

Dated

2023

**Cheshire East Borough Council
and
Orbitas, Bereavement Services Limited**

Shareholder Agreement

Dated

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Parties

- (1) **Cheshire East Borough Council** whose principal office is at Westfields, Middlewich Road, Sandbach, Cheshire CW11 1HZ (the **Council**); and
- (2) **Orbitas, Bereavement Services Limited** a company incorporated and registered in England and Wales with registered number 08747498 whose registered office is at The Cemetery Office, Market Close, Crewe, England, CW1 2NA [(the **Company**)].

Introduction

- (A) The Company was incorporated under the Companies Act 2006 on 24 October 2013 as a private company limited by shares.
- (B) Pursuant to the Council's Constitution of May 2022, it is agreed that the Council's Finance Sub-Committee will exercise the powers of the Council as the sole shareholder in the Company.
- (C) This Agreement sets out the rights and obligations of the Council as sole shareholder in the Company 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.
- (D) The Council and the Company agree to adopt the following principles when carrying out their obligations under this Agreement:
- a. To adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation;
 - b. To work together to ensure that the Council exercises a decisive influence over both the strategic objectives and significant decisions of the Company similar to that which the Council exercises over its own departments but only to the extent that this is legally necessary;
 - c. To be open. Communicate openly about concerns, issues or opportunities relating to the Business;
 - d. To act in a timely manner. Recognise the time-critical nature of the Business and respond accordingly to communications;
 - e. To adopt a positive outlook. Behave in a positive, proactive manner;
 - f. To deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Agreement;
 - g. To act in good faith to support the Business and each other;

- h. To learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- i. To collaborate and co-operate. Establish and adhere to the governance structure set out in this Agreement to ensure that the Business is successful, and actions taken as required; and
- j. To be accountable. Take on, manage and account to each other for performance of their respective roles and responsibilities set out in this Agreement.

Agreed terms

1 Interpretation and definitions

1.1 In this Agreement:

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

Articles means the articles of association of the Company as amended or superseded from time to time;

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 and such other business as the Shareholder 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 3.3 and applicable from time to time;

Council Officer means an officer in the employment of the Council;

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 the Company, the Company itself and any Subsidiary Undertaking of the Company; and the expression **Group Member** shall be construed accordingly;

Information has the meaning given to it under section 84 of the FOIA;

Management Accounts Date means 31 March, 30 June, 30 September and 31 December in each year;

Managing Director means the managing director appointed to this role by the Shareholder;

Member means a duly elected councillor being a member of the Council;

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

Security Interest means any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, guarantee, indemnity, debenture, declaration of trust, right of set off or combination of accounts or any other type of preferential arrangement (including without limitation, a title transfer and retention of title) or any encumbrance or security interest whatsoever, howsoever arising and whether monetary or not;

Shareholder means the Council;

Shareholder Representative means the individual appointed to that role by the Council's Finance Sub-Committee from time to time;

Share means an ordinary shares of £0.01 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 In this Agreement all obligations and liabilities on the part of the Shareholder are (unless expressly stated otherwise) several and shall be construed accordingly.

1.7 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 the Shareholders for the purpose of identification and attached to this Agreement.

2 Share Capital

2.1 At the date hereof the has issued share capital of £1 divided into 100 Shares owned by the Shareholder.

3 The business of the Company

3.1 The Shareholder acknowledges and agrees that unless and until it agrees otherwise, the business of the Company shall be the provision of funerary and bereavement services and such other services as from time to time are contracted for as between the Company and the Council.

3.2 The Business shall be carried on in accordance with the current Business Plan on sound commercial principles.

3.3 The Business Plan shall:

3.3.1 be resolved upon by the Board of Directors;

3.3.2 approved by the Shareholder by 31 January each year;

3.3.3 replaced on a rolling basis annually in respect of the coming financial year and the next three financial years;

3.3.4 superseded or modified from time to time.

3.4 The Company shall share its draft business plan with the Shareholder by 31 October, at the latest, each year.

3.5 Subject to the provisions of this Agreement, the Shareholder understands and agrees that the Company shall use all reasonable and proper means to maintain and improve the Business.

4 Directors and Meetings

4.1 The board of the Company shall (subject to the provisions of clause 4.2 below) be comprised of a total of 4 directors which shall be made up of the following individuals appointed by the Shareholder:

4.1.1 one director being a Member;

4.1.2 two directors being Council Officers; it being envisaged that one such director shall be a finance officer appointed on the recommendation of the Council's chief financial officer and the other being an officer who has service specific knowledge relevant to the activities of the Company appointed on the recommendation of the Council's chief executive;

4.1.3 the Managing Director.

4.2 The Shareholder may seek to appoint an additional director being an independent sector specialist with expertise relevant to the activities of the Company. If a suitable person is identified to perform this role, on his appointment the board shall then be comprised of a total of 5 directors and clause 4.1 shall be deemed amended on this basis.

4.3 All directors shall be appointed by, or removed, by the Shareholder. Any appointment or removal of a director pursuant to this paragraph shall be in writing and signed by the Shareholder. Any such appointment or removal shall take effect when received by the Company or at such later time as shall be specified in such notice.

4.4 All directors shall serve under the terms of a Shareholder approved service contract which all Directors will be required to enter into as a condition of their continuing appointment.

4.5 Notwithstanding any other provision of this director if there for any reason shall be a temporary vacancy arising after the appointment of directors as outlined in clauses 4.1 and 4.2 above the Shareholder shall be entitled to appoint a temporary director to act until any vacancy can be filled.

4.6 At least 10 Board Meetings will be held (at reasonably regular intervals) in each calendar year. Board Meetings can be formal or informal as agreed by the Board of Directors.

4.7 The quorum at any meeting of the directors (including adjourned meetings) shall be three directors. No business shall be conducted at any meeting of the directors unless a quorum is present at the beginning of the meeting and also when that business is voted on.

4.8 The post of chair of the board of directors will be held by the Managing Director. The chairperson shall not have a casting vote. If the Managing Director is unable to attend any meeting of the board of directors, the Managing Director may appoint another director to chair the meeting by way of his substitute or if the Managing Director is for any reason unable to make such an appointment within a reasonable time the Shareholder shall be entitled to make such appointment of another director to act as chair in the absence of the Managing Director.

4.9 The Company shall at all times permit:

4.9.1 an elected representative of the Company's employees (the **Employee Representative**) to attend and speak at, but not to vote at, any Board Meetings. Subject to providing a binding confidentiality undertaking in favour of the Company, such Employee Representative will be entitled to receive and retain all notices, written materials and other information given to Directors in connection with such meetings at the same time as those materials or information are given to the Directors. Such Employee Representative shall have the same rights and restrictions as does a Director in relation to the passing of information pursuant to clause 4.6; and

4.9.2 a member of the Finance Sub-Committee of the Council (**the Shareholder Representative**) to attend and speak at, but not to vote at, any Board Meetings. The Shareholder Representative will be entitled to receive and retain all notices, written materials and other information given to Directors in connection with such meetings at the same time as those materials or information are given to the Directors.

4.10 The Directors will provide a copy of the minutes of each Board Meeting to the Shareholder following approval and signature of those minutes.

4.11 The Company will convene one general meeting in each financial year being the Annual General Meeting (**AGM**). The date of the AGM shall be agreed in advance with the Shareholder. At the AGM the Shareholder will approve, amongst other things, the annual report and accounts of the Company produced in accordance with clause 9. The Company acknowledges and agrees that each member of the Council shall, with the consent of the Company's Chairman, be entitled to attend and speak but not vote at the AGM.

4.12 The Company will procure that its chair and managing director will both attend public meetings to be arranged by the Council and attended by representatives of the Council's other Subsidiary Undertakings. The first such public meeting will be held on or before 31 December 2014 and thereafter the Council will arrange such meetings on a six-monthly basis. All such meetings will be held at a location within the administrative boundaries of the Council. The Council will ensure that all questions to be raised at such meetings are submitted in writing in advance and that the Company will receive copies of all such questions not less than 5 Business Days before each meeting.

4.13 The Company will procure that each of its Directors will immediately receive formal training and provide the Council with a programme of training and implementation dates.

5 Conduct of the Company's affairs

5.1 With the exception of those matters requiring the Shareholder's consent pursuant to clause 8, the day-to-day management of the Company shall be vested in the Directors. The Directors recognise that the Council is accountable to the residents and businesses of Cheshire East for the way it spends public money. The Shareholder recognises that the Directors have statutory duties to uphold in the way they conduct the Business, and the Shareholder is not allowed to fetter the discretion of the Directors.

5.2 Without prejudice to the generality of clause 5.1, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out, subject to the Business Plan and to those matters requiring the Shareholder's consent pursuant to clause 8 and to any other express provisions of this Agreement.

5.3 In particular, but without limitation to the generality of the foregoing, the Directors shall exercise all voting rights and other powers of control available to them in

relation to the Company so as to procure that, at all times during the term of this Agreement, the Company shall:

5.3.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with the Business Plan and with good business practices, and

5.3.2 transact all its business on arm's length terms and in accordance with statute and statutory regulations, the Company's Contract Procedure Rules and associated scheme of delegation]¹.

5.4 The Company shall not carry out any activity which would render the holding of Shares by the Shareholder unlawful provided that where a proposed change of law would render such shareholding unlawful the Shareholder will use all reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.

5.5 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.

5.6 The Company shall permit any Director, or any authorised employee, and for the avoidance of doubt the Shareholder Representative to disclose and discuss the affairs, finances and accounts of the Company and its subsidiaries to and with the Council's Finance Sub-Committee. 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 by any member of the Council's Finance Sub-Committee of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the 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 15.

5.7 The Company agrees with the Shareholder 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 informed of the progress of each Group Member's business and affairs and in particular will procure that the 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.

5.8 The Company shall not breach nor cause the Council to be in breach of the Local Authorities (Companies) Order 1995, Part V of the Local Government and Housing Act 1989, the Local Government Public Involvement in Health Act 2007 or its

¹ To be reviewed

obligations under the Public Contracts Regulations 2015 or any regulations on public procurement subsequently coming into effect.

5.9 The Company shall:

5.9.1 identify the Council's participation on all its official business stationery; and

5.9.2 not engage in any party-political publicity.

5.10 The 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 that at all times during the term of this Agreement:

5.10.1 the Company is managed in accordance with the objectives and provisions of this Agreement; and

5.10.2 the Company performs and complies with all obligations on its part under this Agreement and the Articles.

6 To the extent that the Company does not have its own policies and procedures in place, it will be for the Directors to determine which of the relevant corporate policies of the Council they wish to adopt. This does not apply to a policy or procedure referred to in clause 8.

7 **Finance for the Company**

If the Company requires capital, the Company may request such capital from the Council **provided that** the Council shall not be obliged to provide any guarantee or security in respect of any indebtedness of the Company or to provide the finance concerned.

8 **Matters requiring the consent of the Shareholder**

8.1 The Shareholder and the Company shall take all such steps and do all such acts and things as may be necessary or desirable, including as regards the Shareholder it exercising all voting and other rights and powers of control available to it in relation to the Company, so as to procure 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 of the Company in respect of any of the following matters except with the prior written consent of the Shareholder:

8.1.1 altering in any respect the Articles or the rights attaching to any of the shares in the Company;

8.1.2 permitting the registration of any person as a member of the Company other than the Council;

8.1.3 issuing or allotting any shares;

- 8.1.4 borrowing any monies (other than normal trade credit);
- 8.1.5 changing the auditors of the Company or its financial year end;
- 8.1.6 making or permitting to be made any change in the accounting policies and principles adopted by the Company in the preparation of its audited or management accounts except as may be required to ensure compliance with relevant accounting standards under the Companies Act 2006 or any other generally accepted accounting principles in the United Kingdom; or
- 8.1.7 declaring or paying any dividend.

8.2 Only to the extent that it is necessary to ensure that the Council exercises a decisive influence over both the strategic objectives and significant decisions of the Company similar to that which the Council exercises over its own departments the Shareholder and the Company shall take all such steps and do all such acts and things as may be necessary or desirable, including as regards the Shareholder it exercising all voting and other rights and powers of control available to it in relation to the Company, so as to procure 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 of the Company in respect of any of the following matters except with the prior written consent of the Shareholder:

- 8.2.1 changing the name of the Company or its registered office;
- 8.2.2 changing the nature of the Company's Business or commencing any new business by the Company which is not ancillary or incidental to the Business;
- 8.2.3 forming any Subsidiary Undertaking or acquiring shares in any other company or participating in any legal/commercial partnership or joint venture (incorporated or not);
- 8.2.4 amalgamating or merging with any other company or business undertaking;
- 8.2.5 adopting or amending the Business Plan in respect of each Financial Year;
- 8.2.6 significant changes to its main financial system not provided for in the Business Plan;
- 8.2.7 instituting, settling or compromising any material legal proceedings instituted or threatened against the Company or submitting to arbitration or alternative dispute resolution any dispute involving the Company;
- 8.2.8 making any acquisition or disposal of any material asset(s);
- 8.2.9 adopting or amending a remuneration and/or bonus policy ("Remuneration and Bonus Policy");

8.2.10 making an individual award to any employee in excess of £100 in any financial year related to either:

(a) a sustained excellent contribution, over and above the normal expectations for the employee's role, in the context of expected continuation at that level, or

(b) a single exceptional contribution, significantly over and above the normal expectations for the employee's role, in the context of a one-off task or project;

8.2.11 making any bonus payment to any director not provided for in the Remuneration and Bonus Policy;

8.2.12 establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for directors other than the Remuneration and Bonus Policy;

8.2.13 agreeing to engage an employee or an independent consultant to the Company at a rate in excess of £50,000 per annum not included or provided for in the Business Plan (not including employers costs);

8.2.14 changing the terms and conditions of employment of the employees of the Company (but for the avoidance of doubt this shall not prevent the Company from making any minor changes to terms and conditions of employment that do not impact upon the Council so long as appropriate consultation and dialogue has been carried out prior to the changes taking place);

8.2.15 appointing or employing any director who has been disqualified from acting as a Councillor;

8.2.16 dismissing any director;

8.2.17 creating or granting any Security Interest over the whole or any part of the Business, undertaking or assets of the Company or over any shares in the Company or agreeing to do so;

8.2.18 save in relation to:

(a) a hardship loan to an employee; or

(b) a loan to enable an employee to purchase an annual travel ticket,

in either case not exceeding £2,000 per employee in any financial year, making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading) or giving any guarantee or indemnity;

8.2.19 entering into any arrangement, contract or transaction:

(a) which is outside the normal course of its business, or

(b) which is not on arm's length terms;

8.2.20 giving notice of termination of any arrangements, contracts or transactions which are material in the nature of the Company's Business, or materially varying any such arrangements, contracts or transactions;

8.2.21 entering into any transaction or contract through purchasing, leasing or otherwise acquiring assets, or any interests in assets with a value in excess of £250,000, or a duration in excess of 12 months or which is not incidental or ancillary to the primary business of the company;

8.2.22 purchasing, leasing or otherwise any interests in land or real property not included or provided for in the Business Plan;

8.2.23 entering into any material contract, transaction or arrangement not included or provided for in the Business Plan;

8.2.24 undertaking any activity or providing any goods or services for any party other than the Council or a Subsidiary Undertaking of the Council in return for consideration which would exceed over twenty per centum (20%) of the Company's gross annual turnover in any 12-month financial period; or

8.2.25 entering into an agreement to do any of the foregoing

8.3 The consent referred to in clause 8.2 will usually be preceded by a period of consultation and dialogue between the parties and shall not if consent is forthcoming be unreasonably delayed.

9 Production of accounts and reports

9.1 The Company shall prepare and submit to the Directors and to the Shareholder on or before 30 November in each year a detailed draft operating budget for the Company (including estimated major items of revenue and capital expenditure) for the following financial year, broken down on a monthly basis, and an accompanying cash flow forecast, together with a balance sheet showing the projected position of the Company as at the end of the following financial year.

9.2 The Company shall (with the assistance of the Council) produce a balance sheet of the Company, as at each Management Accounts Date and a profit and loss account and a projected year end surplus/deficit of the Company for each 3-month financial period ending on each Management Accounts Date, to be presented to the Shareholder within four weeks after the end of the period to which such accounts relate. The balance sheet and profit and loss account will be accompanied by a report in such format and covering such issues as may reasonably be requested by either Shareholder, this will include a summary of all items of expenditure in excess of £250,000.

9.3 The Company shall instruct its auditors to prepare and audit a balance sheet of the Company, as at the Annual Accounts Date each year and a 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 Shareholder at the AGM. The balance sheet and profit and loss account will be accompanied by a report of the Directors in such format and covering such issues as may reasonably be requested by the Shareholder.

9.4 The Company will provide to the Shareholder full details of any actual or prospective material change in the Business or the financial position or affairs of the Company, as soon as such details are available.

9.5 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.

9.6 The Company shall prepare and submit:

9.6.1 quarterly Company accounts to the Council's Corporate Leadership Team (CLT) and the Shareholder (via the Shareholder Working Group); and

9.6.2 annual Company accounts to the Council's Audit and Governance Committee.

10 **Anti-corruption**

10.1 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 Undertaking) 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;

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

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

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

10.2.3 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;

10.2.4 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;

10.2.5 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 10.2 and will provide any information reasonably requested by the other party in support of such compliance; and

10.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 10.

11 Transfer of Shares

11.1 The Shareholder shall comply with the provisions relating to the issue and transfer of Shares contained in the Articles.

12 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.

13 No fetter

Nothing in this Agreement shall operate to bind the Company or the Council to the extent that it constitutes an unlawful fetter on any statutory power of the Company or the Council.

14 Duration and termination

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

14.1.1 the Shareholder agrees in writing to terminate this Agreement;

14.1.2 an effective resolution is passed, or a binding order is made for the winding up of the Company.

14.2 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.

14.3 Upon termination of this Agreement pursuant to clause 14.1.1, the Shareholder 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.

15 **Confidentiality, Freedom of Information and Transparency**

15.1 This clause applies to:

15.1.1 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;

15.1.2 any information concerning the business affairs of one party or other information confidential to that party which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement;

including any information relating to any party's business, assets or affairs, Business Plans, products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, **Confidential Information**).

15.2 In this clause, in relation to a particular item of Confidential Information:

15.2.1 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

15.2.2 the **Receiving Party** means the other party.

15.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:

15.3.1 keep the Confidential Information confidential;

15.3.2 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 15; and

15.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.

15.4 Notwithstanding clause 15.3, the Receiving Party may disclose Confidential Information as follows:

15.4.1 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

15.4.2 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 including for the avoidance of doubt under the provisions of FOIA or the Environmental Information Regulations.

15.5 This clause 15 shall not apply to any Confidential Information which:

15.5.1 is at the date of this Agreement or at a later date comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;

15.5.2 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

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

15.6 The Company acknowledges that the Company and the Council is subject to the requirements of the FOIA, the Environmental Information Regulations and the Local Government Ombudsman and other access to information and propriety controls, such as the National Fraud Initiative, as provided in legislation, and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 15.7 to 15.18.

15.7 If the Council receives a Request for Information in relation to Information that the Company is holding and which the Council does not hold itself, the Council shall refer to the Company such Request for Information as soon as practicable and in any event within three (3) Business Days of receiving a Request for Information, and the Company shall:

15.7.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within 15 Business Days (or such other period as the Council acting reasonably may specify) of the Council's request; and

15.7.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

15.8 Following notification under clause 15.7, and up until such time as the Company has provided the Council with all the Information specified in clause 15.7, the Company may make representations to the Council 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 Council shall be responsible for determining, at its absolute discretion whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations.

15.9 The Company acknowledges that the Council 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:

15.9.1 in certain circumstances without consulting with the Company; or

15.9.2 following consultation with the Company and having taken its views into account.

15.10 The Company shall transfer to the Council any Request for Information received by it as soon as practicable and in any event within 3 Business Days of receiving it;

15.11 Unless the Council notifies the Company that it wishes to take conduct of the Request for Information referred to in clause 15.10, the Company shall process the Request for Information. Where the Council so notifies the Company that it wishes to take conduct of the matter, the Company shall provide the Council with such information in accordance with clause 15.7 within 15 Business Days of being so notified by the Council.

15.12 Where the Company makes a decision to withhold information being the subject of a Request for Information, it agrees to adhere to the Council's policy in relation to seeking the agreement to withhold such information and to be bound by any review of the decision.

15.13 If the Council is the subject of an investigation by the Local Government Ombudsman relating in whole or in part to the operations of the Company, the Company shall assist the Council in providing such Information to enable the Council to deal with such investigation.

15.14 If the Council is the subject of an investigation or a Decision Notice; Practice Recommendation or Enforcement Notice by the Information Commissioner, the Company shall assist the Council in providing such Information to enable the Council to deal with such investigation or Notice insofar as it relates to the actions or activities of the Company.

15.15 The Company agrees (subject to the provisions of the Data Protection Act 1998) to participate in the National Fraud Initiative operated by the Audit Commission.

15.16 The Company acknowledges that any lists provided which list or outline Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 15.9.

15.17 The Company acknowledges that FOIA requires every public authority to have a publication scheme, approved by the Information Commissioner's Office, and to publish information covered by the scheme (or such other or analogous guidance or regulations published from time to time). As a company owned and controlled by the

Authority, the Company is obliged comply with the provisions of FOIA and must provide as much information as possible on a routine basis. The Information Commissioner's Office has developed a model publication scheme (September 2013) and a definition document for wholly owned companies (March 2014) (**Publication Scheme**). The Company is responsible for ensuring information is published and maintained in response to the ICO requirements in order to uphold transparency and accountability. The Company agrees that the information released will be in accordance with the Publication Scheme and represents the minimum disclosure and acknowledges that if a member of the public wants information not listed in the Publication Scheme, they can still request it under the FOIA.

15.18 The Parties hereby consent to the Council making such disclosures as the Council deems necessary (acting reasonably) as are recommended under The Code of Recommended Practice for Local Authorities on Data Transparency as published from time to time by the Department for Communities and Local Government or any analogous recommendations or legislation and the Company consents to make any information required to support such disclosure available on request.

16 Remedies and Waivers

16.1 No delay by any party in exercising, or failure by any party to exercise, any right, power or remedy provided by law or under this Agreement or any document referred to in it shall:

16.1.1 operate as a waiver of that or any other right, power or remedy; or

16.1.2 affect the other terms of this Agreement or any document referred to in it.

16.2 The single or partial exercise of any right, power or remedy provided by law or under this Agreement or any document referred to in it shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.

16.3 A waiver of any breach of or default under this Agreement or any document referred to in it shall not constitute a waiver of any other breach or default and will not prevent a party from subsequently requiring compliance with the waived obligation.

16.4 The rights, powers and remedies provided in this Agreement, or any document referred to in it are in addition to and (subject as otherwise provided in this Agreement) not exclusive of any rights, powers and remedies provided by law.

17 General

17.1 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.

17.2 No variation of this Agreement or any agreement or document entered into pursuant to this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

17.3 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.

17.4 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.

17.5 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.

17.6 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.

17.7 The rights and remedies provided by this Agreement are cumulative and subject as otherwise provided in this Agreement are not exclusive of any rights, powers or remedies provided by law.

17.8 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:

17.8.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

17.8.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

17.9 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.

17.10 Each of the parties acknowledges and agrees that:

17.10.1 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;

17.10.2 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;

17.10.3 nothing in this clause shall operate to limit or exclude any liability for fraud.

17.11 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.

18 **Assignment**

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, save where the Council's functions are transferred or assigned to a successor body. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

19 **No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership, 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 any 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).

20 **Notices**

20.1 Any notice or other communication given under this Agreement:

20.1.1 shall be in writing;

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

20.1.3 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post at the address set out in clause 20.3 of the party due to receive it and marked for the attention of the person named in clause 20.3 (or at such other address in the United Kingdom or marked for the attention of such other person as last notified in writing to the other parties;

20.1.4 shall be deemed to have been received:

(a) if delivered by hand, at the time of actual delivery; and

(b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting.

20.2 As best practice, a copy of any notice served pursuant to clause 20.1 shall also be sent by electronic mail.

20.3 The addresses and email addresses of the parties for the purposes of clause 20.1 are:

The Council

Address: Westfields, Middlewich Road, Sandbach, Cheshire CW11 1HZ

For the attention of: The Chief Executive Officer (with a copy to the Director of Governance and Compliance)

Email address:

The Company

Address:

For the attention of:

Email address:

20.4 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 20.3 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.

20.5 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.

21 Counterparts

21.1 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.

22 Applicable law

22.1 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.

22.2 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 and delivered as a deed on the date stated at the beginning of this Agreement.

THE COMMON SEAL OF

**CHESHIRE EAST
BOROUGH COUNCIL**

Was affixed in the presence
of:

.....
Authorised Signatory

Executed as a deed by
**ORBITAS, BEREAVEMENT
SERVICES LIMITED**
acting by KEVIN MELLING,
a Director,

.....
Director