary to ensure that the Business Plan(s) is/are fully consistent, and does not conflict, with the terms of that agreement.
- 5.6 With the exception of (1) the Reserved Matters (including any additional matters referred to the Council pursuant to clause 5.4), (2) the Business Plans then in force, (3) this Agreement and (4) any agreements between the Council and a Company:

- 5.6.1 the HoldCo Business and all day-to-day affairs of HoldCo shall be managed by the HoldCo Board;
- 5.6.2 each SPV Business and all day-to-day affairs of each SPV shall be managed by the relevant SPV Board;
- 5.6.3 the Directors shall determine the general policies of the Company and the manner in which its business is to be carried out; and
- 5.6.4 the Directors shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this Agreement, the Company shall:
 - (a) carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with good business practices; and
 - (b) transact all its business on arm's length terms.
- 5.7 Each Company shall, if it requires any approval, consent or licence from a person other than the Council for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.
- 5.8 Any Director may at any time discuss the affairs, finances and accounts of the Company with any Council as ultimate shareholder (and any person acting with delegated authority on its behalf) . All books, records, accounts and documents relating to the business and the affairs of each Company (collectively Relevant Information) shall be open to the inspection of the Council or any such person acting with that delegated authority, who shall be entitled to make any copies of that Relevant Information as it, he or she deems appropriate to keep the Council properly informed about the business and affairs of each Company or to protect its interests as ultimate owner of each Company. The Council or any person acting with delegated authority on its behalf may share Relevant Information to others within the Council where there is an established need to know. Any confidential information secured as a consequence of such discussions and examinations shall be kept confidential by the Council and such person(s) as receive it in accordance with the terms of clause 14.
- 5.9 Each Company shall maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Council informed of the progress of its business and affairs and in particular will procure that the Council is given such information and such access to the officers, employees and premises of the Companies as it may reasonably require for the purposes of enabling it to monitor its investment in the Companies and to comply with its obligations under the Prudential Code for Local Authorities.
- 5.10 Each Company shall itself comply with and assist the Council in complying with its statutory obligations including in relation to propriety, governance, public procurement or subsidy control in force from time to time and any other legal obligations insofar as such obligations arise from the Company's legal or contractual relationship with the Council. No Company shall engage in any political lobbying or other political activity.
- 5.11 The Council and HoldCo shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it, in relation to each Company so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement:
 - 5.11.1 each Company is managed in accordance with the objectives and provisions of this Agreement; and
 - 5.11.2 each Company performs and complies with all obligations on its part under this Agreement and the Articles.

6 THE BOARD OF DIRECTORS

- 6.1 The Directors of each Company shall be appointed and shall conduct their dealings in accordance with its Articles and this Agreement.
- 6.2 On the appointment of a Council Director in accordance with the Articles, the Board of that Company shall issue to that person a letter of appointment in the form or substantially in the form contained in Schedule 3 together with a summary of a Director's duties in relation to the Company.
- 6.3 Each Company shall review its Board every year in consultation with the Council to ensure that the composition and membership of the Board is such that it has the ability to sufficiently understand the Company's obligations and make sufficiently robust decisions in relation to those obligations. Nothing in this clause shall require the Council to accept any proposals made by a Company in relation to its Board or to appoint or remove a given Director, and nothing shall limit the Council's rights of appointment and removal of Directors in this Agreement and each Company's Articles.
- 6.4 The Shareholder Representative and any other Council officer notified to the Board in writing in advance of notice for a Board meeting being given to the Directors shall have the right as an observer only to attend (but not speak or vote at) that Board meeting and receive papers in relation to the meeting at the same time as those papers are given to the Directors.
- 6.5 All Board Meetings shall be held at the registered office of the Company.

7 FINANCE FOR THE COMPANY

- 7.1 If a Company requires additional capital:
- 7.1.1 the Company may request such capital from the Council provided that the Council shall not be obliged to provide any guarantee or security in respect of any indebtedness of the Company or to put up the finance concerned; and
- 7.1.2 if the Council is not providing that additional capital, the Company shall endeavour to obtain it from a third party lender on the best terms which could reasonably be expected to be obtained in the open market provided that the Council shall not be obliged to provide any guarantee or security in respect of any indebtedness of the Company.

8 PRODUCTION OF ACCOUNTS

- 8.1 The Company shall instruct its auditors or accountants (as applicable) to prepare and audit a balance sheet of the Company, as at the Annual Accounts Date each year and a consolidated profit and loss account of the Company, for the 12 month financial period ending on the Annual Accounts Date each year to be presented to the Company's shareholder within 3 calendar months after the end of the period to which such accounts relate. The balance sheet and profit and loss account will be accompanied by an annual report.
- 8.2 All accounts referred to in this clause shall be prepared in pounds sterling and in accordance with applicable law and generally accepted accounting standards, principles and practices in the United Kingdom.

9 ANTI-CORRUPTION

- 9.1 In this clause:

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

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

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

- 9.2 Each party declares and undertakes to the other parties that:
- 9.2.1 it has not and will not in relation to the Company or the operation of the Business, engage in any Corrupt Activity;
 - 9.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;
 - 9.2.3 it has and will maintain in place, or in the case of each Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;
 - 9.2.4 it has not and will not engage in any activity, practice or conduct which could place a Company or any other party in breach of section 7(1) Bribery Act;
 - 9.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause 9.2 and will provide any information reasonably requested by the other party in support of such compliance; and
 - 9.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 9.
- 9.3 Breach of any of the undertakings in this clause shall be deemed to be a material breach of this Agreement.

10 DEALINGS IN SHARES, NEW SHAREHOLDERS AND NEW COMPANIES

- 10.1 No Company shall create any Encumbrance over, transfer, or otherwise dispose of or give any person any rights in or over any share in its capital unless it is:
- 10.1.1 permitted under this Agreement (and in particular Schedule 1) and its Articles; and/or
 - 10.1.2 carried out in accordance with the terms of this Agreement and its Articles.
- 10.2 Admitting a person as a new shareholder or member of any Company is a Reserved Matter and shall also be subject to such person executing a Deed of Adherence. Should a Company wish to admit a new shareholder or new member, the Board of such Company must procure that Deed of Adherence is signed and the prior written consent of the Council is obtained, prior to such new shareholder or member being admitted.
- 10.3 The Council and HoldCo shall procure that any new Company shall execute a Deed of Adherence to this Agreement as soon as reasonably practicable following incorporation of that Company and in any event prior to it starting business operations.

11 CONFLICT WITH THE ARTICLES

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

12 NO FETTER

- 12.1 Nothing in this Agreement shall operate to bind the Company to the extent that it constitutes an unlawful fetter on any statutory power of the Company (but this shall not affect the validity of the relevant provision as between the other parties to this Agreement or the respective obligations of such other parties as between themselves under clause 11).

13 DURATION AND TERMINATION

- 13.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Council until the earlier of the following events:

13.1.1 each of the parties agrees in writing to terminate this Agreement; and

13.1.2 in relation to a specific Company (but without affecting the continuation of the Agreement for other parties), an effective resolution has been passed or a binding order has been made for the winding up of that Company,

and provided that this Agreement shall cease to have effect as regards any Company who ceases to be directly or indirectly wholly-owned by the Council, except for any provisions which are expressed to continue in force thereafter.

- 13.2 Termination of this Agreement pursuant to this clause shall not release any party from any liability which at the time of termination has already accrued to another party or which may accrue after termination of this Agreement in respect of any act or omission prior to such termination.

- 13.3 Upon termination of this Agreement pursuant to clause 13.1 the parties shall do all such acts and things as are necessary to procure (so far as they are able) (including, without limitation, the holding of a general meeting of the Company and the passing of appropriate shareholder resolutions) that the Company be wound up.

14 CONFIDENTIALITY

- 14.1 This clause applies to **Confidential Information**, which shall mean:

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

14.1.2 any information concerning the business affairs of one party or other information confidential to that party which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement; Including any information relating to any party's products, operations, processes, plans or intentions, product information, know how, design rights, trade secrets, market opportunities and business affairs.

- 14.2 In this clause, in relation to a particular item of Confidential Information:

14.2.1 the **Disclosing Party** means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and

14.2.2 the **Receiving Party** means the other party.

- 14.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:

14.3.1 keep the Confidential Information confidential;

- 14.3.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this clause 14; and
- 14.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.
- 14.4 Notwithstanding clause 14.3, the Receiving Party may disclose Confidential Information as follows:
 - 14.4.1 to its professional advisers (each, a **Recipient**) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and
 - 14.4.2 to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body.
- 14.5 This clause 14 shall not apply to any Confidential Information which:
 - 14.5.1 is at the date of this Agreement in, or at a later date comes into, the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
 - 14.5.2 was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the same pursuant to this Agreement) and which had not previously been obtained under an obligation of confidence; or
 - 14.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.
- 14.6 Each Company acknowledges that the Council is subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation, and shall facilitate the Council's compliance with its disclosure requirements in relation to **Information** (within the meaning given in section 84 FOIA) pursuant to and in the manner provided for in clauses 14.7 and 14.10.
- 14.7 If the Council receives a **Request for Information** (within the meaning set out in the FOIA or Environmental Information Regulations, as the case may be) in relation to Information that a Company is holding and which the Council does not hold itself, the Council shall refer to the Company such Request for Information as soon as practicable and in any event within 5 Business Days of receiving the Request for Information, and the Company shall:
 - 14.7.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within 10 Business Days (or such other period as the Council acting reasonably may specify) of the Council's request; and
 - 14.7.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 FOIA or Regulation 5 of the Environmental Information Regulations.
- 14.8 Following notification under clause 14.7, and up until such time as the Company has provided the Council with all the Information specified in clause 14.7, the Company may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:
 - 14.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
 - 14.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information.

- 14.9 The Company acknowledges that (notwithstanding the provisions of clause 14.1) the Council may, acting in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 FOIA, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Company:
- 14.9.1 in certain circumstances without consulting with the Company; or
- 14.9.2 following consultation with the Company and having taken its views into account.
- 14.10 The holding Party shall transfer to the Council any Request for Information received by it as soon as practicable and in any event within 3 Business Days of receiving it.
- 14.11 The Company acknowledges that any lists provided which list or outline Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 14.9.

15 GENERAL

- 15.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.
- 15.2 Except as set out in clause 5.3, no variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 15.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.
- 15.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.
- 15.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 15.6 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.
- 15.7 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.
- 15.8 The provisions of this Agreement insofar as they have not been performed at Completion shall remain in full force and effect notwithstanding Completion.
- 15.9 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that:
- 15.9.1 shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement;
- 15.9.2 shall not affect or impair the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement; and
- 15.9.3 provision shall, to the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.

- 15.10 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.
- 15.11 Each of the parties acknowledges and agrees that:
- 15.11.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or those documents;
 - 15.11.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement; and
 - 15.11.3 nothing in this clause shall operate to limit or exclude any liability for fraud.
- 15.12 Save for a person who enters into a Deed of Adherence pursuant to clause 10, no person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

16 ASSIGNMENT

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

17 NO PARTNERSHIP OR AGENCY

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

18 NOTICES

- 18.1 Subject to clause 18.5, any notice or other communication given under this Agreement:
- 18.1.1 shall be in writing;
 - 18.1.2 shall be signed by or on behalf of the party giving it;
 - 18.1.3 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post (or registered airmail in the case of an address for service outside the United Kingdom to the address set out in clause 18.2 of the party due to receive it and marked for the attention of the person named in clause 18.2 (or at such other address or marked for the attention of such other person as last notified in writing to the other parties);
 - 18.1.4 shall be deemed to have been received:
 - (a) if delivered by hand, at the time of actual delivery;
 - (b) in the case of pre-paid recorded delivery or registered post, 2 Business Days after the date of posting;
 - (c) in the case of registered airmail, 5 Business Days after the date of posting; and

(d) in the case of email, upon receipt by the party to which it is given.

18.2 The addresses of the parties for the purposes of clause 18.1 are:

18.2.1 East Suffolk Council

Address: Ground Floor, West Wing, East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge, IP12 1RT

For the attention of: [TITLE OF OFFICEHOLDER]

Email: [ADDRESS]

18.2.2 Any Company³

Address: Ground Floor, West Wing, East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge, IP12 1RT

For the attention of: [TITLE OF OFFICEHOLDER]

Email: [ADDRESS]

18.3 To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in clause 18.2 (or as otherwise notified in writing by that party under clause 18.2) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by email to the address of the relevant party set out in clause 18.2 (or as otherwise notified in writing by that party under clause 18.2).

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

18.5 Notwithstanding the preceding provisions of this clause 18, email shall not be a valid means of service of any proceedings or other documents in any legal action or other method of dispute resolution.

19 COUNTERPARTS

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

20 APPLICABLE LAW

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

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

20.3 This Agreement has been executed on the date stated at the beginning of this Agreement.

³ Council to confirm if any Company will have different details.

SCHEDULE 1 – RESERVED MATTERS

References to Council Cabinet include the Shareholder Reference Group (if created and given delegated authority to provide the relevant Reserved Matter consent).

		Trading Companies (non-Teckal) Matter referred to -	Teckal Companies Matter referred to -
1.	Approve amendments or updates to these Reserved Matters without requiring a variation of this Agreement.	Council Cabinet	Council Cabinet
2.	Amend the Articles.	HoldCo Board (in relation to each SPV) Council Cabinet (in relation to HoldCo)	Council Cabinet
3.	Appoint or remove any Director (including terms of any settlement, compromise or severance).	HoldCo Board (other than in relation to a Council Director or where Council exercises its right to appoint or remove under the Articles)	Council Cabinet
4.	Introduce for the benefit of any current or former director or employee any incentive scheme or arrangement.	HoldCo Board	HoldCo Board
5.	Adopt or amend its Business Plan for the forthcoming three Financial Years.	HoldCo Board	Council Cabinet
6.	Make a material change to the nature or scope of its business as set out in the relevant Business Plan.	HoldCo Board	Council Cabinet
7.	Alter its name or registered office.	HoldCo Board	Council Cabinet
8.	Become resident for tax purposes, or establish a permanent establishment, in a jurisdiction other than the United Kingdom.	Council Cabinet	Council Cabinet
9.	Directly or indirectly acquire shares or any other interest in any other company or business undertaking.	Council Cabinet	Council Cabinet
10.	Amalgamate or merge with any other company or business undertaking.	Council Cabinet	Council Cabinet
11.	Form or acquire any subsidiary.	Council Cabinet	Council Cabinet
12.	Incur any borrowings (other than from the Council), raise finance or issue any loan capital.	HoldCo Board	Council Cabinet

		Trading Companies (non-Teckal) Matter referred to -	Teckal Companies Matter referred to -
		If above £100,000 (any one transaction) or £250,000 (annual aggregate per Financial Year)	If above £50,000 (any one transaction) or £100,000 (annual aggregate per Financial Year)
13.	Create any Encumbrance over the whole or any part of its business, undertaking or assets or over any of its shares (other than any such Encumbrance in favour of the Council).	HoldCo Board	Council Cabinet
14.	Allot, or agree to allot, or permit the registration (upon subscription or transfer) of any person as a shareholder/member of any Company.	Council Cabinet	Council Cabinet
15.	Issue or withdraw, or agree to issue or withdraw, any shares or other securities.	Council Cabinet	Council Cabinet
16.	Grant, or agree to grant, any rights to subscribe for, or to convert any security into, any shares or any other securities.	Council Cabinet	Council Cabinet
17.	Increase or reduce the amount of its issued share capital, grant any option or other interest over or in its share capital, redeem or purchase any of its own shares or otherwise alter, or effect any reorganisation of, its share capital.	Council Cabinet	Council Cabinet
18.	Alter any of the rights attaching to the shares in its issued share capital from time to time.	Council Cabinet	Council Cabinet
19.	Directly or indirectly participate in any partnership, consortium or joint venture.	HoldCo Board	Council Cabinet
20.	Dispose of any business or any shares.	HoldCo Board	Council Cabinet
21.	Enter into any arrangement, contract or transaction: <ul style="list-style-type: none"> not provided for in the relevant Business Plan; which is outside the normal course of its business; or which is otherwise than on arm's length terms. 	HoldCo Board If above £100,000 (any one transaction) or above £250,000 (annual aggregate per Financial Year)	Council Cabinet If above £50,000 (any one transaction) or above £100,000 (annual aggregate per Financial Year)
22.	Make any loan (other than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading).	HoldCo Board If above £20,000 (any one transaction) or above £250,000 (annual aggregate per Financial Year)	Council Cabinet If above £10,000 (any one transaction) or above £100,000 (annual aggregate per Financial Year)

		Trading Companies (non-Teckal) Matter referred to -	Teckal Companies Matter referred to -
23.	Apply for the listing or trading of any shares or debt securities on any stock exchange or market.	Council Cabinet	Council Cabinet
24.	Pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent).	HoldCo Board	Council Cabinet
25.	Appoint any agent or intermediary to conduct the whole or any part of its business.	HoldCo Board	HoldCo Board
26.	Declare any dividend.	HoldCo Board	Council Cabinet
27.	<p>Conduct any litigation material to the Company (involving a contingent liability in excess of £[]) save for:</p> <ul style="list-style-type: none"> • the collection of debts arising in the ordinary course of business carried on by the Company; and • any application for an interim injunction or other application or action (including interim defence) which is urgently required in the best interests of the Company in circumstances in which it is not reasonably practicable to obtain prior consent. 	[HoldCo Board]	Council Cabinet

SCHEDULE 2 – DEED OF ADHERENCE

Deed of adherence dated

By [] Limited] a company incorporated in England and Wales (registered number []) whose registered office is at [] (the **Covenantor**) in favour of the persons whose names and addresses are set out in the Schedule to this Deed (the **Continuing Parties**).

Introduction

(A) This Deed is supplemental to a Shareholder Agreement dated between [NAMES] and the Company (the **Shareholder Agreement**), as amended from time to time.

Agreed terms

- 1 The Covenantor confirms that it has been given and read a copy of the Shareholder Agreement and covenants with each person named in the schedule to this Deed to perform and be bound by all the terms of the Shareholder Agreement and to perform the obligations contained in the shareholder Agreement which are expressed to be performed by [HoldCo] [an SPV] (as defined in the Shareholder Agreement), as if the Covenantor were a party to the Shareholder Agreement.
- 2 Unless the context requires otherwise, words and expressions defined in the Shareholder Agreement shall have the same meanings when used in this Deed.
- 3 This Deed shall be governed by and construed in accordance with English law.

This Deed of Adherence has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule

[Insert names and addresses of Continuing Parties]

Execution page

[Insert execution block of new party]

SCHEDULE 3 – LETTER OF APPOINTMENT FOR A COUNCIL DIRECTOR

[on the headed notepaper of the Company]

To: [Name and address of Director]

[Date]

Dear []

[] Limited (the **Company**)

This letter contains the terms which we have discussed and agreed for your appointment as a director of the Company. Your appointment is made pursuant to and is subject to the terms and conditions set in the Shareholder Agreement dated [] (the **Agreement**) and the articles of association of the Company (the **Articles**).

You shall not be entitled to any fees or remuneration save as paid to you by East Suffolk Council (the **Council**) as your nominator or as otherwise expressly agreed in writing.

You shall be expected to attend Board meetings and general meetings (where requested) of the Company. You shall receive details of all such meetings in advance.

You shall not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions, or affairs of the Company or any client, customer or supplier of the Company which comes to your knowledge during the course of this appointment and shall comply with the provisions of clause 14 (*Confidentiality*) of the Agreement as if it applied to you. You shall, however, be entitled to disclose information as permitted under the Agreement and the Articles.

The appointment shall automatically cease in relation to the Company in the event that: (a) you resign as a director; or (b) upon the delivery of a notice from the Council in accordance with the Agreement and the Articles removing you from office in relation to the Company. Without limitation to (a) and (b) above, in signing this letter, you acknowledge that your office is subject to the terms of the Agreement and the Articles and may be determined as permitted under the terms of the Agreement and the Articles and that upon such termination you shall vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company. On termination of your appointment, you agree that you shall promptly return to the Company all papers and property of the Company which are in your possession or under your control.

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

Yours sincerely

.....
Director, duly authorised
for and on behalf of the Company

I agree to and acknowledge the terms and conditions set out above relating to my appointment as director of the Company.

Signed

Print name

Dated

Executed as a deed by affixing) Seal
the common seal of)
EAST SUFFOLK COUNCIL)
)
)
in the presence of)
)
.....)
Authorised signatory)

Executed as a deed by)
EAST SUFFOLK HOLDINGS LIMITED)
acting by,)
a director, in the presence of) **Director**

Signature:
Name of witness:
Address:
.....
.....
Occupation of witness:

Executed as a deed by)
EAST CONSTRUCTION SERVICES)
LIMITED)
acting by,)
a director, in the presence of) **Director**

Signature:
Name of witness:
Address:
.....
.....
Occupation of witness:

Executed as a deed by)
EAST SUFFOLK PROPERTY)
INVESTMENTS LIMITED)
acting by)
a director, in the presence of) **Director**

Signature:

Name of witness:

Address:

.....

.....

Occupation of witness:

Executed as a deed by)
EAST SUFFOLK PROPERTY)
DEVELOPMENTS LIMITED)
acting by)
a director, in the presence of) **Director**

Signature:

Name of witness:

Address:

.....

.....

Occupation of witness:

Executed as a deed by)
EAST SUFFOLK SERVICES LIMITED)
acting by)
a director, in the presence of) **Director**

Signature:

Name of witness:

Address:

.....

.....

Occupation of witness: