

Dated

Deed of variation of contract

between

CHESHIRE EAST BOROUGH COUNCIL

and

ANSA ENVIRONMENTAL SERVICES LIMITED

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CLAUSE

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SCHEDULE

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THIS DEED is dated

2016

PARTIES

- (1) **Cheshire East Borough Council** of Westfields, Middlewich Road, Sandbach, Cheshire, CW11 1HZ (**Authority**).
- (2) **Ansa Environmental Services Limited** (company registration number 08714767) whose registered office is at Pyms Lane Depot, Pyms Lane, Crewe, CW1 3PJ (**Contractor**).

BACKGROUND

- (A) The Authority and the Contractor entered into an Agreement dated 1st April 2014 (**Agreement**) for the delivery of services.
- (B) The parties wish to amend various provisions of the Agreement including but not limited to extending the term of the Agreement and changes to calculation of the Annual Payment in Schedule 6 of the Agreement.
- (C) Consequently, the parties wish to amend the Agreement in accordance with Schedule 7 of the Agreement and as set out in this deed with effect from December 2016 (**Variation Date**).

AGREED TERMS

1. TERMS DEFINED IN THE AGREEMENT

In this deed, expressions defined in the Agreement and used in this deed have the meaning set out in the Agreement. The following additional expressions shall also apply to this deed and to the Agreement. The rules of interpretation set out in the Agreement apply to this deed.

2. VARIATION OF THE CONTRACT

With effect from the Variation Date the Parties agree the following amendments to the Agreement:

| | | |
|-----|---------------------------------------|---|
| (a) | Clause 1.1 Definitions | Definition of Expiry Date to be amended to 1 st April 2031 with a rolling one year extension each year thereafter, assuming the appropriate performance standards have been achieved. |
| (b) | Schedule 6 Part 1 of the Agreement | Wording of Part 1 of Schedule 6 to be amended and replaced by Schedule 6 Part 1 as set out in Schedule 1 to this Deed. The remainder of Schedule 6 (Parts 2 & 3) of the Agreement shall remain unamended. |

| | | | |
|-----|-----------------------------|---|------------|
| (c) | Schedule 6 of the Agreement | Inclusion of the following additional KPIs | |
| | | Performance Criteria | Base Line |
| | | Measuring the growth of Contractor Concessionary or Non-concessionary Services provided to third parties and the percentage increase year on year relative to base year activities. | 2014 level |
| | | Teckal Status Measure: Percentage of average total turnover associated with performance of tasks for the Authority (% min 81%) | |

3. 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.

4. JURISDICTION

- 4.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

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

Schedule 1

SCHEDULE 6 PAYMENT AND PERFORMANCE MONITORING Part 1

Sharing in savings and overspends against the Estimated Total Costs of Services

1. During the first quarter of each Contract Year the Contractor shall draw up/amend a service delivery plan relative to the Contract ("**Service Delivery Plan**") which is to be maintained on a rolling three year basis.
2. Amongst other things the Service Delivery Plan will show the estimated costs to the Contractor of providing the Services (for any Contract Year "**Estimated Total Cost of Services**") on an open book basis as well as the estimated income to be generated by the Contractor in providing Concessionary or Non-concessionary Services to third parties (for any Contract Year "**Estimated Contractor Generated Income**") for each of the next three Contract Years. For the avoidance of doubt, it is the intention of the parties that the amount of income generated by the Contractor from Concessionary and Non-concessionary Services will rise year-on-year so that the Annual Payment may fall year-on-year.
3. It is acknowledged by the Authority and the Contractor that there is to be a greater utilisation of the Leased Assets throughout the Contract Term. Where the Contractor delivers commercial services to third parties ("**Commercial Services**") the Contractor will account separately for the costs associated with providing such Commercial Services including the costs of utilising the Leased Assets giving rise to an agreed Leased Assets charge ("**Leased Assets Charge**").
4. Progress against the Service Delivery Plan shall be reviewed quarterly reporting cost against quarterly income to allow adjustment to the Annual Payment with respect to any underspend in the previous quarter. Where items arise outside the scope of the Annual Payment these shall be dealt with on a quarterly basis in accordance with the Authority Notice of Change procedures.
5. In line with the Authority's budget setting timescale, each Contract Year the Authority and the Contractor will meet in good faith with a view to identifying the Annual Payment to be paid by the Authority to the Contractor for the following Contract Year. The Annual Payment is the difference between the Estimated Total Cost of Services for any Contract Year and Estimated Contractor Generated Income, less the Leased Assets Charge.
6. If in any Contract Year the Authority and the Contractor fail to agree the Annual Payment for the following Contract Year, then the Annual Payment for that following Contract Year shall be determined by the Dispute Resolution Procedure.
7. The Annual Payment will be paid in twelve monthly instalments in advance in the manner set out at clause 22. The Contractor shall, once the Annual Payment has been agreed or determined, provide the Authority with a statement ("Payment Profile") showing the amount of the Annual Payment to be paid in each Contract Month for the relevant Contract Year. For the avoidance of doubt, there is no requirement that the Monthly Payments be of equal value throughout the Contract Year.
8. Within 30 Business Days of the end of any Contract Year, the Contractor shall demonstrate to the Authority the actual costs to the Contractor of providing the Services for that Contract Year ("**Actual Cost of Services**"). If the Authority and the Contractor cannot agree that the Contractor has demonstrated the Actual Cost of Services, that cost will be determined in accordance with the Dispute Resolution Procedure.

9. If the Actual Cost of Services is less than the Estimated Total Cost of Services as agreed in the Service Delivery Plan in any Contract Year ("**Underspend**"), the amount of the Underspend will be shared as follows:
- 50% held in the Ring Fenced Fund
 - 25% paid to the Contractor
 - 25% paid to the Authority
10. Where the Actual Cost of Services in any financial year is greater than the Estimated Total Cost of Services for that Contract Year, the difference ('the Overspend') will be shared in the manner set out in the table below:

| Amount of Overspend | Contractor Share |
|----------------------------|-------------------------|
| £0 - £135,000 | 100% |
| £135,000.01 and above | 50% |


THE COMMON SEAL OF

**CHESHIRE EAST BOROUGH
COUNCIL**

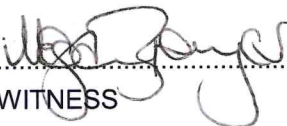
Was affixed in the presence of:

.....
Authorised Signatory

Executed as a deed by
**ANSA ENVIRONMENTAL SERVICES
LIMITED**
acting by, a Director,


.....
Director

in the presence of:


.....
WITNESS

WITNESS NAME **MEGAN BOWYER**
ADDRESS **9 THORNYCROFT, WINSFORD CW7 2LR**
OCCUPATION OF WITNESS **PERSONAL ASSISTANT.**