

Dated 25 January 2022

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL

AND

BCP FUTUREPLACES LIMITED

**SHAREHOLDERS AGREEMENT
IN RELATION TO
BCP FUTUREPLACES LIMITED**



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THIS AGREEMENT is made on 25 January 2022

BETWEEN:

- (1) **BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL** of Civic Centre, Bourne Avenue, Bournemouth BH2 6DY ("**the Council**"); and
- (2) **BCP FUTUREPLACES LIMITED** (company number 13465045) whose registered office is at Civic Centre, Bourne Avenue, Dorset, Bournemouth BH2 6DY ("**the Company**").

BACKGROUND

- (A) The Company is a wholly owned subsidiary of the Council. The Council has decided to establish the Company for the purposes of providing Development Consultancy and Management Services to the Council.
- (B) The Council and the Company are entering into this Agreement to ensure that the Council retains control over the strategic direction and key decisions of the Company as of the date at the top of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise:

Accounting Reference Date means 31 March 2021;

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

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

Business has the meaning given in clause 2;

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

Business Plan means the initial operational business plan and budget of the Company in the agreed form and adopted on the date of this Agreement, and any subsequent operational business plan and budget of the Company adopted in accordance with clause 2 from time to time;

Companies Act means the Companies Act 2006;

Commercially Sensitive Information: information of a commercially sensitive nature relating to the Council or the Company, their intellectual property rights or business which either party has indicated to the other that, if disclosed, would cause significant commercial disadvantage or material financial loss.

Confidential Information means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a. any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b. any information developed by the parties in the course of carrying out this agreement;
- c. personal data (as defined in the Data Protection Act 2018);
- d. any Commercially Sensitive Information.

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

Development Consultancy and Management Services means the services referred to in a Strategic Commissioning Agreement entered into between the parties on the same date as this Agreement;

Director means a director of the Company;

EIR means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

Encumbrance includes any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect;

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

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

Independent Chair means a person appointed to be a non-executive director and chair of the Company who when appointed is independent of the Council.

Intellectual Property means patents, inventions, registered designs, trademarks, applications for any of the foregoing or the right to apply therefor in any part of the world, design rights including community designs, database rights, copyrights, rights in the nature of copyright, topography rights, trade names, logos, get-up, domain names, know-how and trade secrets, and any similar or equivalent rights arising or subsisting anywhere in the world;

Prohibited Act means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (iii) under the Bribery Act 2010;
 - (iv) under legislation creating offences concerning fraudulent acts;
 - (v) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or
 - (vi) defrauding, attempting to defraud or conspiring to defraud the Council;

Reserved Matters means the matters specified in Schedule 3;

Shareholder Loan means all amounts advanced to the Company by the Council;

TUPE Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Working Hours means 9.00 a.m. to 5.00 p.m. on a Business Day.

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 references to clauses, paragraphs, recitals and Schedules are references to clauses and paragraphs of, and recitals and schedules to, this Agreement. The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules. The recitals and headings to clauses and Schedules are for convenience only and shall not affect the construction or interpretation of this Agreement;

1.2.2 a reference to a statute or a statutory provision includes a reference to:

- (a) the statute or statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and
- (b) any subordinate legislation made under the statute or statutory provision (whether before or after the date of this Agreement),

provided that any such modification, re-enactment or legislation made after the date of this Agreement does not materially change the relevant provision;

1.2.3 references to a **person** shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality);

1.2.4 references to any gender shall include every gender, and the singular shall include the plural and vice versa;

- 1.2.5 a person shall be deemed to be **connected** with another if that person is connected with that other within the meaning of section 1122 Corporation Tax Act 2010;
- 1.2.6 words and expressions defined in the Companies Acts shall have the same meanings when used in this Agreement;
- 1.2.7 references to **writing or written** shall include any mode of reproducing words in a legible and non-transitory form excluding e-mail (which may be used as a mode of communication but for information purposes only and not for any formal purpose under this Agreement);
- 1.2.8 references to a **party** or the **parties** are to a party or the parties to this Agreement from time to time and any person who agrees to be bound by the provisions of this Agreement from time to time but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time;
- 1.2.9 in construing this Agreement, the rule known as ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word(s) **other or including or in particular** shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- 1.2.10 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month;
- 1.2.11 any requirement upon the Council to procure a particular matter or thing shall be deemed to include an obligation to exercise its powers as a shareholder of the Company, and to use its reasonable endeavours to procure that any Director appointed by it shall (subject to his fiduciary and other legal duties owed to the Company) exercise his powers as a director, to procure such matter or thing; and
- 1.2.12 references to a document in the **agreed form** are to a document in a form agreed by the Council and subsequently initialled by or on behalf of each Party for the purpose of identification.

2. THE BUSINESS AND BUSINESS PLAN

- 2.1 The business of the Company (the **Business**) shall be:
- 2.1.1 to provide Development Consultancy and Management Services to the Council;
- 2.1.2 during any period for which a Business Plan has been adopted and is in force, to undertake such other business(es) as is or are set out in that Business Plan; and
- 2.1.3 to undertake such other business(es) as the Council may from time to time determine.

- 2.2 The Business Plan for the first Financial Year shall be in agreed form and adopted by the Council on the date of this Agreement;
- 2.3 Thereafter the Company shall prepare in respect of each subsequent Financial Year, for the approval of the Council, a Business Plan to include (amongst other matters):
- 2.3.1 an annual operating revenue plan and capital expenditure requirements (including funding source, operating revenue plan and a capital expenditure programme);
 - 2.3.2 a balance sheet forecast;
 - 2.3.3 a minimum 3 year term financial strategy plan;
 - 2.3.4 an annual profit and loss account for each service delivered;
 - 2.3.5 a corporate risk register containing quarterly updates by the Board;
 - 2.3.6 a copy of any relevant insurance policies;
 - 2.3.7 annual development programme;
 - 2.3.8 portfolio of projects and initiatives; and
 - 2.3.9 any other requirements as requested by the Council from time to time.
- 2.4 The Business Plan for each subsequent Financial Year shall be:
- 2.4.1 prepared by the Board in accordance with the timetable approved by the Council from time to time; and
 - 2.4.2 adopted and approved by the Council, subject to any changes or revisions agreed by the Council, either in writing or at a general meeting as soon as possible after it has been prepared.
- 2.5 The Council agrees to work together in good faith with the Company to procure that the Business Plan is prepared and approved in accordance with clause 2.4.

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

- 3.1 The Company shall provide to the Council:
- 3.1.1 monthly management accounts;
 - 3.1.2 draft annual accounts;
 - 3.1.3 final audited annual accounts;
 - 3.1.4 copies of Board meeting papers prior to the meeting of the Board to which they relate, and minutes of Board meetings twenty (20) days after the relevant Board meeting to which they relate; and
 - 3.1.5 any other information, requested in writing, reasonably required by the Council from time to time.

- 3.2 The Council and its authorised representatives (including internal and external auditors and other inspection bodies) shall have the right, on giving to the Company reasonable advance written notice, during normal Working Hours to inspect the books and records, accounts and documents relating to the Company and its affairs of the Company and any subsidiary of the Company, and shall have the right (at its expense) to take copies of any such books and records or parts thereof.
- 3.3 The Company shall permit any Directors to discuss the affairs, finances and accounts of the Company and its subsidiaries at any time with any officers and employees designated in writing by the Council for this purpose. All books, records, accounts and documents relating to the affairs of the Company and its subsidiaries shall be open to the inspection of any officers and employees designated in writing by the Council for this purposes, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Council properly informed about the business and affairs of the Company or to protect its interests as a shareholder. Any confidential information secured as a consequence of such discussions and examinations shall be kept confidential by the Council and its designated officers and employees in accordance with the terms of clause 18.

4. FINANCING THE COMPANY AND RETURNS

- 4.1 The Company will be funded primarily through payments received from the Council for the delivery of services.

5. MANAGEMENT OF THE COMPANY

- 5.1 With the exception of the Reserved Matters, the Business and all affairs of the Company shall be managed by the Board. To that end but subject to those exceptions, the Board shall have full and complete authority, power and discretion to direct, manage and control the Business and the affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Business.
- 5.2 The Council and the Company agree to maintain the Board for the duration of this Agreement and agree (and agree to procure) that the Board shall operate in accordance with the provisions of this Agreement and the Business Plan then in force.
- 5.3 Adoption of a Business Plan in accordance with clause 2 requires the approval of the Council.
- 5.4 Once a Business Plan has been so approved, as regards the matters specifically contained in the Business Plan or any matter which has been delegated through the Business Plan for decision-making purposes to the Board, the Board shall be entitled to exercise such delegated authority and the Company shall not undertake any business or action inconsistent with the Business Plan and the Company shall not undertake any business or action which is inconsistent with the Business Plan.
- 5.5 The Company agrees with the Council that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Council informed of the progress of each the Business and affairs and in particular will procure that the Council is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment in the Company and to comply with its obligations under the Prudential Code for Local Authorities.
- 5.6 The Company shall not breach nor cause the Council to be in breach of the relevant provisions of the Local Authorities (Companies) Order 1995, Part V of the Local Government and Housing Act 1989 or the Local Government Public Involvement in Health Act 2007 or its obligations

under the Public Contract Regulations 2015 or any European Directive on public procurement.

5.7 The Company shall:

5.7.1 identify the participation of the Council on all of its official business stationery; and

5.7.2 not engage in any party political publicity.

5.8 The Company shall use reasonable endeavours to ensure that:

5.8.1 no more than 19.99% of the total average annual turnover of the Company in any period of three financial years shall derive from activities undertaken for any person who is not the Council or a person over which the Council exercises Control (and for the purposes of this obligation only **Control** shall have the meaning attributed to it in Regulation 12(3) or 12(5) of the Public Contracts Regulations 2015); and

5.8.2 the Company shall not accept any direct private capital participation (with the exception of non-controlling and non-blocking forms of private capital participation as may be required by English legislation in conformity with the Treaty on the Functioning of the European Union which do not exert a decisive influence on the Company).

5.9 Subject to reliance upon the Teckal exemption being desirable, if any of the Parties become aware that, for whatever reason, the Company no longer fulfils any of the requirements of Regulation 12(4) of the Public Contracts Regulations 2015 (**Teckal Non-Compliance**) or such Teckal Non-Compliance is likely to occur, it shall immediately notify the other Parties. Following such notification, the Parties shall work together to ensure action is taken to either:

5.9.1 remedy the Teckal Non-Compliance; or

5.9.2 take steps to prevent such Teckal Non-Compliance occurring.

5.10 If a Reserved Matter is either specifically contained in the Business Plan then in force or not delegated through the Business Plan for decision-making purposes to any other person, such Reserved Matter shall not be undertaken by the Company (or any subsidiary of the Company from time to time) without the written approval of the Council (and a reference to the Company in Schedule 3 shall include a reference to each such subsidiary from time to time).

5.11 The Council shall procure that the Company and any subsidiary of the Company from time to time, and in so far as it may legally do so, the Company, agrees that it, shall:

5.11.1 carry on and conduct its business and affairs in accordance with:

- (a) the Business Plan;
- (b) the Articles;
- (c) all laws relating to companies as amended from time to time;
- (d) sound governance and good business practice; and
- (e) in a proper and efficient manner, for its own benefit.

5.11.2 use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own and operate its assets and to carry on its business properly and effectively and in accordance with the Business Plan.

6. BOARD OF DIRECTORS

- 6.1 The Council agrees to procure that the number of Directors of the Company shall not be less than three (3).
- 6.2 The Council shall be entitled to appoint and remove all and any Directors to the Board in accordance with the Articles and this Agreement.
- 6.3 The Council may nominate a Director, and remove a Director whom it nominated, by giving notice to the Company. The appointment or removal takes effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date.
- 6.4 The parties intend that meetings of Directors shall take place at least quarterly in each year.
- 6.5 The quorum at any meeting of the Board (or any committee of the Board) shall be any three (3) Directors. The parties shall use their respective reasonable endeavours to ensure that any meeting of the Board (or meeting of a committee of the Board) has the requisite quorum.

7. TRANSFER OF SHARES

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

8. NEW SHAREHOLDERS

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

9. TERM AND TERMINATION

- 9.1 This Agreement shall continue in full force and effect unless and until:
 - 9.1.1 the Council services written notice of termination on the Company (whereupon it shall terminate on the date of receipt or, if later, the date specified in the notice); or
 - 9.1.2 an effective resolution is passed for the winding up of the Company.
- 9.2 Termination of this Agreement in respect of the Council for any reason shall not affect any accrued rights or liabilities of any person or any liability or obligation arising under or pursuant to the Articles or any other agreement or arrangement between any of the parties hereto and save where this Agreement expressly provides to the contrary, affect the provisions of:
 - 9.2.1 clause 1 (*Definitions and Interpretation*);

- 9.2.2 this clause 9 (*Termination*);
- 9.2.3 clause 11 (*Assignment and Subcontracting*);
- 9.2.4 clause 13 (*Remedies and Waivers*);
- 9.2.5 clause 14 (*Entire Agreement*);
- 9.2.6 clause 16 (*Conflict with the Articles*);
- 9.2.7 clause 17 (*Severance*);
- 9.2.8 clause 21 (*Notices*);
- 9.2.9 clause 22 (*Set-off*);
- 9.2.10 clause 23 (*No Partnership or Agency*);
- 9.2.11 clause 24 (*Counterparts*); and
- 9.2.12 clause 26 (*Governing Law and Jurisdiction*),

which shall continue in full force and effect after termination.

- 9.3 Where the Company is to be wound up and its assets distributed, the parties shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

- 9.3.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;
- 9.3.2 the Company shall not enter into any new contractual obligations without obtaining the prior written consent of the Council;
- 9.3.3 the Company is dissolved and its assets are distributed as soon as practical in accordance with clause 9.4; and
- 9.3.4 any other proprietary information or Intellectual Property Rights belonging to or originating from a party shall be returned to it by the other party or the Company and all such proprietary information or Intellectual Property Rights shall be erased from the computer systems (to the extent possible) of the Company and the party who is returning it.

- 9.4 In the event of the Company being wound up, the assets of the Company remaining after payment of all debts and liabilities of the Company and of all costs, charges and expenses of winding up the same, shall be distributed amongst the current shareholders of the Company and former shareholders of the Company who have held shares in the Company five years immediately preceding completion of the winding up of the Company, in such proportion or amounts that reasonably reflect the shareholders and former shareholders respective contributions to the Company over that period subject always to the final decision of any liquidator.

10. UNLAWFUL FETTER ON THE COMPANY'S POWERS

- 10.1 Notwithstanding any other provision contained in this Agreement, the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter

on any statutory power of the Company, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

11. ASSIGNMENT AND SUB-CONTRACTING

- 11.1 This Agreement is personal to the parties and no party shall assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other party. Each party hereby undertakes and represents to the other parties that it is entering into this Agreement only for its own benefit.
- 11.2 This Agreement shall be binding on and shall endure for the benefit of each party's successors.

12. FURTHER ASSURANCE

- 12.1 The parties shall agree a communications protocol prior to commencement of service delivery to the Council.
- 12.2 Each party shall at its own cost and expense, on being required to do so by another party now or at any time in the future, do or procure the doing of all such acts and things and/or execute or procure the execution of all such deeds and documents in a form satisfactory to such other party which such other party may reasonably consider necessary for giving effect to this Agreement.

13. REMEDIES AND WAIVERS

- 13.1 No delay by any party in exercising, or failure by any party to exercise, any right, power or remedy provided by law or under this Agreement or any document referred to in it shall:
 - 13.1.1 operate as a waiver of that or any other right, power or remedy; or
 - 13.1.2 affect the other terms of this Agreement or any document referred to in it.
- 13.2 The single or partial exercise of any right, power or remedy provided by law or under this Agreement or any document referred to in it shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 13.3 A waiver of any breach of or default under this Agreement or any document referred to in it shall not constitute a waiver of any other breach or default and will not prevent a party from subsequently requiring compliance with the waived obligation.
- 13.4 The rights, powers and remedies provided in this Agreement or any document referred to in it are in addition to and (subject as otherwise provided in this Agreement) not exclusive of any rights, powers and remedies provided by law.

14. ENTIRE AGREEMENT

- 14.1 This Agreement and the documents referred to in it (including the Articles and any Deed of Adherence) constitute the entire agreement between the parties relating to the Company and supersede all previous agreements between the parties relating to such matters.
- 14.2 Each of the parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and/or the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement. Each of the parties waives:

14.2.1 all rights and remedies which, but for this clause 14.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and

14.2.2 all rights and remedies, other than remedies for breach of contract available in respect of a breach of this Agreement and/or the documents referred to in it, which, but for this clause 14.2, might otherwise be available to it in respect of the falsity of any representation or warranty set out in this Agreement and/or the documents referred to in it, provided that nothing in this clause 14.2 shall limit or exclude any liability for fraud or dishonesty on the part of any party.

15. VARIATION

15.1 No variation to the terms of this Agreement shall be effective unless made in writing and signed by each of the parties and any person who agrees to be bound by this Agreement.

16. CONFLICT WITH THE ARTICLES

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

17. SEVERANCE

17.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

17.2 Without prejudice to the generality of clause 17.1, if any provision of this Agreement or the Articles shall be found by any court or administrative body of competent jurisdiction to be unenforceable against or by the Company, the Council shall procure that the provision is nevertheless put into effect to the greatest extent possible.

17.3 If any provision of this Agreement is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such deletions as may be necessary to make it valid or enforceable.

17.4 The parties agree, in the circumstances referred to in clause 17.1 and if clause 17.3 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision but for such invalidity or unenforceability.

18. CONFIDENTIAL INFORMATION

18.1 This clause applies to:-

18.1.1 all Confidential Information disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to one of the other parties whether before or after the date of this Agreement;

- 18.1.2 any information concerning the business affairs of one party or other information confidential to that party which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement;
- including any information relating to any party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, **Confidential Information**).
- 18.2 In this clause, in relation to a particular item of Confidential Information:
- 18.2.1 the **Disclosing Party** means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and
- 18.2.2 the **Receiving Party** means the other party or parties.
- 18.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:
- 18.3.1 keep the Confidential Information confidential;
- 18.3.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this clause 18; and
- 18.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.
- 18.4 Notwithstanding clause 18.3, the Receiving Party may disclose Confidential Information as follows:-
- 18.4.1 to its professional advisors (each, a Recipient) providing the Receiving Party ensure that each Recipient is made aware of and companies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and
- 18.4.2 to other parties to this Agreement, and where disclosures are required by law, by any court of competent jurisdiction or by any appropriate regulatory body.
- 18.5 This clause 18 shall not apply to any Confidential Information which:
- 18.5.1 is at the date of this Agreement or at a later date comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
- 18.5.2 was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the same pursuant to this Agreement) and which had not previously been obtained under an obligation of confidence; or

- 18.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.

19. FREEDOM OF INFORMATION

- 19.1 The Council and the Company acknowledge that the Council is subject to the requirements of the FOIA and the EIR and the Company shall, where reasonable, assist and co-operate (at its own expense) with the Council for information to enable the Council to comply with these information disclosure obligations.
- 19.2 Where the Company receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of the Council in relation to the Company, it shall:
- 19.2.1 transfer the request for information to the Council as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
 - 19.2.2 provide the Council with a copy of all information in its possession or power in the form that the Council requires within ten Business Days (or such longer period as the Council may specify) of the Council requesting that information; and
 - 19.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 19.3 Where the Council receives a request under FOIA or EIR which relates to the operations of the Company, it shall notify the Company and afford them an opportunity to make any comments or representations in respect of the disclosure of the information sought. The Company shall respond within five Business Days of receipt of this notification. The Council shall take into account any such comments or representations in so doing and shall not respond to the request until the 5 day response period referred to above has passed.

20. PREVENTION OF BRIBERY

- 20.1 The Company:
- 20.1.1 shall not, and shall procure that any Director, officer, employee, adviser or representative of the Company shall not, in connection with this Agreement commit a Prohibited Act;
 - 20.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 20.2 The Company shall:

- 20.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- 20.2.2 within five (5) Business Days of the date of this Agreement, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Company) compliance with this clause 20 by the Company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Company shall provide such supporting evidence of compliance as the Council may reasonably request.
- 20.3 The Company shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Director, officer, employee, adviser or representative of the Company from committing a Prohibited Act and shall enforce it where appropriate.
- 20.4 If any breach of clause 20.1 is suspected or known, the Company must notify the Council immediately.
- 20.5 If the Company notifies the Council that it suspects or knows that there may be a breach of clause 20.1, the Company must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 20.6 The Council may terminate this Agreement by written notice with immediate effect if the Company, Director, officer, employee, adviser or representative of the Company (in all cases whether or not acting with the Company's knowledge) breaches clause 20.1.
- 20.7 Any notice of termination under clause 20.6 must specify:
- 20.7.1 the nature of the Prohibited Act;
- 20.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
- 20.7.3 the date on which this Agreement will terminate.
- 20.8 Any dispute relating to:
- 20.8.1 the interpretation of clause 20; or
- 20.8.2 the amount or value of any gift, consideration or commission;
- shall be determined by the Council, acting reasonably, and its decision shall be final and conclusive.
- 20.9 Any termination under clause 20.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

21. NOTICES

- 21.1 Any notice or other communication to be served under this Agreement shall be delivered or sent by first class post and electronic communication to the party to be served at its address and email address as set out in Schedule 4 or in any Deed of Adherence (as the case may be).

- 21.2 Subject to clause 21.3 and in the absence of earlier receipt, any notice or communication shall be deemed to have been served:
- 21.2.1 if delivered personally, at the time of delivery;
 - 21.2.2 if sent by first class post, two (2) Business Days after the date of posting;
 - 21.2.3 if sent by email, forty eight (48) hours after the time of sending.
- 21.3 Any notice or communication served under this Agreement outside Working Hours in the place to which it is addressed shall be deemed not to have been served until the start of the next period of Working Hours in such place.
- 21.4 In proving service of a notice or communication, it shall be sufficient to prove that delivery was made or that the envelope containing the notice or communication was properly addressed and posted as a prepaid first class letter, that the facsimile message was transmitted to the facsimile number of the recipient, or in the case of electronic communication, that it was sent in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators.
- 22. SET-OFF**
- 22.1 All amounts falling due under this Agreement shall be paid in full without any set-off or counterclaim.
- 23. NO PARTNERSHIP OR AGENCY**
- 23.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or any of them, or to authorise any party to act as agent for any other party, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way.
- 24. COUNTERPARTS**
- 24.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each person who is a party at the date hereof has executed at least one counterpart.
- 24.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.
- 25. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
- 25.1 The parties to this Agreement do not intend that any of its terms should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.
- 26. GOVERNING LAW AND JURISDICTION**
- 26.1 This Agreement is governed by and shall be construed in accordance with the laws of England and each party submits to the exclusive jurisdiction of the courts of England for all purposes relating to this Agreement.
- 26.2 Each party irrevocably consents to any process in any legal action or proceedings arising out of

or in connection with this Agreement being served on it in accordance with the provisions of clause 21. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

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

Executed as a deed by
**BOURNEMOUTH, CHRISTCHURCH
AND POOLE COUNCIL**

By affixing the common seal in the
presence of:

[Redacted signature block]



Executed as a deed by **BCP FUTUREPLACES LIMITED**
Acting by a director and a director/secretary

[Redacted signature block]

(director)

[Redacted signature block]

(director / company secretary)

**SCHEDULE 1 –
PARTICULARS OF THE COMPANY**

- | | |
|--------------------------------------|---|
| 1. Registered number: | 13465045 |
| 2. Date of Incorporation: | 18 June 2021 |
| 3. Place of Incorporation: | England |
| 4. Class of company: | Private limited company |
| 5. Registered office: | Civic Centre, Bourne Avenue, Bournemouth, BH2 6DY |
| 6. Accounting Reference Date: | 31 March 2022 |

**SCHEDULE 2 –
DEED OF ADHERENCE**

THIS DEED is made on [] 2021

(A) BY [] of [] (the
Covenantor) in favour of the persons whose names are set out in the schedule to
this deed and is SUPPLEMENTAL to the Shareholders' Agreement dated []
] 2021 made by Bournemouth, Christchurch and Poole Council and
BCP Futureplaces Limited (**Shareholders' Agreement**).

THIS DEED WITNESSES as follows:-

1. The Covenantor confirms that it has been given and read a copy of the Shareholders' Agreement and covenants with each person named in the schedule to this deed to perform and be bound by all the terms of the Shareholders' Agreement, except clauses [] and [], as if the Covenantor were a Shareholder who is party to the Shareholders' Agreement.
2. This deed is governed by the laws of England.

IN WITNESS WHEREOF this deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

[Parties to the Shareholders' Agreement including those who have executed earlier deeds of adherence:

]

Executed as a deed by **BCP FUTUREPLACES LIMITED**
Acting by a director and a director/secretary

.....
(director)

.....
(director / company secretary)

SCHEDULE 3 – RESERVED MATTERS

All Reserved Matters shall only be effective if approved by the Council.

The following matters are Reserved Matters unless (where relevant) they have been approved in advance by the Council under the Business Plan:

Constitution of the Company

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

Officers and Shareholders of the Company

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

Future direction and development of the company

10. Forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not);
11. Amalgamating or merging with any other company or business undertaking;
12. Selling or disposing of any part of the Business ;
13. Entering into an agreement to do any of the things listed at paras 9-11 above.
14. Entering into any arrangement, contract or transaction with either a capital value over £500,000 (five hundred thousand pounds) or otherwise a value of over £1,000,000 (one million pounds).

15. Adopting or amending the annual Business Plan and any in-year changes;
16. Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent);
17. Agreeing or approving the services to be provided by the Company to the Council;
18. Appoint any agent or intermediary to conduct the whole or any part of the Business;
19. Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market.

Management of the business of the Company

20. Changing the Company's registered address;
21. Changing the Company's name;
22. Creating or agreeing to create a charge, security or Encumbrance over the Company's assets, shares or income;
23. Adopting, amending or agreeing any other material amendments to the terms and conditions on which any employee of the Company is employed. employed.
24. Changing the nature of the Business or commencing any new business which is not ancillary or incidental to the Business or other than as contemplated by the Business Plan and / or defraying monies in connection therewith.
25. Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company;
26. Sell, transfer or otherwise dispose of any of Company assets on terms whereby such assets are or may be leased to or re-acquired or acquired by it;
27. Sell, transfer or otherwise dispose of any of its receivables on recourse terms;
28. Enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts;
29. Enter into any other preferential arrangement having a similar effect as clause 28;

30. Giving notice of termination of any arrangements, contracts or transactions which are material in the nature of the Business or materially varying any such arrangements, contracts or transactions;
31. Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the Company;
32. Changing the Company's auditors;
33. Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading) or giving any guarantee (other than in the normal course of trading)

or indemnity;

34. Borrowing any monies (other than normal trade credit);
35. Changing the financial year end of the Company;
36. Increase or reduce the amount of its issued share capital, grant any option or other interest over or in its share capital, redeem or purchase any of its own shares or otherwise alter, or effect any reorganisation of, its share capital.
37. Issuing or allotting any shares.
38. Making or permitting to be made any change in the accounting principles adopted in the preparation of its audited or management accounts except as may be required to ensure compliance with relevant accounting standards under the Companies Act 2006 or any other generally accepted accounting principles in the United Kingdom.
39. Establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for Directors or employees.
40. Making any bonus payment to any Director or employee.
41. Agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any employee of, or consultant to, the Company at a rate in excess of the annual rate set by the Council or increasing the remuneration of any such person to a rate in excess of an annual rate set by the Council.
42. Instituting, settling or compromising any material legal proceedings instituted or threatened against it or submitting any dispute to arbitration or alternative dispute resolution.

**SCHEDULE 4 –
CONTACT DETAILS**

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL

Address: Civic Centre, Bourne Avenue, Bournemouth, BH2 6DY
For the attention of: The Monitoring Officer
Telephone: 01202 817856
Email address: Susan.Zeiss@bcpcouncil.gov.uk

BCP FUTUREPLACES LIMITED

Address: Civic Centre, Bourne Avenue, Bournemouth, BH2 6DY
For the attention of: The Chief Executive
Telephone: 01202 126885
Email address: Gail.Mayhew@bcpcouncil.gov.uk

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

