

**HUNTINGDONSHIRE DISTRICT COUNCIL**

**Title/Subject Matter:** Council Trading Company – Shareholder Agreement, Articles of Association and commercialisation update.

**Meeting/Date:** O&S – 14 June  
Cabinet - 22 June

**Executive Portfolio:** Commercialisation and Shared Services: Councillor D Brown

**Report by:** Managing Director

**Ward(s) affected:** All

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**Executive Summary:**

Cabinet approved the creation of a Local Authority Trading Company (LATC) at its meeting on 17<sup>th</sup> November 2016. This was determined as an essential stage in enabling the Council to develop a range of commercial, income generating, activities in line with its strategic objectives. It will also make an essential contribution to the Council achieving its aim of achieving financial self-sufficiency by 2020.

This report presents draft versions of the following documents for HDC Ventures Limited:

- Shareholder Agreement – Appendix 1.
- Articles of Association: amendments and modifications to the Model Articles – Appendix 2.

The Articles of Association should be reviewed alongside the Model Articles for Private Companies Limited by Shares. These are published by Companies House and constitute the Articles for all such companies unless amendments and modifications are appended :as is the case with HDC Ventures Ltd.

These documents have been produced with assistance from external legal advisors Trowers & Hamlin LLP. Both the Shareholder Agreement and the Articles require formal approval by Cabinet.

Such approval will enable delegated Officers to complete the incorporation of the LATC, establish the management Board and hold an initial Board meeting. This will provide a stable governance framework within which individual business cases can be brought forward and subsidiary trading entities formed.

In addition, to providing an update on progress in relation to the formation and establishment of HDC Ventures Ltd, this paper also provides a brief note on progress in relation to the preparation of business cases and procurement planning for the Council's Document Centre and CCTV services.

The formation of HDC Ventures Ltd is close to completion and external resources (in the form of an EELGA Associate) have been secured to provide momentum and ensure delivery of the required outcomes for this workstream.

The table presented as Appendix 4 sets out the outstanding tasks and the timeline for completion of each.

**Recommendation(s):**

The Overview and Scrutiny Panel is invited to comment on:

- The suitability and acceptability of the Shareholder Agreement for HDC Ventures Ltd.
- The suitability and acceptability of the Articles of Association for HDC Ventures Ltd.
- Any omissions, amendments or additions that it is felt would improve either document.
- The proposed timetable for the development of business cases for the Document Centre and CCTV services.

The Cabinet is asked to approve the following:

**RECOMMENDED:**

- **That the Shareholder Agreement for HDC Ventures Limited is approved as set out in Appendix 1.**
- **That the Articles of Association for HDC Ventures Limited are approved as set out in Appendix 2.**

## **1. PURPOSE OF THE REPORT**

- 1.1 This report is provided to enable Members to approve the legal basis for the incorporation and establishment of a Local Authority trading company (LATC) – HDC Ventures Limited.

It also provides Members with an update on the progress that has been made in relation to the creation of robust business cases and procurement plans for the Council's Document Centre and CCTV services.

## **2. WHY IS THIS REPORT NECESSARY**

- 2.1 This report will ensure that Members have a clear understanding of the roles and responsibilities that they will be expected to fulfil, both collectively and (where applicable) as individual Company Directors. It will also provide Cabinet with confidence that this workstream is being progressed with momentum and an appropriate degree of urgency.

## **3. COMMENTS OF OVERVIEW & SCRUTINY**

- 3.1 The comments of the relevant Overview and Scrutiny Panel will be included in this section prior to its consideration by the Cabinet.

## **4. KEY IMPACTS**

- 4.1 Approval of the Shareholder Agreement (including the Deed of Adherence) and the Articles of Association enables the formation of HDC Ventures Limited to be completed.
- 4.2 The Deed of Adherence futureproofs the Shareholder Agreement, should the Council wish to introduce additional shareholders into the company at a later date.

## **5. WHAT ACTIONS WILL BE TAKEN**

- 5.1 Appendix 3 presents a list of actions, with associated timelines, that are required to complete the formation of HDV Ventures Limited.

## **6. LINK TO THE CORPORATE PLAN, STRATEGIC PRIORITIES AND / OR CORPORATE OBJECTIVES**

- Implementing our Transformation Programme.  
Commercialisation will be an important part of the way HDC functions in the future. The creation of de facto trading entities is one of the key elements of the transformation plan.
- Ensuring our Medium Term Financial Strategy is focused on strategic priorities.  
The anticipated revenue income from commercial activities will play an important role in ensuring the Council's future financial stability.
- Maximising income opportunities, where appropriate.  
Commercial activity will require the Council to take a measured approach to market opportunities. Robust business planning will ensure that each Council-owned business is able to generate revenue within an acceptable and sustainable cost base.
- Identifying new opportunities for income generation, where appropriate.  
This will be achieved via the development of a 'commercial culture' across the Council, alongside a systematic approach to evaluating and developing commercial projects.

- Having a more engaged and motivated workforce. Commercial activities will introduce new ways of thinking and working into the Council, which will provide opportunities for professional and personal development across the organisation.

## 7. LEGAL IMPLICATIONS

- 7.1 Trowers & Hamlin have assessed HDC's planned actions in regards to incorporating a LATC and have confirmed that this is within the Council's legal powers as defined in:
- Local Authorities such as Huntingdonshire District Council are able to create Local Authority Trading Companies (LATC) under:
  - Local Government Act 2003 allows local authorities to trade in any of their ordinary functions.
  - The Localism Act 2011 enables local authorities to undertake activities for a "commercial purpose" in order to make a profit but only if delivered within a company
  - Local Government Best Value Authorities Power to Trade England Order 2009.
- 7.2 The Shareholder Agreement and Articles of Association have been drafted in collaboration with external legal advisors – Trowers & Hamlin LLP. T&H have also provided advice on potential changes to the Council's constitution which may be required to support the effective formation and operation of a set of trading companies. T&H are also providing practical support in the incorporation of HDC Ventures Limited.

## 8. RESOURCE IMPLICATIONS

- 8.1 Support for the delivery of this workstream has required the engagement of an external associate from the East of England LGA. The value of this support is in the region of £10,500 and will be cost coded to XXXXXX.
- 8.2 HDC Ventures Ltd will also require a range of support services in areas such as HR, Finance and IT. It is anticipated that these services will be competitively sourced and that HDC will be provided with an opportunity to submit a bid for each contract.

## 9. OTHER IMPLICATIONS

- 9.1 Key risks
- Acting outside law:** external legal advice has been taken to establish legal basis for local authority trading.
- Business return may not be there:** robust business cases will be prepared for each commercial proposition.
- Higher risk profile:** procurement of joint ventures will help to spread risk.
- Loss of control over services:** HDC shareholding in each company will ensure that influence is maintained, but the Council will not retain sole control of services.
- 9.2 As noted above, input from the Monitoring Officer will be required to support any required changes to the Council's constitution.

Should operational support for HDC Ventures Ltd provided by HDC, this will be a market rates and under the terms of a Resourcing Agreement which will be negotiated between the company and the Council.

Any rental agreement for office accommodation in Pathfinder House will be at market rate and configured as a contractual arrangement between the two parties.

## **10. REASONS FOR THE RECOMMENDED DECISIONS**

- 10.1 In order that HDC can proactively pursue its intention to be financially self-sufficient by 2020, it is essential that the Council establishes a robust infrastructure within to operate a number of commercial activities. Approval of the appended Shareholder Agreement and Articles of Association will enable the formation of HDC Ventures Limited as the holding company in the Council's 'commercial arm'. This will provide the basis for the subsequent formation of the corporate entities the Council requires to effectively deliver commercial services.

## **11. LIST OF APPENDICES INCLUDED**

- Appendix 1 – Shareholder Agreement (draft)
- Appendix 2 – Articles of Association (draft)
- Appendix 3 – Project Plan
- Appendix 4 – Business Case/Procurement Update

## **CONTACT OFFICER**

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**APPENDIX 1**  
**DRAFT SHAREHOLDER AGREEMENT**

**dated**                      **2017**

**Huntingdonshire District Council**  
and  
**HDC Ventures Limited**

**Shareholders' Agreement**

in relation to HDC Ventures Limited

| <b>Contents</b>  | <b>Page</b> |
|--|-------------|
| <b>1 Interpretation and definitions</b>                            | <b>6</b>    |
| <b>2 Completion</b>  | <b>8</b>    |
| <b>3 The business of the Company</b>                               | <b>8</b>    |
| <b>4 Conduct of the Company's affairs</b>                          | <b>8</b>    |
| <b>5 The Board of Directors</b>                                    | <b>10</b>   |
| <b>6 Finance for the Company</b>                                   | <b>10</b>   |
| <b>7 Matters requiring the consent of each of the Shareholders</b> | <b>10</b>   |
| <b>8 Production of accounts</b>                                    | <b>11</b>   |
| <b>9 Anti-corruption</b>   | <b>12</b>   |
| <b>11 Conflict with the New Articles</b>                           | <b>13</b>   |
| <b>12 No fetter</b>  | <b>13</b>   |
| <b>13 Duration and termination</b>                                 | <b>13</b>   |
| <b>14 Confidentiality</b>  | <b>14</b>   |
| <b>15 General</b>  | <b>16</b>   |
| <b>16 Assignment</b>   | <b>17</b>   |
| <b>17 No partnership or agency</b>                                 | <b>17</b>   |
| <b>18 Notices</b>  | <b>17</b>   |
| <b>19 Counterparts</b>   | <b>19</b>   |
| <b>20 Applicable law</b>   | <b>19</b>   |
| <b>Schedule 1 - Deed of Adherence</b>                              | <b>20</b>   |

# Shareholders' agreement

dated 2017

## Parties

- (1) **Huntingdonshire District Council** having its principal place of business at Pathfinder House, St. Mary's Street, Huntingdon, PE29 3TN (**the Council**);
- (2) HDC Ventures Limited incorporated and registered in England and Wales with registered number [ ] whose registered office is at Pathfinder House, St. Mary's Street, Huntingdon, PE29 3TN (**the Company**).

## Introduction

- (A) The Company was incorporated under the Companies Act 2006 on [ ] 2017 as a private company limited by shares. At the date of this Agreement the Company has issued 100,000 Shares which are registered in the name of and are beneficially owned by the Council.
- (B) This Agreement sets out the terms and conditions on which the Council will participate in the Company as its shareholder [and is made pursuant to the Council's powers under Sections 1 and 4 of the Localism Act 2011 and the Local Government (Contracts) Act 1997, section 1].

## Agreed terms

### 1 Interpretation and definitions

#### 1.1 In this Agreement

**Articles** means the articles of association of the Company, as may be amended or replaced from time to time;

**Annual Accounts Date** means the accounting reference date of the Company from time to time;

**Associate** means, in relation to any party to this Agreement, any person, firm or company which is a connected person (within the meaning of section 1122 of the Corporation Tax Act 2010) of such party or which is an associated company of such party within the meaning of section 449 of the Corporation Tax Act 2010;

**Board of Directors** means the Board of Directors of the Company;

**Board Meeting** means a meeting of the Board of Directors;

**Business** means the business of the Company described in clause 3 or anything which is contemplated by the Business Plan and such other business as the Shareholders may agree from time to time in writing should be carried on by the Company;

**business day** means a day other than a Saturday or Sunday or public holiday in England and Wales;



**Business Plan** means the business plan for the Company in the agreed form and any subsequent business plan agreed by the Board of Directors in accordance with clause 3 and applicable from time to time;

**Completion** means completion of the allotment and issue of A Shares and B Shares in accordance with clause 2;

**Deed of Adherence** means a deed of adherence in substantially the same form as set out in schedule 1;

**Director** means any director for the time being of the Company, including where applicable any alternate director;

**Environmental Information Regulations** means the Environmental Information Regulations 2004;

**FOIA** means the Freedom of Information Act 2000;

**Group** means in relation to a company that company and any company which is a Parent Undertaking of that company or a Subsidiary Undertaking of that company or of such Parent Undertaking; and the expression Group Member shall be construed accordingly;

**Parent Undertaking** means a parent undertaking as defined in section 1162 of the Companies Act 2006;

**Shareholder** means the Council and/or any person to whom they may properly transfer any Shares in accordance with this Agreement and who enters into a Deed of Adherence agreeing to be bound by the terms of this Agreement;

**Shares** means the ordinary shares of £1 each in the Capital of the Company; and

**Subsidiary Undertaking** means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006.

- 1.2 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Clause headings in this Agreement are for convenience only and do not affect the construction of any provision.
- 1.4 References to any gender shall include the other genders and references to the singular shall include the plural and vice versa.
- 1.5 Any reference to a person (which for the purposes of this Agreement shall include a firm, unincorporated association, body corporate, government, state or agency of state, any association or partnership or joint venture (whether or not having a separate legal personality)) shall include its successors in title.

- 1.6 Any reference to a document **in the agreed form** shall be a reference to that document in the form agreed and initialled by or on behalf of each of the Shareholders for the purpose of identification and attached to this Agreement.

## 2 Completion

- 2.1 Completion shall take place immediately following execution of this Agreement, when the parties shall procure that meetings of the Company and the Board of Directors are held as may be necessary to:
- 2.1.1 appoint [NatWest] as bankers to the Company; and
- 2.1.2 resolve that the Company's financial year shall end on 31 March in each year.

## 3 The business of the Company

- 3.1 The Shareholder acknowledges and agrees that unless and until they agree otherwise, the business of the Company shall be initially to act as a holding company in relation to its Subsidiary Undertakings from time to time, and subsequently, in accordance with a Business Plan on sound commercial profit-making principles so as to generate the maximum achievable maintainable profits available for distribution.
- 3.2 The Business Plan shall be resolved upon by the Board of and replaced on a rolling basis annually in respect of the coming financial year and the next three financial years and superseded or modified from time to time.
- 3.3 The Company will make decisions relating to the overall strategy for its Subsidiary Undertakings and their respective businesses and will communicate such decisions to those Subsidiary Undertakings.
- 3.4 Subject to the provisions of this Agreement, the Shareholders understand and agree that the Company shall use all reasonable and proper means to maintain and improve the Business.

## 4 Conduct of the Company's affairs

- 4.1 With the exception of those matters requiring the Shareholders consent pursuant to clause 7, the day-to-day management of the Company shall be vested in the Directors. Without prejudice to the generality of the foregoing, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out to those matters requiring the Shareholders consent pursuant to clause 7 and to any other express provisions of this Agreement. In particular, but without limitation to the generality of the foregoing, the Directors will shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this Agreement, the Company shall:
- 4.1.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with good business practices, and

- 4.1.2 transact all its business on arm's length terms.
- 4.2 The Company shall not carry out any activity which would render the holding of Shares by any Shareholder unlawful provided that where a proposed change of law would render such shareholding unlawful such Shareholder will use all reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.
- 4.3 The Company will if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.
- 4.4 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its subsidiaries with any Shareholder's designated officers and executives at any time. All books, records, accounts and documents relating to the business and the affairs of the Company and its subsidiaries shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the relevant Shareholder 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 requesting Shareholder and its designated officers and executives in accordance with the terms of clause 14.
- 4.5 The Company agrees with the Shareholder(s) that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Group and will generally keep the Shareholder(s) informed of the progress of each Group Member's business and affairs and in particular will procure that each Shareholder is given such information and such access to the officers, employees and premises of the Group as it may reasonably require for the purposes of enabling it to monitor its investment in the Group and to comply with its obligations under the Prudential Code for Local Authorities.
- 4.6 The Company shall itself comply with and assist the Shareholder comply with its statutory obligations relating to propriety, governance, public procurement or state aid in force from time to time and any other legal obligations insofar as such obligations arise from the Company's legal or contractual relationship with the Council.
- 4.7 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it
- 4.8 Each Shareholder shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it, in relation to the Company so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement:

- 4.8.1 the Company is managed in accordance with the objectives and provisions of this Agreement; and
- 4.8.2 the Company performs and complies with all obligations on its part under this Agreement and the Articles.

## 5 The Board of Directors

- 5.1 A Board Meeting shall be held no less than once in every three calendar months. All Board Meetings shall be held at the registered office of the Company.
- 5.2 Unless otherwise agreed by all the Directors, at least 5 business days' notice shall be given to each of the Directors of all Board Meetings. The notice convening a Board Meeting shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting.

## 6 Finance for the Company

- 6.1 If the Company requires capital, the Company may request such capital from the Shareholder **provided that** the Shareholder shall not be obliged to provide any guarantee or security in respect of any indebtedness of the Company or to put up the finance concerned.
- 6.2 If the Company requires further capital, the Company shall endeavour to obtain such finance from a third party lender on the best terms which could reasonably be expected to be obtained in the open market **provided that** the Shareholder shall not be obliged to provide any guarantee or security in respect of any indebtedness of the Company or to put up the finance concerned.

## 7 Matters requiring the consent of the Shareholder

- 7.1 Each Shareholder shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company or any Subsidiary Undertaking, so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement no action shall be taken or resolution passed by the Company or any Subsidiary Undertaking in respect of any of the following matters except with the prior written consent of the Shareholder(s)<sup>1</sup>:
  - 7.1.1 the making of any material change in the nature of the Business or the jurisdiction in which it is managed and controlled;
  - 7.1.2 the issue or allotment of any shares in the capital of the Company or any Subsidiary Undertaking of the Company or the creation of any security or the grant of any option or rights to subscribe in respect thereof or to convert any instrument into such shares;
  - 7.1.3 the reduction of the share capital or variation of the rights attaching to any class of shares in the capital of the Company or any Subsidiary Undertaking of the Company or any redemption, purchase or other

- acquisition by the Company of any shares or other securities of the Company or any Subsidiary Undertaking of the Company;
- 7.1.4 the sale, transfer or disposal of the whole or a substantial part of the Business, or any dilution of the Company's interest in any Subsidiary Undertaking;
- 7.1.5 the formation of any Subsidiary Undertaking or the acquisition of or investment in any other company or business;
- 7.1.6 the merger or amalgamation of the Company or any Subsidiary Undertaking of the Company with any other company or the participation in any partnership or joint venture;
- 7.1.7 the incurring of any borrowings or other indebtedness (other than normal trade credit) or the giving of any guarantees;
- 7.1.8 the approval and/or adoption of any Business Plan or annual budget or any variation of the Business Plan; or annual budget from time to time;
- 7.1.9 the entering into any purchase, sale, lease or licence of any freehold or leasehold property (other than in accordance with the Business Plan);
- 7.1.10 disposing of any assets of the Company or any Subsidiary Undertaking;
- 7.1.11 any changes to the Articles of the Company or any Subsidiary Undertaking of the Company;
- 7.1.12 entering into any arrangement, contract or transaction between the Company or any Subsidiary Undertaking of the Company and any third party which has an annual contract value in excess of £150,000 (or the equivalent amount in any other currency);
- 7.1.13 any change of the Company's name, auditors, bankers, accounting reference date;
- 7.1.14 entering into an agreement to do any of the foregoing.

## **8 Production of accounts**

- 8.1 The Company shall instruct its auditors or accountants(as applicable) to prepare and audit a balance sheet of the Company, as at the Annual Accounts Date each year and a consolidated profit and loss account of the Company, for the 12 month financial period ending on the Annual Accounts Date each year to be presented to the Shareholders within 3 calendar months after the end of the period to which such accounts relate. The balance sheet and profit and loss account will be accompanied by an annual report.
- 8.2 All accounts referred to in this clause shall be prepared in pounds sterling and in accordance with applicable law and generally accepted accounting standards, principles and practices in the United Kingdom.

## 9 **Anti-corruption**

9.1 In this clause:

**Adequate Procedures** means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

**Associated Person** means in relation to a party to this Agreement, any person (including an officer, employee, agent or subsidiary) who performs services for or on behalf of that party;

**Corrupt Activity** means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including without limitation any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 Bribery Act;

9.2 Each party declares and undertakes to the other parties that:

9.2.1 it has not and will not in relation to the Company or the operation of the Business, engage in any Corrupt Activity;

9.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;

9.2.3 it has and will maintain in place, or in the case of the Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;

9.2.4 it has not and will not engage in any activity, practice or conduct which could place the Company or any other party in breach of section 7(1) Bribery Act;

9.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause 9.2 and will provide any information reasonably requested by the other party in support of such compliance; and

9.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 9.

9.3 Breach of any of the undertakings in this clause shall be deemed to be a material breach of this Agreement.

## 10 **Transfer of Shares**

10.1 The Directors and the Company shall procure that no person who acquires Shares in the Company (whether by transfer or allotment or otherwise) (a **New Shareholder**) shall be registered as their holder unless or until he has entered into a Deed of Adherence.

10.2 A New Shareholder who has entered into a Deed of Adherence in accordance with clause 10.1 shall have all the rights and obligations as if he were an original party to this Agreement in the capacity of a Shareholder.

## 11 **Conflict with the Articles**

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles, then it is the intention of the Shareholder that the provisions of this Agreement shall prevail. Accordingly, each Shareholder (so far as each is able) shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the Articles.

## 12 **No fetter**

Nothing in this Agreement shall operate to bind the Company to the extent that it constitutes an unlawful fetter on any statutory power of the Company (but this shall not affect the validity of the relevant provision as between the other parties to this Agreement or the respective obligations of such other parties as between themselves under clause 11).

## 13 **Duration and termination**

13.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Shareholders until the earlier of the following events:

13.1.1 each of the Shareholders agrees in writing to terminate this Agreement;

13.1.2 an effective resolution is passed or a binding order is made for the winding up of the Company;

13.1.3 all of the Shares become beneficially owned by one person;

**provided that** this Agreement shall cease to have effect as regards any Shareholder who ceases to hold any Shares in the Company, except for any provisions which are expressed to continue in force thereafter.

13.2 Termination of this Agreement pursuant to this clause shall not release any party from any liability which at the time of termination has already accrued to another party or which may accrue after termination of this Agreement in respect of any act or omission prior to such termination.

13.3 Upon termination of this Agreement pursuant to clause 13.1 the Shareholders shall do all such acts and things as are necessary to procure (so far as they are able) (including, without limitation, the holding of a general meeting of the Company and the passing of appropriate shareholder resolutions) that the Company be wound up.

## 14 Confidentiality

- 14.1 This clause applies to:
- 14.1.1 all information of a confidential nature 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;
  - 14.1.2 any information concerning the business affairs of one party or any member of its Group or other information confidential to that party or its Group 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**).
- 14.2 In this clause, in relation to a particular item of Confidential Information:
- 14.2.1 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
  - 14.2.2 the **Receiving Party** means the other party.
- 14.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:
- 14.3.1 keep the Confidential Information confidential;
  - 14.3.2 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 14; and
  - 14.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.
- 14.4 Notwithstanding clause 14.3, the Receiving Party may disclose Confidential Information as follows:
- 14.4.1 to its professional advisers (each, a **Recipient**) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and



- 14.4.2 to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body.
- 14.5 This clause 14 shall not apply to any Confidential Information which:
- 14.5.1 is at the date of this Agreement in, or at a later date comes into, the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
- 14.5.2 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
- 14.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.
- 14.6 The Company acknowledges that the Shareholder is subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation, and shall facilitate the Shareholder's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 14.7 and 14.10.
- 14.7 If the Shareholder receives a Request for Information in relation to Information that the Company is holding and which the Shareholder does not hold itself, the Shareholder shall refer to the Company such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the Company shall:
- 14.7.1 provide the Shareholder with a copy of all such Information in the form that the Shareholder requires as soon as practicable and in any event within 10 Business Days (or such other period as the Shareholder acting reasonably may specify) of the Shareholder's request; and
- 14.7.2 provide all necessary assistance as reasonably requested by the Shareholder to enable the Shareholder to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 14.8 Following notification under clause 14.7, and up until such time as the Company has provided the Shareholder with all the Information specified in clause 14.7, the Company may make representations to the Shareholder as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Shareholder shall be responsible for determining, at its absolute discretion:
- 14.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

- 14.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information.
- 14.9 The Company acknowledges that (notwithstanding the provisions of clause 14.1) the Shareholder may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Managers or the Company:
- 14.9.1 in certain circumstances without consulting with the Company; or
- 14.9.2 following consultation with the Company and having taken its views into account.
- 14.10 The Company shall transfer to the Shareholder any Request for Information received by it as soon as practicable and in any event within 3 Business Days of receiving it.
- 14.11 The Company acknowledges that any lists provided which list or outline Confidential Information are of indicative value only and that the Shareholder may nevertheless be obliged to disclose Confidential Information in accordance with clause 14.9.

## 15 General

- 15.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.
- 15.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 15.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.
- 15.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.
- 15.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 15.6 A waiver of a breach of any of the terms of this agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.

- 15.7 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.
- 15.8 The provisions of this Agreement insofar as they have not been performed at Completion shall remain in full force and effect notwithstanding Completion.
- 15.9 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:
- 15.9.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- 15.9.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 15.10 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.
- 15.11 Each of the parties acknowledges and agrees that:
- 15.11.1 in entering into this Agreement, and the documents[referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or those documents;
- 15.11.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement;
- 15.11.3 nothing in this clause shall operate to limit or exclude any liability for fraud.
- 15.12 Save for a person who enters into a Deed of Adherence pursuant to clause 10.2, no person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

## 16 Assignment

- 16.1 This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

## 17 No partnership or agency

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall

have authority to act in the name or on behalf of or otherwise to bind the other party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**18 Notices**

18.1 Any notice or other communication given under this Agreement:

18.1.1 shall be in writing;

18.1.2 shall be signed by or on behalf of the party giving it;

18.1.3 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post (or registered airmail in the case of an address for service outside the United Kingdom) or by fax at the address or fax number set out in clause 18.2 of the party due to receive it and marked for the attention of the person named in clause 18.2 (or at such other address or fax number or marked for the attention of such other person as last notified in writing to the other parties;

18.1.4 shall be deemed to have been received:

- (a) if delivered by hand, at the time of actual delivery;
- (b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting;
- (c) in the case of registered airmail, five Business Days after the date of posting; and
- (d) in the case of fax, at the time of completion of transmission.

18.2 The addresses and fax numbers of the parties for the purposes of clause 18.1 are:

**Huntingdonshire District Council**

Address: Pathfinder House, St. Mary's Street, Huntingdon, PE29 3TN

For the attention of:

HDC Ventures Limited

Address: Pathfinder House, St. Mary's Street, Huntingdon, PE29 3TN

For the attention of:

- 18.3 To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in clause 18.2 (or as otherwise notified in writing by that party under clause 18.2) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out in clause 18.2 (or as otherwise notified in writing by that party under clause 18.2).
- 18.4 In this clause if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.
- 18.5 For the avoidance of doubt, a notice or other communication given under this Agreement shall not be validly served if sent by e-mail.

## **19 Counterparts**

- 19.1 This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

## **20 Applicable law**

- 20.1 The parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English law.
- 20.2 Each of the parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

This Agreement has been executed on the date stated at the beginning of this Agreement.

## Schedule 1

### Deed of adherence

#### Deed of adherence

dated [ ] 20[ ]

By [ **Limited**] a company incorporated in England and Wales (registered number [ ]) whose registered office is at [ ] (the **New Shareholder**) in favour of the persons whose names and addresses are set out in the Schedule to this Deed (the **Continuing Parties**).

#### Introduction

- (A) This Deed is supplemental to a Shareholders' Agreement dated 2017 between [A], [B] and the Company (the **Shareholders' Agreement**) and to [insert details of any subsequent Deeds of Adherence or Amendment].
- (B) The New Shareholder wishes to [subscribe for] [acquire] [ ] [A]/[B] Shares in the capital of the Company [from *Transferor*].
- (C) Clause [ ] of the Shareholders' Agreement provides that no person other than a Shareholder shall acquire shares in the Company (whether by way of transfer or allotment or otherwise) unless he enters into a Deed of Adherence in substantially the form of this Deed.

#### Agreed terms

- 1 The New Shareholder confirms that [he/it] has been given a copy of the Shareholders' Agreement and covenants with the Continuing Parties to observe, perform and be bound by every provision of the Shareholders' Agreement (other than the Excluded Clauses) as if the New Shareholder had been an original party to it.
- 2 In this Deed the Excluded Clauses shall mean clauses [insert numbers of clauses to be excluded ie ones containing a personal obligation] of the Shareholders' Agreement.
- 3 Unless the context requires otherwise, words and expressions defined in the Shareholders' Agreement shall have the same meanings when used in this Deed.
- 4 This Deed shall be governed by and construed in accordance with English law.

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

#### Schedule

[Insert names and addresses of Continuing Parties]



**Appendix 2**  
**DRAFT ARTICLES OF ASSOCIATION**

**dated**                      **2017**

**HDC Ventures Limited**

**Articles of Association**

**Company number:**

**Private company limited by shares**





- 11 If the directors for the time being are unable to form a quorum, the directors must not take any decision other than a decision:
- 11.1 to appoint such number of further directors as are required to make up the quorum required; or
- 11.2 to call a general meeting so as to enable the shareholders to appoint further directors. Article 11(3) of the Model Articles shall not apply to the Company.

### **Conflicts of interest**

- 12 If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.

### **Authorisation of directors' conflicts of interest**

- 13 For the purposes of section 175 of the Companies Act 2006, as amended, consolidated or re-enacted from time to time (the **2006 Act**), the directors shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the 2006 Act. Any reference in these articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.
- 14 Authorisation of a matter under article 13 shall be effective only if:
- 14.1 the matter in question shall have been proposed in writing for consideration by the directors, or in such other manner as the directors may determine;
- 14.2 any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question and any other interested director (together the **Interested Directors**); and
- 14.3 the matter was agreed to without the Interested Directors voting or would have been agreed to if the votes of the Interested Directors had not been counted.
- 15 Unless otherwise determined by the directors (excluding the Interested Directors), any authorisation of a matter under article 13 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 16 Any authorisation of a matter under article 13 shall be on such terms and/or conditions as the directors (excluding the Interested Directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the directors (excluding the Interested Directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the Interested Directors from all information and discussion of the matter in question. A director shall comply with any obligations imposed on him by the directors (excluding the Interested Directors) pursuant to any such authorisation.

17 A director, notwithstanding his office, may be a director or other officer of, employed by, a member of or otherwise interested (including by the holding of shares) in, the Council or in a shareholder who has appointed him as a director of the Company, or any other member of such shareholder's group, or an employee of another local authority placed at the disposal of the Council pursuant to section 113 of the Local Government Act 1972, and no authorisation under article 9 shall be necessary in respect of any such interest

18 If a director receives or has received any information otherwise than by virtue of his position as a director of the Company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:

18.1 disclose any such information to the Company, the directors or any other director or employee of the Company; or

18.2 use or apply any such information in connection with the performance of his duties as a director;

provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the director of the duty to avoid conflicts of interest set out in section 175 of the 2006 Act, this article shall apply only if such situation or relationship has been authorised by the directors under article 13.

19 A director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the directors under article 13 and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.

#### **Appointment and removal of directors**

20 Unless otherwise determined by ordinary resolution, the number of directors is not subject to any maximum and the minimum number is two.

21 Notwithstanding any other provision of these articles, the holder or holders of a majority in nominal value of the issued ordinary shares in the capital of the Company may at any time and from time to time:

21.1 appoint any person to be a director (provided that any such appointment does not cause the number of directors to exceed a number fixed by or in accordance with these articles as the maximum number of directors); or

21.2 remove any director from office.

Every such appointment or removal shall be effected by notice in writing to the Company and shall take effect immediately (or on such later date, if any, specified in the notice). Any such notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of one or more holders.

22 The board of directors and/or the chairman has the authority to appoint non-executive directors of the Company.

- 23 In any case where, as a result of bankruptcy, the company has no shareholders and no directors, the trustee in bankruptcy or other transmittee(s) of the last shareholder to have a bankruptcy order made against him has the right, by notice in writing, to appoint a natural person (including himself) who is willing to act and is permitted to do so to be a director.

#### **Termination of a director's appointment**

- 24 Notwithstanding any other provision of these articles, a person ceases to be a director, in the following circumstances;

24.1 as soon as he has for more than six consecutive months been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated; or

24.2 being an officer of the Council at the time of his appointment as a director, his employment by the Council is terminated for any reason.

#### **Company secretary**

- 25 The directors may appoint a company secretary for such term, at such remuneration and upon such conditions as they think fit. Any company secretary may be removed or replaced by the directors.

#### **Nil- or partly-paid shares permitted**

- 26 Article 21 of the Model Articles shall not apply to the Company. If the Company at any time has nil or partly-paid shares in issue, articles 52 to 62 (inclusive) of the model articles of association for public companies contained in Schedule 3 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these articles, shall apply to the Company and form part of these articles as if the text of such provisions was set out in full in these articles.

#### **Share certificates**

- 27 Every share certificate must specify the amount paid up on the shares to which it relates. Article 24(2)(c) of the Model Articles shall not apply to the Company.

#### **Share transfers**

- 28 The instrument of transfer of any share taken on formation of the Company by a subscriber to the company's memorandum of association need not be executed by or on behalf of the transferee even where the share is not fully paid.

#### **Calculation of dividends**

- 29 Except as otherwise provided by these articles or the rights attached to shares, all dividends must be:

29.1 declared and paid according to the amounts paid up on the shares on which the dividend is paid; and

- 29.2 apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly. For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount. Article 30 of the Model Articles shall be modified accordingly.

#### **Proceedings at general meetings**

- 30 If a general meeting is adjourned, then notice of the time and place to which it is adjourned shall be given to all the members of the Company. Article 41(5) of the Model Articles shall be modified accordingly.

#### **Poll votes**

- 31 A poll may be demanded by any member (present in person or by proxy) having the right to attend and vote at the meeting or by a duly authorised representative of a corporation. Article 44(2)(c) of the Model Articles shall be modified accordingly.
- 32 A demand for a poll may, before the poll is taken, be withdrawn. A demand so withdrawn shall not invalidate the result of a vote on a show of hands declared before the demand was made. Article 44(3) of the Model Articles shall not apply to the Company.

#### **Proxies and corporate representatives**

- 33 The failure of any proxy or corporate representative to vote in accordance with any instructions given by the member by whom such proxy or corporate representative is appointed shall not invalidate the result of any vote in which the proxy or corporate representative has participated and the Company and the directors shall be under no duty to enquire as to the instructions given to any such proxy or corporate representative.

#### **Written resolutions**

- 34 A proposed written resolution of the members of the Company (or of a class of members) shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the 2006 Act).

#### **Means of communication to be used**

- 35 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
- 35.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five working days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended

recipient, provided that delivery in at least five working days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);

- 35.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
- 35.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
- 35.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

- 36 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the 2006 Act.

#### **Indemnity**

- 37 The Company may indemnify any relevant officer out of the assets of the Company from and against any loss, liability or expense incurred by him or them in relation to the Company (including any liability incurred in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act)) **provided that** this article shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent permitted by, and subject to the restrictions of, the 2006 Act. This article does not allow for or provide (to any extent) an indemnity which is more extensive than as permitted by the 2006 Act and any such indemnity is limited accordingly. This article is also without prejudice to any indemnity to which any person may otherwise be entitled. Article 52 of the Model Articles shall not apply to the Company.
- 38 To the extent permitted by, and subject to the restrictions in, the 2006 Act and without prejudice to any indemnity to which he may otherwise be entitled, the board shall have the power to provide funds to meet any expenditure incurred or to be incurred by any relevant officer in defending any criminal or civil (including regulatory) proceedings, or in connection with an application under the 2006 Act, or to enable him to avoid incurring such expenditure.
- 39 Without prejudice to the provisions of article 53 of the Model Articles, the directors may exercise all the powers of the Company to purchase and maintain insurance for the benefit of any person who is a relevant officer or an employee or former employee of the Company or any associated company or who is or was a trustee of a retirement benefits scheme or another trust in which a relevant officer or an employee or former employee is or has been interested, indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the Company.

40 In these articles:

40.1 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate;

40.2 **relevant officer** means any current or former director, alternate director, secretary or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act)), other than any person (whether an officer or not) engaged by the Company (or associated company) as an auditor, to the extent he acts as an auditor.

#### **Right to inspect accounts and other records**

41 The Council and its authorised representatives shall have the right, on giving to the Company reasonable advance notice, during normal business hours to inspect the books and records of the Company and any subsidiary of the Company. Article 50 of the Model Articles shall not apply to the Company.

#### **Definitions**

42 In these articles;

“Council” means Huntingdonshire District Council

“elected member” means an elected member of the Council; and

"officer" means an officer of the Council and shall include an employee of another local authority placed at the disposal of the Council pursuant to section 113 of the Local Government Act 1972.





## **APPENDIX 4 – BUSINESS CASE /PROCUREMENT UPDATE**

### **Document Centre**

- Options review and business case for preferred option (joint venture) completed.
- Submission to O&S and Cabinet scheduled for July.
- Soft market testing – market validation via supplier discussions – ongoing.
- Procurement timetable drafted.
- Intention is to initiate a Restricted Procedure with Competitive Dialogue: commencing in June.
- Contract Award anticipated in November/December.
- Mobilisation plan to be prepared during procurement process.

### **CCTV**

- Briefing paper in preparation for submission to O&S/Cabinet in July.
- Procurement timetable drafted.
- Intention is to initiate a Restricted Procedure with Competitive Dialogue: commencing in July.
- Contract Award anticipated in November/December.
- Mobilisation plan to be prepared during procurement process.