

Dated

2022

OWNER (1)

COUNCIL (2)

SOLENT FREEPORT CONSORTIUM (3)

SITE SPECIFIC AGREEMENT RELATING TO LAND AT [ADDRESS]

Paris Smith LLP
No 1 London Road
Southampton
Hampshire
SO15 2AE

Tel: 023 8048 2482
Ref: CMD

TABLE OF CONTENTS

1	Interpretation.....	3
2	Term.....	8
3	Freeport Objectives	8
4	Obligations of Owner in relation to the Land	9
5	End Users of the Land.....	10
6	Business Rates Relief.....	10
7	Retained Rates Funding and Seed Capital Funding.....	10
8	Remedies.....	11
9	Termination.....	11
10	Confidentiality	12
11	Force Majeure.....	12
12	Council Functions	12
13	No Partnership.....	13
14	costs	13
15	Waiver.....	13
16	Notices	13
17	Third party rights.....	14
18	Disputes.....	14
19	Governing Law.....	14
	Annex 1 Solent Freeport Area.....	15

DRAFTING NOTES:

Tax Site Designation. This Agreement is drafted to encourage Owners of land within designated tax sites to use the land in the manner envisaged in the Outline Business Case and in line with the Freeport Objectives. At the moment, the drafting assumes that there will be one agreement per owner (not one per tax site).

Customs Site Designation. The Agreement is not intended to regulate the use of land within designated customs sites (save to the extent that such sites are also tax sites).

Seed Capital Funding. The Agreement does not seek to allocate potential seed capital funding or to regulate the manner in which seed funding is to be spent and accounted for. Rather, it is envisaged that each owner will be required to apply to the Freeport Company for seed capital funding after the Full Business Case has been approved and that successful applicants will be required to enter into agreements with the Freeport's accountable body at the time any such seed funding is granted to them. The agreement with the accountable body will regulate the way in which that funding is to be spent and accounted for.

Business Rates Relief. The Agreement does not stipulate detailed eligibility criteria for business rates relief. It is envisaged that ratings authorities (in consultation with the Freeport) will publish criteria separately, and when a business occupying premises on a Tax Site applies for business rates relief, they will be required to demonstrate that they meet these criteria.

Retained Business Rates. The Agreement does not stipulate or guarantee whether owners will be eligible for a share of the retained business rates arising from new business rates revenue arising at the tax sites. Rather, it is envisaged that Owners wishing to receive a share of such retained business rates will need to apply to the Freeport Company (which will operate in conjunction with the ratings authorities) for the funds when the Freeport Company and ratings authorities advertise opportunities to apply for such funds and that successful applicants will be required to enter into agreements with the Freeport's accountable body at the time any such retained rates funding is granted to them. The agreement with the accountable body will regulate the way in which that funding is to be spent and accounted for.

Use of Land. The Agreement sets out the broad intentions in relation to the use and development of the land, but does not seek to nail down firm commitments in relation such development or timeframes, which may be contingent on various factors that are liable to change. However, the landowner is required to use Best Endeavours to use the land in line with the Freeport Objectives. This is necessary to give reassurance to HM Government that the tax benefits of a tax site designation will be used to achieve their intended aims, and not be used purely to provide a short term commercial benefit to the landowner. Best Endeavours falls short of an absolute obligation and is likely to be the minimum that HM Government will accept in return for a tax site designation. The scope of the term Best Endeavours is further defined in the Agreement.

Agreements with End Users. Where the land will be used and occupied by third parties (referred to in the Agreement as End Users), the Agreement requires land owners to enter into agreements with those End Users to pass on any obligations necessary to ensure that the Freeport Objectives are met. The form of the agreements with End Users is not prescribed in this Agreement and will be at the discretion of the landowner. The Solent Freeport Company and the ratings authorities will not be a party to those End User Agreements.

THIS DEED IS DATED [DATE] 2022

PARTIES

- (1) [NAME OF OWNER] of [ADDRESS OF OWNER] (the "**Owner**");
- (2) [NAME OF COUNCIL] of [ADDRESS OF COUNCIL] (the "**Council**"); and
- (3) **SOLENT FREEPORT CONSORTIUM LIMITED** incorporated and registered in England and Wales with company number 13266664 whose registered office is at 1 London Road, Southampton, United Kingdom, SO15 2AE (the "**Freeport Company**").

BACKGROUND

- (A) The Owner is the freehold owner¹ of the Land, which is located within the Solent Freeport Area.
- (B) The Freeport Company has been incorporated to co-ordinate the activities of the local authorities and landowners within the Solent Freeport and promote the Solent Freeports objectives.
- (C) The Council is the local rating authority for the area in which the Land is situated.
- (D) The Freeport Company has applied to HM Government to have the area within which the Land is situated formally designated as a freeport tax site, meaning that businesses operating on the Land (and the wider tax site) will benefit from certain tax reliefs and benefits.
- (E) The application for tax site designation has been made on the basis of proposals to promote the occupancy and use of the Land in ways meet one or more of the objectives of the Solent Freeport, as more particularly outlined in the Outline Business Case submitted to HM Government by the Freeport Company.
- (F) The purpose of this Agreement is to set out the high level principles about how the Owner, the Council and the Freeport Company intend to work together with a view to achieving the Freeport Objectives once tax site designation has been granted in respect of the area in which the Land is situated.

AGREED TERMS

1 INTERPRETATION

The following definitions and rules of interpretation apply in this Deed:

1.1 Definitions:

- 1.1.1 "**Accountable Body**" means the local authority that will act as the accountable body on behalf of the Freeport Company for the purposes of [*legislation ref TBC*] when the Freeport Company (in conjunction with the relevant local authorities) makes grants of Seed Capital Funding and Retained Rates Funding, which, as of the Commencement Date, shall be Portsmouth City Council;
- 1.1.2 "**Additional**" means in relation to activity by an End User on the Land, activity which:
 - 1.1.2.1 was not being performed on the Land by that End User prior to the Commencement Date and does not displace activity currently being performed by that End User elsewhere in the United Kingdom; and
 - 1.1.2.2 would not have been sufficiently Viable elsewhere in the Solent Freeport outer boundary without the benefits of the Tax Site Designation, or which

¹ If a person other than the freehold owner has exclusive possession of the Land (eg. under a long lease), then that person may also need to be a party to this Agreement.

might have occurred without a Tax Site Designation but at a much later date; or

- 1.1.2.3 the Freeport Company and the Council otherwise agree meets one or more of the Freeport Objectives.

Additional activity may include (without limitation) an expansion of an activity currently being performed elsewhere by the End User (whether in the UK or otherwise), activity commenced on the Land after the date of this Agreement where contracts for the use of that land were signed prior to the Commencement Date in anticipation of the Tax Site Designation being granted and activity in unoccupied buildings that already exist on the Land.

- 1.1.3 **“Affected Party”** has the meaning given to it in clause 11;
- 1.1.4 **“Affiliate”** means, in respect of a Party, any member of that Party's Group except the Party itself;
- 1.1.5 **“Applicable Law”** means all laws, regulations, directives, statutes, subordinate legislation, common law together with all codes of practice having force of law or statutory guidance applicable to a Party in connection with its activities under this Agreement;
- 1.1.6 **“Best Endeavours”** means, in relation to an intended outcome, pro-actively, energetically and expeditiously taking all such steps as are reasonable and necessary to achieve the intended outcome including, where relevant:
- 1.1.6.1 applying for any planning permission required to achieve that outcome and complying with any reasonable requests made by the planning authorities as a condition of granting such planning permission;
- 1.1.6.2 requesting consent from any relevant mortgagee or other person having a security interest over the Land and complying with any reasonable requests that such mortgage or other person may make as a condition of granting such consent;
- 1.1.6.3 using a Party's own funds to facilitate the achievement of that outcome to the extent that the provision of such funding was envisaged in the Outline Business Case (provided that a party shall not be required to provide such funding if other sources of funds that were intended to be pooled with the Party's own funds to achieve such outcome are not forthcoming);
- provided that no Party shall be required to pursue an outcome that, due to a material change in circumstances arising after the Commencement Date, is no longer sufficiently Viable.
- 1.1.7 **“BRR Criteria”** means the criteria to be used by the Council in determining whether or not to grant Business Rates Relief to an End User, which criteria shall be set by the Council in consultation with the Freeport Company and with reference to guidance published by HM Government and all applicable statutory criteria and which will be notified to the Owner and End Users;
- 1.1.8 **“Business Rates”** means [the levy charged on non-domestic properties by local ratings authorities under the Local Government Finance Act 1988]; **[Definition TBC]**
- 1.1.9 **“Business Rates Relief”** means relief from Business Rates granted by the Council under section 47 of the Local Government Finance Act 1988 (as amended) to End-User

Businesses occupying Relevant Premises in accordance with the terms of this Agreement and Applicable Legislation;

- 1.1.10 **"Commencement Date"** means the date on which the Tax Site receives a Tax Site Designation;
- 1.1.11 **"Confidential Information"** means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a Party or a member of its Group to another Party under or in connection with this Agreement including information relating to the operations, processes, plans or intentions, trade secrets, market opportunities, commercial information, information about rents, or business affairs, of the person making the disclosure or any member of its Group or any of its subcontractors, suppliers, customers, clients or other contacts;
- 1.1.12 **"control"** means, in relation to a party:
- 1.1.12.1 the holding or possession of a beneficial interest in more than 50% of the shares or other securities in that party (whether directly or indirectly);
 - 1.1.12.2 the ability to exercise, in aggregate, more than 50% of the voting rights applicable to shares or other securities in that party (whether directly or indirectly)
 - 1.1.12.3 the ability to ensure that the affairs of that party are conducted in accordance with a person's wishes, whether through contractual rights or otherwise;
- 1.1.13 **"Disclosing Party"** means, in respect of any Confidential Information, the Party:
- 1.1.13.1 which discloses that Confidential Information; or
 - 1.1.13.2 whose Affiliate discloses that Confidential Information;
- 1.1.14 **"Disposal"** means:
- 1.1.14.1 a transfer of the freehold title to the Land (if the Owner is the freeholder);
 - 1.1.14.2 an assignment of the Owner's leasehold interest in the Land (if the Owner is a long leaseholder); or
 - 1.1.14.3 the grant by the Owner of a leasehold interest in the Land having a duration in excess of seven years;
- in each case to a third party (including an Affiliate);
- 1.1.15 **"Eligible Premises"** means commercial premises on the Land the developers and occupants of which are eligible for certain tax benefits as a result of the Tax Site Designation;
- 1.1.16 **"End User"** means any person occupying Eligible Premises on the Land, whether such person is the Owner themselves or a third party that acquires a right to occupy the Eligible Premises;
- 1.1.17 **"End User Agreement"** means an agreement between the Owner and (where the End User is not also the Owner) the End User of Eligible Premises entered into for the purposes of ensuring the End-User's use of the Eligible Premises meets one or more of the Freeport Objectives;
- 1.1.18 **"Freeport Objectives"** means the objectives set out in clause 3;

- 1.1.19 **"Force Majeure Event"** means an event beyond the reasonable control of the Affected Party which prevents that Party from performing its obligations under this Agreement, including any strike, lock out or labour dispute (not involving employees of the Affected Party), act of God, disease, epidemic war, riot, civil commotion, malicious damage, compliance with a law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood and storm;
- 1.1.20 **"Group"** means in relation to an undertaking, that undertaking and its group undertakings from time to time;
- 1.1.21 **"Individual Recipient"** means any director, other officer, employee, subcontractor, advisor or consultant of the Receiving Party;
- 1.1.22 **"Land"** the land at [DESCRIPTION OR ADDRESS] shown edged red on the Plan and registered at HM Land Registry with absolute title under title number(s) [NUMBER[S]];
- 1.1.23 **"Outline Business Case"** means the Outline Business Case submitted by the Freeport Company to HM Government on 26 November 2021;
- 1.1.24 **"Partial Disposal"** means a Disposal in respect of a part of the Land;
- 1.1.25 **"Plan"** means the plan of the Land which is attached as Annex 3;
- 1.1.26 **"Receiving Party"** means, in respect of any Confidential Information, the Party:
- 1.1.26.1 to whom that Confidential Information is disclosed; or
- 1.1.26.2 to whose Affiliate that Confidential Information is disclosed;
- 1.1.27 **"Retained Rates"** means the aggregate of:
- 1.1.27.1 Business Rates Relief granted by ratings authorities in the Solent Freeport Area to (i) End Users; and (ii) eligible end users of premises at other tax sites in the Solent Freeport Area which, are reimbursed to the applicable ratings authorities by HM Government during the term of this Agreement; and
- 1.1.27.2 Business Rates paid to ratings authorities in the Solent Freeport Area by such end users (once eligibility for Business Rates Relief has expired) and by any other end users of the tax sites in the Solent Freeport Area for a period of up to 25 years from the Commencement Date (to the extent that such Business Rates exceed the baseline level of rates received at those tax sites prior to the Commencement Date);
- which, in each case, local authorities are entitled to retain to fund local investment and infrastructure projects for the purposes of furthering the Freeport Objectives;
- 1.1.28 **"Retained Rates Funding"** the funding distributed or available for distribution from the pool of Retained Rates to fund local investment and infrastructure projects for the purposes of furthering the Freeport Objectives;
- 1.1.29 **"Seed Capital Funding"** means the funding referred to as seed capital funding that will be made available to the Solent Freeport Company (via its Accountable Body) by HM Government following approval by HM Government of the Freeport Company's full business case, which funding will be distributed by the Freeport Company (via its Accountable Body) to fund local investment and infrastructure projects for the purposes of furthering the Freeport Objectives;

- 1.1.30 “**Solent Freeport Area**” means the area in the Solent region designated by HM Government as a freeport, as set out on the map attached to this Agreement as Annex 1;
- 1.1.31 “**Tax Site**” means the area(s)² hatched in red on the map attached as Annex 2.
- 1.1.32 “**Tax Site Designation**” means the formal designation of the Tax Site as a freeport tax site by HM Government [under the Finance Act 2020]; **[Legislation reference TBC]**.
- 1.1.33 “**Term**” means the term of this Agreement set out in clause 2.
- 1.1.34 “**Transferee**” means a person acquiring a freehold interest or leasehold interest having a duration in excess of seven years in the Land, or a part of the Land, pursuant to a Disposal or a Partial Disposal (as applicable);
- 1.1.35 “**Viable**” means an instance where activity takes place as the benefits and/or revenues outweigh the costs; and
- 1.1.36 “**Working Day**” any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.
- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 a “**group undertaking**” means a “**parent undertaking**” or a “**subsidiary undertaking**”, and those terms shall have the respective meanings given to them in sections 1161 and 1162 Companies Act 2006;
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **this Deed** or **this Agreement** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.12 An obligation on a party not to do something includes an obligation not to allow that thing to be done.

² For the Southampton Water Tax Site, the Tax Site consists of multiple (non-contiguous) areas.

1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.14 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2 TERM

This Deed shall come into force on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 8, until 30 September 2036.

3 FREEPORT OBJECTIVES

3.1 The “**Freeport Objectives**” are to:

- 3.1.1 establish the Solent Freeport as a hub for global trade and investment across the UK;
- 3.1.2 promote regeneration and job creation; and
- 3.1.3 create hotbeds of innovation and skills, pioneer approaches to climate change adaptation and decarbonisation and accelerate the transition to a “Net Zero” economy.

3.2 All the parties agree to work together in good faith with a view to leveraging the Tax Site Designation to achieve one or more of the Freeport Objectives in the manner envisaged by this Agreement. The parties shall agree which of the Freeport Objectives are proposed to be met in relation to the various activities carried out on the Land.

3.3 The parties shall hold meetings together to discuss the progress in and strategy for achieving the Relevant Freeport Objectives as often as reasonably necessary and, in any event, at least once every quarter.

3.4 The Owner shall:

- 3.4.1 report to the Freeport Company and the Council in writing not less frequently than once every six months on the progress in achieving the Relevant Freeport Objectives on the Land (provided that the Freeport Company may reduce this frequency after the first five years of this Agreement to such frequency as it considers to be more appropriate);
- 3.4.2 from time to time provide such information as may be reasonably requested by the Freeport Company and/or the Council;
- 3.4.3 be available for and attend (together with its professional advisers) briefing meetings as may be reasonably requested by the Freeport Company or the Council; and
- 3.4.4 have due regard to reasonable representations made by the Freeport Company and the Council in relation to the use of the Land.

3.5 The Freeport Company shall:

- 3.5.1 give the Owner the opportunities to attend meetings to discuss the progress of the development and use of the Land and whether such development and use is Additional and meets one or more of the Freeport Objectives;
- 3.5.2 at the written request of the Owner, take reasonable steps as agreed by the Freeport Company’s board to promote and publicise the opportunities for potential End Users of Eligible Premises on the Land through such channels as the Freeport Company considers appropriate;
- 3.5.3 inform the Owner of opportunities to apply for Seed Capital Funding and Retained Rates Funding;

- 3.5.4 give the Owner reasonable opportunities to make representations in support of any application that the Owner submits for Seed Capital Funding or Retained Rates Funding, subject to compliance with Applicable Law;
 - 3.5.5 at the written request of the Owner, write such letters in support of planning applications for developments on the Land that meet the Relevant Freeport Objectives as the Freeport Company considers appropriate.
- 3.6 The Council shall promptly inform the Owner and the Freeport Company:
- 3.6.1 of the BRR Criteria after they are published;
 - 3.6.2 of any changes to the BRR Criteria from time to time; and
 - 3.6.3 of any material changes in the administration of the Council likely to have an impact on the ability of any Party to achieve the Relevant Freeport Objectives.

4 OBLIGATIONS OF OWNER IN RELATION TO THE LAND

- 4.1 The Owner warrants it owns and has exclusive possession of the freehold of the Land.³
- 4.2 The Owner shall use Best Endeavours to:
- 4.2.1 promote activity on the Land that is genuinely Additional; and
 - 4.2.2 ensure that the benefits of the Tax Site Designation flow to furtherance of one or more of the Freeport Objectives.
- 4.3 Without prejudice to the generality of the foregoing, the Owner shall use Best Endeavours to develop and use the Land in the manner and within the timeframes set out in the Outline Business Case, upon which the Tax Site Designation was based.
- 4.4 The Owner shall promptly inform the Freeport Company and the Council in writing if:
- 4.4.1 its plans in relation to the development or use of the Land change such that they are no longer consistent with either clause 4.2 or clause 4.3; or
 - 4.4.2 it becomes aware of any fact or circumstance that are likely to prevent the Owner from developing or using the Land in the manner required by clause 4.2 or clause 4.3.
- and in each case it shall inform the Freeport Company and the Council of the reasons why it is unable to comply with clause 4.2 and/or clause 4.3 (as applicable). Informing the Freeport Company and the Council under this clause 4.4 shall not relieve the Owner of its other obligations under this Agreement and shall be without prejudice to clause 8.
- 4.5 The Owner undertakes that:
- 4.5.1 in the event of a Disposal, it shall inform the Freeport Company and the Council and shall procure that its rights and obligations under this Agreement are novated to the relevant Transferee; and
 - 4.5.2 in the event of a Partial Disposal, it shall inform the Freeport Company and the Council and shall procure that its rights and obligations under this Agreement are novated to the relevant Transferee in respect of the part of the Land that has been disposed of (and its rights and obligations under this Agreement shall continue in relation to the part of the Land not subject to the Partial Disposal).

³ If there are other interested parties – eg. mortgagees or lessees, this can be acknowledged here and the warranty can be caveated accordingly.

4.6 If a Transferee takes a leasehold interest in the Land, the novation(s) referred to in clause 4.5 shall provide that the Owner's rights and obligations will transfer back to the Owner in the event of the termination or expiry of the Transferee's lease prior to the expiry of the Term.

4.7 Clauses 4.4 and 4.5 shall apply to the Transferee, and any subsequent Transferees.

4.8 Subject to their rights of termination under clause 9.5, the Freeport Company and the Council will enter into any novation entered into pursuant to clause 4.5 (provided that this clause does not oblige the Freeport Company and the Council to agree to any proposed changes to this Agreement in connection with the novation).

5 END USERS OF THE LAND

5.1 The Owner shall use Best Endeavours to identify End Users for the Land whose activities will meet one or more of the Freeport Objectives and be genuinely Additional. This may include use of the Land by the Owner itself in a manner consistent with the vision for the Tax Site as such vision is articulated in Outline Business Case.

5.2 The Owner shall enter into an End User Agreement with each End User that meets the criteria specified in clause 5.1 (where the End User is not the Owner itself). The Owner shall include such obligations in the End User Agreement as may be necessary as to ensure that the End User uses the Eligible Premises in a way that meets one or more of the Freeport Objectives and shall take reasonable steps to enforce those obligations.

5.3 The End User Agreement shall require the End User to impose those same obligations on any further End User deriving a right to occupy and use the Eligible Premises from the original End User.

6 BUSINESS RATES RELIEF

6.1 The Council shall be responsible for setting (in consultation with the Freeport Company) and publishing the BRR Criteria.

6.2 End Users may apply for Business Rates Relief when they acquire the right to occupy Relevant Premises.

6.3 The End User's application for Business Rates Relief shall be assessed by the Council for compliance with one or more of the Freeport Objectives and the BRR Criteria and the End User shall be eligible for the relief it meets these objectives and criteria.

7 RETAINED RATES FUNDING AND SEED CAPITAL FUNDING

7.1 Subject to clauses 7.2 and 7.3, the Freeport Company shall administer the process by which the Owner (and other applicants in the Solent Freeport Area) may apply for Retained Rates Funding and Seed Capital Funding.

7.2 The Freeport Company and the Council shall (along with other relevant ratings authorities) work together to agree:

7.2.1 protocols by which Retained Rates collected by different ratings authorities within the Solent Freeport Area may be pooled;

7.2.2 the criteria for determining how Seed Capital Funding and Retained Rates Funding will be distributed and spent;

7.2.3 a joint decision-making process relating to the assessment of applications for such funding; and

- 7.2.4 how the costs the Council, the other relevant ratings authorities and the Freeport Company incurred in administering such funding and Business Rates Relief will be funded.
- 7.3 Seed Capital Funding and Retained Rates Funding will be distributed via the Accountable Body, who may require the recipient of those funds to enter into an appropriate funding agreement with the Accountable Body to govern how those funds are spent and accounted for in line with the Freeport Objectives.

8 REMEDIES

- 8.1 If the Owner does not adhere to the terms of this Agreement then:
- 8.1.1 the Freeport Company shall have the right (under its Articles of Association) to remove the Owner's right to membership of the Freeport Company (if applicable) and/or representation on or attendance at the Freeport Company board of directors or sub-committees (if applicable), provided that the Freeport Company shall first give the Owner written notice of the breach and a reasonable period in which to remedy it if it is capable of remedy;
- 8.1.2 the Freeport Company and the Council shall have right to publish a finding that the Owner failed to use Best Endeavours to use the Land in accordance with one or more of the Freeport Objectives provided that the Freeport Company shall first give the Owner written notice of the breach and a reasonable period in which to remedy it if it is capable of remedy;
- 8.1.3 the Freeport Company and the Council may take account of the breach into account when in the context of Seed Capital Funding and Retained Rates Funding; and
- 8.1.4 the Council may take account of the breach when setting BRR Criteria and assessing applications for Business Rates Relief.

9 TERMINATION

- 9.1 This Agreement may be terminated by the mutual agreement of the parties.
- 9.2 Without prejudice to the Owner's obligations under clause 4.5, this Agreement shall automatically terminate if the Owner is dissolved or ceases to exist.
- 9.3 If the Freeport Company is dissolved or ceases to exist then, subject to clause 9.4, this Agreement shall continue as between the Owner and the Council who shall work together to agree such changes as may be necessary to take account of the fact that the Freeport Company no longer exists.
- 9.4 If, following a dissolution of the Freeport Company the Council and the Owner fail to agree any required changes to this Agreement to take account of the fact that the Freeport Company no longer exists and the Council considers that this Agreement has become unworkable, the Council may terminate this Agreement by giving prior written notice to the Owner within a reasonable time (not to exceed 9 months following the Freeport Company's dissolution).
- 9.5 This Agreement may be terminated by the Freeport Company and Council acting jointly by giving prior written notice to the Owner within a reasonable time (not to exceed 9 months) following:
- 9.5.1 a Disposal or a Partial Disposal of the Land by the Owner; or
- 9.5.2 a direct or indirect change of control of the Owner.
- 9.6 Clauses 8 and 10 to 19 shall survive termination of this Agreement.

10 CONFIDENTIALITY

- 10.1 The Receiving Party:
- 10.1.1 may not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
 - 10.1.2 may not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with clause 10.2 or clause 10.3.3; and
 - 10.1.3 shall make every effort to prevent the use or disclosure of Confidential Information other than in accordance with clauses 10.1.1 and 10.1.2.
- 10.2 During the term of this Agreement the Receiving Party may disclose Confidential Information to any Individual Recipient to the extent that disclosure is reasonably necessary for the purposes of this Agreement (including, where the Receiving Party is the Freeport Company, disclosures required to be made to the Freeport Company's Accountable Body and disclosures required to be made to HM Government). The Receiving Party shall ensure that the Individual Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Individual Recipient was a party to this Agreement.
- 10.3 Clause 10.1 does not apply to Confidential Information which:
- 10.3.1 is at the date of this Agreement, or at any time after that date becomes, publicly known other than by the Receiving Party's or Individual Recipient's breach of this Agreement; or
 - 10.3.2 can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party; or
 - 10.3.3 is required to be disclosed by Applicable Law.

11 FORCE MAJEURE

- 11.1 If a Party ("**Affected Party**") is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event:
- 11.1.1 the Affected Party's obligations under this Agreement are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;
 - 11.1.2 as soon as reasonably possible after the start of the Force Majeure Event the Affected Party shall notify the other Party in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;
 - 11.1.3 the Affected Party shall use its reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement; and
 - 11.1.4 as soon as reasonably possible after the end of the Force Majeure Event the Affected Party shall notify the other Party in writing that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.

12 COUNCIL FUNCTIONS

- 12.1 Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.
- 12.2 The Parties agree that:

- 12.2.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
- 12.2.2 nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

13 NO PARTNERSHIP

- 13.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Owner and any other Party.

14 COSTS

- 14.1 Each party shall bear its own costs in connection with the preparation and negotiation of this Agreement.

15 WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16 NOTICES

- 16.1 Any notice to be given under this Deed must be in writing and must be:
 - 16.1.1 delivered by hand;
 - 16.1.2 sent by pre-paid first class post or other next working day delivery service; or
 - 16.1.3 sent by email.
- 16.2 Any notice to be given under this Deed must be sent to the relevant party as follows:
 - 16.2.1 to the Council at [ADDRESS] marked for the attention of [NAME/POSITION];
 - 16.2.2 to the Owner at [ADDRESS] marked for the attention of [NAME/POSITION];
 - 16.2.3 to the Freeport Company at [ADDRESS] marked for the attention of [NAME/POSITION]]or as otherwise specified by the relevant party by notice in writing to each other party.
- 16.3 Any notice given in accordance with clause 16.1 and clause 16.2 will be deemed to have been received:
 - 16.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
 - 16.3.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
 - 16.3.3 If sent by email, at the time of transmission, provided that if transmission occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if transmission occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day

16.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17 THIRD PARTY RIGHTS

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

18 DISPUTES

18.1 Any dispute, controversy or claim arising out of or relating to this Deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this Deed, shall be subject to the jurisdiction of the English courts.

19 GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

The common seal of **[NAME OF COUNCIL]**
was affixed to this document in the presence of:

Authorised signatory

Signed as a deed by **[NAME OF OWNER]** in the presence of:

.....
[SIGNATURE OF Owner]

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by **SOLENT FREEPORT LIMITED**

.....
[SIGNATURE OF DIRECTOR]
Director

acting by **[NAME OF DIRECTOR]** a director, in the presence of:
.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

**ANNEX 1
SOLENT FREEPORT AREA**

[INSERT MAP OF SOLENT FREEPORT AREA]

**ANNEX 2
TAX SITE**

[INSERT MAP OF TAX SITE]

**ANNEX 3
THE LAND**

[INSERT PLAN OF THE LAND]

DRAFT