

2022

Members' Agreement
relating to
Plymouth and South Devon Freeport Limited

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DATE

PARTIES

- (1) Plymouth City Council of Ballard House, West Hoe Road, Plymouth, Devon PL1 3BJ. (**PCC**).
- (2) Devon County Council of County Hall, Topsham Road, Exeter, Devon EX2 4QD (**DCC**).
- (3) South Hams District Council of Follaton House, Plymouth Road, Totnes, Devon TQ9 5NE (**SHDC**).
- (4) Plymouth and South Devon Freeport Limited (Company No. _____) whose registered office is Ballard House, West Hoe Road, Plymouth, Devon PL1 3BJ (the **Company**).

1. INTERPRETATION

1.1 In this Agreement the following words have the following meanings:

Annual Delivery Plan	the annual delivery plan of the business of the Company and any detailed operating plan and financial budget of the Company for each financial period approved in accordance with Clause 7.2.
Articles	the new articles of association of the Company in agreed form to be adopted at completion of this Agreement and as amended from time to time.
Board	the board of directors for the time being of the Company.
Business	the business of the Company as described in Clause 2 and such other business as the Members may agree from time to time in writing should be carried on by the Company.
Chief Executive	the chief executive (or equivalent role) in each of the PCC, DCC and SHDC from time to time.
Connected Party	in relation to any Member, (a) any person connected with that Member where connected has the same meaning in section 1122 and 1123 of the Corporation Tax Act 2010 and as if references to director in that section were references to a Member or (b) any employee or representative of that Member.
Deadlock	has the meaning given in Clause 11.1.
Deed of Adherence	a deed of adherence in the form set out in Schedule 2.
Director	any director for the time being of the Company.
disposal	includes charging, selling, leasing, assigning or transferring or agreeing to do any of the same, granting an option or similar right, creating a trust or other equitable interest and dispose shall be construed accordingly.
Expert	an independent person nominated to act as expert.
Members	the members from time to time in the Company and Member means any of them.
Nolan Principles	the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership as defined by the Good

Governance Institute from time to time.

Nominated Director a director appointed by a Member in accordance with the Articles.

Restricted Party a Member and any Connected Party of a Member.

Security Interest includes any mortgage, charge, pledge, lien, encumbrance, assignment or any other agreement or arrangement having the effect of conferring security or creating payment priority.

1.2 In this Agreement:

1.2.1 words denoting any gender include every gender and the singular includes the plural and vice versa;

1.2.2 references to persons include bodies corporate, unincorporated associations, governments, states, partnerships and trusts (in each case, whether or not having separate legal personality);

1.2.3 references to clauses and Schedules are to clauses of and schedules to this Agreement;

1.2.4 the Schedules form part of this Agreement and the expression **this Agreement** includes the Schedules;

1.2.5 the headings in this Agreement are for convenience only and shall not affect interpretation;

1.2.6 any reference to a statutory provision includes a reference to any modification, replacement, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it;

1.2.7 a reference to any of the parties includes, where appropriate, persons deriving title under it;

1.2.8 general words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things; and

1.2.9 references to any document (including this Agreement) or a provision thereof shall be construed as a reference to that document or provision as from time to time supplemented, varied or replaced.

2. BUSINESS OF THE COMPANY

The business of the Company is the promotion and delivery, support for the promotion and delivery, of programmes and initiatives which are capable of establishing and maintaining the Plymouth and South Devon Freeport and/or anything ancillary to or related to the Plymouth and South Devon Freeport.

3. COMPLETION

Immediately or as soon as practicable after executing this Agreement but before the Company commences trading, each of the Members shall take or cause to be taken the following steps at directors' and members' meetings of the Company or by circulation of written resolutions of the Company (as appropriate) so that:

3.1 the adoption by the Company of the Articles;

3.2 the first Nominated Directors of PCC, DCC, SHDC be appointed as directors of the Company;

- 3.3 the persons recommended by Princess Yachts and Sherford Consortium be appointed as directors of the Company;
- 3.4 the adoption of Ballard House, West Hoe Road, Plymouth PL1 3BJ as the registered office of the Company;
- 3.5 the adoption of 31 March in each year as the accounting reference date of the Company.

4. THE BOARD

4.1 Composition of the Board

- 4.1.1 Each Member has the right to appoint one Director to represent it as its Nominated Director, in accordance with the Articles.
- 4.1.2 Each Member agrees that it will appoint a replacement director as its Nominated Director soon as reasonably practicable in the event its Nominated Director resigned, is removed by it or is disqualified.
- 4.1.3 Each Member has the right in accordance with the Articles to remove a Nominated Director appointed by it to represent it and appoint another Nominated Director in their place for so long as it remains a Member as specified in the Articles.

4.2 Chair

- 4.2.1 The first chair shall be an interim chair and shall remain as chair of the directors for an interim period of up to six months from completion of this Agreement without payment of any fee. Thereafter the right to appoint the chair shall be through unanimous agreement of the Members, provided always that the chair consents to being appointed.
- 4.2.2 If the chair is unable to attend a Board meeting or a meeting of the members of the Company, the Board shall be entitled to nominate another Director to act as chair in their place at the meeting.

4.3 Quorum

- 4.3.1 The quorum for Board meetings shall be not less than all of the Nominated Directors (or their Alternate Directors) able to form part of the quorum of a meeting in accordance with the Articles, plus one other director.
- 4.3.2 A person who holds office only as an alternate director shall, if their appointor is not present, be counted in the quorum.

4.4 Board Meetings

- 4.4.1 Decisions of the Board shall be decided by a simple majority of votes on the basis that each Director shall have one vote. If votes are equal, the chair of the meeting has a second or casting vote.
- 4.4.2 Meetings of the Board shall be properly convened in accordance with the Articles and notice must be given in accordance with the Articles with participation in meetings governed by the Articles.

4.5 Removal of Directors

- 4.5.1 If a Member removes any person nominated by it as a Nominated Director or a Member's Nominated Director is required to vacate office as a Director under the Articles then that Member shall:

- (a) procure that its Nominated Director(s) vacates office without any claim to the Company for loss of office or otherwise;
- (b) deliver to the Company a form of compromise agreement meeting the relevant statutory requirements acknowledging that they have no claim for compensation for loss of office; and
- (c) indemnify the Company against all direct and indirect losses, liabilities and costs which the Company may incur arising out of, or in connection with, any claim by its Nominated Director for wrongful or unfair dismissal or redundancy or other loss arising out of such removal or loss of office.

5. CONDUCT OF THE COMPANY'S AFFAIRS

5.1 Initial period of membership

- 5.1.1 Each of the Members agrees with each of the other Members to be a Member of the Company for a minimum of an initial period of five years.

5.2 Exercise of voting rights

- 5.2.1 Each Member shall exercise all voting rights and other powers in relation to the Company so as to procure (so far as they are able) that the Business is conducted in the best interests of the Company on sound commercial principles in a way likely to promote the success of the Company for the benefit of its members as a whole and to achieve its Objects as set out in the Articles.
- 5.2.2 Each Member undertakes with the other Members to exercise all voting rights and powers of control available to it in relation to the Company so as to give full effect to the terms and conditions of this Agreement.

5.3 Anti-corruption undertakings

Each party undertakes to the other parties that:

- 5.3.1 it will not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010; and
- 5.3.2 it will not do or omit to do any act that will cause or lead the Company to be in breach of or to commit an offence under the Bribery Act 2010.

6. BUSINESS PLANNING AND FINANCIAL MATTERS

6.1 Financial Information and Accounts

The Members shall each be entitled to examine the separate books and accounts to be kept by the Company and to be supplied with all relative information, including the Annual Delivery Plan, monthly management accounts and operating statistics and such other trading and financial information in such form as they may reasonably require.

6.2 Annual Delivery Plan

The Board shall prepare the draft Annual Delivery Plan for approval of the Members in accordance with Clause 7.2 and the draft Annual Delivery Plan shall include (as a minimum):

- 6.2.1 set out the context of the Freeport strategy and vision.
- 6.2.2 Company business objectives, key performance indicators, resourcing plan and financial plan over a rolling three-year timetable.

- 6.2.3 Measures to support implementation of our Innovation Strategy, Trade and Investment Strategy and Skills plan highlighting opportunities for and/ or implementation of any secured additional public funding and initiatives.
- 6.2.4 Any proposals to utilise surplus retained business rates to deliver the Annual Delivery Plan and appropriate business cases.
- 6.2.5 Evidence of compliance with Department for Levelling Up, Homes and Communities requirements on monitoring and evaluation.
- 6.2.6 Outcomes of the annual audit of the security measures in place, any breaches and remedies.
- 6.2.7 Risks Strategy.
- 6.2.8 Recruitment plans and proposals as appropriate, and staff remuneration in accordance with the FBC.

7. MATTERS REQUIRING CONSENT

7.1 Board to manage the Business

Except for the matters listed in Clauses 7.2 and 10, the Members agree that all decisions relating to the Company shall be made by the Board in accordance with Clause 4.

7.2 Matters reserved for the Members

The Members shall exercise all voting rights and other powers available to them in relation to the Company so as to procure (so far as they are able) that no matter listed in Schedule 3 is carried out without the consent of all the Members, but such unanimity is subject to the voting restrictions set out in Clause 10 so that for the purposes of this Clause 7.2 there can be unanimity if the Member the subject of Clause 10 does not vote or consent.

7.3 Amendments or variations to this Agreement

Any amendment or variation to this Agreement shall be made only in accordance with Clause 7.2. The Company's consent is not required for any amendment or variation to this Agreement.

8. SERVICES TO BE PROVIDED BY MEMBERS

Each Member shall procure that any contracts between it and the Company or between its Connected Parties and the Company shall be made on an arm's length basis and on terms that are not unfairly prejudicial to the interests of any Member.

9. FUNDING

- 9.1 The Board are to operate a balanced financial business plan for the Company as set out in detail in the approved Annual Delivery Plan. The Members will not be obliged to provide any further funding than as agreed in the Annual Delivery Plan.
- 9.2 The Members acknowledge that PCC will be entering into arrangements with the Department of Levelling Up, Housing and Communities in the form as set out in Schedule 4 and each Member will use best endeavours to enable PCC to meet its obligations under such arrangements.
- 9.3 The Members agree to enter into a separate funding agreement outlining the flow of funding between PCC, SHDC and DCC and each Member will use best endeavours to assist each other in agreeing the terms of such agreement and in complying with such an agreement.

10. NON-INTERFERENCE/STEP-ASIDE

10.1 Claims By the Company

If the Company is entitled to bring a claim or enforce any rights it may have against any Member or any Connected Party of a Member then:

- 10.1.1 that Member agrees to refrain from using voting rights (and the rights of Director(s) nominated by it) and other powers in relation to the Company to prevent or delay the bringing of the claim or enforcement of the rights by the Company and in particular its consent shall not be required (nor the consent of any Director nominated by it) to any such action by the Company;
- 10.1.2 the parties agree that the Company shall be entitled to and shall enforce its rights under such contract;
- 10.1.3 to that end the Members agree that any Directors appointed as Nominated Director by such Member shall have no part (whether through the exercise of voting rights at meetings of the Board or in relation to directors' resolutions or otherwise) in the conduct of any proceedings taken by the Company for the purposes of such enforcement;
- 10.1.4 neither that Member nor its Nominated Director(s) shall have any right to see or take copies of documents belonging to the Company in relation to such claim or right of enforcement which in litigation (whether or not commenced) would be privileged;
- 10.1.5 the other Directors shall have full conduct of such proceedings; and
- 10.1.6 the other Directors shall constitute a quorum at any Board meeting convened for the purpose of considering such proceedings and/or shall constitute any necessary percentage for agreeing to a directors' resolution.

10.2 No Participation by an Interested Member

Notwithstanding any provision in the Articles, in relation to the entry into of any contract with a Member or a Connected Party of a Member requiring Member consent under Clause 7.2, the relevant Member shall not participate in or vote the matter requiring approval is being considered or voted on or agreed to. In that event, the other Members shall constitute a quorum at any meeting convened for the purpose of considering such contract and/or constitute any necessary percentage for agreeing to a resolution for approving such contract.

10.3 Claims by a Member

Each of the Members agrees that, if it appears that the Company is in breach of an obligation which it owes to a Member or a Connected Party of a Member under any agreement neither that Member nor any nominated Director of it nor an observer of it entitled to attend Board meetings shall have any right to see or take copies of documents belonging to the Company in relation to such breach which in litigation (whether commenced or not) would be privileged.

10.4 Members and Directors to Act in Good Faith

- 10.4.1 Each of the Members shall (and shall procure that their nominated director) act reasonably and in good faith in the interest of the Company when taking action under this Clause 10.
- 10.4.2 Each of the Members shall (and shall procure that their Nominated Director) act in accordance with the Nolan Principles.

11. DEADLOCK

11.1 When Deadlock occurs

This Clause 11 applies where there is a **Deadlock** because:

- 11.1.1 a matter relating to the affairs of the Company requires unanimous consent of the Members under Clause 7.2 of this Agreement and no such consent has been obtained;
or
- 11.1.2 a matter relating to the affairs of the Company has not been considered by a Board meeting of the Company as the meeting convened to consider such matter was adjourned due to lack of quorum and at the reconvened meeting there was no quorum

and the matter is not resolved within 20 Business Days of any Member specifying in writing to the other Members and the Company that a Deadlock has arisen. The parties undertake that they shall use all reasonable endeavours in good faith to resolve the matter giving rise to the Deadlock.

11.2 Procedure

- 11.2.1 In the case of a Deadlock not resolved within the period referred to in Clause 11.1, the procedure set out in the following provisions of this Clause 11.2 shall apply.
- 11.2.2 If the Members fail to resolve a Deadlock within such 20 Business Days period, any Member may serve written notice on the other parties stating that in its opinion that a Deadlock has occurred and identifying the matter giving rise to the Deadlock and requesting that the Deadlock be referred to the Chief Executives of each of the Members.
- 11.2.3 The Chief Executives, or such other person as the Chief Executive authorises and nominates in its place, of each of the Members agree to meet to discuss the issue and will use reasonable endeavours to resolve a Deadlock within 20 Business Days from such notification under 11.2.2. If the Chief Executives of each of the Members fail to resolve a Deadlock within such 20 Business Days period, any Chief Executive of any Member may serve written notice on the other parties stating that in its opinion that a Deadlock has occurred, identifying the matter giving rise to the Deadlock and requesting that the Deadlock be referred to an Expert.
- 11.2.4 An Expert shall be nominated jointly by the Members or, in the absence of agreement within seven days of a Chief Executive of any Member becoming entitled to request referral to an Expert, to be nominated upon request by any Member by the President (or, if they are not available, the next most senior officer) for the time being of the Institute of Chartered Accountants in England and Wales.
- 11.2.5 An Expert shall act as expert and not as an arbitrator. Their costs shall be borne as they direct or, in the absence of such direction, equally by the Members.
- 11.2.6 Each party shall give all such facilities and information and all reasonable assistance to the Expert to enable them to make any determination and shall allow them access to any books, records or information relating to the Business held by any of them.
- 11.2.7 The Expert shall be instructed to provide written notice of their determination to the parties at the address of the parties as set out in this Agreement or as subsequently notified in accordance with Clause 20 (Notices) within 30 days of their appointment.
- 11.2.8 If the Expert dies or becomes unwilling or incapable of acting or does not deliver the determination within the time required by this Clause 11.2, then any Member may apply to the then President of the Institute of Chartered Accountants for England and Wales to discharge the Expert and to appoint a replacement Expert with the required

expertise and this Clause 11.2 applies in relation to the new Expert as if they were the first Expert appointed.

- 11.2.9 Submission to this procedure as set out in Clause 11.1 and this Clause 11.2 (but not the Expert's determination) shall be binding on the Members and the Company. The Expert's determination shall (in the absence of manifest error) be final and binding on the Members and the Company.

11.3 Other relief

This Clause 11 is without prejudice to the rights of any party to seek any injunctive or similar relief from the courts to protect its intellectual property rights, its confidential information, restrictions on the activities of any Member or other rights of any description.

12. WINDING UP

- 12.1 This Agreement shall terminate and the Company shall be wound up only in the following circumstance:

12.1.1 all the Members unanimously agree to the same.

13. EFFECT OF TERMINATION

- 13.1 The provisions of this Agreement stated to remain in effect after termination of this Agreement and this Clause 13 and the clauses referred to below in this Clause 13.1 shall remain in full force and effect following such termination. These referred to clauses are Clauses 1 (Interpretation), 15 (Confidential Information), 14 (Costs), 17 (Severance), 18 (Entire Agreement) and 21 (Governing Law and Jurisdiction).
- 13.2 Termination of this Agreement shall not affect any rights or liabilities that the parties have accrued under it.
- 13.3 Where the Company is to be wound up and its assets distributed, the parties shall agree a suitable basis for dealing with the interests and assets of the Company and shall ensure that:
- 13.3.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;
- 13.3.2 the Company shall not enter into any new contractual obligations; and
- 13.3.3 the Company is dissolved and its assets are distributed as soon as practical.
- 13.4 Where any party is required by law, regulation or governmental or regulatory authority to retain any information (or copies) of any other party or of the Company, it shall notify the other parties in writing of such retention giving details of the information that it has been required to retain.

14. COSTS

Each party shall bear its own costs, legal fees and other expenses incurred in the preparation, negotiation, execution and implementation of this Agreement and any document referred to in it.

15. CONFIDENTIAL INFORMATION

15.1 Permitted Disclosures

Notwithstanding the duties owed by the Directors to the Company, a Director may disclose information and provide relevant documents and materials about the Company and discuss its affairs, accounts or finances with the Member who they represent as a Nominated Director provided that such Member shall not (unless it is under a legal or regulatory obligation to do so) use such information in any way which is detrimental to the Company or any other Member.

15.2 Confidentiality Obligation

- 15.2.1 Subject to Clause 15.1, the Members shall keep confidential and keep separate from all other information (and shall procure that their employees and agents keep confidential and separate) all financial and other information concerning the Business, the Company and the other Members unless that information is already accessible from public sources or becomes publicly available to third parties other than as a result of disclosure(s) in breach of this Agreement. A Member will not use or disclose this information except with the consent of the other Members and the Company.
- 15.2.2 The obligations in this Clause 15.2 will continue without limit in time and shall remain binding on the Members even after a Member ceases to be a member of the Company. However, they will cease to apply to information which comes into the public domain other than by reason of breach of this Clause 15.
- 15.2.3 Nothing in this Clause 15 will prevent a party from disclosing information to the extent required in or in connection with:
- (a) legal proceedings before a court of competent jurisdiction or under any court order; or
 - (b) the requirements of any applicable law or regulation or as requested by any governmental, taxation or regulatory body or agency entitled to disclosure of the same.
- 15.2.4 The Members agree that the information referred to in Clause 15.2.1 is valuable and that damages might not be an adequate remedy for breach of this Clause 15.2 and accordingly the remedies of injunction and other equitable relief will be available for any actual or threatened breach of this Clause 15.2 without proof of special damage.

15.3 Return of Confidential Information

A Member who ceases to be a member of the Company shall promptly hand over to the Company all confidential information, documents and materials belonging to the Company (unless that the Member is required by law to retain the same) and shall, if so required by the Company, certify that it has not kept any records or copies of that information.

16. WAIVER

- 16.1 No failure to exercise or any delay in exercising any right or remedy under this Agreement shall operate as a waiver of it or of any other right or remedy under it. No single or partial exercise of any such right or remedy shall prevent any further or other exercise of it or the exercise of any other right or remedy.
- 16.2 Any waiver given must be in writing and expressly stated to be a waiver. Such a waiver will only apply to the specific events to which it is stated to relate and not to any other events, whether past or future.

17. SEVERANCE

If any provision of this Agreement shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from the remainder of this Agreement which shall remain in full force and effect to the extent permitted by law.

18. ENTIRE AGREEMENT

- 18.1 This Agreement and the documents referred to in it, constitute the entire agreement and understanding of the parties and supersede:

- 18.1.1 any previous agreement between the parties relating to the subject matter of this Agreement; and
- 18.1.2 any prior promises, representations and misrepresentations (whether oral or written) relating to the subject matter of this Agreement

but without prejudice to the rights and liabilities of the parties accrued before the date of this Agreement.

18.2 Each of the parties acknowledges and agrees that:

- 18.2.1 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, misrepresentation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement;
- 18.2.2 its only remedy in respect of statements, representations, misrepresentations, warranties or understandings made or repeated in this Agreement or in relation to this Agreement shall be for breach of contract and it agrees that it shall have no additional remedy in respect of such statements, representations, misrepresentations, warranties or understandings upon which it may have relied in entering into this Agreement whether for misrepresentation or otherwise; and
- 18.2.3 all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

18.3 Nothing in this Clause 18 shall operate to limit or exclude any liability for fraud.

19. MISCELLANEOUS

- 19.1 If there is any ambiguity or conflict arising between the terms of this Agreement and those of the Articles, the terms of this Agreement shall prevail as between the Members. The Members shall then procure the amendment of the Articles to the extent required to enable the Company to be administered as provided for in this Agreement and the documents referred to in it.
- 19.2 Notwithstanding any other provision contained in this Agreement, the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of the Company, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.
- 19.3 Where any Member is required under this Agreement to exercise their powers in relation to the Company to procure a particular matter or thing, such obligation shall be deemed to include an obligation to procure that any Nominated Director of it shall procure such matter or thing, subject to the Nominated Director acting in accordance with their statutory duties as a director.
- 19.4 Nothing in this Agreement or in any document referred to in it or any arrangement contemplated by it shall constitute any Member, a partner, agent, fiduciary or employee of any other Member.
- 19.5 Each party shall upon demand and at its own expense execute and register or procure to be executed and registered all further deeds, documents and do all acts and things as may be necessary or desirable to give effect to this Agreement or any document executed or to be delivered pursuant to it.

20. NOTICES

20.1 How communications should be given

- 20.1.1 Subject to Clause 20.5, any communication given under this Agreement shall be in writing and delivered by hand or prepaid recorded, special delivery or first class post

(or air mail post if to an address outside the United Kingdom) to the address of the party who is to receive such communication as set out on page 1 of this Agreement or to such other address in the United Kingdom as may from time to time be specified in writing by the relevant party as its address for the purpose of this Clause 20.

20.1.2 Subject to Clause 20.5, a communication given under or in connection with this Agreement is not valid if it is sent by electronic mail.

20.2 Deemed receipt

20.2.1 A communication shall be deemed to have been received:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by prepaid recorded, special delivery or first class post, on the second business day after the date of posting; and
- (c) if sent by prepaid air mail post, on the fifth business day from the date of posting.

20.2.2 A communication received or deemed to be received in accordance with Clause 20.2.1 on a day which is not a business day or after 5.00pm on any business day according to local time in the place of receipt shall be deemed to be received at 9.00am on the next business day according to such local time.

20.3 Proving service

In proving service:

20.3.1 by delivery by hand, it shall be necessary only to show that delivery was made; and

20.3.2 by post, it shall be necessary only to prove that the communication was contained in an envelope which was properly addressed and posted in accordance with this Clause 20.

20.4 Undertaking to notify change of details

Each party undertakes to notify all of the other parties in accordance with this Clause 20 if the address specified in this Clause 20 is no longer an appropriate address for the service of communications. Such notification shall only be effective on the date specified in the notification as the date on which the change is to take place or, if no date is specified or if the date specified is less than five business days after the date on which the notice is deemed to have been served, the date falling five business days after notice of any such change is deemed to have been given.

20.5 Electronic communication for certain purposes

20.5.1 Any communication to be made under or in connection with Clause 7.2 may be made by electronic mail if the Members

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication for such purposes;
- (b) notify each other and the Company in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (c) notify each other and the Company of any change to their address or any other such information supplied by them.

20.5.2 Any communication sent by electronic mail under this Clause 20.5 will be effective only when actually received in readable form. Where a communication is sent by electronic

mail to an address specified for the purpose by the intended recipient, service or delivery shall be deemed to be effected on the same day on which it is sent and in proving such service it will be sufficient to prove that it was properly addressed.

- 20.5.3 A communication made under this Clause 20.5 which is received or deemed to be received in accordance with Clause 20.5.2 on a day which is not a business day or after 5.00pm on any business day according to local time in the place of receipt shall be deemed to be received at 9.00am on the next business day.

21. GOVERNING LAW AND JURISDICTION

- 21.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 21.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes or claims (including any non-contractual disputes or claims) which may arise out of or in connection with this Agreement, its subject matter or formation (or any documents entered into in accordance with its provisions) or as to the rights and liabilities of the Members in connection with the Business and, for such purposes, irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.

22. VARIATION

- 22.1 Subject to Clause 7.3 and Clause 10 **Error! Reference source not found.**, no amendment or variation of the terms of this Agreement or any documents entered into or delivered in accordance with its provisions shall be effective unless made or confirmed in writing and signed by all each of the Members of the Company, from time to time.

23. FURTHER ASSURANCE

- 23.1 Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

24. RIGHTS OF THIRD PARTIES

- 24.1 This Agreement does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it except that a person who is a permitted successor to or assignee of the rights of a party to this Agreement is deemed to be a party to this Agreement.

25. COUNTERPARTS

- 25.1 This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same document, and any party may execute this Agreement by signing any one or more of such counterparts.

SCHEDULE 1

Details of the Company

Company Number:

Date of Incorporation:

Name:

Registered Office:

Directors:

Auditors:

Bankers:

SCHEDULE 2

Form of Deed of Adherence

This Deed is made on [●] 20[●] by [Limited][plc][No. [●]] whose registered office is at [●][of [●]] (**New Member**).

BACKGROUND

- (A) By an agreement dated [●] 20[●] (**Members Agreement**) and made between [●] (1) [●] (2) [●] (3) [●] and (5) [●] [Limited] (**Company**) the Members have agreed to make the New member a member of the Company, conditional upon the New Shareholder entering into this Deed of Adherence.
- (B) The New Member wishes to become a member of the Company, subject to such condition, and to enter into this Deed of Adherence pursuant to the Members Agreement.

THIS DEED WITNESSES:

- (a) The New Member undertakes to and covenants with all the parties to the Members Agreement from time to time (including any person who enters into a Deed of Adherence pursuant to the Members Agreement, whether before or after this Deed is entered into) to comply with the provisions of and to perform all the obligations of a member under the Members Agreement in so far as they remain to be observed and performed, as if the New Member had been an original party to the Members Agreement in place of the Transferor.
- (b) Except as expressly varied by this Deed, the Members Agreement shall continue in full force and effect and the Members Agreement shall be interpreted accordingly.
- (c) The interpretation provisions and the provisions of Clauses 14, 18, 21, 20, 23 and 25 of the Members Agreement apply to this Deed as if those provisions had been set out expressly in this Deed which shall take effect from the date set out above.

EXECUTED by the parties as a deed on the date set out above.

SCHEDULE 3

Matters reserved for the Members – Clause 7.2

Ref	Description
A	Fundamental Matters
A1	Joint scrutiny and approval of the Annual Delivery Plan and any material change to the Annual Delivery Plan.
A2	Approval of the scheme of delegation to the Board.
A3	Approval of the Annual Procurement Rules applicable to the Company.
A4	Approval of the Landowner Agreements and any material change to the Land Owner Agreements.
A5	Any enforcement action under the Landowner Agreement and Gateway Policy.
A6	Appointment of the Chair of the Board.
A7	Any amendment or variation to this Agreement.
A8	Allocation of seed capital and local public sector match, including the use of retained business rates to support the Annual Delivery Plan.]
A9	Agreement on individual or joint external funding bids that may indirectly benefit the Freeport objectives or Annual Plan priorities which are not governed under the Freeport arrangement.
A10	Allocation of retained business rates surpluses in accordance with the Plymouth and South Devon Policy for Retained Business Rates.
A11	Entry into a contract with a Member where the value of the contract exceeds £100,000.
B	Corporate Matters
B1	Creation by the Company of any Security Interest over the whole or any part of the Company's assets, property or undertaking.
B2	Borrowing by the Company of any amount in excess of the figure set out in the relevant Annual Delivery Plan.
B3	The Company making any loan, advance or credit (other than normal trade credit).
B4	The Company giving any guarantee or indemnity not approved in the Annual Delivery Plan.
B5	Disposal by the Company of a material part of the undertaking, property and/or assets of the Company or the contracting so to do.
B6	Expenditure by the Company on capital account or the realisation of capital assets not provided for in the relevant Annual Delivery Plan.
B7	The Company taking or agreeing to take any leasehold interest or licence over land.
B8	The Company entering into any contract or transaction except in the ordinary course of the Business and on arm's length terms.

Ref	Description
B9	Acquisition or subscription for shares, debentures or securities in any person by the Company.
B10	Alteration of the Company's accounting reference date.
B11	Appointment of new auditors to the Company.
B12	Appointment of new bankers to the Company.
B13	Factoring or assignment of book debts of the Company.
B14	Change in accounting or taxation policies of the Company other than in accordance with changes in the applicable accounting standard.
B15	Commencement or settlement of legal or arbitration proceedings involving the Company and a claim (including costs) in excess of £10,000.
B16	Entry into a scheme of arrangement or (unless required to do so by law) the winding up of the Company.
B17	The Company entering into any legal partnership or profit sharing arrangement.
B18	The Company appointing any agent or other intermediary to conduct any aspect of the Business.
C	Management, Directors and Employees
C1	Engagement by the Company of new employees or dismissal of employees not included in the relevant Annual Delivery Plan.
C2	Increase in remuneration of any employee of the Company not included in the relevant Annual Delivery Plan.
C3	Appointment or removal of any Director (save for a Nominated Director) (but this is without prejudice to the rights of the Members under Clause 4).
C4	Appointment of any committee of Directors not included in the Annual Delivery Plan.
C5	Engagement by the Company of (and terms of engagement of) any person as a consultant not included in the Annual Delivery Plan.
C6	Adoption of any pension scheme, share option scheme or similar arrangement by the Company.
D	Constitutional Matters
D1	Alteration of the Company's registered office.
D2	Creation, acquisition or disposal of any subsidiary (or shares in a subsidiary) of the Company.
D3	Taking any step to appoint an administrator of the Company or to wind up or dissolve the Company (although this is subject to the statutory duties of the Directors).
D4	Amendment to the Articles.
D5	Change of name of the Company.

Ref	Description
D6	Change in the status of the Company from a private limited company.

SCHEDULE 4

PCC DLUHC Arrangements

This Agreement has been entered into on the date stated at the beginning of it.

Signed by _____, for and on
behalf of

Signed by _____, for and on
behalf of

Signed by _____, for and on
behalf of

Signed by _____, for and on
behalf of