



**Isle of Man
Government**

Reilhtys Ellan Vannin

DATED 10 November 2021

Treasury

and

Manx Development Corporation

SHAREHOLDER AGREEMENT

IN COMMERCIAL CONFIDENCE



Attorney General's Chambers
Douglas

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SHAREHOLDER AGREEMENT

DATED 10 NOVEMBER 2021

PARTIES

- (1) The **Treasury** (a Department of the Isle of Man Government) of Government Offices, Bucks Road, Douglas, Isle of Man, IM1 3PZ (the "**Shareholder**"); and
 - (2) The **Manx Development Corporation Limited** (a company incorporated in the Isle of Man with company number 134406C) whose registered office is situated at 1st Floor, St. George's Court, Upper Church Street, Douglas, Isle of Man (the "**MDC**");
- (together referred to as the "**Parties**").

RECITALS

- (A) The Shareholder owns all of the issued and outstanding shares in the capital of the MDC as at the date hereof.
- (B) The Parties wish to record their agreement as to the manner in which the MDC's affairs are to be conducted.
- (C) The objectives of the Parties are to ensure that the division of responsibilities set out in this Agreement are based upon four (4) guiding principles, namely:
 - i. Clear accountability – each Party must be accountable for its actions, so each must have unambiguous and well-defined responsibilities;
 - ii. Transparency – Tynwald and the public must know who is responsible for what;
 - iii. Avoidance of duplication – each Party must have a clearly defined role, to avoid the unnecessary duplication of effort and to help ensure proper accountability; and
 - iv. Regular information exchange – this helps each Party to discharge its responsibilities as efficiently and effectively as possible.
- (D) Whilst the Shareholder will be the decision-maker in respect of all Shareholder functions as set out in this Shareholder Agreement and the Articles of Association, the Shareholder will consult and take guidance from the Brownfield Regeneration Steering Group (as hereinafter defined) when making certain of those decisions.
- (E) The MDC is a private company, run at arm's length from Government.

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

The following expressions shall have the meanings set opposite them below and cognate expressions shall bear corresponding meanings:

“Agreement”

means this agreement and all/any schedules and appendices hereto;

“Annual Work Programme (AWP)”

the detailed document outlining the intended Projects and Programmes to be delivered as part of the Strategy Implementation Plan (SIP). The AWP includes a budget for the current year’s planned expenditure and income.

“Articles of Association”

means the articles of association of the MDC;

“Board”

means the board of Directors of the MDC and which will comprise not less than three (3) NEDs including the Chairman and additional Executive Directors (provided that the number of Executive Directors on the Board can at no time exceed the number of NEDs on the Board);

“Brownfield Regeneration Steering Group” or “BRSG”

means a sub committee of the Council of Ministers tasked with providing strategic direction for the operation of the MDC

“Business Case”

means a document produced in accordance with the description in Clause 14.1.1 of this Agreement.

“Chair or Chairperson”

means the person Chairing Board who is appointed by the Shareholder (from the NEDs on the Board at the time being in force);

“Commencement Date”

means the 22nd July 2021

“Commercially Sensitive Information”

has the same meaning as is defined or described in the FOIA;

“Directors”

means the NEDs and the Executive Directors;

“Executive Directors”

means a Director on the Board who also holds an executive operational position within the MDC (for the avoidance of doubt the MDC shall be at liberty to appoint to the position of operational director but these operational directors will not be Executive Directors unless they are appointed to the Board in accordance with the provisions of this Agreement and the Articles of Association);

“FOIA”

means the Freedom of Information Act 2015;

“Government”

means the Departments’ Boards and Offices which together form the Isle of Man Government;

“Governance Document”

means the IOMG Corporate Governance Principles and Code of Conduct (Nov 2005) governance code set out in the Schedule to this Agreement adapted by the Parties as appropriate;

“Information”

has the same meaning as is defined or described in the FOIA;

“Island Development Plan”

means the Isle of Man Development Plan which is made up of the Isle of Man Strategic Plan and the relevant Area Plans;

“MDC”

means the Manx Development Corporation Limited;

“NED”

means a non-executive Director of the MDC;

“Parties”

means the Shareholder and the MDC, and **“Party”** means either one of them as appropriate;

“Remuneration”

means the remuneration paid to NEDs from the Commencement Date until such time as it is varied in accordance with Clause **Error! Reference source not found.** (DIRECTORS’ REMUNERATION) of this Agreement;

“Requests for Information”

means requests for Information received by the Shareholder pursuant to the FOIA;

“Senior Officers”

means employees of the MDC generally included in the first layer of management below Board level;

“Shared Services”

means any services provided by IOMG Shared Services;

“Shareholder”

means the Treasury;

“SIP”

A Strategy Implementation Plan which is to be prepared by the MDC in accordance with clause 11.1 and which will set out the MDC plans to meet the requirements of the Strategic Direction.

“Sites”

means land sites (either owned by Government or by third parties) which the MDC is to develop or on which it is to facilitate development by others.

“Strategic Direction”

means the strategic direction of the MDC as set by the Brownfield Regeneration Steering Group;

“Term”

has the meaning given to it in Clause 2 (COMMENCEMENT AND DURATION);

“Working Days”

has the same meaning as is defined or described in the FOIA.

1.2. Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- 1.2.1. The clause headings in this Agreement are for reference purposes only and shall not be used in the interpretation thereof.
- 1.2.2. Expressions which denote any reference to one gender shall include the other and any reference to the singular includes the plural and vice versa.
- 1.2.3. References to a **“person”** shall be construed as including references to an individual, firm, company, corporation, partnership, association,

unincorporated body of persons, trust, a state or any governmental authority or any other entity whether acting in an individual, financing or other capacity and to such person's permitted successors.

1.2.4. References to a "**business day**" shall mean any day which is not a Saturday or a Sunday or any public holiday or bank holiday recognised in the Isle of Man.

1.2.5. References to clause(s), schedule(s) or appendix/appendices shall refer to clauses, schedules or the appendices of and to this Agreement.

1.2.6. All references to this Agreement shall include references to all schedules and appendices to this Agreement which schedules and appendices shall form an integral part of this Agreement.

1.2.7. An expression defined in this Agreement shall bear the same meaning in the appendices.

2. COMMENCEMENT AND DURATION

This Agreement shall be effective from the Commencement Date and shall continue until it is terminated in accordance with clause 19 (the "**Term**").

3. PURPOSE OF THE MDC (THE "PURPOSE")

The overarching Purpose of the MDC is:

"To be a catalyst for the positive transformation of the Island's urban landscape for the benefit of all Manx Citizens".

4. ROLE & RESPONSIBILITIES OF THE MDC

4.1 The roles and responsibility of the MDC will be to:

4.1.1 The development of unoccupied or previously developed sites which are owned by Government transferred to the MDC in line with Government strategies, urban regeneration masterplans and the Island Development Plan.

4.1.2 Facilitate, enable and broker the development of unoccupied or previously developed sites in private ownership for the purpose of sustainable and suitable development, ensuring alignment with Government strategies, urban regeneration masterplans and the Island Development Plan. Activities could include shouldering some of the risk preventing privately funded development and regeneration.

4.1.3 The provision of strategic and research support for Government in support of Island-wide urban regeneration.

5. SCOPE OF THE MDC (THE "SCOPE")

5.1 The Scope of the MDC will be:

5.1.1 To develop agreed Government owned brownfield Sites directly, or indirectly through the commissioning of development and construction by third parties.

- 5.1.2 To facilitate, enable and broker development throughout the Island on Sites owned by third parties, in line with the Government strategies, urban regeneration masterplans and Island Development Plan.
- 5.1.3 To conduct strategic and operational property development activities for public benefit, furthering urban regeneration or through commissions from Government Departments, with a similar goal.
- 5.1.4 To enter into commercial agreements for joint ventures with private developers and investment companies where it is in the interest of the Shareholder to do so.
- 5.1.5 To act as a landlord for Government controlled assets which are transferred into the ownership of the MDC.
- 5.1.6 To act as a landlord for privately owned assets, where it has commissioned development in the interests of the Shareholder.
- 5.1.7 To deliver public realm and spatial enhancement whenever possible.

6. COMPLIANCE WITH AGREEMENT

6.1 By the Shareholder:

The Shareholder agrees to vote and act as a shareholder of the MDC to fulfil the provisions of this Agreement and in all other respects to comply with, and use all reasonable efforts to cause the MDC to comply with, this Agreement. The Shareholder further undertakes that it will use its influence as Shareholder to cause such meetings of the MDC to be held, resolutions passed, bylaws enacted, agreements and other documents signed and acts or things performed or done as may be necessary or desirable to ensure that the provisions of this Agreement are implemented and given full force and effect.

6.2 By the MDC

The MDC undertakes to carry out and be bound by the provisions of this Agreement to the full extent that it has the capacity and power at law so to do.

7. CONFLICT WITH ARTICLES OF ASSOCIATION

To the extent permitted by the Act, in the event of any conflict of the MDC between the provisions of this Agreement and the provisions of the Articles of Association, the provisions of this Agreement shall prevail, and the Shareholder shall vote to amend the Articles of Association so as to ensure conformity with the terms of this Agreement.

8. CORPORATE GOVERNANCE

- 8.1 The Government's Three Fundamental Principles of Corporate Governance and the Seven Internationally agreed Principles of Conduct (each as set out in the Governance Document) shall apply to the MDC Board and its employees.

- 8.2 The corporate values of respect, integrity, collaboration and innovation shall apply within the MDC corporate culture and in all stakeholder relationships.
- 8.3 The MDC shall not engage anywhere in any political activity or provide funds in connection with the carrying on by any third party of any political activity.
- 8.4 The MDC will not appoint any agent or intermediary to conduct the whole or part of the business.
- 8.5 The Shareholder agrees that the MDC will implement appropriate financial controls, which take into account its size and arms-length nature, alongside the need to supervise the public purse and protect its assets. These controls will be agreed between the parties and documented before 31 December 2021. It is recognised that these controls will develop as the MDC matures, and they will be updated from time-to-time as agreed between the parties.
- 8.6 The Shareholder requires MDC to develop and deploy a management system and associated Policies demonstrating robust controls for environmental, social and corporate governance with appropriate KPIs. The system and policies will be documented as an annex to this agreement before 31 March 2022.
- 8.7 The Policy under which the MDC distributes dividends to the Shareholder will be agreed between the parties and documented before 31 December 2022. The policy will be flexible, in the event that the MDC needs to retain cash to fund future investments.

9. IMPORTANT MANAGEMENT DECISIONS

- 9.1 The MDC will seek the approval of the Shareholder prior to making any of the following decisions to:
 - 9.1.1 sell, transfer, lease, licence or in any way dispose of all or any part of its business or assets including, in particular, any of its real estate;
 - 9.1.2 create any mortgage or security interest, lien or other charge other than any arising by operation of law or prior agreed limits over any of its assets;
 - 9.1.3 give any material guarantee, indemnity or security in respect of the obligations of any other person other than in accordance with pre-agreed financial controls;
 - 9.1.4 borrow any sum or factors or discounts any book debts, except in respect of the purchasing or leasing of plant or equipment in the ordinary course of business;
 - 9.1.5 enter into any material contract or alter, in a material way, the commercial terms of any material trading arrangements in either case outside the ordinary course of business;
 - 9.1.6 undertake in any financial year any material single item or material series of items of capital expenditure or commence any litigation, arbitration or

administrative proceedings, or claim outside the ordinary course of its business which might by itself or together with any such other proceedings or claim have a material adverse effect on the financial position of the MDC;

- 9.1.7 alter any of the rights attaching to shares in the authorised share capital of the MDC;
- 9.1.8 alter the name or Registered Office of the MDC;
- 9.1.9 alter its Articles of Association;
- 9.1.10 grant or create any rights (by licence or otherwise) over or in any intellectual property owned or used by the MDC;
- 9.1.11 amalgamate or merge with any other company or business undertaking, or acquire any subsidiary directly or indirectly, or acquire shares in any other company or directly or indirectly participate in any partnership or joint venture;
- 9.1.12 apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange market;
- 9.1.13 pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent);
- 9.1.14 appoint any agent or intermediary to conduct the whole or part of the business;
- 9.1.15 enter into any partnership or joint venture agreement.

10. REQUESTS FOR APPROVAL

- 10.1 In instances where the MDC requires the approval, consent or permission of the Shareholder before making a decision as defined in clause 9 above the MDC will submit their request for approval, consent or permission to the Shareholder and to the BRSB in such format as the Shareholder and the BRSB shall reasonably require.
- 10.2 The MDC shall ensure that all Business Cases which are submitted align with the Strategy Implementation Plan or MDC Scope.

11. EXCHANGE OF INFORMATION AND COMMUNICATION

- 11.1 The MDC shall produce a three-year Strategy Implementation Plan based on the Strategic Direction set by the BRSB, pertaining to government site development and other activities included within the MDC scope. This SIP will be available to the BRSB for oversight at least 7 days in advance of the BRSB quarterly meetings.
- 11.2 The MDC will produce an Annual Work Programme and budget detailing the short-term actions and deliverables for the following twelve (12) months, referenced against a budget forecast and provide these to the Shareholder for oversight at least 7 days in advance of the BRSB quarterly meetings.

- 11.3 Except as stated below, the MDC shall supply to the Shareholder and the BRSB such information relating to the affairs of the MDC as the Shareholder or BRSB may reasonably request from time to time.
- 11.4 The MDC will give the Shareholder access to information to assist the Shareholder properly and effectively to respond, within the required timescale, to requests for information for Parliamentary questions and other information required for the Shareholder to fulfil its responsibilities on behalf of Government or in accordance with the law.
- 11.5 For the avoidance of doubt, in no circumstances shall the MDC be obliged to supply to the Shareholder personal data (including sensitive personal data) in respect of an individual employee (other than Directors).
- 11.6 When the Shareholder is consulted or its consent is required, it will use best endeavours to respond substantively to any reasonable request by MDC within one (1) calendar month of the request having been received.
- 11.7 For the purposes of ensuring open communications between the Parties, the following meeting (in addition to statutory corporate meetings) will, as a minimum, take place during each calendar year:
- 11.7.1 The Shareholder (who may invite representatives from the BRSB to accompany it) will meet with representatives from the MDC Board on a quarterly basis to discuss matters generally covered by this Agreement and requirement for Business Case presentations and a record of matters discussed at such meetings will be made and circulated to the Shareholder.

12. DIRECTORS' APPOINTMENT

- 12.1 The Directors shall be appointed by the Shareholder in accordance with the Articles of Association.
- 12.2 In order to assist the Shareholder in the appointment of NEDS and to help ensure the correct balance of qualification and skills on the MDC Board, upon the vacancy for NEDs arising the Board will compile a list of the recommended skills required by applicants ("Skills List") and will submit this Skills List to the Shareholder for its consideration.
- 12.3 The Shareholder will advertise for NEDs in an open and transparent manner.

13. DIRECTORS' REMUNERATION

The Shareholder shall set the Remuneration for NEDs and for the Executive Directors in consultation with the Chair of the MDC Board.

14. FUNDING

14.1 Funding Model Principles

14.1.1 The funding requests to Shareholder will be made on a Business Case by Business Case basis for the development of individual Sites, taking into account the Strategic Direction and the Government's current and future land and property asset needs. If the MDC is considering funding from a source other than Shareholder, details of the proposed alternative arrangements will be included within the Business Case. The Business Case will be constructed by the MDC in full consultation with the appropriate Government Departments and Statutory Boards and, where applicable, Local Authorities. All Business Cases will include a masterplan consisting of the development brief (containing such information as the Shareholder shall reasonably require) and the proposed contractual arrangements under which development will take place, along with a cost/economic & social/environmental/design quality benefit analysis. The Business Case will also provide a forecasted return on investment (ROI) along with viability and risk assessments and a Stakeholder impact analysis.

14.1.2 Funding for a Business Case may be made available to the MDC by the Shareholder on a loan basis using a floating Debenture, specifying the terms and conditions of lending with respect to:

- **Interest rate applied:** Bank rates for Government owned, "Arms-length" companies.
- **Repayment amount and frequency:** To commence at a date to be **agreed** with the Shareholder which takes account of the MDC's need to build retained earnings and to reinvest in public realm projects.
- **Fixed repayment date or 'on demand':** As above.
- **Charges secured on the loan:** The MDC's assets.

14.1.3 A request for funding may also be based on the MDC Board's need to respond in an agile way to an emerging opportunity within the private sector or Local Authority owned land or property.

14.1.4 The contractual arrangements between the MDC and the Shareholder for the transfer and development of Government owned land and property assets may vary from site to site and potential options include (but are not limited to):

14.1.4.1 by transferring the Government owned Sites at market value to the MDC by the relevant Government Department, adhering to para 8.1 of FPN F.03 of the Treasury's Financial Regulations. In such circumstances, the relevant Government Department or Statutory Board (after consultation with the Shareholder) may or may not require payment for the purchase of land or property at the time of transfer. Where payment is not made at the time of transfer sale will be subject to a charge document enabling the relevant Government Department or Statutory Board to secure any non-

payment of the sale price by means of a charge against the Site. As in the case of the repayment of Government loans, MDC will reimburse the relevant Department for the cost of the property or land transferred on a date to be agreed with the relevant Department and which takes into account the MDC's need to build retained earnings and to reinvest in public realm projects.

14.1.4.2 by way of a procurement contract won after an open tender process.

14.1.4.3 under licence from Government.

15. PAYMENT OF DIVIDENDS

The MDC Board will comply with its legal duties and the Policy referred to in Clause 8.7 in setting the dividend for the MDC.

16. AUDIT

16.1 External audit of the MDC's accounts will be undertaken in accordance with the provisions of the Audit Act 2006.

16.2 The MDC shall be responsible for ensuring that it has appropriate internal audit procedures as outlined in the Governance Document.

17. SHARED SERVICES

17.1 The MDC will use IOMG shared service provision where it is possible and practical to do so, i.e. where the internal service provider has agreed to provide a service that matches the MDC's reasonable business needs.

17.2 The MDC shall negotiate a service level agreement with each agreed IOMG service provider.

17.3 In each case where it is not possible and practical to use internal shared services, the Shareholder requires confirmation from the MDC and the internal service provider confirming that this is the case.

18. PARTY REPRESENTATIVES

Throughout the Term, the Shareholder and the MDC shall each nominate and maintain a representative, as the single point of contact between the Parties in relation this Agreement. Such a representative may be changed by the Shareholder or MDC (as applicable) by giving written notice to the other Party. The representatives shall meet as regularly as may be agreed between the Parties.

19. TERMINATION

19.1 Subject to clause 2, the Shareholder Agreement shall terminate:

19.1.1 when a resolution is passed by the Shareholder or creditors of the MDC, or an order is made by a court or other competent body or person instituting a

process that shall lead to the MDC being wound up and its assets being distributed among the MDC's shareholder, creditors or other contributors; or

19.1.2 upon the appointment of a receiver or liquidator over the whole or any part of the assets of the MDC or the making of any arrangement with the creditors of the MDC for the affairs, business and property of the MDC to be managed by a supervisor; or

19.1.3 upon the expiration of twenty eight (28) days' notice in writing served on the MDC by the Shareholder.

19.2 Termination of this Agreement will not affect any rights, remedies, obligations or liabilities of any of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Shareholder Agreement which existed at or before the date of termination.

19.3 Where, following an event referred to in this clause 20 the MDC is to be wound up and its assets distributed, the Parties shall agree a suitable basis for dealing with the interests and assets of the MDC and shall endeavour to ensure that, before dissolution:

19.3.1 all existing contracts of the MDC are performed to the extent that there are sufficient resources;

19.3.2 the MDC shall not enter into any new contractual obligations; and

19.3.3 the MDC's assets are distributed as soon as practical; and OR

19.3.4 any assets or intellectual property rights belonging to or originating from the Shareholder shall be returned to it by the MDC and all such intellectual property rights shall be erased from the computer systems (to the extent possible) of the MDC.

20. TRANSPARENCY

20.1 The MDC gives its consent to the Shareholder to publish to the general public this Agreement in its entirety, including any changes to this Agreement agreed from time to time.

20.2 The Parties acknowledges that the Shareholder is subject to the requirements of the FOIA. The MDC shall:

20.2.1 provide all necessary assistance and cooperation as reasonably requested by the Shareholder to enable the Shareholder to comply with its obligations under the FOIA; and

20.2.2 notify the Shareholder of all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt.

20.3 The MDC acknowledges that the Shareholder may be required under the FOIA to disclose Information without consulting or obtaining consent from the MDC. The Shareholder shall notify the MDC of a Request For Information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) as soon as reasonably practicable after receipt of the relevant Request for Information. The Shareholder shall be responsible for determining whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA.

21 ASSIGNMENT

The Shareholder shall be entitled to assign or novate this Agreement upon giving the MDC not less than five (5) days notice in writing.

22 VARIATION

The terms of this Agreement may only be varied by agreement in writing between and signed by the Parties.

23 COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart of this Agreement shall constitute an original of the relevant document, but together the counterparts shall constitute one document.

24 SEVERABILITY

If any provision of this Agreement shall be held illegal or unenforceable, such provision shall be deemed separate and divisible from and shall in no way affect or impair the validity or enforceability of, the remaining provisions.


25 GOVERNING LAW

This Agreement will be governed and construed in accordance with the laws of the Isle of Man and each Party irrevocably agrees to submit to the non-exclusive jurisdiction of the courts of the Isle of Man.

AS WITNESS the hands of the Parties or their duly authorised representatives on the date first stated above.

SIGNED by the Minister or a person duly authorised by the Minister for Treasury in the presence of:-



Witness Signature: 

:

: Print name: Dawn Ashmore

Witness Full Name: KONDEA LACEY

: Position: MINISTER FOR THE TREASURY

Witness Address: 3rd floor, Government

Office, Bucks Road, Douglas

Witness Occupation: CIVIL SERVANT

SIGNED by the MDC acting by:-



:

Director

: Print name: SEAN GILBERT

:



:

Director/Company Secretary

: Print name: DAVID PEACH

