



Dated

2022

- (1) THE PARTIES WHOSE DETAILS ARE LISTED IN SCHEDULE 1**
- and
- (2) FREEPORT EAST LIMITED**

Members' Agreement

relating to FREEPORT EAST LIMITED

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THIS MEMBERS' AGREEMENT is made by Deed on

2022

BETWEEN:

- (1) Those parties whose details are set out in Schedule 1 (**Founding Members**);
- and
- (2) [FREEPORT EAST LIMITED] a company incorporated in England and Wales (registered with number [INSERT]) and whose registered office is at [INSERT ADDRESS] (**Company**),
- together, the "**Parties**", and each, a "**Party**".

WHEREAS:

- (A) The Company is a private company limited by guarantee incorporated on [DATE] under the Companies Act 2006 and having the Founding Members detailed in Schedule 1 as its current members.
- (B) The Company has been incorporated for the purpose of monitoring and administering public funds, to act as an employing organisation and the governing body of Freeport East, as well as overseeing the collective marketing of the Freeport East brand nationally and internationally.
- (C) The Members have agreed to enter into this Agreement for the purpose of regulating their relationship with each other and certain aspects of the affairs of and their dealings with the Company.
- (D) The Company has agreed with the Members that it will comply with the terms and conditions of this Agreement insofar as they relate to the Company.

IT IS AGREED as follows:

1 Definitions and interpretation

- 1.1 In this Agreement (which expression shall be deemed to include the Schedules) unless there is something in the subject or context inconsistent therewith the following expressions have the following meanings:

Accounting Period	means any period of 12 calendar months from and including one Accounting Reference Date up to but excluding the next Accounting Reference Date;
Accounting Reference Date	has the meaning given in clause 5.1;
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;
Agreement	means this agreement (as amended from time to time);

Alternate	has the meaning given in Article 16 of the Articles;
Articles	means the articles of association of the Company in the agreed form to be adopted on or around the date of this Agreement and as amended from time to time;
Associate Member	means an organisation that is not a Founding Member and that becomes a member of the Company (in accordance with the process set out in the Articles and this Agreement) to assist the Company in realising its vision and achieving its Objects, having such rights and responsibilities as are set out in the Articles and in the Rules or in any Relevant Agreement;
Associated Person	means, in relation to a company, a person (including an employee, agent or subsidiary) who performs services for or on behalf of that company;
Auditors	means the auditors from time to time of the Company;
Billing Authorities	means East Suffolk Council, Tendring District Council and Mid Suffolk District Council;
Board Minutes	means the minutes of a meeting of the Board;
Board	means the supervisory board of the Company which comprises the Chief Executive Officer, the Directors of the Company from time to time and the Chair;
Business	means: a) to operate Freeport East in accordance with DLUHC and other central government requirements; and b) to undertake such other business as the Members may from time to time agree that promotes the achievement of the Objects;
Business Day	means 9.00 am to 5.00 pm on any day (other than a Saturday) on which clearing banks in the City of London are open for the transaction of normal sterling banking business;
Business Plan	means the business plan of the Company approved by the Members in accordance with this Agreement;
Business Rates Agreement	means the agreement between the Company and the Billing Authorities relating to the retention by the Company of a proportion of the growth in business rates generated in the Tax Sites;

Chair	means the independent chair appointed in accordance with Article 18 and this Agreement;
Chief Executive Officer	means the independent chief executive officer appointed by the Board following an external recruitment process;
Companies Act	means the Companies Act 2006;
Company Policies	those policies, procedures and codes of practice listed in Schedule 6;
Confidential Information	<p>means in relation to any Party information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to that Party, its business affairs or activities which:</p> <ul style="list-style-type: none">a) that Party has marked as confidential or proprietary;b) that Party, orally or in writing has advised the other Party (to whom it has disclosed such information) is of a confidential nature; orc) due to its character or nature, a reasonable person in a like position and under like circumstances would treat as confidential;
Confidentiality Term	means the duration of the Company (from and including the Effective Date) and for an additional period of 36 months after the termination or expiry of the Company for any reason whatsoever, provided that in circumstances where a Member ceases to be a Member (Retiring Member), the Confidentiality Term shall end, insofar as it relates to that Member, 36 months after the date of ceasing to be a Member;
Conflict Matter Documentation	means any professional advice, memoranda or other documentation to the extent that it relates to a Conflict Matter;
Conflict Matter	<p>any decision of the Company:</p> <ul style="list-style-type: none">a) to take legal action or enforce any right in respect of agreement with the Member or any Connected Person of the Member;b) any decision by the Company to enter into an arrangement or transaction with the Member or any Connected Person of the Member (for example where the Member or any Connected Person of the Member is proposing to sell an interest in land to the Company);

- c) in relation to a claim by a Member or any Connected Person of the Member and any counterclaim by the Company in relation thereto;
- d) the conduct, settlement or abandonment of any claim by the Company against the Member or any Connected Person of the Member and the defence of any counterclaim; and
- e) the giving of any notice on behalf of the Company to terminate any agreement between the Company and the Member or any Connected Person of the Member,

but excluding for the avoidance of doubt, any decision of the Company acting through the Members to adopt, vary or update any Business Plan;

Connected Person	means a person connected (within the meaning of section 1122 of the Corporation Tax Act 2010) with any of the Parties or with any directors or senior officers of any Party or any elected members, officers or employees of any Party;
Consent Matter	means those matters requiring consent of the Members set out in Schedule 3;
Customs Site	means any customs site within the Freeport Boundary designated by HMRC or by statutory instrument from time to time that has been endorsed by the Board;
Customs Site Operators	means those operators endorsed by the Company (but appointed by the owners of the Customs Sites) and authorised by HMRC to operate a customs site from time to time;
Data Protection Legislation	means, for the periods in which they are in force in the United Kingdom, the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the UK GDPR and all applicable Laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time;
Deed of Adherence	means the deed of adherence substantially in the form set out in Schedule 4;
Defaulting Member	has the meaning given in clause 27.2;

Director	means a director of the Company and includes any person occupying the position of director, by whatever name called;
Disclosing Party	means a Party who discloses Confidential Information to another Party;
Dispute Resolution Procedure	means the dispute resolution procedure as set out in Schedule 5;
DLUHC	means the Department for Levelling Up, Housing and Communities (formerly known as the Ministry of Housing, Communities and Local Government);
Effective Date	means the date of this Agreement
EIR	means the Environmental Information Regulations 2004;
Eligible Director	means a Director who would have been entitled to vote on the matter had it been proposed as a resolution at a Board meeting (but excluding any Director whose vote is not to be counted provided such exclusion shall apply only in respect of the particular matter on which the Director's vote is not to be counted in accordance with the Articles);
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time;
Forward Funding	£80,000 provided by each of the Local Authorities to the Company in each of the financial years 2022/2023 and 2023/2024 in furthering its Objects which shall be repaid by the Company to each of the Local Authorities from pot C of the Retained Business Rates;
Founding Members	means: <ul style="list-style-type: none"> a) the following Local Authorities and any Successor Body: East Suffolk Council; Suffolk County Council; Essex County Council; Tendring District Council; Mid Suffolk District Council; b) the following Private Sector Members: Harwich International Port Limited which owns and operates Harwich International Port; The Felixstowe Dock and Railway Company which operates the Port of Felixstowe; and Gateway14 Limited; c) the following LEP Members and any Successor Body: New Anglia Local Enterprise Partnership; and South East Local Enterprise Partnership; and

- d) the following University Member: University of Essex;
- Freeport Boundary** means the outer boundary for the Freeport East area as shown on the plan set out in Freeport East’s Full Business Case submitted to DLUHC or such other boundary for the operations of Freeport East as is designated by DLUHC or by secondary legislation from time to time;
- Full Business Case** means the full business case for Freeport East to operate a freeport in the East Anglia area as approved by DLUHC on [DATE] 2022;
- Good Faith** means the Member bound shall:
- a) act honestly and faithfully to the common purpose of this Agreement;
 - b) not use their powers for an ulterior purpose;
 - c) deal fairly and openly with the other Members; and
 - d) take into account the interests of the other Members;
- Governance Review Date** 1st November 2027 or such other date as the Members may unanimously agree;
- Group** means, in relation to a company, including the Company, that company and any company which is from time to time a Holding Company of that company or a Subsidiary of that company or of such Holding Company provided that, for the purposes of this definition, any references to companies shall be interpreted as including limited liability partnerships and the definitions of “**Subsidiary**” and “**Holding Company**” shall be such that any references to companies therein shall include references to limited liability partnerships;
- Holding Company** has the meaning given to parent undertaking by section 1162 of the Companies Act amended to include any limited liability partnership which would fall within that meaning if it were a company;
- Intra-Group Transfer** means the transfer of rights and obligations from a Private Sector Member to another company within the Private Sector Member’s Group;
- Lead Authority** means East Suffolk Council or any such body that becomes the accountable body to central Government from time to time in respect of the use by the Company of public funds;

Letter of Appointment	means a letter of appointment of a Director of the Company or a Subsidiary of the Company in the form set out in Appendix 1;
LEP Member	means those Founding Members which are Local Enterprise Partnerships;
Local Authority	means a local authority as defined within section 1 of the Local Government Act 2000;
Material Breach	means a breach of this Agreement which is material and/or persistent (provided that, in the case of a persistent breach, the breach by reason of the persistence has become material) in each case having regard to all relevant circumstances including the nature of the relationship between the parties to such agreement and the need for each such party to maintain the confidence of the others, the nature of the breach (and in particular whether it be intentional, negligent or otherwise), the regularity with which the obligation which has been breached fails to be performed under the relevant agreement and the consequences of the breach and for the avoidance of doubt shall include but shall not be limited to any breach of this Agreement that gives rise to a right to terminate it in its entirety;
Management Committee	<p>means the committee with the responsibility for the day-to-day operation of the Company comprising the Chief Executive Officer; one representative on behalf of the Lead Authority; one representative on behalf of each of the following Founding Members:</p> <ul style="list-style-type: none">a) Harwich International Port Limited;b) The Felixstowe Dock and Railway Company;c) Gateway14 Limited;d) Tendring District Council;e) Mid Suffolk District Council;f) East Suffolk Council (in addition to any representative which may be appointed in respect of their status as Lead Authority), <p>and such other individuals as may be invited by the Board from time to time;</p>
Member	means a member of the Company from time to time;

Member Consent Matters	means those matters requiring the unanimous consent of the Members set out in Schedule 3;
Member Services Agreement	means an agreement between a Member and the Company relating to the provision of services by that Member to the Company;
MoU	means the Memorandum of Understanding relating to the use of the capacity funding provided by DLUHC to the Lead Authority for Freeport East and outlining other support to be made available to Freeport East by central government which will be entered into by relevant parties including the Company in due course;
MoU Sanctions	any sanction imposed on the Lead Authority by DLUHC or other central government department in connection with its role as Lead Authority under the MoU;
Objects	means the objectives of the Company set out in Article 3.1 of the Articles;
Parties	means each Party, and where the context so permits or requires, any additional Member of the Company admitted to membership of the Company after the Effective Date in accordance with the terms of the Articles and this Agreement and which agrees to be bound by the terms of this Agreement (by executing a Deed of Adherence) and, in each case, where such Party or additional Member at the relevant time (other than in respect of the Company) remains a Member;
Prevention Procedures	means procedures designed to prevent any Associated Person from committing foreign tax evasion facilitation offences under the law of the foreign country concerned;
Principal Ports	means the principal ports of Freeport East, being the Port of Felixstowe and Harwich International Port at the date of this Agreement;
Private Sector Director	means any Director appointed by the Private Sector Members but excluding the Chief Executive Officer and the Chair;
Private Sector Member	means any Founding Member that is not a Public Body;
Procurement Policy	means Freeport East's procurement policy;

Public Body	means a: <ul style="list-style-type: none">a) Local Authority;b) Local Enterprise Partnership; orc) further or higher education institution;
Public Sector Director	means any Director appointed by the Public Sector Members but excluding the Chief Executive Officer and the Chair;
Public Sector Member	means a Founding Member that is a Public Body or such other Founding Member as the Board otherwise agrees;
Receiving Party	means a Party who is receiving Confidential Information from another Party;
Retained Business Rates	means the business rates retained or to be utilised by the Company after allowing for no detriment provisions to the Billing Authorities, Suffolk County Council, and Essex County Council;
Retiring Member	has the meaning given in the definition of Confidentiality Term ;
Rules	has the meaning given in Article 22 of the Articles;
Schedules	means the schedules annexed to and forming part of this Agreement;
Subsidiary	save where expressly extended or it is stated to the contrary in this Agreement, has the meaning ascribed to “subsidiary undertaking” by section 1162 of the Companies Act and includes any limited liability partnership which would fall within that meaning if it were a company;
Successor Body	means, upon an amalgamation or merger of or transfer of engagements or otherwise, any Local Authority or Local Enterprise Partnership which assumes some or all of the functions exercised by another: <ul style="list-style-type: none">a) Local Authority; orb) Local Enterprise Partnership, provided that where one or more Local Authorities may assume some or all of the functions exercised by a Local Enterprise Partnership such Successor Body shall never have more than one Membership of the Company;

Tax Site	means the sites within the Freeport Boundary designated by HMRC or by statutory instrument from time to time as benefiting from such tax advantages as the UK Government may determine from time to time;
Tax Site Owners	means the owners of the Tax Sites;
Tax Site Tenant	means a tenant with land within a Tax Site;
Termination Event	Has the meaning given in clause 32.2;
UK GDPR	means the General Data Protection Regulations (Regulation (EU) 2016/679) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018;
University Member	means those Founding Members that are further and higher education institutions;

- 1.2 reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
- 1.3 reference to an agreement or other document is a reference to that agreement or document as from time to time supplemented or amended;
- 1.4 words and phrases the definitions of which are contained or referred to in the Companies Act for the time being in force shall be construed as having the meaning thereby attributed to them but excluding any statutory modification thereof not in force on the date of this Agreement;
- 1.5 words and phrases the definitions of which are contained or referred to in the Articles shall be construed as having the meaning thereby attributed to them;
- 1.6 words importing the singular include the plural, words importing any gender include every gender, and words importing persons include bodies corporate and unincorporated, and (in each case) vice versa;
- 1.7 reference to clauses and other provisions are references to clauses and other provisions of this Agreement and any reference to a sub-provision is, unless otherwise stated, a reference to a sub-provision of the provision in which the reference appears; and
- 1.8 the headings herein shall not affect interpretation.

THE OBJECTS, THE BUSINESS AND NATURE OF OBLIGATIONS

2 The Company's Objects

2.1 The Company's Objects are those as set out in the Articles.

3 The Company's Business

3.1 The Members and the Company shall procure that the business of the Company shall consist exclusively of the Business.

3.2 The Business shall be carried out by the Company in accordance with any Business Plan adopted in accordance with this Agreement.

3.3 Except as the Members may otherwise agree in writing or save as otherwise expressly provided for in this Agreement, the Board shall, in so far as they are able, procure that the Management Committee shall exercise their powers in relation to the Company so as to ensure that:

3.3.1 the Company carries on and conducts its Business and affairs in a proper and efficient manner and for its own benefit and in accordance with this Agreement, any direction given to the Company by DLUHC, the terms of any agreement entered into by the Lead Authority (which relates to the Company or its Business) or the Company with DLUHC and the Articles;

3.3.2 the Company transacts all its business (including agreements or arrangements with the Members) on arm's length terms, provided that notwithstanding the foregoing the Company shall be entitled to enter into contracts with the Member on other terms so long as such contracts are approved in writing by all the Members and in compliance with this Agreement;

3.3.3 if the Company requires any approval, consent or licence for the carrying on of the Business in the places and in the manner in which it is from time to time carried on or proposed to be carried on the Company will use its best endeavours to maintain the same in full force and effect provided its maintenance is not considered by the Board to be uneconomic or unjustifiable in the circumstances; and

3.3.4 the Company effects and maintains sufficient and appropriate policies of insurance of the Business and assets of the Company (as determined by the Board from time to time) and to supply copies of evidence of them on written demand by the Members.

3.4 The expression **the Company** where used in this clause 3 shall be deemed to include each Subsidiary (if any) of the Company from time to time to the intent and effect that the provisions of this clause 3 shall apply in relation to each such company as they apply in relation to the Company, save for those provisions which expressly or by implication relate only to the Company. Notwithstanding this general position, the Business Plan may specify separate governance arrangements in relation to a particular development and the terms governing such governance shall be agreed by the Members in relation to that development and the Company.

4 Nature of obligations

- 4.1 Each Public Body that has obligations under this Agreement shall at all times be bound by its statutory obligations (whether in any other statute or secondary legislation or otherwise) that imposes obligations on it as regards:
- 4.1.1 the consideration, approval and/or publicity of the matters contained in this Agreement; and
 - 4.1.2 the discharge of its statutory obligations.
- 4.2 In the event of any discrepancy or conflict between the statutory obligations of a Public Body (on the one hand) and its obligations arising pursuant to this Agreement (on the other hand), the Public Body's statutory obligations shall not be fettered and shall prevail and the exercise by the Public Body of any of its statutory functions shall not be treated as a breach of this Agreement.
- 4.3 Nothing contained or implied in this Agreement or any consent or approval granted pursuant to it shall prejudice or affect the rights powers duties and obligations of a Local Authority in the exercise of its functions as the local authority or local planning authority or as the highway authority and/or water authority or other statutory authority and such rights powers duties and obligations under all public and private statutes bye-laws regulations and statutory instruments may be as fully and effectually exercised as if it were not a party to this Agreement and any approval consent direction or authority given by a Local Authority as local or other statutory authority shall not be or be deemed to be an approval consent direction or authority given under this Agreement and vice versa.

BASIC OPERATIONAL MATTERS

5 Administrative matters

- 5.1 Unless otherwise agreed between the Members in writing the accounting reference date of the Company shall be 31 March in each year (**Accounting Reference Date**).
- 5.2 The Company may appoint a company secretary, who or which may be one of the Members or a third party provider.
- 5.3 Subject to the Procurement Policy and unless the Members indicate to the Board in writing to the contrary:
- 5.3.1 the Company's principal place of business shall be within Suffolk and Essex;
 - 5.3.2 the Auditors shall be such firm of accountants as is agreed by the Board from time to time;
 - 5.3.3 the solicitors of the Company shall be such firm as is agreed by the Board from time to time.

Bank account

- 5.4 The Company shall open such accounts with such bank as the Board shall determine from time to time (the **Bank**) and the Company shall ensure that such accounts shall not be used for any purpose other than a purpose directly relating to the Business and all money transactions relating to the Business shall be recorded and conducted by means of credits to and withdrawals from such accounts.
- 5.5 The Company shall issue a mandate to the Bank to make payments out of the accounts referred to in clause 5.4 on such terms as the Board shall determine from time to time.

FUNDING AND RETAINED BUSINESS RATES**6 Funding the Freeport**

- 6.1 The Company shall initially be funded:
- 6.1.1 through capacity funding equalling £1 million (or such other sum as agreed between DLUHC and the Lead Authority) provided by DLUHC to the Lead Authority and made available to the Company; and
- 6.1.2 the Forward Funding,
- and thereafter, once such funding has been exhausted, it is the Members' intention that the Company shall be self-funding through the Retained Business Rates.
- 6.2 Subject always to clause 6.3 and notwithstanding that the Company is a limited liability company, if following exhaustion of the initial funding set out in clause 6.1 there is insufficient funding to meet the Objects, the Management Committee may present proposals to the Board to reduce expenditure and/or seek additional funding from the Members.
- 6.3 The Members shall be under no obligation to provide the Company with any additional funding which may be sought under clause 6.2 and the provision of any such funding shall be subject to the prior unanimous agreement of the Members.
- 6.4 Each Member's obligation to provide any agreed funding to the Company under this clause 6 is owed to the Company and each other Member on a several basis.
- 6.5 The Members' acknowledge that the Lead Authority and Billing Authorities may from time to time incur liabilities including MoU Sanctions, in connection with the Company through their role as Lead Authority or Billing Authority. The Parties agree that the Lead Authority and the Billing Authorities shall be entitled to be reimbursed on demand, for any losses or costs they may suffer as a result of MoU Sanctions or otherwise due to their role as Lead Authority or Billing Authority (each in the context of and only as it relates to their roles and obligations relating to Freeport East), through any available Company funding and/or Retained Business Rates except to the extent that:
- 6.5.1 such liability arises as a result of a negligent act of the Lead Authority or Billing Authority or any of its employees, officers or elected members in

the course of their employment or their role as elected member (in which case the Lead Authority or the Billing Authority in question will bear such liability or cost); or

6.5.2 such liability arises as a result of a negligent act of one or more Members or any of their employees, officers or elected members, in the course of their employment or their role as elected member who were aware or ought reasonably to have been aware that such action was likely to result in a MoU Sanction or loss in which case that Member or Members shall reimburse the loss or cost to the Lead Authority or the Billing Authority as the case may be.

6.6 If such liabilities referred to in clause 6.5 above cannot be recovered through Company funding, Retained Business Rates or otherwise, such liabilities shall only be met by Members where they have agreed in writing to meet them.

6.7 The day to day working capital and expenditure of the Company shall be set out in the Business Plan.

6.8 Subject to the Company's overhead and running costs first being met pursuant to clause 7.1, a Member which is providing services to the Company pursuant to a Member Services Agreement shall be entitled to receive repayment of its costs incurred in providing such services in priority to any other payment from or the use of the Retained Business Rates.

7 Retained Business Rates

7.1 Business rate revenue will be apportioned based on a bespoke hybrid model. Under this model a portion of the Retained Business Rates will be top sliced to cover the overhead and running costs of the Company, following which the remaining income generated will be apportioned:

7.1.1 for reinvestment within the Tax Sites and Customs Sites;

7.1.2 to be retained by the Local Authority within which the Tax Site or Custom Site resides as a compensation for otherwise lost income (with the potential to pay the New Anglia Local Enterprise Partnership an additional contribution to compensate for Enterprise Zone rate income loss);

7.1.3 to be retained by the Company for reinvestment across the wider Freeport East area; and

7.1.4 to meet any MoU sanctions.

7.2 The Parties agree to work in Good Faith together and with DHLUC (where necessary) to reach final agreement on the retention and utilisation of Retained Business Rates.

MEMBERS

8 Membership and admission to membership

8.1 At the Effective Date, the Members of the Company are the Founding Members.

- 8.2 In addition to the membership eligibility criteria set out in the Articles, the applicant shall be required to satisfy any other membership eligibility, including applicant propriety, set out in the Rules or otherwise determined by the Board.
- 8.3 Where the Board approves the admission of a new Member, the new Member's admission shall be conditional upon:
- 8.3.1 the Member agreeing to be bound by the terms of this Agreement, the Articles, the Rules; and
 - 8.3.2 Member consent by way of the unanimous consent of Members in accordance with Schedule 3.
- 8.4 Any party to be admitted as a new Member of the Company shall execute an application to become a member in accordance with the provisions of the Articles and a Deed of Adherence substantially in the form set out in Schedule 4 agreeing to be bound by the provisions of this Agreement, and the provisions of this Agreement shall be deemed to have been amended so as to be binding on the new Member accordingly.
- 8.5 The admission of a new Member as a result of an Intra-Group Transfer or automatic transfer of membership to a Successor Body in compliance with Article 28.2 shall be deemed approved by the Board, in which circumstances, the membership of the original Member shall terminate upon the admission of this new Member.

9 Member and Company obligations

- 9.1 Subject to clause 4.1, each Member undertakes to each of the other Members and the Company that, in its capacity as a Member, it shall exercise its powers (so far as is reasonably practicable) so as to procure that:
- 9.1.1 it, and any Director it appoints, abides by this Agreement and the Company Policies, procedures and codes in force from time to time, including those set out in Schedule 6;
 - 9.1.2 it pays all membership fees (if any) to the Company on time;
 - 9.1.3 it at all times carries out its duties as a Member observing reasonable standards of efficiency, economy and integrity;
 - 9.1.4 it shall exercise all voting rights and other powers of control available to it in relation to the Company so as to procure (insofar as it is lawfully able by the exercise of such rights and powers) that the Company complies with the provisions of this Agreement and all the contracts and agreements that have been entered into by or on behalf of the Company;
 - 9.1.5 it notifies the Company and the Board immediately on becoming aware of any matter which it considers (acting reasonably) is likely to materially affect the Company and/or its Business or any arrangement or proposed arrangement between the Company and any of the Members, or any Connected Person;

- 9.1.6 each Director it appoints shall, at all times conduct himself or herself in a proper and reasonable manner;
- 9.1.7 it at all times acts in Good Faith towards and co-operates with each other Member in connection with this Agreement and all the contracts and agreements that have been entered into by or on behalf of the Company and the performance of its respective obligations under all such documents;
- 9.1.8 it shall account to the Company for any profit derived from a business, office or appointment accepted by it or its Director or the use of the Company's name or property of the Company which is, in each instance, in breach of this Agreement, the Articles or company law, except to the extent that the profit is derived from:
- (a) a bone fide transaction with the Company;
 - (b) the Member granting a lease of land to the Company; and
 - (c) the Member generating a profit from land owned by it by virtue of operating a Tax Site or a Customs Site.

- 9.2 In addition to undertaking activities to further the Objects, the Company and the Members acknowledge that DHLUC will require certain parties including the Lead Authority, the Billing Authorities, and the Company to enter into the MoU (once agreed) such MoU may also require Tax Site Owners to agree certain obligations. The Members agree that they will work in Good Faith to agree, as soon as reasonably practicable, such ancillary agreements and documentation which are necessary to meet the obligations placed on the Parties to the MoU.

10 Minutes of Member decisions

Draft minutes of a Members' meeting shall be circulated to the Members for written approval by their relevant Member representative within 20 Business Days of the date of the meeting, rather than remaining in draft form until the next Members' meeting.

11 Withdrawal from membership

- 11.1 An Associate Member may withdraw from membership of the Company by giving at least one month's written notice to the Board.
- 11.2 Save as permitted within the Articles or this Agreement, a Founding Member cannot withdraw from membership of the Company before the Governance Review Date without the prior unanimous consent of all other Founding Members.
- 11.3 Following the Governance Review Date, a Founding Member may withdraw from membership of the Company by giving not less than 12 months' written notice to the Company provided that such notice cannot be served before the Governance Review Date

TAX AND CUSTOMS SITE OPERATORS**12 Tax Site Owners**

- 12.1 The Board shall adopt a governance framework for endorsing (or declining) prospective Tax Site Owners (**Tax Site Policy**) and for monitoring their ongoing compliance, which may be amended by the Board from time to time.
- 12.2 The Board and to the extent applicable Members, shall comply with any further obligations, which may include the entry into of further agreements, around the management, monitoring and reporting on Tax Sites as may be set out in the Full Business Case and any agreed and executed MoU.

13 Customs Site Operators

- 13.1 The Board shall adopt a governance framework for endorsing (or declining) prospective Customs Site Operators (**Customs Site Policy**) and for monitoring their ongoing compliance, which may be amended by the Board from time to time.
- 13.2 The Board and to the extent applicable, Members shall comply with any further obligations, which may include the entry into of further agreements, around the management, monitoring and reporting on Customs Sites as may be set out in the Full Business Case and any agreed and executed MoU.

RUNNING THE COMPANY AND DECISION MAKING**14 The Board**

- 14.1 The Board will provide overall leadership and strategic direction for the Company. The Board will act as a point of escalation for risks, issues and decisions as required.
- 14.2 The operation of the Board shall be governed in accordance with the provisions of Schedule 2 and the Articles. All Directors will be required to complete a declaration of interests form upon taking office. Each Director shall update the declaration of interests form on an event-driven basis to reflect changes to their interests within 20 Business Days of the event occurring. The declaration of interests form shall also be refreshed annually.
- 14.3 All Directors and employees of the Company shall inform themselves of, shall be subject to and shall abide by the Company's policies, procedures and codes in force from time to time including those listed in Schedule 6.

15 Member Consent Matters

- 15.1 The Company shall not, and the Members undertake that they shall exercise their powers in relation to the Company to procure that the Company will not, and none of its Subsidiaries will, without the prior written unanimous consent of all Founder Members carry out any of the Member Consent Matters.
- 15.2 The Board shall use their reasonable endeavours to provide information reasonably required by Members in relation to a Member Consent Matter as soon as reasonably practicable (either in writing or verbally at a meeting of the Members). The Members shall use all reasonable endeavours to reach a

decision on the matter within fourteen days of the date of notice in the reference.

- 15.3 If the Members or any of them fail to give to the Company notice of its decision within the relevant time limit specified in clause 15.2 then the decision of the Member who has failed to give the Company notice of such decision shall be deemed to be in the negative and a vote against the resolution.
- 15.4 Any variation to the list of Member Consent Matters must be approved by a unanimous decision of the Founding Members.

16 Committees and advisory groups

- 16.1 Provided that the Company shall always have the Management Committee, the Board may from time to time:
- 16.1.1 establish any committee;
 - 16.1.2 change the number and composition of the Company's committees; and
 - 16.1.3 determine the terms of reference and obligations to be undertaken by such committees.
- 16.2 A member of a committee need not be a Director and there will be no obligation to include any specific proportions of individuals representing the public sector or private sector.

17 Role of the Lead Authority

- 17.1 The role of the Lead Authority is:
- 17.1.1 to act as the Lead Authority/accountable body for any Government funding provided, which will include:
 - (a) managing grant payments to deliver Freeport East;
 - (b) monitoring and reporting against the use of such funding;
 - (c) managing financial risk and fraud through the Freeports Framework;
 - (d) upholding procurement practices in relation to public sector procurement; and
 - (e) providing assurance to Government that DLUHC seed capital expenditure proposals have been subject to appropriate levels of scrutiny;
 - 17.1.2 to act as accountable body to DLUHC in respect of acts of its delivery partners;

- 17.1.3 to be responsible for providing effective support to the Board in delivering its purpose;
 - 17.1.4 to maintain appropriate project documentation including implementation plans and risk registers;
 - 17.1.5 to ensure the Board and Management Committee operate in line with appropriate levels of transparency, propriety and inclusivity, abiding by the (Standards in Public Life) Nolan principles (see [The Seven Principles of Public Life](#)). This includes but is not limited to: the publication of Board papers and minutes and a register of members' interests to ensure any conflicts of interests are recorded and managed appropriately; and
 - 17.1.6 to act as a single point of contact for Government officials, responsible for coordinating the work of the Board (with the Lead Authority being supported by the Chair, the Chief Executive Officer, relevant committees and Members as appropriate).
- 17.2 The Parties will use reasonable endeavours to support the Lead Authority in its role and in meeting any obligations placed on it as Lead Authority.
- 17.3 The Parties acknowledge that the Lead Authority in its role as Lead Authority/accountable body has the potential to incur liabilities in connection with the Company and separate from the other Members. Such liabilities will be met in accordance with clauses 6.5 and 6.6.

18 Freeport contracting

- 18.1 Unless otherwise agreed by the Board, the Company shall enter into contracts in its own name. Save as set out in clause 18.2, no Director or Member shall enter into any contract on behalf of the Company without the unanimous consent of the Board decided by those Directors present and entitled to vote. Each Member shall use reasonable endeavours to procure that no person shall enter into any contract on behalf of the Company except as approved by the Board.
- 18.2 Provided the Members have given their prior written consent, the Lead Authority may enter into agreements on behalf of the Company. At the request of the Lead Authority, and subject to the further consent of the Members, the Company shall provide such indemnities to the Lead Authority as the Lead Authority acting reasonably requires to mitigate any risks to which the Lead Authority might be exposed through entering into such contracts.
- 18.3 Subject to the prior consent of the Members and completion of an appropriate Member Services Agreement, any Member may provide services to the Company.

19 Procurement of works and services

- 19.1 The Members acknowledge that the Public Sector Members are subject to public procurement law and where a Public Sector Member has agreed to procure the supply of works or services on behalf of the Company, the Procurement Policy shall apply. The Company shall be required to

demonstrate transparency and value for money in procuring any internal and external resources.

- 19.2 Works and services shall be competitively tendered (in accordance with all applicable laws and regulations) by the Company (or a Public Sector Member on its behalf) and the outcome of any such tender process shall be reported to the Board.

20 Related Party Contracts

- 20.1 In relation to the proposed entry by the Company into a contract with any Member or any member of a Member's Group (a **Related Party Contract**) (or any material amendment or variation to a Related Party Contract), the entry into or the material amendment or variation to the Related Party Contract shall be:

20.1.1 in accordance with the relevant Member's procurement policy (to the extent applicable);

20.1.2 approved at a Board meeting and by the Lead Authority;

20.1.3 unless otherwise required by the relevant Member's procurement policy subject to a written report provided to the Board and the Lead Authority at least five Business Days prior to the meeting referred to in clause 20.1.2 which:

- (a) summarises the material terms of the Related Party Contract (or the proposed material amendment or variation to the Related Party Contract as the case may be); and
- (b) confirms that the proposed Related Party Contract (or the proposed material amendment or variation to the Related Party Contract) is, in the reasonable opinion of the Directors appointed by the Members which are not part of the Group seeking to enter into or benefit from the Related Party Contract on arm's length commercial terms.

21 Good Faith

Each Member hereby covenants with and undertakes to the other at all times to act in Good Faith towards each other and the Company and each Subsidiary in connection with this Agreement generally and the performance of their respective obligations under all such documents.

22 Conflict matters

Conflict Matters shall be dealt with as set out in Article 20 of the Articles.

INFORMATION PROVISIONS

23 Access to information and accounts

- 23.1 Nothing in this clause 23 shall preclude the operation of the Local Authorities (Companies) Order 1995/849.

- 23.2 The Company undertakes that:
- 23.2.1 it shall make available as soon as reasonably practicable following any request from any of the Members, such information and documents relating to the Company and its Subsidiaries (if any) as they (or any of them) may from time to time request, including any information which any of the Members require to provide to any regulatory body, taxation authority or to any internal or external auditor;
- 23.2.2 the Members and their respective advisers shall each be entitled to examine at any reasonable time and from time to time the books, accounts and other records or documents relating to the Business kept by or on behalf of the Company and each of its Subsidiaries (if any) and to be supplied promptly, without prejudice to clause 23.2.1, with all relevant information, including:
- (a) Board Minutes as well as copies of all agendas for Board meetings together with the accompanying Board papers, at the same time they are sent to the Directors;
 - (b) monthly, quarterly or such other periodic management accounts and cash flow projections as are produced by the Company (but no less frequently than quarterly);
 - (c) budgets and management reports (including annual budgets);
 - (d) the annual accounts in respect of each financial year of the Company (together with the Directors' report for that year and the Auditors' report on those accounts); and
 - (e) the statutory accounts in respect of each financial year of the Company and each of its Subsidiaries (if any),
- and such other trading, financial or other information relating to the Company and each of its Subsidiaries (if any) (and, in each case, to make copies of the same) in such form as the Members, or any of them, may require to keep each of them properly informed about the Business as carried on by the Company and each of its Subsidiaries (if any) and generally to protect their respective interests;
- 23.2.3 it shall, and shall ensure that its Subsidiaries (if any) shall, at all times maintain accurate and complete accounting and other financial records in accordance with the requirements of all applicable laws and generally accepted accounting principles and practices applicable in the United Kingdom.
- 23.3 Following termination of this Agreement, each of the Members (or former Members) shall be entitled (at its own expense) to have reasonable access to, and to examine and make copies of, the books, accounts and records or any other documents of the Company and its Subsidiaries (if any) relating to the Business, if and to the extent that such information is required to be provided by such Member to any regulatory body or is required for necessary taxation or statutory or internal or external auditing or accounting purposes and the

provisions of this clause 23.3 shall survive termination of this Agreement to that extent.

23.4 In the event that a Member ceases to be a Party, such Member shall continue to be given reasonable access to, and be allowed to examine and make copies of, the books, accounts and records or any other documents of the Company and its Subsidiaries (if any) relating to the Business at its own expense, if and to the extent that such information is required to be provided by such Member to any regulatory body or is required for:

23.4.1 necessary taxation or statutory or internal or external auditing or accounting purposes; or

23.4.2 for the purposes of establishing and/or verifying the entitlement of such Member to any financial return or recompense from the Company and the provisions of this clause 23.4 shall survive termination of this Agreement, save that such right of access, examination and copying shall apply only in respect of the books, accounts and records or any other documents of the Company that are referable to the period prior to the date of such cessation.

23.5 The Company shall ensure that, and each of the Members insofar as they are able to, shall procure that, the annual accounts of the Company (and each of its Subsidiaries (if any)) for each financial period of the Company (and its Subsidiaries (if any)) are prepared, signed and delivered to the Registrar of Companies within the period of four calendar months (or such longer period as may be agreed by the Members) from the end of that financial period.

23.6 The Company undertakes to ensure that the statutory accounts of the Company and each of its Subsidiaries (if any) in each year are prepared on a basis consistent with generally accepted accounting principles and practices in the United Kingdom applicable from time to time and, subject thereto, utilising the accounting policies approved by the Board.

23.7 The Company undertakes to promptly prepare and circulate to the Directors and the Members the monthly, quarterly or such other periodic management accounts and cash flow projections, budgets and management reports referred to in clause 23.2.2(b) and 23.2.2(c) above.

24 Data protection, confidentiality and announcements

24.1 Each Party shall comply with its obligations under the Data Protection Legislation.

24.2 During the Confidentiality Term a Receiving Party shall:

24.2.1 keep Confidential Information confidential;

24.2.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party or in accordance with clauses 24.3 to 24.6; and

24.2.3 not use the Confidential Information for any purpose other than the performance of its obligations under this Agreement.

- 24.3 During the Confidentiality Term, the Receiving Party may disclose Confidential Information to its employees, contractors, sub-contractors, agents and advisers (and those of its Group) under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Agreement or any other supporting agreement and, unless otherwise required by the Disclosing Party, may disclose Confidential Information to its funders, prospective funders or prospective purchasers of its assets under conditions of confidentiality. In each case the permitted recipient of such Confidential Information shall be known as a **Recipient**.
- 24.4 Each Party acknowledges that the Lead Authority in its capacity as a Receiving Party may be required to disclose confidential information to DLUHC as part of its reporting obligations as Lead Authority. In this case DLUHC as a permitted recipient shall be known as a **Recipient**.
- 24.5 The Receiving Party shall, so far as practicable, procure 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 were subject to the terms of this Agreement.
- 24.6 The obligations contained in clause 24.2 shall not apply to any Confidential Information which:
- 24.6.1 is at the Effective Date in, or at any time after the Effective Date comes into, the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;
 - 24.6.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party and not subject to any obligations of confidentiality before disclosure by the Disclosing Party to the Receiving Party;
 - 24.6.3 subsequently comes lawfully into the possession of the Receiving Party from a third party and not subject to any obligations of confidentiality; or
 - 24.6.4 is required to be disclosed by law or a regulatory or governmental authority or body or department to which the Receiving Party is subject (including but not limited to any obligations imposed by the FOIA and EIR). If the Receiving Party reasonably believes that this sub-clause 24.6.4 applies, it shall, as far as it is reasonably practicable and lawful to do so first consult the Disclosing Party to give the Disclosing Party an opportunity to contest the disclosure and then take into account the Disclosing Party's reasonable requirements about the proposed form, timing, nature and extent of the disclosure.
- 24.7 If the Receiving Party is unable to consult with the Discloser before disclosure is made pursuant to clause 24.6.4, the Receiving Party shall, to the extent not prohibited by such applicable law, rule or requirement, inform the Disclosing Party of the form, timing, nature and extent of the disclosure as soon as reasonably practicable after such disclosure is made.
- 24.8 No Member shall make nor send after the Effective Date any announcement, communication or circular relating to the Business of the Company or subject

matter of this Agreement unless such Member has first obtained the prior approval of the Chair to the form and text of such announcement, such consent not to be unreasonably withheld. However, the foregoing does not apply to:

- 24.8.1 any announcement, communication or circular approved for publication by the Board; or
 - 24.8.2 any announcement, communication or circular required by law or by the rules of any stock exchange or by any governmental authority, in which event the Member required to make or send such announcement, communication or circular shall, where practicable, first consult with the other Members as to the content of such announcement.
- 24.9 The Company acknowledges and agrees that it shall be required to share information with the Lead Authority and DLUHC as part of ongoing reporting, evaluation and monitoring requirements which may be on a monthly basis or on request.

BUSINESS PLANS

25 The Business Plan

- 25.1 The Business Plan will set out as a minimum:
- 25.1.1 how the Company anticipates delivering the Objects over the following four years (and will be updated every 12 months and as required);
 - 25.1.2 a four year revenue budget (with detailed content for the first Accounting Period and provisional content in relation to the following three Accounting Periods), to include:
 - (a) estimated operational expenditure, borrowing costs, repayments of any loans, direct revenue contributions to capital, publicity, marketing etc.);
 - (b) estimated income (e.g., the grant funding provided by the Local Authorities, central government income, Retained Business Rates receipts);
 - 25.1.3 a four year capital programme budget, to include:
 - (a) a profiled statement of spending (including grants from Retained Business Rates);
 - (b) a funding statement (including anticipated receipt of Retained Business Rates);
 - 25.1.4 a reserves policy.
- 25.2 A meeting of the Board shall be convened as soon as reasonably practicable following the Effective Date at which the draft Business Plan shall be presented to the Board, and if approved by the Board, presented to the

Members for their approval. Following approval of the draft Business Plan that will become the first Business Plan for the Company.

- 25.3 Subsequent Business Plans shall be prepared in draft annually at least 40 Business Days in advance of the financial year end. A meeting of the Board shall be convened as soon as reasonably practicable following the circulation of the revised draft Business Plan, and in any event on or before the final day in February in each year, and if the draft Business Plan is approved by the Board, it shall be presented to the Members for their approval. Following approval of the draft Business Plan that will replace the then current Business Plan for the Company.
- 25.4 In any year a change to the Business Plan shall only be effective if approved by the Members, whereupon the amended Business Plan shall become the Business Plan in the place of the then current Business Plan.

MISCELLANEOUS PROVISIONS

26 Warranties

Each of the Parties warrants and represents independently and on its own account only to each of the other Parties that it has full power and authority, as at the date of signing of this Agreement, to enter into this Agreement.

27 Default

27.1 Save as expressly agreed otherwise by Members, each of the following events shall be a Default Event:

27.1.1 where any of the following occurs in relation to a Member:

- (a) a resolution being passed (or a meeting being convened, or a written resolution being circulated), or an order being made, for the purpose of its winding up or an order being made for a provisional liquidator to be appointed;
- (b) an order being made, by the Registrar of Companies to strike off the entity in question under section 1000 of the Companies Act or an application is made under section 1003 of the Companies Act for the Member to be struck off the Register of Companies;
- (c) any notice of intention to appoint an administrator or to enter into a moratorium is given in respect of the Member, an administrative receiver, receiver, administrator, liquidator or provisional, liquidator monitor or similar officer being appointed over the whole or part of its assets and/or undertaking;
- (d) a floating charge crystallising and the holder of such floating charge successfully taking steps to enforce such security;
- (e) it being unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- (f) there being an unsatisfied judgment or order of any court or tribunal, or award of any arbitrator, outstanding against it;
 - (g) a distress, distraint, charging order, attachment, execution or other process being levied against any of its assets and remaining undischarged;
 - (h) a meeting of its creditors, or any class of them, being held or summoned or a proposal being made for a moratorium, composition or arrangement in relation to any of its debts, or for a voluntary arrangement under Part 1 of the Insolvency Act 1986; and/or
 - (i) an event or step analogous to any of the above occurring in any jurisdiction;
- 27.1.2 where the Member or any member of its Group commits a Material Breach, which if capable of remedy, is not remedied within 20 Business Days of a notice to remedy being given to the Member; and/or
- 27.1.3 fraud on the part of the Member towards another Member or towards the Company; and/or
- 27.1.4 any action which breaches anti-corruption or modern slavery requirements or which constitutes tax evasion whether imposed by any Act or secondary legislation.
- 27.2 A Member which has suffered or committed a Default Event (the **Defaulting Member**) shall notify the other Members (the **Non-Defaulting Members**) in writing as soon as practicable after becoming aware that a Default Event has occurred and where a Non-Defaulting Member becomes aware that a Default Event has occurred (which has not been waived by notice in writing by the Non-Defaulting Members to the Defaulting Member) and it has not received notification of the Default Event from the Defaulting Member, the Non-Defaulting Members shall give notice to the Defaulting Member (in each case by means of a **Default Notice**). The date on which the Default Notice is given shall be the **Default Notice Date**.

28 Dispute resolution

Any disputes between the Parties arising under or in connection with the Company the Articles or the terms of this Agreement shall be governed by the Dispute Resolution Procedure.

29 The Articles

- 29.1 If, during the continuance of this Agreement, there shall be any conflict between the provisions of this Agreement and the provisions of the Articles (including, without limitation, any definitions), the provisions of this Agreement shall prevail.
- 29.2 Each of the Parties undertakes with each of the others to fully and promptly observe and comply with the provisions of the Articles to the intent and effect that each and

every provision thereof shall be enforceable by the Parties inter se and in whatever capacity.

- 29.3 Nothing contained in this Agreement shall be deemed to constitute an amendment of the Articles or of any previous articles of association of the Company.

30 Parties bound

- 30.1 The Company undertakes with each of the Members to be bound by and comply with the terms and conditions of this Agreement insofar as the same relate to the Company and to act in all respects as contemplated by this Agreement.
- 30.2 The Members undertake with each other to exercise their powers in relation to the Company so as to ensure (in so far as they are reasonably able) that the Company fully and promptly observes, performs and complies with its obligations under this Agreement.

31 Enforcement of the Company's rights

Where a Member or any member of a Member's Group (or any Connected Person to any of the foregoing) asserts any claim against the Company or any Subsidiary of the Company or it is proposed that the Company or any Subsidiary of the Company asserts any claim against a Member or any member of such Member's Group (or any Connected Person to any of the foregoing) any right of action of the Company in respect thereof shall be passed to the Directors (other than any Directors appointed by the relevant Member) who shall have full authority on behalf of the Company to negotiate, litigate and settle any claim arising therefrom, and the Members shall take all steps within their power to give effect to the provisions of this clause 31.

32 Termination and winding up

- 32.1 The Company shall continue to exist until terminated in accordance with this clause 32.
- 32.2 The Company shall cease its activities following not less than 20 Business Days' written notice from one Founding Member to the Company and the other Founding Members (provided that a Defaulting Member may not serve such a notice) or from the Company to the Founding Members (as applicable) following the occurrence of any of the following events (each a **Termination Event**) whereupon the Company shall be wound up in accordance with clause 33:
- 32.2.1 the revocation of the legislation designating Freeport East as a freeport or all the Tax Sites as freeport tax sites or all the Customs Sites as freeport customs sites in circumstances where there is no equivalent replacement designation legislation or replacement Tax Site or Customs Site;
 - 32.2.2 the insolvency, dissolution or liquidation of the Company (other than for the purposes of an amalgamation or merger or reconstruction or incorporation);
 - 32.2.3 the written agreement of all the Founding Members to voluntarily dissolve or wind up the Company;

- 32.2.4 the service of a notice by the Company on the Founding Members following any change in the law as a result of which the continuation of the Company becomes unlawful or materially in contravention of the guidance of any regulatory authority or body or any government department; and/or
 - 32.2.5 the service of a notice by a Founding Member on the Company and the other Founding Members following any change in the law as a result of which the continuation of the Company becomes unlawful or materially in contravention of the guidance of any regulatory authority or body or any government department.
- 32.3 The termination or dissolution of the Company and/or or winding up of the Company (in each case howsoever arising) shall be without prejudice to the rights and duties of any Member accrued prior to such expiry, termination, dissolution and/or winding up.
- 32.4 The provisions in this Agreement which expressly or impliedly have effect after expiry, termination or dissolution of the Company and/or winding up of the Company (in each case howsoever arising) include: clause 27 (Default), clause 24 (Data Protection, Confidentiality and Announcements), clause 35.2 (Notices), clause 35.10 (Entire agreement) and any liability under any indemnity and/or guarantee shall continue to be enforceable notwithstanding such expiry, termination, dissolution or winding up.

33 Winding up – obligations following a Termination Event

- 33.1 On the occurrence of a Termination Event, the Company and the Members shall procure, and shall do all such acts and execute all such documents as may be necessary to ensure, that the winding up procedure set out in this clause 33 is followed.
- 33.2 With effect from the date of the Termination Event and subject to the Insolvency Act 1986:
- 33.2.1 no further activities or operations of the Company shall be conducted and no contracts shall be entered into by it, except as required to wind down the Business in accordance with this clause 33;
 - 33.2.2 a winding up practitioner shall be appointed and the Company's assets shall be distributed in accordance with Article 4 of the Articles.

34 Anti-corruption, tax evasion and modern slavery

- 34.1 Each Member and the Company undertakes to each of the other Members that:
- 34.1.1 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;
 - 34.1.2 it has and will 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;

- 34.1.3 it shall not engage in any activity, practice or conduct which would constitute a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017 or a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
 - 34.1.4 it has and will maintain in place, Prevention Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 45 or 46 of the Criminal Finance Act 2017;
 - 34.1.5 it shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
 - 34.1.6 it shall not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
 - 34.1.7 it shall have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance with the provisions of this clause 34;
 - 34.1.8 from time to time, at the reasonable request of another Member or the Company (as applicable), it will confirm in writing that it has complied with its undertakings under clauses 34.1.1 to 34.1.7 and will provide any information reasonably requested by another Member or the Company in support of such compliance.
- 34.2 Breach of any of the undertakings in this clause 34 shall be deemed to be a Material Breach of the Agreement.

35 General

Costs

- 35.1 Each of the Members and the Company shall pay their own costs and expenses incurred in relation to the negotiation, preparation and execution of this Agreement.

Notices

- 35.2 Any notice required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each Party required to receive the notice as set out below:
- 35.2.1 the Company: the Board, at the Company's Registered Office from time to time; and
 - 35.2.2 the Members: at the address notified by the relevant Member to the other Parties from time to time.
- 35.3 Any notice shall be deemed to have been duly received:

- 35.3.1 if delivered personally, when left at the address and for the contact referred to in this clause; or
 - 35.3.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
 - 35.3.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 35.4 A notice required to be given under this Agreement shall not be validly given if sent by e-mail.
- 35.5 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

Successors and permitted assignees bound

- 35.6 This Agreement shall be binding on and shall ensure for the benefit of the successors and permitted assignees (as the case may be) of each of the Parties.

Assignment

- 35.7 None of the Parties may assign its rights or obligations in whole or in part hereunder without the prior written consent of the other Parties other than to a Successor Body or as part of an Intra-Group Transfer.

Continuing agreement

- 35.8 All provisions of this Agreement shall so far as they are capable of being performed and observed continue in full force and effect except in respect of those matters then already performed.

Further assurance

- 35.9 The Parties shall, and shall use their respective reasonable endeavours to procure (in so far as they are reasonably able so to do), that any necessary third parties shall do, execute and perform all such further deeds, documents, assurances, acts and things as any of the Parties may reasonably require by notice in writing to the others to carry the provisions of this Agreement and the Articles into full force and effect.

Entire agreement

- 35.10 This Agreement together with the Articles constitutes the entire agreement among the Parties with respect to the matters dealt with therein and supersedes any previous agreement among the Parties in relation to such matters. Each of the Parties hereby acknowledges that in entering into this Agreement it has not relied on any representation or warranty save as expressly set out herein or in any document expressly referred to herein and to which it is a party and further waives any and all rights and remedies that it may have in respect of any such warranty or representation not expressly set out herein. No variation of this Agreement shall be valid or effective unless made by one or more instruments in writing signed by all of the Parties.

No partnership

35.11 Nothing in this Agreement shall constitute or be deemed to constitute a partnership between or among any of the Parties and none of them shall have any authority to bind the others in any way.

Duration

35.12 This Agreement shall remain in full force and effect unless otherwise agreed in writing by all of the Members.

Termination

35.13 The termination of this Agreement, however caused, and the ceasing by any Member to be a Member of the Company and/or a Party, shall in any event be without prejudice to any obligations or rights of any of the Parties which have accrued prior to such termination and/or cessation and shall not affect any provision of either this Agreement which is expressly or by implication provided to come into effect on or to continue in effect after such termination or any other contract or agreement entered into pursuant to or in connection herewith.

Waiver

35.14 No failure to exercise and no delay in exercising on the part of any of the Parties any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

Severability

35.15 Notwithstanding that any provision of this Agreement may prove to be illegal or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

Exercise of powers

35.16 Where any Member is required under this Agreement to exercise its powers in relation to the Company to procure a particular matter or thing, such obligation shall be deemed to include an obligation to exercise its powers both as a Member of the Company and to procure that any Director appointed by it (whether alone or jointly with any other person) shall, except in circumstances where such Director believes in good faith that it is contrary to law or regulation or his fiduciary duties at common law or under statute to the Company and the Members, procure such matter or thing.

36 Counterparts

This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts, each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.

37 Law

This Agreement shall be governed by and construed in accordance with English law. Each Party hereby submits to the exclusive jurisdiction of the courts of England and Wales to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement and each Party irrevocably waives any objection which it may have to the courts of England and Wales being nominated as the forum to hear and determine any such proceedings and to settle any such disputes and agrees not to claim that the courts of England and Wales are not a convenient or appropriate forum.

EXECUTED AS A DEED and delivered by the Parties on the date which first appears in this deed.

<p>Executed as a deed (but not delivered until the date specified above) by affixing the common seal of EAST SUFFOLK COUNCIL in the presence of:</p>	<p>Signature</p> <p>Name</p> <p>Title</p> <p>Signature</p> <p>Name</p> <p>Title</p>
--	--

Executed as a deed by **Suffolk County Council** affixing its seal in the presence of a duly authorised officer

Authorised Officer

The Common Seal of)
)
Essex County Council)
 Was affixed hereto)

In the presence of

 Attesting Officer

Executed as a deed by)
GATEWAY 14 LIMITED)
acting by two directors:)
Director

.....
Director

Schedule 1 Founding Members

Public Sector Members

- 1 At the Effective Date the following Public Sector Members are Founding Members:
 - 1.1 East Suffolk Council;
 - 1.2 Suffolk County Council;
 - 1.3 Essex County Council;
 - 1.4 Tendring District Council;
 - 1.5 Mid Suffolk District Council;
 - 1.6 New Anglia Local Enterprise Partnership;
 - 1.7 South East Local Enterprise Partnership; and
 - 1.8 University of Essex.

Private Sector Members

- 2 At the Effective Date the following Private Sector Members are Founding Members:
 - 2.1 Harwich International Port Limited;
 - 2.2 The Felixstowe Dock and Railway Company; and
 - 2.3 Gateway14 Limited.

Schedule 2 The Board

Composition

- 1 The number of Directors must not be less than 6 and shall have a maximum number of 12.
- 2 At the outset there shall be 12 Directors, comprising the Chief Executive Officer, the Chair and a balance of:
 - 2.1 up to 3 Private Sector Directors (drawn from the Founding Members which are Private Sector Members); and
 - 2.2 up to 7 Public Sector Directors (drawn from the Lead Authority and the Founding Members which are Public Sector Members).

Chair and Deputy Chair

- 3 The primary role of the Chair is to secure good governance by ensuring that the Board is alert to its obligations. This means ensuring that the Board is effective and it gives the leadership required.
- 4 The Chair will ensure that there is a balanced structure for the Board and that it spends sufficient time on each of its key tasks to secure the Company's success.
- 5 The Chair of the Board will be appointed in accordance with the Articles.
- 6 The responsibilities of the Chair shall be as set out in their job description.
- 7 Following the appointment of the Chair, the Board may, if it chooses, appoint a Deputy Chair in accordance with the Articles.

Appointment of Directors

- 8 A person proposed as a Director (including those proposed to be appointed as Directors on the Effective Date) shall not be appointed as a Director unless they have signed and given to the Board the Letter of Appointment in the form Annexed to this Agreement at Appendix 1 or such other terms as the Board may agree from time to time.
- 9 Wherever possible, the Members shall use reasonable endeavours to ensure that their respective Directors serve on the Board for at least 12 months in order to maintain continuity.
- 10 All new Directors will be informed of their responsibilities, the role of the Board and the Management Committee, and shall be provided with support and training (where deemed necessary by the Chair or by the person appointed by the Chair) to ensure they are able to discharge their responsibilities effectively.

Board Decision Making

- 11 Without prejudice to the generality of the following provisions of this Schedule 2 and save where expressly provided otherwise in this Agreement (including clause 15 (Member Consent Matters)), the Parties agree that the management and operation of the Company shall be carried out as decided by the Board.

- 12 Subject to clause 22 (Conflict matters) all resolutions of the Board shall be decided by unanimous vote of those Directors present and entitled to vote.
- 13 If the Lead Authority has objected to a decision on the basis that the decision does not in the Lead Authority's view conform to the accountability requirements of DLUHC or the CIPFA accounting requirements, the Board shall, within 28 days of receiving the objection, meet to consider any written representations from the Lead Authority and shall reconsider the decision made. If the Board reaches the same decision after considering such representations, the Lead Authority shall have no further right under this clause to request that the decision be reconsidered again but, notwithstanding the provisions of clause 24 (Data protection, confidentiality and announcements), it shall be entitled to report the decision and its concerns to DLUHC or the appropriate government body.
- 14 Subject to paragraph 16, the quorum for Board meetings shall be six Directors present (or their approved Alternates) comprising:
- 14.1 the Director appointed by the Lead Authority;
 - 14.2 each of the Directors appointed by the Billing Authorities;
 - 14.3 at least one other Public Sector Director representing at least one other Local Authority; and
 - 14.4 at least two Private Sector Directors.
- 15 The Lead Authority shall use its reasonable endeavours to ensure that its appointed Director (or their approved alternate) is present at Board meetings.
- 16 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision to call a general meeting so as to enable the Members to appoint Directors or to give notice to any Member entitled to appoint a Director but who presently has not exercised that right, requiring such Member to exercise such right.
- 17 Any Member which is served a notice pursuant to paragraph 16 requiring them to appoint a Director shall appoint a Director as soon as is reasonably practicable and in any event no later than seven days from the date of receipt of such notice.
- 18 At a Board meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting. The Members shall use their respective reasonable endeavours to procure (in so far as they are reasonably able to do so) that a quorum is present at meetings of the Board.
- 19 If a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting a quorum ceases to be present, such meeting shall stand adjourned to the same day in the next week at the same time and place or to such other time and place as the Directors may determine.
- 20 Each Director shall be entitled to one vote at any meeting of the Board at which they are present, and provided that where one Director appoints another person to act as Alternate in accordance with the Articles, that person, if another Director, shall be entitled to exercise one additional vote (for each alternate appointment) at any meeting of the Board at which their appointer is absent. This is without prejudice to the ability of the Board to transact

business by way of resolution in writing signed by all the Directors (it being acknowledged and agreed that any Director by virtue of being an alternate director in terms of the Articles for another Director may sign as alternate director for such Director, such that a resolution so signed shall be treated as a valid resolution in writing as aforesaid).

- 21 If the numbers of votes for and against a proposal are equal, the Chair or other Director chairing the meeting does not have a casting vote.

Directors

- 22 Subject to any limitation on the number of directors set out within this Schedule, each Founding Member which is not a LEP Member or University Member shall, for so long as it remains a Member, be entitled to appoint one Director to the Board.
- 23 Each of the following classes of Founding Member shall, so long as there is a Member within the relevant class, be entitled to each appoint one Director to the Board:
- 23.1 the LEP Members; and
- 23.2 the University Members.
- 24 Unless otherwise unanimously agreed by the Members, a Member who is not a Founding Member shall not be entitled to appoint a Director to the Board, but the Board may agree to confer observer status on to a person appointed by a Member who is not a Founding Member.
- 25 Each Member will promptly notify the other Parties after appointing or removing any person as a Director (provided that failure to serve such notice shall not affect the validity of any such appointment or removal).
- 26 A Member (or relevant class of Member as the case may be) shall be entitled to remove and replace the Director appointed by it in accordance with the Articles). A Member exercising its rights of removal of a Director pursuant to the Articles shall be responsible for paying and discharging all costs, claims and expenses incurred by the Company as a result and such Member shall hold the Company harmless from all such costs, claims or expenses.
- 27 Subject to paragraph 28 no Director except the Chief Executive Officer and the Chair shall be entitled to receive any remuneration from the Company in respect of their service in office.
- 28 The Company may pay any reasonable expenses which the Directors properly incur in connection with their attendance at meetings of Directors or committees of Directors, general meetings, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company, subject to the production of relevant receipts.

Board Observers

- 29 The following officeholders shall be entitled to receive notice of, attend and speak (but not vote) at Board meetings as observers. They shall be entitled to receive copies of all Board papers relating to the relevant meeting:
- 29.1 the Section 151 Officer of the Lead Authority (or their nominee notified to the Chair in writing from time to time);

- 29.2 the Monitoring Officer of the Lead Authority (or their nominee notified to the Chair in writing from time to time);
 - 29.3 the person appointed by the Lead Authority with primary responsibility for reporting to DLUHC (or their nominee notified to the Chair in writing from time to time);
 - 29.4 a representative of DLUHC or another HM Government Department (or their nominee notified to the Chair in writing from time to time); and
 - 29.5 a local Member of Parliament (as determined by the relevant local Members of Parliament).
- 30** The Chair may invite individuals who are not Directors to attend Board meetings (in an advisory and non-voting capacity where they are able to provide expert opinions or strategic advice).
- 31** Each Founding Member may invite a maximum of two individuals to attend and observe (but not speak or vote at) Board meetings.

Committees

- 32** The Board shall be entitled to delegate by unanimous decision such of its decision making powers as it shall think fit to committees comprising such persons as the Board shall unanimously agree in accordance with the provisions of the Articles.

Management Committee

- 33** The Company shall have a Management Committee which shall be responsible for the day-to-day operation of the Company and the discharge of its obligations in respect of the following:
- 33.1 marketing Freeport East to domestic and international investors;
 - 33.2 supporting investors in delivering investment, including through understanding planning, regulations and incentives;
 - 33.3 a specific innovation function to coordinate and deliver submissions to innovation and challenge funds;
 - 33.4 security and crime prevention, including an annual audit of security measures and working with relevant government parties;
 - 33.5 monitoring and reporting to DLUHC on delivering Freeport East's strategy, including data collection on economic performance;
 - 33.6 executing the strategy agreed by the Board under delegated powers;
 - 33.7 submitting regular reports to Government; and
 - 33.8 any matters delegated to it by the Board from time to time.

- 34 The Management Committee shall be accountable to the Board and shall report to the Board no less than six times a year and at other such times as required by the Board from time to time.

Board Reporting

- 35 The Management Committee shall prepare a report for the Board to include such content and in such form as determined by the Board from time to time, which shall be submitted to the Board no less than 7 days before each Board meeting.
- 36 The Management Committee shall, on the request of the Lead Authority and in any event no less than three times a year (i.e., quarterly), prepare a report to include such content and in such form as required by DLUHC.

Board meetings

- 37 The Directors shall meet at such location(s) as the Directors shall agree as often as is reasonably required in order to fulfil their functions but shall, in any event, seek to meet no less than six times a year or at such other intervals as the Directors may consider reasonably necessary provided that, without prejudice to the obligation to meet as aforesaid, the Directors shall be entitled to transact business by the execution of resolutions in writing (signed by all of the Eligible Directors) and the Articles and any amendment thereof shall contain provisions to this effect.
- 38 Unless otherwise agreed in writing by the unanimous consent of Directors or by the unanimous consent of the Members, at least seven days' prior notice (or such lesser period of notice as all of the Directors agree is reasonable in the circumstances) in writing of any meeting of the Board shall be given to each Director (and his Alternate previously notified in writing) and such notice shall set out in reasonable detail an agenda of the business to be conducted at such meeting.
- 39 Relevant papers for discussion at such meeting shall be circulated no later than 72 hours before the meeting. Conflict Matter Documentation shall not be sent to a Director who is conflicted with respect to that Conflict Matter.
- 40 No business shall be considered at any meeting of the Board unless such business was included in the agenda accompanying the notice of meeting unless all of the Directors (including those not present at the meeting) agree otherwise in writing.
- 41 Notwithstanding the foregoing, on urgent matters a meeting may be called on less than seven days' notice provided that notice is given to all of the Directors (such notice shall set out in reasonable detail in an agenda of the business to be conducted at such meeting and shall be accompanied by any relevant papers for discussion at such meeting) and it is done with the prior written consent of the Directors.
- 42 Subject always to the provisions of paragraph 19, during such time as a Chair is appointed, if at any meeting of the Board the Chair is unable to attend any meeting of the Board and a quorum is present within ten minutes of the time at which it was to start, the participating Directors must appoint another Director to chair it.

Records of Board Decisions

- 43 All Board meetings shall be minuted. Draft Board Minutes shall be promptly circulated to the Chair for approval prior to circulation to the other Directors. All Board Minutes will remain in draft form until the Board approves them as an accurate record of the discussion at the following Board meeting. Once approved by the Board, the Board Minutes and board papers (other than those appendices that the Board has agreed are commercially confidential) shall be published on the Company's website.
- 44 Records of Board written resolutions shall be kept and a record of the written resolutions passed shall be published on the Company's website.
- 45 Published minutes, written resolutions and board papers should be consistent with the issues and concerns raised within confidential appendices. The confidential appendices should only be used to the minimum extent necessary.

General

- 46 No appointment of a Director shall be valid unless that person has accepted and signed a Letter of Appointment or such other terms as the Board may agree from time to time.
- 47 Notwithstanding any duties that a Director may owe to the Company (whether pursuant to the Companies Act or otherwise) and its Members, the Members and the Company agree that each of the Public Sector Directors will be at liberty from time to time to make such disclosure to the Member which appointed them in relation to the Business or affairs of the Company as they think fit.
- 48 For the avoidance of doubt, the delegation of any powers or authorities of the Board to any committee or individual pursuant to the terms of this Agreement or the Articles shall not avoid or obviate the requirement or obligation of the Parties to obtain the written consent of the Members in respect of any proposed act or omission by or on behalf of the Company (or any or its Subsidiaries if any) if required by the terms of this Agreement including, for the avoidance of doubt, clause 15 (Member Consent Matters).

Schedule 3 Consent matters

- 1 The expression the **Company** where used in this Schedule 3 shall be deemed to include each of the Subsidiaries of the Company from time to time to the intent and effect that the provisions of this Schedule 3 shall apply in relation to each such company as they apply in relation to the Company, save for those provisions which expressly or by implication relate only to the Company.
- 2 Notwithstanding any other provision of this Agreement, none of the following actions shall be carried out or undertaken by the Company without the prior written consent of all Founding Members:
 - 2.1 amend the Company's Articles;
 - 2.2 make any amendment or variation to this Agreement;
 - 2.3 approve or make any material amendment to any Business Plan;
 - 2.4 sell, lease (as lessor), license (as licensor), transfer or otherwise dispose of any of its assets at a total price per transaction exceeding two hundred and fifty thousand pounds sterling (£250,000), otherwise than in the ordinary course of the Business and to the extent not provided for in the Business Plan and provided that the aggregate value of such transactions never exceeds one million pounds sterling (£1,000,000) in any one calendar year;
 - 2.5 purchase, lease (as lessee), license (as licensee) or otherwise acquire any assets at a total cost to the Company per transaction exceeding two hundred and fifty thousand pounds sterling (£250,000) otherwise than in the ordinary course of the Business and to the extent not provided for in the Business Plan and provided that the aggregate value of such transactions never exceeds one million pounds sterling (£1,000,000) in any one calendar year;
 - 2.6 enter into or make any contract with a cost to the Company of more than two hundred and fifty thousand pounds sterling (£250,000) unless provided for in any Business Plan (**material contract**) and provided that the aggregate value of such transactions never exceeds one million pounds sterling (£1,000,000) in any one calendar year;
 - 2.7 appoint or remove any Director (this shall not affect or include the right of any Founder Member to appoint or remove their appointed director pursuant to Articles 23 and 24 which may be exercised without the consent of the other Members);
 - 2.8 appoint or remove the Chief Executive Officer of the Company;
 - 2.9 change the name of the Company or its registered office;
 - 2.10 give any guarantee, suretyship or indemnity to secure the liabilities of any person or assume the obligations of any person;
 - 2.11 form any subsidiary of the Company, or acquire any shares in any other company, whether through subscription or transfer, such that the company concerned becomes a subsidiary of the Company;

- 2.12 consolidate or amalgamate with any company, association, partnership or legal entity or acquire any business or undertaking of any other person;
- 2.13 enter into any joint venture, partnership or profit sharing arrangement with any person;
- 2.14 make any agreement with any revenue authorities or any other taxing authority, or make any claim, disclaimer, election or consent of a material nature for tax purposes in relation to the Company, its business, assets or undertakings;
- 2.15 change the Accounting Reference Date;
- 2.16 approval of the annual operating income and expenditure budget and the capital investment programme budget;
- 2.17 prior to the Governance Review Date, approve the withdrawal of any Founding Member from the Company's membership;
- 2.18 approve additional funding for the Company to be provided by the Members in accordance with clause 6;
- 2.19 give or take any loans, borrowing or credit (other than normal trade credit in the ordinary course of business) in excess of two hundred and fifty thousand pounds sterling (£250,000), or cause the aggregate indebtedness of the Company to exceed one million pounds sterling (£1,000,000);
- 2.20 incur any item or series of items of capital expenditure of more than one hundred thousand pounds sterling (£100,000) unless provided for in any Business Plan;
- 2.21 admit any new Member;
- 2.22 give notice of termination of any material contract or make any material variation or amendment to any such contracts;
- 2.23 enter into any contracts or arrangements with any of the Members or Directors or any person with whom any Member or Director is connected, associated or interested (whether as director, consultant, Member or otherwise);
- 2.24 enter into any contract which cannot be terminated within a 12 month period and under which the liability for such termination could exceed one hundred thousand pounds sterling (£100,000);
- 2.25 enter into any agreement not in the ordinary course of the Business and/or which is not on an arm's length basis or amend its standard terms of business;
- 2.26 recruit or dismiss any employee whose remuneration exceeds one hundred and fifty thousand pounds sterling (£150,000) per annum unless provided for in any Business Plan provided always that any employee may be dismissed for gross misconduct without the prior consent of the Members;
- 2.27 undertake any procurement process that is inconsistent with any Business Plan;
- 2.28 make any amendment or variation to the Business Rates Agreement;

- 2.29 addition of any new or any variation of any Member Consent Matter;
- 2.30 create encumbrances or grant security over Company assets; nor
- 2.31 enter into any contract to do any of the things referred to in the foregoing paragraphs of this Schedule.

Schedule 4 Deed of adherence

THIS DEED is made on 20[●]

- 1 [INSERT PARTY];
- 2 [INSERT PARTY];
- 3 [INSERT PARTY];
- 4 [INSERT PARTY];
- 5 [INSERT PARTY]; and
- 6 [FREEPORT EAST LIMITED] a company incorporated in England and Wales (registered with number [NUMBER]) and whose registered office is at [ADDRESS](the **Company**),
the parties listed at (1) to (X) above being the **Original Parties**; and
- 7 [NAME OF NEW PARTY] a [company/limited liability partnership] registered in [England] ([Company/LLP Number] [●]) whose registered office is at [●] (**New Party**).

[DN: Parties who have executed earlier deeds of adherence also to be listed.]

This Deed is supplemental to the Members' Agreement (the **Members' Agreement**) dated [●] 2022 and made between the Original Parties.

Other words and expressions defined in the Members' Agreement have the same meanings when used in this Deed.

The New Party and each of the Original Parties undertake with each other and with any other person who becomes a party to the Members' Agreement after the date of this Deed to be bound by, observe and perform the Members' Agreement as if the New Party had been an original party to the Members' Agreement and was named in the Members' Agreement.

The address and details for notices of [name] for the purposes of clauses 35.1 to 35.5 (Notices) of the Members' Agreement are: [●]. All of the other terms of the Members' Agreement shall be unamended.

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

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

In witness whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written

[EXECUTION CLAUSES TO BE INSERTED FOR PARTIES TO THE MEMBERS' AGREEMENT INCLUDING THOSE WHO HAVE EXECUTED EARLIER DEEDS OF ADHERENCE.]

Schedule 5 Dispute resolution procedure

- 1 The provisions in this Schedule shall apply where:
 - 1.1 there is a dispute between two Members in connection their relationships with the Company and this Agreement;
 - 1.2 there is a dispute between a Member and the Company in connection with this Agreement;
 - 1.3 there is a dispute between a Member and the Company in connection with this Agreement or a Member Services Agreement,being the **Disputing Parties**.
- 2 In all cases, the Disputing Parties shall endeavour to resolve the matter themselves within 20 Business Days.
Senior Officers
- 3 Where the subject matter of any dispute has not been resolved within the 20 Business Day period referred to in paragraph 2, either Disputing Party may give notice to the other Disputing Party in writing (a **Dispute Notice**).
- 4 Within five Business Days of a Disputing Party giving or receiving a Dispute Notice, it shall nominate by written notice to the Company a senior officer who has the authority of that Disputing Party to resolve the disputed matter on its behalf and who is not conflicted by reason of already having been involved in decision making in connection with the subject matter of the dispute (together the **Senior Officers**). For the purposes of this paragraph 4, where:
 - 4.1 the dispute is between a Member (other than the Lead Authority) and the Company, the Senior Officer representing the Company, shall be a senior officer appointed by the Lead Authority for the purpose of conducting the discussions;
 - 4.2 the dispute is between the Company and the Lead Authority, there shall be two Senior Officers representing the Company, one appointed by the Public Sector Members and the other appointed by the Private Sector Members for the purpose of conducting the discussions.
- 5 Within 10 Business Days following the nomination of the Senior Officers, each Senior Officer shall give to the other Senior Officer a memorandum setting out that Disputing Party's position on the subject matter of the dispute and the reasons for adopting such position. The Disputing Party's shall procure that the Senior Officers consider each the other's memorandum. The Senior Officers shall use reasonable endeavours to resolve such dispute matter within 20 Business Days of receipt of the last memorandum given in accordance with this paragraph.
- 6 If the Senior Officers agree on how to resolve the dispute within 20 Business Days of receipt of the last memorandum to be given in accordance with paragraph 5, they shall jointly draft and sign a statement setting out the terms of resolution which shall forthwith be given on the Board. Where the Company is one of the Disputing Parties, the Board shall procure that such resolution is fully and promptly carried into effect.

Mediation

- 7 If the Senior Officers do not agree on how to resolve the dispute within 20 Business Days of receipt of the last memorandum to be given in accordance with paragraph 5 (**Senior Officers Resolution Period**) or if either the Senior Officer fails to give a memorandum in accordance with paragraph 5 then the matter shall be referred to mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Procedure.
- 8 The Disputing Parties shall refer the matter to the mediator within 15 Business Days of (i) the expiry of the Senior Officers Resolution Period; or (ii) the latest date by which the Senior Officers should have given a memorandum in accordance with paragraph 5 (as applicable).
- 9 Unless otherwise agreed between the Disputing Parties, the mediator will be nominated by CEDR. Within 10 Business Days following the appointment of the mediator, each Disputing Party shall give to the mediator a memorandum setting out its position on the dispute and the reasons for adopting such position. The Mediator shall then conduct the mediation in accordance with the CEDR Model Procedure with a view to resolving such dispute as soon as reasonably practicable and in any event within 20 Business Days (or such longer period as the Members may determine) of receipt of the last memorandum to be given in accordance with this paragraph.
- 10 Each Disputing Party shall bear its own costs in relation to the reference to the mediator. The mediator's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the mediator) shall be borne by the Disputing Parties equally or in such other proportions as the mediator shall direct.

Schedule 6 Company Policies and Codes

- 1 Procurement Policy;
- 2 Diversity Statement;
- 3 Conflicts of Interest Policy;
- 4 Joint Policy on Fraud, Bribery, Corruption and Acceptance of Gifts and Hospitality;
- 5 Code of Conduct;
- 6 Recruitment and Remuneration Policy; and
- 7 Management Committee Terms of Reference.

Appendix 1 Letter of Appointment

[on the headed notepaper of the Company]

[name and address of Director]

[Date]

Dear [●]

Terms of your appointment to the boards of the Company [and each Subsidiary of the Company]

This letter contains the terms which we have discussed and agreed for your appointment as a Director on the Board of the Company [and each Subsidiary of the Company]. Your appointment is made pursuant to and is subject to the terms and conditions set in the Members' Agreement dated [●] 2022 and made between [●] (**Members' Agreement**).

- 1 You shall not be entitled to any fees or remuneration from the Company in connection with your appointments to such boards unless expressly agreed in writing.
- 2 You shall be expected to attend board meetings and Members' Meetings of the Company. You shall receive details of all such meetings in advance.
- 3 You shall complete a declaration of interests form upon taking office which you shall update on an event-driven basis to reflect changes to your interests within 20 Business Days of the event occurring. You shall refresh the declaration of interests form annually throughout your appointment as a Director.
- 4 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 any Subsidiary of the Company] or of any dealings, transactions, or affairs of such party or any client, customer or supplier thereof which comes to your knowledge during the course of this appointment. You will, however, be entitled to disclose information to the Member appointing you as permitted under the Members' Agreement.
- 5 The appointment as Director shall automatically cease in relation to the Company and any Subsidiary of the Company in the event that:
 - 5.1 you resign as a Director; or
 - 5.2 upon the lodgement or delivery of a notice from [the Board][Member] removing you as Director; or
 - 5.3 in any of the circumstances set out in (and in accordance with Article 24 of) the Articles of Association of the Company.
- 6 Without limitation to the paragraphs above, in signing this letter, you acknowledge that your position as Director is subject to the terms of and you shall comply with the Members' Agreement and may be terminated as permitted under the terms of the Members' Agreement and the Articles of Association and that upon such termination you shall vacate your position as Director in relation to the Company, and any Subsidiary of the Company

forthwith without raising any claim whatsoever against any such party in relation to such vacation (otherwise than in respect of any properly incurred and unpaid expenses due to you up to the date you vacate your position as Director).

- 7 On termination of your appointment as Director, you agree that you shall promptly return to the Chair all papers and property of the Company and any Subsidiary of the Company which are in your possession or under your control (including for the avoidance of doubt, and to the extent reasonably practicable, any information stored on the Company’s personal electronic devices).
- 8 Upon request, you agree that you shall promptly enter into a letter addressed to each and every Subsidiary of the Company in the form requested by the Company or such Subsidiary, provided that such form is substantially similar to the form of this letter (amended to the extent necessary).

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 the first board meeting.

Yours sincerely

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

.....
 Signatory, duly authorised
 for and on behalf of [Insert name of any Subsidiary of the Company in existence at the time]

I agree to and acknowledge the terms and conditions set out above relating to my appointment as Director of the Company and the Subsidiary/ies of the Company.

Signed:

Dated:

Appendix 2 Articles of Association

[TO BE INSERTED]