

DATED

2023

(1) SEVENOAKS DISTRICT COUNCIL

and

(2) QUERCUS 7 LIMITED

SHAREHOLDER'S AGREEMENT RELATING TO QUERCUS 7 LIMITED

Sevenoaks District Council
Council Offices
Argyle Road
Sevenoaks
Kent TN13 1HG

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THIS SHAREHOLDER'S AGREEMENT is made by Deed on

2023

BETWEEN:

- (1) **SEVENOAKS DISTRICT COUNCIL** of Council Offices, Argyle Road, Sevenoaks, Kent TN13 1HG (**the Council**);
- (2) **QUERCUS 7 LIMITED** to be registered at Companies House and whose registered office will be Council Offices, Argyle Road, Sevenoaks, Kent TN13 1HG (**the Company**)

BACKGROUND

- (A) The Company has been established as a company limited by shares for the purpose of carrying on the Business as set out in this Agreement and the Council is the sole shareholder of the Company.
- (B) The parties have agreed to enter into this Agreement for the purpose of regulating their relationship with each other.

OPERATIVE PROVISIONS

1.0 DEFINITIONS AND INTERPRETATION

- 1.1 The words and expressions used in this Agreement (including in the Background above) shall have the following meanings:

'Annual General Meeting'	an annual meeting of the shareholder called in accordance with the Articles and clause 10 of this Agreement;
'Applicable Law'	Any applicable law (whether criminal, civil or administrative), whether common law, judgment, court order, statute, statutory instrument, regulation, directive, European Community decision (insofar as legally binding), by-law or treaty;
'Articles'	the articles of association of the Company as may be amended from time to time in accordance with the Articles;
'Auditors'	the auditors appointed pursuant to clause 3.1.1 and any other auditors of the Company appointed from time to time;

'Bank'	such bank as the Board shall appoint from time to time;
'Board'	the board of Directors of the Company or the Directors present at a duly convened meeting of the Board at which a quorum is present in accordance with the Articles;
'Board Approval'	any approval or resolution passed by a simple majority at a meeting of the Board, where the requisite quorum is present;
'Board Chair'	the chair of the Board, appointed from time to time in accordance with clause 10.5;
'Business'	the business of fulfilling the Objectives together with such other business or businesses as may receive Member Approval and as is set out in the Business Plan from time to time;
'Business Day'	any day other than a Saturday or Sunday or a public or bank holiday in England;
'Business Plan'	the business Plan of the Company from time to time as more particularly described in clause 6.3 and which is formulated and approved in accordance with clause 6 including, for the avoidance of doubt, the First Business Plan;
'Business Plan Period'	each period of 36 months commencing on 1 April in each year and ending on 31 March 36 months thereafter during the period of this Agreement or any such period as the Council shall agree;
'Cabinet'	means the Cabinet of the Council in accordance with the Council's constitution as may be amended from time to time;
'Companies Act 2006'	the Companies Act 2006 (as amended from time to time);
'Company Intellectual Property'	any Intellectual Property developed or created by an employee or any personnel on secondment to the Company whilst acting on behalf of the Company or any that the Council creates or

	organises the development of on behalf of the Company, or which is developed or created by third parties on the Company's behalf, including any logos, advertising or marketing material;
'Completion'	the performance by the parties of their respective obligations under clause 3;
'Confidential Information'	the information set out in clause 15.1;
'Controlled Company Legislation'	Part V of the Local Government and Housing Act 1989, the Local Authorities Companies Order 1995, the Local Government Act 2003 and Part 12 of the Local Government and Public Involvement in Health Act 2007 and any substitute, replacement or similar legislation in force from time to time;
'Council Director'	a director who is either an elected member or current employee of the Council;
'Council'	members represented by Cabinet or a Portfolio Holder or Full Council in accordance with The Local Authorities (Functions and Responsibilities)(England) Regulations 2000;
'Director'	any person duly appointed as a Director of the Company in accordance with this Agreement and the Articles whether they are a Council Director or an External Director and "Directors" means all such persons;
'Director's Undertaking'	the undertaking to be given by each Director in substantially the same form set out in Schedule 1;
'External Director'	a Director who is not a Council Director;
'Financial Regulations'	the financial regulations set out in Schedule 2 as may subsequently be amended with the approval of The Trading Board;
'Financial Year'	each financial year of the Company following the date of this Agreement commencing on 1 April and ending on 31 March and, in the case of the first Financial Year, commencing on the date of this Agreement and ending on 31 March 2017;

‘First Business Plan’	the document annexed at Appendix 1 approved by the Council on 31 st March 2015 as the first Business Plan of the Company (referred to as the Business Case in the document);
‘First Business Plan Period’	the period from the date of this Agreement until 31 st March 2017;
‘General Meeting’	the Annual General Meeting or any other meeting where a resolution is proposed for the Council to vote on in its capacity as sole shareholder of the Company;
‘Intellectual Property’	all intellectual and industrial property rights including patents, Know-How, registered trade marks, registered designs, utility models, applications for the rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;
‘In Writing’	delivered by hand, posted or sent by fax but shall not be valid if sent by e-mail;
‘Key Documents’	this Agreement, the Articles, the First Business Plan and each subsequent Business Plan, the Financial documents supporting the Business Plan and "Key Document" shall mean any of them as the case may be;
‘Know How’	all knowledge, experience, data, technical or commercial information, inventions which includes description of formulae, business plans, research, research products, information access, networking administration, facilitation and planning;
‘Material Matters’	the matters specified in Schedule 3 of this Agreement in respect of the Company;

‘Member Approval’	the approval of the Council, which may be given by The Trading Board in accordance with its terms of reference, in accordance with clause 12;
‘Member IP’	any Intellectual Property owned by or licensed to the Council, excluding Company Intellectual Property;
‘Net Losses’	the accumulated aggregate net losses of the Company for a Financial Year as shown in the accounts for such Financial Year;
‘Net Profits’	the accumulated aggregate profits of the Company available for distribution (in accordance with the Companies Act 2006) for a Financial Year as shown in the accounts for such Financial Year after the deduction of Net Losses and the corporation tax payable by the Company on such profits;
‘Objectives’	the objectives set out in Schedule 4 as may be amended from time to time with Member Approval;
‘Policies’	the contract and financial rules, regulations and policies to which the Company is subject from time to time as such rules, regulations and policies may be required by law or as they may be adopted (and, if applicable, amended) from time to time with Member Approval, such reference to include the Financial Regulations;
‘Statutes’	the Companies Acts (as defined in section 2 of the Companies Act 2006) and every other statute, order, regulation, instrument or other subordinate legislation for the time being in force relating to companies and affecting the Company;
‘Term’	the period during which this Agreement continues in force pursuant to clause 15;
‘The Trading Board’	the Cabinet or a sub committee of Cabinet of the Council established to oversee the trading activities of the Company, whose terms of reference and governance arrangements are set out in Schedule 5;

‘Written Resolution’ a written resolution of the Council pursuant to clause 12.

1.2 In this Agreement, a reference to:

1.2.1 parties will be construed as a reference to the parties to this Agreement and their statutory successors (or any of them as the context may require);

1.2.2 a statutory provision includes a reference to:

1.2.2.1 any modification, consolidation, amendment or re-enactment of the provision for the time being in force;

1.2.2.2 all statutory instruments, orders, bylaws or regulations made under it or deriving validity therefrom; and

1.2.2.3 any statutory provisions of which it is a modification, consolidation or re-enactment,

provided that the provisions of this clause 1.2.2 shall not operate so as to increase the liability of any party hereto beyond that which would have existed had this clause 1.2.2 been omitted from this Agreement.

1.2.3 a person includes a reference to any body corporate, unincorporated association or partnership, government or government body, trust, firm, state, statutory authority or non-departmental public body (whether or not having a separate legal personality);

1.2.4 the singular will include the plural and the masculine will include the feminine and the neuter and vice versa where the context so admits;

1.2.5 a clause, Schedule or Appendix, unless the context requires otherwise, is a reference to a clause of, Schedule to, or Appendix to, this Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;

1.2.6 a document being “in the agreed terms” will be construed as references to that document in the form agreed and initialised by or on behalf of the parties; and

1.2.7 a Key Document shall be construed as including any variation of it made with Member Approval.

1.3 The Schedules and Appendices form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement and references to this Agreement include the Schedule and Appendices.

- 1.4 The Index and headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- 1.5 In this Agreement the words “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context.

2. CONSIDERATION

In consideration of the mutual agreements and undertakings set out in this Agreement the parties have granted the rights and accepted the obligations set out in this Agreement.

3. COMPLETION

Completion shall take place after the execution of this Agreement when the parties shall take, or procure to be taken the following steps (to the extent not already taken):

- 3.1 the appointment of the auditors of the Company;
- 3.2 the appointment of the bankers of the Company; and
- 3.3 the change of accounting reference date of the Company to 31 March.

4. DIRECTOR'S UNDERTAKING

Following the execution of this Agreement, the Council shall procure (insofar as they are able) that (to the extent not already achieved) each Director appointed from time to time shall enter into a Director's Undertaking with the Company and the Council and shall deliver an executed copy of the same to the Company.

5. CONDUCT OF THE COMPANY'S AFFAIRS

- 5.1 The business of the Company shall be the Business.
- 5.2 The parties agree that the Company, for so long as this Agreement remains in full force and effect, shall:
 - 5.2.1 carry on the Business in accordance with the Key Documents;
 - 5.2.2 adhere to the Policies;
 - 5.2.3 comply with the Key Documents; and
 - 5.2.4 procure the attendance of one of the Directors and/or the Board Chair and/or such other appropriate representative of the Company at meetings of The Trading Board to report on the progress of the Company as against the Business Plan.

6. BUSINESS CASES

- 6.1 The Council and the Company acknowledge and agree that:
- 6.1.1 the Company shall at all times have a Business Plan;
 - 6.1.2 notwithstanding any other provision of this Agreement, the Business Plan shall require the prior written approval of the Cabinet prior to such Business Plan being adopted, amended, varied or upgraded by the Company pursuant to this clause 6.
- 6.2 The Board shall be responsible for preparing, reviewing and updating the Business Plan in accordance with this clause 6 and such Business Plan (as appropriate) shall be approved by the Board prior to being delivered to The Trading Board for consideration and recommendation for approval by the Cabinet pursuant to this clause 6 and the provisions of Schedule 5.
- 6.3 The Business Plan of the Company (which shall include such other supporting documents as the Board shall determine) shall set out the overall strategic delivery plans of the Company for the forthcoming Business Plan Period and shall include, for the Financial Year in which such Business Plan is adopted, a detailed revenue and capital expenditure budget, identified projects for delivery, details of funding and resource commitments to the delivery of such projects and such other item or items The Trading Board may from time to time specify together with a summary of the assumptions on which they are based.
- 6.4 The Board shall be responsible for preparing, reviewing and updating the Business Plan prior to the end of the expiry of each Financial Year as follows:
- 6.4.1 at least 90 Business Days before the end of each Financial Year, the Board shall (in accordance with this Agreement) review and update the Business Plan in order to report on the progress made under the Business Plan to date and any variations to the Business Plan that the Company requires for the remainder of the Business Plan Period to The Trading Board; and
 - 6.4.2 The Trading Board shall (if they consider it appropriate to do so) recommend to the Cabinet that any amendments or variations to the Business Plan, be approved subject always to the provisions of clauses 6.8 and 6.9.
- 6.5 Notwithstanding any other provision of this clause 6, following the requisite approval of an updated Business Plan by the Cabinet, such Business Plan shall become the Business Plan for the remainder of the Business Plan Period.
- 6.6 Towards the end of the current Business Plan Period the Board shall be responsible for preparing a new Business Plan for the next Business Plan Period for approval as follows:

- 6.6.1 at least 90 Business Days before the end of the current Business Plan Period, the Board shall submit a new Business Plan to The Trading Board for approval;
- 6.6.2 The Trading Board shall (if they consider it appropriate to do so) recommend to the Cabinet that the new Business Plan be approved;
- 6.6.3 the Company shall adopt the new Business Plan for the next Business Plan Period following approval of the same by the Cabinet.

6.7 For such period as an updated or new Business Plan is not approved and adopted by the Company in accordance with this Agreement, the relevant existing Business Plan shall continue to be the Business Plan of the Company.

6.8 The Trading Board shall use all reasonable endeavours to agree such draft Business Plan or variations to the Business Plan submitted to them and recommend the same to the Cabinet for approval as soon as reasonably practicable, and, in any event, prior to the beginning of the relevant Financial Year or Business Plan Period.

6.9 In the event that the Company wishes to carry out an area of activity (with an annual value in excess of £50,000) that forms part of the Business but is not included in the current Business Plan it shall submit to the Trading Board a specific business plan for that activity. The Trading Board shall approve the same if it sees fit subject to Cabinet approval.

7. PROFITS AND LOSSES

7.1 Subject to clause 7.2, the Net Profits of the Company in any one Financial Year shall be retained by the Company for the forthcoming Financial Year.

7.2 Subject to the provisions of the Statutes and the Articles, if, on a winding up of the Company in accordance with clause 15.1 or other dissolution of the Company, there remains, after the satisfaction of all debts and liabilities of the Company, any property or operating surplus whatsoever, the same shall be paid to the Council.

8. MANAGEMENT OF THE COMPANY

8.1 The Council shall delegate the control of the affairs of the Company to the Board, except as otherwise provided in this Agreement and the Articles and subject to clause 8.2 and provided that the authority of the Board shall be subject to any Material Matter requiring Member Approval.

8.2 The Board shall have the power to establish panels, committees or delivery groups to deal with any matters it shall deem appropriate to be dealt with by such panels, committees or delivery groups.

9. OBLIGATIONS OF THE COMPANY

9.1 The Council shall exercise all voting rights and other powers of control available to it in the Company (so far as the Council is legally able) to procure that and the Company will procure that:

- 9.2 the Company shall transact all its business on arm's length terms;
- 9.3 the business of the Company consists exclusively of the Business and that the Company shall not involve itself in any other business or activities in pursuance of the Objectives;
- 9.4 the Company fully complies with its obligations under the Key Documents and carries out its duties with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, probity, courtesy, consideration and hygiene;
- 9.5 the Company shall not enter into any agreement or arrangement restricting its competitive freedom to provide and take goods and services by such means and from and to such persons as it thinks fit;
- 9.6 the Company shall adopt standing orders to regulate the letting of contracts and the selection and evaluation of contractors consistent with the obligations imposed on the Council in relation to procurement and that the Company's procurement of works, suppliers and services complies with all laws which relate to the EU public procurement framework;
- 9.7 the Company shall adopt the Financial Regulations;
- 9.8 the Company carries out and conducts its business and affairs in a proper and efficient manner in accordance with its objects and the provisions of this clause 8;
- 9.9 subject to clauses 8.2 and 11, all business of the Company (other than Material Matters) shall be undertaken and transacted by the Directors;
- 9.10 the Company shall maintain, with a well-established and reputable insurer, adequate insurance against all risks usually insured against by companies carrying on the same or a similar business and (without prejudice to the generality of the foregoing) for the full replacement or reinstatement value of all its assets of an insurable nature;
- 9.11 the Company may purchase and maintain for any Director (including an alternate), officer or auditor of the Company insurance against any such liability as is referred to in section 310(1) of the Companies Act 1985 and sections 232 – 237 of the Companies Act 2006, subject to the provisions of the Companies Act 1985 and the Companies Act 2006, against any other liability which may attach to him or loss or expenditure which he may incur in relation to anything done or alleged to have been done or omitted to be done as a Director (including an alternate), officer or auditor;
- 9.12 the Company shall not acquire, dispose, hire, lease, license or take licences of any assets, goods, rights or services otherwise than at the best value reasonably obtainable in the circumstances;

- 9.13 the Company shall keep proper books of account and therein make true and complete entries of all its dealings and transactions of and in relation to the Business;
- 9.14 save to the extent otherwise agreed by The Trading Board, the Company shall prepare and provide to The Trading Board, by no later than 20 Business Days following the end of the 3 month period to which they relate, a financial statement and unaudited management accounts for the Company containing such information as The Trading Board shall agree from time to time for such relevant 3 month period.
- 9.15 the Company shall prepare its accounts and its management accounts in accordance with the Statutes and in accordance with historical cost convention and with all applicable accounting standards and principles and practices generally acceptable in the United Kingdom;
- 9.15.1 the Company shall:
- 9.15.1.1 prepare the accounts in respect of each accounting reference period as are required by statute;
- 9.15.1.2 procure that such accounts are audited as soon as practicable after the end of the period to which they relate and in any event not later than 3 months after the end of the relevant accounting reference period; and
- 9.15.1.3 provide The Trading Board with annual audited accounts within 12 weeks from the end of the period to which they relate;
- 9.16 as soon as practicable and in any event within 15 Business Days of the end of each quarter, the Company shall send to The Trading Board a report showing progress against the Business Plan;
- 9.17 the Company fully complies with any obligations which it may from time to time have under or pursuant to any Key Document and/or pursuant to Applicable Law;
- 9.18 the Company opens a bank account and that such account shall not be used for any purpose other than for a purpose directly related to the Business and all money transactions relating to the Business shall be recorded and conducted by means of credits to or withdrawals from such account;
- 9.19 if the Company requires any approval, consent or licence for carrying on the Business, the Company will use all reasonable endeavours to maintain the same in full force and effect and the Council shall provide such assistance as the Company may reasonably request of them to facilitate the Company obtaining the requisite approval, consent or licence provided that this shall not require the Council to exercise or fetter the exercise of any of its statutory powers;
- 9.20 the Company conducts the Business in accordance with the Key Documents, provided that The Trading Board may approve the introduction of any project or

scheme into the Business of the Company at any time notwithstanding the fact that such project has not been included in the Business Plan for the relevant Financial Year;

- 9.21 the Company, as soon as practicable upon becoming aware of the same, provides The Trading Board the full details of any actual or prospective change in circumstances which has had or could have a material affect on the financial position or affairs of the Company;
- 9.22 the Company uses it's reasonable endeavours to take such steps and do such things as may be reasonably requested by The Trading Board to assist them in complying with its duties and obligations under the Controlled Company Legislation;
- 9.23 the Company maintains (where such information is not contained within the Business Plan) cash flow projections, project briefs, time lines and reporting mechanisms, such information to be supplied to The Trading Board from time to time upon request.

10. DIRECTORS AND MEETINGS

- 10.1 The appointment, removal, dismissal and conduct of the Directors shall be regulated in accordance with this Agreement and the Articles.
- 10.2 Subject to the Articles, the Council shall be entitled from time to time to appoint all the Directors by notice in writing to the Company and also to remove any such Director appointed by it.
- 10.3 In accordance with the Articles, an External Director shall be appointed by the Council for a term of three years and at the end of the three year term the External Director shall be deemed to have retired as a Director unless the Council reappoints them for a further three year term.
- 10.4 An External Director shall not serve more than nine years as a Director.
- 10.5 The Council agrees that any person appointed to the Board in accordance with the Articles as a Director must have sufficient knowledge, understanding and experience to contribute appropriately in connection with the matters with which the Board will deal. The Directors may appoint a Director to Chair their meetings, in accordance with paragraph 13 of the Articles.
- 10.6 Board Meetings shall be held at regular intervals as the Board shall determine from time to time provided that a Board Meeting is held at least once in every 3 month period.
- 10.7 Non-voting observers or attendees as The Trading Board shall agree (with Board Approval from time to time) shall be entitled to attend meetings of the Board in a non-voting observer role ("Observers"). For the avoidance of doubt, Observers shall not be Directors of the Company.

- 10.8 Each Director will be entitled whilst he or she holds that office to make full disclosure to the Council of any information relating to the Company which may come into his or her possession as a Director and which the Council may reasonably require including (for the avoidance of doubt) Confidential Information but each Council shall only use such information in connection with its interest in the Company and the Business and shall not (unless it is under a legal or regulatory obligation to do so and then only to the extent so required) use that information in any way which is or may be detrimental to the Company.
- 10.9 The Company shall have an Annual General Meeting at which it shall report those matters that The Trading Board require to be reported on annually and it shall invite all Councillors of the Council to attend the Annual Meeting which will be held at the end of a Full Council Meeting with Members being asked to endorse such report

11. FINANCING THE BUSINESS

- 11.1 The Council shall not be obliged to:
- 11.1.1 provide any funding to the Company other than on commercial terms, in accordance with State Aid Rules; or
 - 11.1.2 guarantee or provide security for any indebtedness of the Company.
- 11.2 Any expenditure by the Company in any form (electronic or otherwise) must be made in accordance with the Financial Regulations and must only relate to matters covered by the Business Plan. For such time as the Company shall not have adopted the Financial Regulations any expenditure made by the Company shall require the prior approval of each Director.
- 11.3 No new accounts will be opened by the Company, or amendments made to the mandate under which the Company operates its account with the Bank or any other account or facility opened with the Bank or any other bank or financial institution without the prior written consent of the Board.

12. MEMBER APPROVAL

- 12.1 Every Material Matter shall require Trading Board Approval before such matter is then actioned by the Board on behalf of the Company, provided always that the Board may approve a Material Matter subject to obtaining Member Approval. For the avoidance of doubt, once a Material Matter has received Member Approval, the Board must approve and action such Material Matter save that the Board shall not be required to approve or action any such Material Matter where the Board considers that to do so would no longer be in the best interests of the Company.
- 12.2 In voting for or against a resolution, the Council and The Trading Board shall at all times act in good faith.
- 12.3 Member Approval shall be evidenced by:

- 12.3.1 In respect of anything not being a Material Matter, a resolution passed by the Council acting by The Trading Board or one of its members authorised to act on behalf of the same; or
- 12.3.2 In respect of Material Matters: letters or electronic communication addressed to the Company from The Trading Board, or the Cabinet as required, signed by the chair confirming approval of the matter in question, or a resolution passed by The Trading Board or the Cabinet as required.
- 12.4 Any resolution of the Council (except for Material Matters) shall be validly made without the need for any meeting if contained in a written resolution signed by the chair of The Trading Board, apart from matters outside approved budgets
- 12.5 For the purposes of a General Meeting the Council shall act and be represented by its duly authorised representative, who shall be a member of The Trading Board, and the Council or The Trading Board shall give the Company written notice of its duly authorised representative.

13. PARTIES' RIGHTS AND OBLIGATIONS

- 13.1 The Council shall not have any personal obligation for the debts and liabilities of the Company.
- 13.2 The Council will account fully and promptly to the Company for any payment received by the Council from any third party in respect of services provided to that third party by or on behalf of the Company.
- 13.3 Subject to clause 13.4 the Council and The Trading Board shall be permitted access to such information and documents of the Company as the Council may reasonably require in order to:
 - 13.3.1 satisfy itself that that Company has established and is maintaining and administering an internal control system necessary to ensure:
 - 13.3.1.1 the Company's effective and efficient operation by enabling it to manage significant business, operational, financial, compliance and other risks to achieve the Objectives;
 - 13.3.1.2 the quality of the Company's internal and external reporting; and
 - 13.3.1.3 the Company's compliance with any Applicable Law;
 - 13.3.2 keep itself properly informed about the business and affairs of the Company;

- 13.3.3 allow it to comply with any obligations to which it is from time to time subject under any Applicable Law; and
- 13.3.4 allow it to comply with its obligations in relation to public sector requirements for transparency and accountability.
- 13.4 The Company shall make available the accounting records and any other books and records, information, plans or other documents (“Records”) for inspection by the Council and its duly authorised representatives (and by any other person to whom the Company or the Council is required pursuant to any statutory or regulatory obligation to disclose such Records including the internal or external auditors of the Council, their employees, the Audit Commission or any government organisation) and the taking of copies (at the reasonable expense of the Council) during normal business hours on reasonable advance notice being given.
- 13.5 The Company shall not be obliged to disclose or otherwise make available to the Council or other person (save for a governmental or regulatory body to which the Company or any Council has a statutory or regulatory obligation to disclose) any Records or other information if and to the extent that to do so would or may put the Company in breach of any confidentiality or other obligation by the Company to a third party or would cause the Company to be in breach of any Applicable Law. The Company will procure that in respect of any contract entered into by the Company with any third party on or after the date of this Agreement that the Company will use all reasonable endeavours to secure the permission of that third party to the disclosure of such contract to the Council but provided always that the obligations upon the Company to use reasonable endeavours to secure such permission will not be a pre-condition to the Company entering into any contract.
- 13.6 It is acknowledged that the Council may provide services (including the secondment of staff) to the Company during the Term provided that the provision of such services is in accordance with the Policies and the terms upon which such services will be provided (including remuneration) have received Board Approval.
- 13.7 The parties shall, to the extent permitted by Applicable Law, comply with and be bound by the provisions of this Agreement.

14. TAX MATTERS

- 14.1 The effective management of the Company shall be exercised in the United Kingdom and the parties shall use their respective best endeavours to ensure that the Company is treated by all relevant authorities as being resident for taxation purposes only in the United Kingdom.
- 14.2 The parties hereby agree that they will use reasonable endeavours to ensure that the Company is operated in a tax efficient manner.

15. TERMINATION

15.1 Termination

This Agreement shall continue in full force without limit in point of time until the earlier of:

- 15.1.1 the Council agreeing in writing to terminate this Agreement whereupon the provisions of clause 15.2.1 shall apply;
- 15.1.2 an effective resolution or binding order is passed for the winding up of the Company, whereupon the provisions of clause 15.2.2 shall apply.

15.2 Consequences of termination and retirement

15.2.1 In the event that this Agreement shall terminate pursuant to clause 15.1.1:

15.2.1.1 the provisions of this Agreement shall cease to have effect against the Council; and

15.2.1.2 this Agreement will terminate on the date agreed by the Council.

15.2.2 In the event that this Agreement shall terminate pursuant to clause 15.1.2:

15.2.2.1 the provisions of this Agreement shall cease to have effect against the Council upon the Council ceasing to be a member of the Company;

15.2.2.2 the Company shall be put into voluntary liquidation and the Council shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

- (a) all existing contracts and commitments of the Company shall be completed so far as possible;
- (b) no new contractual obligations shall be entered into by the Company; and
- (c) the Company shall be wound up as soon as possible.

- 15.2.3 The termination of this Agreement pursuant to this clause 15 shall be without prejudice to any accrued rights and liabilities of the Council. The provision of clauses 20 and 33 shall survive termination or expiration of this Agreement.

16. CONFIDENTIALITY AND ANNOUNCEMENTS

- 16.1 Subject to the exceptions provided in clause 16.2, none of the parties shall, at any time, whether before or after the expiry or sooner termination of this Agreement without the consent of each of the other parties, divulge or permit its officers, employees, agents, advisers or contractors to divulge to any person (other than to any respective officers or employees of a party or a person to whom, in each case, disclosure of information is permitted by this Agreement and who require the same to enable them properly to carry out their duties):
- 16.1.1 any of the contents of this Agreement or any other document referred to in this Agreement.
- 16.1.2 any information which it may have or acquire (whether before or after the date of this Agreement) relating to the Business of the Company or otherwise in relation to the assets or affairs of the Company;
- 16.1.3 any information which, in consequence of the negotiations relating to this Agreement or any other document referred to in this Agreement or of a party being involved in the Company or its business in a manner whatsoever (including as a Member and as an appointer of a Director) or performing or exercising its rights and obligations under this Agreement or any other document referred to in this Agreement, any party may have acquired (whether before or after the date of this Agreement) with respect to the customers, business, assets or affairs of any other party.
- 16.2 The restrictions imposed by clause 16.1 shall not apply to the disclosure of any information by a party ("the Disclosing Party"):
- 16.2.1 which is now in or comes into the public domain otherwise than as a result of a breach of such undertaking of confidentiality; or
- 16.2.2 which is required by law (including, without limitation, by virtue of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004) to be disclosed to any person who is authorised by law to receive the same; or
- 16.2.3 such information is disclosed to any department or office of the Government or their advisors; or

- 16.2.4 which is required to be disclosed by the regulations or any recognised exchange upon which the share capital of the Disclosing Party is or is proposed to be from time to time listed or dealt in; or
 - 16.2.5 to its legal advisors provided that such legal advisors are made aware of the confidentiality obligations contained in this Agreement and undertake to the Disclosing Party to maintain such information as confidential and further provided that such disclosure is only made to such legal advisors where legal advice is required to be taken by the Disclosing Party; or
 - 16.2.6 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the Disclosing Party is a party in a case where such disclosure is required by such proceedings.
- 16.3 No announcement, advertisement, circular or other publication concerning or relating to:
- 16.3.1 the subject matter of this Agreement shall be made by any party (save as required by law) without the prior approval in writing of each of the Members as to the contents, form and timing thereof; or
 - 16.3.2 the business of the Company except in accordance with any communications strategy of the Company adopted by the Board from time to time.

17. VAT

- 17.1 Where the fulfilment by any party of an obligation under this Agreement constitutes a supply of goods or services for VAT purposes, the appropriate VAT payments shall be made and invoices issued. Agreement to pay any money shall be regarded as exclusive of VAT and as requiring the additional payment of any VAT properly chargeable in exchange for a valid VAT invoice.

18. INTELLECTUAL PROPERTY

- 18.1 Any Company Intellectual Property shall belong to and vest in the Company. If the Council creates or procures the creation of any Company Intellectual Property it shall assign such Company Intellectual Property to the Company, and in relation to any copyright, design right or database right, the Council shall assign by way of present assignment of future rights, any future copyright, design rights and database rights in the Company Intellectual Property to the Company.
- 18.2 The Company grants to the Council a non-exclusive, royalty-free licence to use such of the Company Intellectual Property as it may require, in order to carry out

its obligations under this Agreement and for the purpose of carrying on the Business.

- 18.3 The Council grants to the Company a non-exclusive, royalty-free licence of any of its Member IP, which is required by the Company to conduct the Business or as is otherwise required pursuant to this Agreement.

19. NOTICES

- 19.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, first class post or facsimile addressed to the recipient at its address or facsimile number as the case may be stated in clause 19.3 marked for the attention of the appropriate person specified in clause 19.3 (or such other address or facsimile number or person which the recipient has notified in writing to the sender in accordance with this clause 19, to be received by the sender not less than 5 Business Days before the notice is despatched).

- 19.2 The notice, demand or communication will be deemed to have been duly served:

19.2.1 if delivered by hand, at the time of delivery;

19.2.2 if delivered by first class post, 48 hours after being posted (excluding days other than Business Days);

19.2.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission;

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day.

- 19.3 The addresses, facsimile numbers and appropriate contacts for the parties are as follows:

Party	Address/facsimile number and contact
SEVENOAKS DISTRICT COUNCIL	Council Offices, Argyle Road, Sevenoaks, TN13 1HG Contact: Head of Legal and Democratic Services Fax number: 01732 227340

[COMPANY]	Council Offices, Argyle Road, Sevenoaks, TN13 1HG
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	Contact: Finance Director Fax number: 01732 227493
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A notice or other communication given under or in connection with this agreement is not valid if sent by e-mail.

- 19.4 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

20. FAIRNESS CLAUSE

- 20.1 In the event that any circumstance arises during the Term which is not within the contemplation of the parties at the date of this Agreement and not provided for in the Key Documents (or any of them) either expressly or impliedly then the parties agree that such matter shall be dealt with and resolved in such manner as shall operate between them for fairness and, so far as is possible, without detriment to the interests of any of them.

21. CONFLICT

- 21.1 Where the provisions of the Articles, the Policies (or any of them) conflict with or are inconsistent with the provisions of this Agreement then this Agreement shall prevail to the intent that the parties shall if necessary procure the amendment of the Articles, or the Policies (or any of them) to the extent required to enable the Company and its affairs to be administered as provided in this Agreement.

22. EXERCISE OF POWERS

- 22.1 Words denoting an obligation on a party to do any act, matter or thing include, except as otherwise specified, an obligation to use all reasonable endeavours to procure that it be done (including using its voting and other powers at any meeting of Founder Members to such effect) and words placing a party under a restriction include an obligation not to permit or allow so far as the same is possible infringement of that restriction.

23. NO PARTNERSHIP OR AGENCY

- 23.1 Nothing in this Agreement shall constitute a partnership between the parties hereto or constitute one the agent of another and none of the parties shall do or suffer anything to be done whereby it shall or may be represented that it is the partner or agent of a party hereto (save as aforesaid) unless such party is appointed partner or agent of that other party with the consent in writing of that party.

24. VARIATION

24.1 Any variation to this Agreement shall only take effect if it is in writing and signed by both parties.

25. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

25.1 The parties do not intend that any of the provision of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

26. ENTIRE AGREEMENT

26.1 This Agreement and the Articles constitute the entire agreement between the parties in relation to their respective subject matters (save, for the avoidance of doubt, any statutory provisions which are not overridden by the terms of this Agreement and/or the Articles or any of them or any part of them) and there are no representations, promises, terms, conditions or obligations between the parties other than those contained or expressly referred to in this Agreement and/or the Articles. This clause 26 does not exclude or restrict the liability of a party for any representations made fraudulently by that party.

27. WAIVER

27.1 The waiver by any party of any default by any other party in the performance of any obligation of such other party under this Agreement shall not affect such party's rights, powers or remedies in respect of any other default or any subsequent default of the same or of a different kind nor shall any delay or omission of any party to exercise any right arising from any default, affect or prejudice that party's rights as to the same or any future default.

27.2 No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

27.3 For the avoidance of doubt and without prejudice to the generality of the foregoing, any failure by any party to comment upon or raise any objection to the fact that any matter referred to in clause 12 has been effected without the consent of the Council shall not be deemed to constitute consent to such action and nor shall be taking of any such action on any two or more occasions without such comment or objection be deemed to constitute accepted general practice.

28. UNLAWFUL FETTER ON STATUTORY POWERS

- 28.1 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.
- 28.2 The parties recognise that it is a rule of public law that it is unlawful for the Council to fetter its discretion in carrying out its statutory duties and that they agree that notwithstanding anything apparently to the contrary in this Agreement the terms of this Agreement shall not have that effect on the Council's statutory duties.

29. INVALIDITY/SEVERABILITY

- 29.1 If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.

30. ASSIGNMENT

- 30.1 The Council shall not assign or transfer or purport to assign or transfer all or any of its rights or obligations hereunder or as the shareholder of the Company.

31. COUNTERPARTS

- 31.1 This Agreement may be executed in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

32. DISPUTE RESOLUTION

- 32.1 The Council undertakes and agrees to pursue a positive approach towards dispute resolution which seeks (in the context of these joint working arrangements) to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the parties.
- 32.2 Any dispute arising out of this Agreement and which has unsuccessfully been settled by the parties between themselves within 60 Business Days, will be attempted to be settled by mediation. To initiate mediation, a party must give notice in writing ("a mediation notice") to the other parties to the dispute.

- 32.3 The parties will seek to agree the appointment of a mediator but failing agreement within 28 days of service of the mediation notice, the parties (or any of them) will ask the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator.
- 32.4 The parties will use their best endeavours to arrange and attend a mediation meeting within 60 Business Days of the appointment of a mediator.
- 32.5 If any party refuses at any time to participate in the mediation procedure and in any event if the dispute is not resolved in 90 days of the appointment of a mediator, then clause 20 shall apply.

33. GOVERNING LAW AND JURISDICTION

- 33.1 This Agreement shall be governed by and construed in all respects in accordance with English Law and the Courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, each party irrevocably submits to the jurisdiction of the Courts of England.

THIS AGREEMENT is executed as a deed and delivered and takes effect on the date stated at the beginning of it.

**SCHEDULE 1
DIRECTOR'S UNDERTAKING**

To: Quercus 7 Limited
Sevenoaks District Council

From: []

Dated []

I hereby confirm that I have been supplied with a copy of the Shareholder's Agreement made between (1) Sevenoaks District Council, and (2) Quercus 7 Limited dated 2016 (the "Shareholder's Agreement") and undertake to the Company and the Council that:-

I will, so far as may be permitted by law and so long as I remain a Director of the Company, be bound by and comply with the terms and conditions of the Shareholder's Agreement (as the same may hereafter be amended from time to time), insofar as the same relate to me and to act in all respects as contemplated thereby, and I will (so far as aforesaid) do everything within my power as a Director to ensure that the Company complies with all its obligations thereunder.

Provided that there shall not attach to me any personal liability in relation to the pursuance of my obligations, save where such liability shall arise directly or indirectly out of my fraudulent activity, dishonesty, bad faith or negligence.

EXECUTED AND DELIVERED AS)
A DEED BY [])
On the date stated above)
in the presence of:)

**SCHEDULE 2
FINANCIAL REGULATIONS**

Estimated Value of Purchase	Minimum competition and documentation requirements	
Zero to £10,000	At least one quote in advance	
£10,000 up to £74,999	At least three written quotes in advance	
Over £75,000 up to EU Procurement Limit	At least three written tenders, formal opening procedures, Cabinet approval and a written contract.	
At EU Procurement Limit and above	Advertisement and tenders in accordance with EU requirements, Cabinet approval and a written contract.	

Purchase of Property

Board decision with The Trading Board approval if contained within the Business Plan and Approved Budgets otherwise Cabinet approval between £50,000 and £500,000 and Full Council approval over £500,000

For the avoidance of doubt the Financial Procedure Rules and Contract Procedure Rules must follow the Financial Procedure Rules and Contract Procedure Rules of Sevenoaks District Council as set out within the Constitution of Sevenoaks District Council.

SCHEDULE 3
MATERIAL MATTERS

1. Subject to paragraph 3 below, the Company can do anything that is contained in the Business Plan without any further approval from the Cabinet.
2. The approval of the Cabinet via the Trading Board (to be given in accordance with the terms of reference of The Trading Board) is required:
 - (a) For the adoption of the Business Plan and any variations to the Business Plan;
 - (b) Before the Company can carry out any activity that is not included in the Business Plan;
 - (c) Before the Company makes any amendment or variation to the Financial Regulations;
 - (d) Before the Company makes any amendment or variation to the Policies;
 - (e) In order to appoint or remove the Auditors;
 - (f) In order to appoint or remove a director in accordance with the Articles;
 - (g) To waive any of the confidentiality restrictions under this Agreement;
 - (h) Before entering into (or agreeing to enter into) any borrowing arrangement and giving any security in respect of such borrowing;
 - (i) Before creating or allowing to be created any encumbrance over any tangible or intangible asset (including any mortgage, charge, pledge, option, title retention, preferential right, equity or trust arrangement, lien (other than a lien arising by operation of law), right of set-off or any security interest whatsoever and howsoever created or arising;
 - (j) Entering into any grant funding agreement or applying for any other funding;
 - (k) Before making any application for planning permission or lodging an appeal against a planning authority;
 - (l) Any other matter that the Cabinet or Council shall advise the Company of in writing.

3. The specific approval of the Council is required for the following matters, regardless of whether they are included in the Business Plan:
- (a) Before the Company forms any subsidiary, acquires any interest in any other company, partnership, limited partnership, limited liability partnership, trust or other body (incorporated or otherwise) or enters into any joint ventures or partnerships
 - (b) Determining whether any Director (or any person recruited to work for the Company) shall be entitled to remuneration in connection with the performance of his or her duties for the Board and determining the level and terms upon which the remuneration will be payable.
 - (c) Before taking any step which will result or may result in the winding up of the Company including (but not limited to) making any petition or passing any resolution to wind up the Company or making any application for an administration or winding up order or giving notice of the intention to appoint an administrator or filing a notice of appointment of an administrator unless in any case the Company is at the relevant time insolvent and the Council reasonably considers that it ought to be wound up.
 - (d) Before changing the registered office of the Company;
 - (e) Before changing the accounting reference date of the Company;
 - (f) Before changing the place of business of the Company;
 - (g) Any other matter that the Council shall advise the Company of in writing; and
 - (h) Issuing any further shares in the Company.

For the avoidance of doubt The Trading Board can sign off material matters on behalf of the Council

SCHEDULE 4 OBJECTIVES

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- To enable the Council to move towards a more financially self sufficient position.
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- To operate development on a commercial basis as well as investing in residential property
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SCHEDULE 5
TERMS OF REFERENCE and GOVERNANCE ARRANGEMENTS OF THE TRADING BOARD

The Trading Board shall have delegated authority to carry out on behalf of the Cabinet the following functions, namely:

- a) To monitor and report regularly on high level performance and report on areas of concern to the Cabinet;
- b) To receive and consider an annual business plan from the trading company including any information on profit and loss accounts;
- c) To receive and consider any variations from the approved annual business plans;
- d) To receive and consider reports on new business initiatives. It is proposed that the Council as shareholder should require the company to submit to The Trading Board a business plan for each new area of activity and to obtain The Trading Board's approval for every new contract outside the approved business plans, which the company proposes to enter with an annual value in excess of £50,000 up to £500,000 and thereafter Full Council approval would be necessary. ;
- e) To receive and consider periodic reports on the performance of key areas of business and main areas of business of each company. Such reports will initially be required quarterly in respect of the business area or contract which has been approved or exceeds the values set in paragraph d) above, but these values are to be subject to review by The Trading Board;
- f) To review any significant identified risks of the trading company on behalf of the Cabinet for the purposes of managing those risks;
- g) To receive and consider annual budget and capital spending plans for the company;
- h) To recommend to Cabinet whether or not to approve any applications from the trading companies for:
 - (i) consents to acquire or dispose of land outside the approved business plan;
 - (ii) consents to enter into third party loan agreements;
 - (iii) the transfer of Council assets including land;
 - (iv) the granting of loans from the Council; and
 - (v) approval of the business plans and variations;
- i) To receive and consider quarterly budget monitoring reports from the trading company;

- j) To assist the trading company in the exploration of other trading opportunities with a view to achieving greater efficiency;
- k) To be responsible for ensuring that the Council's investment and or assets that may be transferred to or used by the established trading company is properly protected and used for the purposes approved of by the Cabinet;
- l) To ensure formal directions of the Council or Cabinet are brought forward to the trading company and agree the basis of implementation by the company; including making changes to the governance arrangements for the trading company;
- m) To appoint and remove the directors of the company (subject to the approval of the Leader of the Council);
- n) To act as the Council's (in its capacity as shareholder) nominated body to give all consents and approvals, including those that may be given under the shareholder agreement, subject to the approval of the Cabinet in respect of those matters set out in (h) above;
- o) To nominate a member of The Trading Board (subject to the approval of the Leader) to act as the representative of the Council at shareholder meetings of the trading company;
- p) The purpose of the Trading Board is to oversee the activities of the Company which require approval of the Council as Member, in line with these terms of reference and governance arrangements.

Governance Arrangements

- q) The Trading Board will be made up of Members of the Cabinet;
- r) The quorum of The Trading Board will be three voting Members;
- s) All Members of The Trading Board will be entitled to vote at meetings;
- t) Voting will take place by a show of hands. If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote.
- v) The Chairman of The Trading Board will be the Chairman of Cabinet and the Vice Chairman will be Appointed by the Trading Board.
- v) The Trading Board will meet at least each quarter.

Signed on behalf of Sevenoaks District Council

.....

Signed on behalf of

Limited

.....Director

.....Secretary

APPENDIX 1

First Business Plan