

APPENDIX A

Dated 2017

LEICESTERSHIRE COUNTY COUNCIL

and

LEICESTER CITY COUNCIL

Members' Agreement

**Relating to the establishment and operation of MARKETING
LEICESTER AND LEICESTERSHIRE LIMITED**

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This agreement is dated 2017

Parties

- (1) **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield, Leicestershire LE3 8RA (**County**).
- (2) **LEICESTER CITY COUNCIL** of City Hall, 115 Charles Street, Leicester LE1 1FZ (**City**).

Background

- (A) Marketing Leicester and Leicestershire Limited is a newly formed company limited by guarantee, incorporated in England and Wales with company number [NUMBER] of which the County and the City are members (the "**Company**").
- (B) The Company is a Place Marketing Organisation (PMO) which has been established to deliver Place Marketing, Inward Investment and Strategic Tourism across Leicester and Leicestershire.
- (C) The County and the City shall exercise their rights in relation to the Company in accordance with the terms and conditions of this agreement and the Articles.
- (D) The County and the City intend that the Company meets and shall continue to meet the joint control in-house or '*Teckal*' exemption which is set out in Regulation 12(4) of the Public Contracts Regulations 2015.

Agreed terms

1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in this agreement.

Act: means the Companies Act 2006.

Articles: the new articles of association of the Company in agreed form to be adopted on or prior to Completion as amended or superseded from time to time.

Audit Agents:

- (a) the Members' internal and external auditors;
- (b) the Members' statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by a Member to carry out audit or similar review functions;
- (f) successors or assigns of any of the above;

Board: the board of directors of the Company as constituted from time to time.

Business: has the meaning given in clause 2.

Business Plan: has the meaning given in clause 11.

CA 2006: the Companies Act 2006.

City Director: any director appointed to the Board by City.

Completion: the completion of the formation of the Company in accordance with clause 4.

Completion Date: [date] or such other date as the parties may agree.

Confidential Information: has the meaning given in clause 18.

County Director: any director appointed to the Board by County.

Deadlock Notice: has the meaning given in clause 15.2.

Electronic form: has the meaning given in section 1168 of the CA 2006.

Eligible City Director: A City Director who would be entitled to vote on the matter at a meeting of the Board (but excluding any City Director whose vote is not to be counted in respect of the particular matter).

Eligible County Director: A County Director who would be entitled to vote on the matter at a meeting of the Board (but excluding any County Director whose vote is not to be counted in respect of the particular matter).

Environmental Information Regulations: the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: 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.

Encumbrance: any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or any other security agreement or arrangement.

Eligible Director: any Eligible City Director or Eligible County Director (as the case may be).

Financial Year: in relation to the Company, means its accounting reference period of 12 months ending on the date given in clause 4.2(f) or such other date as the Company may determine in accordance with section 392 of the CA 2006 but, in the first year in which the Company is formed, means the period starting with the day the Company is formed and ending on the date given in clause 4.2(f), subject to the CA 2006.

LLEP Director: a director appointed to the Board to represent the Leicester and Leicestershire Enterprise Partnership (LLEP), who may also be an employee of City or County.

Members: the members of the Company being, as at the date of this agreement, County and City, and any new Members who are admitted to membership of the Company.

parties: the parties to this agreement being, as at the date of this agreement, County and City, and any new Members who are admitted to membership of the Company and who sign a deed of adherence pursuant to clause 6.2(c) and thus become party to this agreement.

PCR: the Public Contracts Regulations 2015.

Request For Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, the Environmental Information Regulations or FOIA.

Reserved Matters: the matters listed in Schedule 1.

State Aid De Minimis Regulation: the state aid de minimis regulation which is in force from time to time being, as at the

date of this agreement, Commission Regulation 1407/2013, OJ L352/1, 24.12.2013, equating to €200,000 over three years to a single undertaking.

subsidiary: has the meaning given in clause 1.10.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 References to clauses, Schedules and the Appendix are to clauses of, Schedules to and the Appendix to this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.4 The Schedules and the Appendix 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 and the Appendix.
- 1.5 A reference to **this agreement** or to any **other agreement or document referred to in this agreement** is a reference to this agreement or such other agreement or document as varied or novated in accordance with its terms from time to time.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.9 A reference to a **party** shall include that party's successors and permitted assigns.
- 1.10 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the CA 2006.

- 1.11 A reference to **writing** or **written** does not include email, faxes or any other electronic form.
- 1.12 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.
- 1.13 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.14 References to a document in "agreed form" are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.
- 1.15 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.16 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.17 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.18 Unless the context requires otherwise, words and expressions defined in the Articles shall have the same meaning when used in this agreement.

2. Meeting the joint control in-house exemption

- 2.1 The Members intend that the Company meets and shall continue to meet the joint control in-house or '*Teckal*' exemption which is set out in Regulation 12(4) of the PCR. This is important as it means that the Members can award contracts to the Company without applying Part 2 of the PCR.
- 2.2 Regulation 12(4) of the PCR requires that in order to meet the exemption the following requirements need to be met:

- (a) the Members exercise jointly with each other a control over the Company which is similar to that which they exercise over their own departments; and
- (b) more than 80% of the activities of the Company are carried out in the performance of tasks which are entrusted to it by the Members or by other legal persons which are controlled by the Members; and
- (c) there is no direct private capital participation in the Company.

2.3 For the purposes of clause 2.2(a), the Members exercise joint control over the Company where all of the following conditions are fulfilled:

- (a) the decision-making bodies of the Company are composed of representatives of both of the Members;
- (b) the Members are able to jointly exert decisive influence over (i) the strategic objectives and (ii) the significant decisions of the Company; and
- (c) the Company does not pursue any interests which are contrary to those of the Members.

2.4 The Members believe that exercising their rights in relation to the Company in accordance with the terms and conditions of this agreement and the Articles complies with these requirements but agree to exercise their rights in such a way and make such changes to this agreement and/or the Articles as shall be necessary to ensure such compliance.

3. Business of the Company

- 3.1 The business of the Company is deliver tourism, place marketing and inward investment support services across Leicester and Leicestershire as more particularly set out in the Business Plan (**Business**).
- 3.2 As at the date of this agreement, it is not envisaged that the Company will trade.

4. Completion

- 4.1 Completion shall take place on or before the Completion Date.
- 4.2 At Completion the parties shall procure that such member and board meetings of the Company are held as may be necessary to:
- (a) adopt the Articles in agreed form;
 - (b) change the Company's name to Marketing Leicester and Leicestershire Limited;
 - (c) appoint Mike Dalzell, Director of Tourism, Culture and Investment as a City Director; Tom Purnell, Assistant Chief Executive as a County Director; Mandip Rai as the LLEP Director with Mike Dalzell also being appointed as the initial chairman of the Board;
 - (d) resolve that the registered office of the Company shall be at City Hall, 115 Charles Street, Leicester, LE1 1FZ;
 - (e) appoint Barclays Bank PLC of Barclays Bank PLC of Unit 1 – 3 Haymarket Towers, 15 Humberstone Gate, Leicester LE1 1WA as the principal bankers to the Company; and
 - (f) resolve that the Company's Financial Year shall end on 31st March in each year.
- 4.3 Within six months of the Completion Date the parties shall adopt the Business Plan for the Financial Year in which the Company is formed in agreed form.
- 4.4 The parties shall appoint auditors of the Company at some time as they shall deem it necessary

5. Membership

- 5.1 Unless and until unanimously agreed by the existing Members there shall be no maximum number of Members and the minimum number of Members shall be one.
- 5.2 The Members shall consist of:

- (a) Leicestershire County Council of County Hall, Glenfield, Leicestershire LE3 8RA (County);
- (b) Leicester City Council of City Hall, 115 Charles Street, Leicester LE1 1FZ (City); and
- (c) such other Members as may be first approved and resolved to be admitted as a Member by the unanimous approval of the existing Members.

5.3 A Member shall cease to be a Member if it resigns its membership on service of not less than twelve months' prior written notice served upon the other Members PROVIDED THAT the terms of such resignation have been unanimously agreed by all of the Members (including the resigning Member) before it becomes effective.

5.4 If the resignation of a Member pursuant to clause 5.3 would leave only one Member that Member shall determine in its absolute discretion by written notice served on the resigning Member whether it wishes to:

- (a) subject to the proviso in clause 5.3, continue as the sole Member, the agreed terms including a requirement for the sole Member to change the name of the Company to disassociate it from the resigning Member, upon the resignation becoming effective; or
- (b) elect for the Company to be wound up in accordance with clause 16.

5.5 A Member may not transfer his membership to another person without the prior written approval of all of the other Members.

6. Admission of new Members

6.1 Subject to clause 6.2, County and City anticipate that other local authorities and possibly other public sector organisations may become Members.

6.2 The existing Members shall procure that no new member shall be admitted as a Member unless:

- (a) this is agreed by all of the existing Members;
- (b) new Articles are drafted, agreed and adopted, and this agreement and the Business Plan are varied, in each case as shall be unanimously agreed by the existing Members to be appropriate or desirable to cater for the admission of the new Member, and which may establish different classes of Members with different rights and obligations; and
- (c) the new Member has executed and delivered a deed of adherence, on terms which are acceptable to all of the existing Members, pursuant to which it agrees to be bound by the terms of this agreement (as varied by the existing Members pursuant to clause 6.2(b)).

7. Reserved Matters

Each party shall procure that the Company shall not, without the prior written approval of all of the Members, carry out any of the Reserved Matters.

8. Directors and management, including voting rights

- 8.1 Subject to this agreement (in particular clause 2.3(b) and clause 7) and the Articles, the Board has responsibility for the supervision and management of the Company and its Business.
- 8.2 As set out in the Articles:
 - (a) For so long as there are five directors (as anticipated by City and County as at the date of this agreement, one being appointed by City, one being appointed by County, the LLEP Director and two others) the City Director and the County Director shall each have two votes on any matter that is required to be voted on by the directors; whereas the other three directors, including the LLEP Director, shall only have one vote each;
 - (b) if at some point in the future City and County agree to appoint an additional director who is not a City Director

nor a County Director, the voting rights of the City Director and the County Director shall be increased, equally between them, in such proportions as shall be necessary to ensure that the City Director and the County Director can vote through any matter on which the City Director and the County Director agree;

- (c) the chair shall not have any additional or casting vote;
- (d) the LLEP Director may be an employee of City or County but in serving as a director shall represent the interests of the LLEP as he or she thinks fit.

9. Rotation of the chair

The chair shall rotate each year between City and County. The initial chair is Mike Dalzell, a City Director, who shall resign on the first anniversary of the Completion Date, or such other date as City and County may agree. The second chair shall be appointed by County for the same period as that which was served by Mike Dalzell as the initial chair. The third chair shall be appointed by City; the fourth chair shall be appointed by County, and so on;

10. Finance for the Company

- 10.1 The finance to be provided by the Members for the Company shall be as set out in the Business Plan.
- 10.2 The Members agree that if it requires any additional finance, the Company shall be financed, so far as practicable, from external funding sources and on terms to be agreed between the Board, the Members and any relevant third parties and that any security required in relation to such external funding shall, if possible, be provided by the Company.
- 10.3 There is no obligation on the Members to provide any further finance to the Company but, if they do so, the Members shall each provide the same amount on the same terms unless they agree otherwise in writing.

11. Business Plan

- 11.1 The Business Plan is an annual business plan for the Company prepared by the Board and it shall include in relation to the Financial Year to which it relates:
- (a) a cashflow statement giving an estimate of the working capital requirements; and
 - (b) a monthly projected profit and loss account;
 - (c) an operating budget (including capital expenditure requirements) and balance sheet forecast;
 - (d) a management report giving business objectives for the year; and
 - (e) a financial report which shall include an analysis of the estimated results of the Company for the previous Financial Year compared with the Business Plan for that year, identifying variations in sales revenues, costs and other material items.
- 11.2 The Business Plan for the Financial Year in which the Company is formed is set out at Appendix 1 (“**Initial Business Plan**”).
- 11.3 The Business Plan for every other Financial Year shall be:
- (a) prepared by the Board at least three months before the end of the preceding Financial Year; and
 - (b) adopted and approved by the Members by agreement in writing as soon as possible after it has been prepared.
- 11.4 If the Business Plan for a Financial Year which has been prepared by the Board is not adopted and approved by the Members then the provisions of clause 15 shall apply.

12. Secondments

The provisions of Schedule 2 shall apply.

13. Corporate services and support

City and County shall provide support and services to the Company as shall be required upon such terms as they may agree, including but not limited to IT support services; legal services; audit services; finance services; use of computers and office accommodation and other consumables, up to a total maximum aggregate value which equates to the State Aid De Minimis Regulation.

14. Accounting and other information

- 14.1 The Members shall procure that the Company shall at all times maintain accurate and complete accounting and other financial records including all corporation tax computations and related documents and correspondence with HM Revenue & Customs in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable in the United Kingdom.
- 14.2 Each Member, its Audit Agents and its authorised representatives shall be allowed access at all reasonable times to examine the books and records of the Company.
- 14.3 The Members shall procure that the Company shall supply each party with the financial and other information necessary to keep the party informed about how effectively the Business is performing and in particular shall supply each party with:
 - (a) a copy of each year's Business Plan for approval in accordance with clause 11.3;
 - (b) a copy of the audited accounts of the Company prepared in accordance with the laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom, within six months of the end of the year to which the audited accounts relate; and
 - (c) monthly management accounts of the Company to be supplied within 30 days of the end of the month to which

they relate and the accounts shall include a profit and loss account, a balance sheet and a cashflow statement.

- 14.4 The Members shall procure that the Company shall, as soon as possible, comply with any request made by a Member, to provide any documents, information and correspondence necessary (at the cost of the party making the request) to enable the relevant Member to comply with applicable law and/or the requirements of regulatory authority or body.

15. Deadlock

- 15.1 There is a deadlock if a resolution is proposed and one of the following applies:
- (a) at a properly convened meeting of Members or of the Board there is no quorum at the meeting and no quorum at the meeting when it is reconvened following an adjournment, provided that the meeting, or adjourned meeting, is not inquorate because the person who proposed the resolution does not attend; or
 - (b) on a directors' resolution, all Eligible City Directors or all Eligible County Directors vote against or abstain from voting on the resolution (unless one of their number proposed the resolution); or
 - (c) a Members' resolution is not passed by unanimous agreement.
- 15.2 Either party may within 28 days of the meeting at which the deadlock arises or within 28 days of the date of the resolution in respect of which the deadlock arises (as the case may be) serve notice on the other party (**Deadlock Notice**):
- (a) stating that in its opinion a deadlock has occurred; and
 - (b) identifying the matter giving rise to the deadlock.
- 15.3 The Members undertake that they shall

use all reasonable endeavours in good faith to resolve the dispute.

- 15.4 If a deadlock cannot be resolved in accordance with this clause 15 within 30 days from the date the deadlock matter is referred under clause 15.3, either party may elect by written notice served on the other party for the Company to be wound up in accordance with clause 16.

16. Termination and liquidation

- 16.1 Subject to clause 16.2 this agreement shall terminate when there is only one Member.

- 16.2 On termination of this agreement, the following clauses shall continue in force:

- (a) Clause 1 (interpretation);
- (b) this clause;
- (c) Clause 18 (confidentiality);
- (d) Clause 23 (assignment and other dealings);
- (e) Clause 24 (entire agreement);
- (f) Clause 25 (variation and waiver);
- (g) Clause 26 (costs);
- (h) Clause 27 (no partnership or agency);
- (i) Clause 28 (notices);
- (j) Clause 29 (severance);
- (k) Clause 34 (inadequacy of damages); and
- (l) Clause 35 (governing law and jurisdiction).

- 16.3 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the Members that have accrued up to the date of termination, including the right to claim

damages in respect of any breach of the agreement which existed at or before the date of termination.

- 16.4 If this agreement terminates each party shall, if requested by the other, procure that the name of the Company is changed to avoid confusion with the name of the party making the request.
- 16.5 Where and only where a party elects by written notice served on the other party for the Company to be wound up in the specific circumstances which are set out in this agreement, the Members shall agree a suitable basis for dealing with the interests and assets of the Company consistent with the principles set out in clause 16.6 and shall endeavour to ensure that, before dissolution:
- (a) all existing contracts of the Company are performed to the extent that there are sufficient resources;
 - (b) the Company shall not enter into any new contractual obligations; and
 - (c) the Company's assets are distributed as soon as practical.
- 16.6 The parties have agreed to the following principles to govern financial liabilities arising upon the Company being wound up:
- financial and employment liabilities for any staff seconded or transferred other than under Tupe from City will remain the liability of City and City shall indemnify and keep indemnified the County against any financial and employment Liabilities ;
- (a) financial and employment liabilities for any staff seconded or transferred other than under Tupe from County will remain the liability of County and County shall indemnify and keep indemnified the City against any financial and employment liabilities ;
 - (b) The parties agree that the secondment of their staff for the provision of services to the Company will not be a relevant transfer in relation to such staff but if any such staff assert Tupe rights against the other party then any TUPE

implications and liabilities will be the responsibility and liability of the organisation transferring the related posts and shall indemnify the other party against all employee liabilities arising out of Tupe in respect of the Company being wound up or otherwise that arise during the period of the Secondment.

- (c) any other financial liabilities that are incurred will be apportioned proportionate to the financial contributions of the Members.

17. Status of agreement

- 17.1 Each party shall, to the extent that it is able to do so, exercise all its voting rights and other powers in relation to the Company to procure that the provisions of this agreement are properly and promptly observed and given full force and effect according to the spirit and intention of the agreement.
- 17.2 If there is an inconsistency between any of the provisions of this agreement and the provisions of the Articles, the provisions of this agreement shall prevail as between the Members.
- 17.3 The Members shall, when necessary, exercise their powers of voting and any other rights and powers they have to amend, waive or suspend a conflicting provision in the Articles to the extent necessary to permit the Company and its Business to be administered as provided in this agreement.

18. Compliance with applicable law

In administering this agreement the parties shall each comply with all applicable law and at the cost of the other party shall also take all reasonable steps as shall be required or requested by the other party to assist the other party to comply with applicable law.

19. Confidentiality and FOIA

- 19.1 In this clause, **Confidential Information** means any information (however recorded or preserved) which is of a confidential or

proprietary nature whether or not marked as confidential, but excludes the information in clause 19.2.

19.2 Information is not Confidential Information if:

- (a) it is or becomes generally available to the public (other than as a result of its disclosure in breach of this agreement); or
- (b) a party can establish to the reasonable satisfaction of the other party that it found out the information from a person not connected with the other party or its Group and that such person is not under any obligation of confidence in respect of the information; or
- (c) a party can establish to the reasonable satisfaction of the other party that the information was known to the first party before the date of this agreement and that it was not under any obligation of confidence in respect of the information; or
- (d) the parties agree in writing that it is not confidential.

19.3 Each party shall at all times keep confidential (and use all reasonable endeavours to ensure that its employees and the Company shall keep confidential) any Confidential Information belonging to the other party and shall not use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement, and shall not disclose such Confidential Information except:

- (a) to a party's professional advisers where such disclosure is for a purpose related to the operation of this agreement; or
- (b) with the written consent of the party; or
- (c) as may be required by the Environmental Information Regulations or FOIA (as to which clause 19.5 shall apply) or any other law, or governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally

permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

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

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

19.5 The parties acknowledge that they are each subject to the requirements of the Environmental Information Regulations and the FOIA and shall each:

- (a) provide all necessary assistance and cooperation as reasonably requested by the other party to enable it to comply with its obligations under the Environmental Information Regulations and the FOIA;
- (b) transfer to the other party all Requests for Information relating to the other party that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide to the other party a copy of all Information belonging to it requested in the Request For Information which is in its possession or control in the form that the other party requires within 5 Working Days (or such other period as the other party may reasonably specify) of the other party's request for such Information; and

- (d) not respond directly to a Request For Information relating to the other party unless authorised in writing to do so by the other party.

19.6 The parties acknowledge that the other party may be required under the Environmental Information Regulations and the FOIA to disclose their Confidential Information without consulting or obtaining their consent. The parties shall take reasonable steps to notify other party of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) each party shall be responsible for determining in its absolute discretion whether any Confidential Information of the other party and/or any other information is exempt from disclosure in accordance with the Environmental Information Regulations and/or the FOIA.

19.7 On termination of this agreement, each party shall (and shall use all reasonable endeavours to procure that its officers and employees and the Company shall):

- (a) return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information; and
- (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable),

provided that a recipient party (and/or the Company, as the case may be) may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

19.8 The provisions of this clause 18 shall continue to apply after termination of this agreement for any cause.

20. Announcements

- 20.1 Subject to clause 20.2 and clause 20.3, neither party shall make, or permit any person to make, any public announcement, communication or circular (**announcement**) concerning this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). The parties shall consult together on the timing, contents and manner of release of any announcement.
- 20.2 Where an announcement is required by law or any governmental or regulatory authority or by any court or other authority of competent jurisdiction, the party required to make the announcement shall promptly notify the other party. The party concerned shall make all reasonable attempts to agree the contents of the announcement before making it.
- 20.3 On the signing of this agreement the parties shall issue a joint announcement about the formation of the Company in agreed form.

21. Warranty

Each party warrants and represents to the other that, at the date of this agreement, the Company has not carried on any business, has no assets or liabilities, has no employees and is not a party to any contracts except as necessary to comply with clause 4.

22. Further assurance

Without prejudice to clause 4, at its own expense each party shall, and shall use all reasonable endeavours to procure that any relevant third party shall, promptly execute and deliver such documents and perform such acts as the other party may reasonably require from time to time for the purpose of giving full effect to this agreement.

23. Assignment and other dealings

Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its

rights and obligations under this agreement (or any other document referred to in it) without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

24. Entire agreement

- 24.1 This agreement (together with the documents referred to in it) constitute the entire agreement between the parties and supersede and extinguish all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements and understandings between them, whether written or oral, relating to their subject matter.
- 24.2 Each party acknowledges that in entering into this agreement (and any documents referred to in it), it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement or those documents.
- 24.3 Nothing in this clause shall limit or exclude any liability for fraud.

25. Variation and waiver

- 25.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 25.2 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and signed by the person waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.
- 25.3 A failure or delay by any person to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided

under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 25.4 A person that waives a right or remedy provided under this agreement or by law in relation to one person, or takes or fails to take any action against that person, does not affect its rights or remedies in relation to any other person.

26. Costs

Except as expressly provided in this agreement, each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this agreement (and any documents referred to in it).

27. No partnership or agency

- 27.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership between the parties or constitute any party the agent of another party.
- 27.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

28. Notices

- 28.1 A notice given to a party under or in connection with this agreement:
- (a) shall be in writing and signed by or on behalf of the party giving it;
 - (b) shall be sent to the relevant party for the attention of the contact and to the address specified in clause 28.2, or such other address as that party may notify to the other in accordance with the provisions of this clause 28; and
 - (c) shall be:
 - (i) delivered by hand; or

- (ii) sent by pre-paid first class post or another next working day delivery service providing proof of delivery.

28.2 The addresses and fax numbers for service of notices are:

(a) LEICESTERSHIRE COUNTY COUNCIL:

- (i) address: County Hall, Glenfield, Leicestershire LE3 8RA (County).
- (ii) for the attention of: [NAME];

(b) LEICESTER CITY COUNCIL:

- (i) address: City Hall, 115 Charles Street, Leicester LE1 1FZ];
- (ii) for the attention of: [NAME].

28.3 A party may change its details for service of notices as specified in clause 28.2 by giving notice to the other party. Any change notified pursuant to this clause shall take effect at 9.00 am on the later of:

- (a) the date (if any) specified in the notice as the effective date for the change; and
- (b) five Business Days after deemed receipt of the notice of change.

28.4 Delivery of a notice is deemed to have taken place (provided that all other requirements in this clause have been satisfied):

- (a) if delivered by hand, on signature of a delivery receipt; or
- (b) if sent by pre-paid first class post or another next working day delivery service providing proof of delivery to an address in the United Kingdom, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if deemed receipt under the previous paragraphs of this clause 28.4 would occur outside business hours (meaning

9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), at 9.00 am on the day when business next starts in the place of deemed receipt. For the purposes of this clause, all references to time are to local time in the place of deemed receipt.

28.5 To prove service, it is sufficient to prove that:

- (a) if delivered by hand, the notice was delivered to the correct address; or
- (b) if sent by post, the envelope containing the notice was properly addressed, paid for and posted.

28.6 This clause 28 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

29. Severance

29.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

29.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

30. Agreement survives Completion

This agreement (other than obligations that have already been fully performed) remains in full force after Completion.

31. Third party rights

31.1 Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third parties) Act 1999 to enforce any term of this agreement.

31.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

32. Counterparts

32.1 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

32.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the other party with the original of such counterpart as soon as reasonably possible thereafter.

32.3 No counterpart shall be effective until each party has executed at least one counterpart.

33. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

34. Inadequacy of damages

Without prejudice to any other rights or remedies that a party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of clause 18 by that party. Accordingly, the other party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of clause 18.

35. Governing law and jurisdiction

35.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

35.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of this agreement.

Schedule 1 – Reserved Matters

1. Permitting the registration of any person as a member of the Company other than County and City.
2. Altering the name or registered office of the Company.
3. Altering in any respect the Articles or the rights of the Members in the Company (except as provided in clause 17.3).
4. Adopting or amending the Business Plan in respect of each Financial Year.
5. Changing the nature of the Company's Business or commencing any new business by the Company which is not ancillary or incidental to the Business.
6. Making any acquisition or disposal by the Company of any material asset(s).
7. Closing down any business operation.
8. Creating or granting any Encumbrance over the whole or any part of the Business, undertaking or assets of the Company or agreeing to do so.
9. Making any borrowing other than from its bankers in the ordinary and usual course of business and arranging banking facilities that enable the Company to have more than £100,000 in aggregate borrowed at any one time.
10. Making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading) or giving any guarantee (other than in the normal course of trading) or indemnity.
11. Giving any guarantee, suretyship or indemnity to secure the liability of any person or assuming the obligations of any person.

12. Passing any resolution for the Company's winding up or presenting any petition for its administration (unless it has become insolvent); or
13. The Company employing any staff and, if staff are employed, varying any contract of employment providing for the payment of remuneration (including pension and other benefits) in excess of a rate of £50,000 per annum or increasing the remuneration of any staff (including pension and other benefits) to a rate in excess of £50,000 per annum.
14. Establishing or amending any pension scheme or granting any pension rights to any director, officer, employee, former director, officer or employee, or any member of any such person's family.
15. Dismissing any director, officer or employee in circumstances in which the Company incurs or agrees to bear redundancy or other costs.
16. The Company entering into any contract:
 - (a) with a value in excess of £100,000 in total.
17. Appointing any agent or other intermediary to conduct any of the Company's Business.
18. Establishing a subsidiary, becoming a member of or acquiring any shares in any other company.
19. Participating in any partnership or joint venture (incorporated or not).
20. Amalgamating or merging with any other company or business undertaking.
21. Entering into any transaction or arrangement of any nature whatsoever with any of the Company's directors or any person who is connected (within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010) to any of its directors whether or not any other person shall be party to such transaction or arrangement .
22. Establishing or amending any profit-sharing, bonus or other incentive scheme of any nature for directors, officers or employees.

23. Entering into any commitment by way of a transaction or series of related transactions (including without limitation any leasing transaction) which would involve the Company in the payment or receipt of consideration having an aggregate value in excess of £100,000.
24. Entering into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms.
25. Entering into or giving notice of termination of any arrangements, contracts or transactions which are of a material nature in the context of its business, or materially vary any such arrangements, contracts or transactions to a value in excess of £100,000.

Each of the Parties and the Company shall procure that no subsidiary (which has been agreed to be established) takes any action which would constitute a breach of any provision in paragraphs 1–25 above, as if any reference therein to the Company (express or implied) were construed as a reference to each subsidiary for the time being.

Schedule 2 – Secondments

Appendix 1

Initial Business Plan

Signed by [NAME],
[POSITION]
for and on behalf of
**LEICESTERSHIRE COUNTY
COUNCIL**

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Signed by [NAME],
[POSITION] for and on
behalf of **LEICESTER CITY
COUNCIL**

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