

# Finance Sub-Committee

## Agenda

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**Date:** Thursday, 7th September, 2023  
**Time:** 2.00 pm  
**Venue:** Committee Suite 1, 2 & 3, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the top of each report.

It should be noted that Part 1 items of Cheshire East Council decision making meetings are audio recorded and the recordings will be uploaded to the Council's website

### **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

1. **Apologies for Absence**

To note any apologies for absence from Members.

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Minutes of Previous Meeting** (Pages 5 - 12)

To approve as a correct record the minutes of the meeting held on 7<sup>th</sup> June 2023.

4. **Public Speaking/Open Session**

In accordance with paragraph 2.24 of the Committee Procedure Rules and Appendix on Public Speaking, set out in the [Constitution](#), a total period of 15 minutes is allocated for members of the public to put questions to the Sub-Committee on any matter relating to this agenda. Each member of the public will be allowed up to two minutes to speak; the Chair will have discretion to vary this where they consider it appropriate.

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**Contact:** Paul Mountford, Democratic Services  
**Tel:** 01270 686472  
**E-Mail:** paul.mountford@cheshireeast.gov.uk

Members of the public wishing to speak are required to provide notice of this at least three clear working days in advance of the meeting.

5. **Medium Term Financial Planning Assumptions - Feedback from Task Group**

To receive an oral report from the Task Group which is due to meet on 6<sup>th</sup> September.

6. **Wholly-owned Companies Governance Review - Board Composition and Shareholder Agreement** (Pages 13 - 74)

To consider a report which sets out the key findings and recommendations of the Shareholder Working Group in relation to the governance of the Council's wholly-owned companies.

7. **Work Programme** (Pages 75 - 82)

To consider the work programme and determine any required amendments.

8. **Procurement Pipeline** (Pages 83 - 98)

To consider a report which provides an update of the pipeline of procurement activity, an update on the contracts awarded this financial year, and an update on the number of cases where and reasons why procurement activity has required the use of waivers.

9. **Exclusion of the Press and Public**

The reports relating to the remaining items on the agenda have been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matters may be determined with the press and public excluded.

The Committee may decide that the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1, 2, 3 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

**PART 2 – MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT**

10. **Procurement Pipeline** (Pages 99 - 122)

To receive details of the waivers referred to in the Procurement Pipeline report.

11. **Extra Care Housing PFI Schemes** (Pages 123 - 132)

To receive an update on the Extra Care Housing PFI schemes.

**Membership:** Councillors D Brown, J Clowes, B Drake, M Gorman (Vice-Chair), R Kain, C O'Leary, N Mannion (Chair) and F Wilson



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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Finance Sub-Committee**  
held on Wednesday, 7th June, 2023 in the Council Chamber - Town Hall,  
Macclesfield, SK10 1EA

**PRESENT**

Councillor N Mannion (Chair)

Councillors J Clowes, R Kain, C O'Leary, F Wilson, L Braithwaite (for Cllr Drake), C Browne (for Cllr Gorman) and S Gardiner (for Cllr Brown)

**OFFICERS**

Alex Thompson, Director of Finance and Customer Services  
David Brown, Director of Governance and Compliance  
Tom Shuttleworth, Interim Director of Environment and Neighbourhoods  
Julie Gregory, Legal Team Manager - Place/Corporate  
Paul Mountford, Democratic Services

**ALSO PRESENT**

Kevin Melling, Managing Director of Ansa

**APOLOGIES**

Councillors D Brown, B Drake and M Gorman

**1 DECLARATIONS OF INTEREST**

Councillors S Gardiner and N Mannion declared an interest in an item on the agenda relating to the Local Government Pension Scheme and Cheshire Pension Fund, as future beneficiaries of the local government pension scheme.

**2 MINUTES OF PREVIOUS MEETING****RESOLVED**

That the minutes of the meeting held on 8<sup>th</sup> March 2023 be approved as a correct record.

**3 PUBLIC SPEAKING/OPEN SESSION**

There were no public speakers.

**4 MEDIUM TERM FINANCIAL STRATEGY ASSUMPTIONS AND REPORTING CYCLE 2024-28**

The Sub-Committee considered a report which set out the baseline assumptions for net revenue expenditure and core funding, to assist with development of the Medium-Term Financial Strategy 2024 to 2028.

The Sub-Committee was being asked approve the assumptions and to form a Working Group to review them further over the summer with the aim of feeding back in September.

The Sub-Committee was also being asked to approve the financial reporting timetable at Appendix B to the report.

Officers responded as follows to questions raised by members:

- The difference between the assumed and actual council tax collection rates for last year was more a result of individuals paying later rather than not paying. Therefore, the assumptions for this year were considered appropriate and any variations that occurred would be managed through use of the Collection Fund Reserve.
- The legislation on secondary homes had not yet been passed. If it were, there would be 12 months' notice to the owners of such properties.
- With regard to pension contributions, the Council was now in excess of 95% funded and did not need to continue to increase contributions as an employer.
- £5.2M was drawn down from the MTFS Reserve to meet the 2022/23 overspend. There was still money within the Reserve and the situation would be closely monitored to determine whether any increase in the Reserve was required.
- There was no material financial benefit to the Council from the change in the treatment of leisure services by HMRC with regard to the reclaiming of VAT.

## **RESOLVED**

That the Sub-Committee

1. by majority, approves the budget assumptions underpinning the Medium-Term Financial Strategy for 2024-28, as set out in Appendix A1 to the report;

In accordance with Procedure Rule 2.34, the following councillors asked that the minutes of the meeting record that they voted against the motion:

Councillor J Clowes  
Councillor S Gardiner  
Councillor C O'Leary

2. approves the setting up of an MTFS Planning Assumptions Working Group to meet informally with the Chief Finance Officer to review the current assumptions, with the aim of feeding back to the September meeting of the Sub-Committee, the group to be made up of at least four members of the Sub-Committee, including Councillors J Clowes and C O'Leary, with other nominations being submitted to the Head of

Democratic Services and Governance, and the chair be appointed by the Working Group;

3. approves the financial reporting timetable for 2023/24 as set out in Appendix B.

**5 DRAFT PRE-AUDITED STATEMENT OF ACCOUNTS 2022/23 AND OUTTURN UPDATE 2022/23**

The Sub-Committee considered a report which provided the pre-audited overview of the Cheshire East Council Outturn for the financial year 2022/23.

Officers responded as follows to questions raised by members:

- With regard to the overspend on Adult and Health services and whether this was likely to be a recurring overspend, there had been a net increase of £15M in the budget for the current financial year.
- As with other local authorities, the Council had an overspend on SEND compared to the High Needs funding block within the Dedicated Schools Grant. The Council must treat the accumulated overspending as a negative, and unusable, reserve. The Council continued to be in conversation with the Government and the matter had also been discussed at a recent County Councils Network meeting.

**RESOLVED**

That the Sub-Committee

1. notes the summarised position of the accounts for year ended 31<sup>st</sup> March 2023 as set out in the report at Appendix 1;
2. notes the dates in relation to the approval process for the Statement of Accounts;
3. agrees to the setting up of an informal session with the Officers to allow Members of the Sub-Committee the opportunity to discuss in more detail the Statement of Accounts and to report such discussions back to the Sub-Committee; and
4. notes the overall financial performance of the Council in the 2022/23 financial year, as contained within the report, as follows:
  - (a) A Net Revenue Overspend of £6.0m against a revised budget of £318.7m (1.9% variance) funded by the drawdown of £5.2m from the MTFS Earmarked Reserve and a reduction in the planned contribution of General Reserves by £0.8m.
  - (b) General Reserves closing balance of £14.1m.

- (c) Capital Spending of £116.4m against an approved programme of £125.2m (7.0% variance).

**6 DRAFT PRE-AUDITED FINANCIAL STATEMENTS - WHOLLY-OWNED COMPANIES 2022/23 AND OUTTURN UPDATE 2022/23**

The Sub-Committee considered a report which confirmed that the Council's wholly-owned companies (WOCs) would publish, on their websites, their pre-audit Summary Financial Statements for year ended 31<sup>st</sup> March 2023, alongside the Council's 2022/23 Group Financial Statements.

**RESOLVED**

That the Sub-Committee

1. notes the summarised position of the WOC Financial Statements for year ended 31<sup>st</sup> March 2023 as set out in the report at Appendix 1;
2. notes the dates in relation to the approval process for the Financial Statements;
3. agrees to the setting up of an informal session with the Council's Officers to allow Members of the Sub-Committee the opportunity to discuss in more detail the Financial Statements; and
4. notes the overall financial performance of the WOCs in the 2022/23 financial year, as contained within Appendix 1, as follows:
  - (a) ASDV Reserves increased by £0.462m less £0.291m dividend from TSS to CEC, leaving retained reserves at £1.949m.
  - (b) A further final dividend of £0.106m is due to CEC from TSS in 2023/24.
  - (c) Wholly-Owned Companies Net Core Contract Spending was £37.94m

**7 LOCAL GOVERNMENT PENSION SCHEME AND CHESHIRE PENSION FUND**

The Sub-Committee considered a report on the Local Government Pension Scheme.

The report described the main items for consideration in Cheshire East's financial planning and reporting for pensions, and how Members would be kept informed of these matters at future meetings.



**RESOLVED**

That the Sub-Committee

1. notes the contents of the report;
2. notes the Council's processes for making Member appointments to the Cheshire Pension Fund Committee, via the Corporate Policy Committee;
3. notes how pensions matters feature in the Council's ongoing financial planning and reporting arrangements, particularly the pensions-related financial assumptions that will be included in the next review of the Medium Term Financial Strategy; and
4. agrees that its work plan include receiving briefing papers through the year in respect of matters considered at the Pension Fund Committee.

**8 APPOINTMENTS TO WORKING GROUPS AND WHOLLY-OWNED COMPANY BOARDS**

The Sub-Committee considered a report on the appointment of members to the Sub-Committee's working groups, and the appointment of members of the Sub-Committee as shareholder representatives to attend and observe the board meetings of the Council's wholly-owned companies.

It was noted that the members of the working groups could, where appropriate, be drawn from the wider Council membership but that the chair of each working group should be a member of the Sub-Committee. There was a preference, but not a requirement, for members of the Business Rates Working Group to be members of the Sub-Committee.

**RESOLVED** (unanimously)

That

1. The following working groups be re-established for the current municipal year on the basis set out in the report, and nominations to the groups be submitted to the Head of Democratic Services and Governance:
  - Wholly-owned Companies Governance Review Working Group
  - Shareholder Working Group
  - Business Rates Working Group
2. The following members of the Sub-Committee be appointed as shareholder representatives to attend and observe the board meetings of the wholly-owned companies:

Councillor F Wilson – Ansa  
Councillor M Gorman – Orbitas  
Councillor J Clowes – Tatton Park Enterprises

## **9 WORK PROGRAMME**

The Sub-Committee considered its work programme for 2023-24.

The Director of Governance and Compliance informed members that there were a number of instances where future scheduled meetings of the Finance Sub-Committee clashed with planning committee meetings, with some members of the Sub-Committee sitting as members of the Northern Planning Committee. Democratic Services officers were considering alternative dates for future meetings of the Sub-Committee. It would then be for the Monitoring Officer in consultation with the Chair to agree any revised dates.

Members asked for an update on Bexton Court and the Stanley Centre, Knutsford, and the negotiations between the Council and the NHS. The Director of Finance and Customer Services undertook to arrange a written response.

### **RESOLVED**

That

1. the work programme for 2023-24 be approved; and
2. officers notify members of the Sub-Committee of the revised dates for future meetings.

## **10 PROCUREMENT PIPELINE**

The Sub-Committee considered a report which provided an update of the pipeline of procurement activity, provided an update on the Contract Management System (Atamis), confirmed the contracts awarded by the Council since April 2023 and provided an update on the number of cases where, and reasons why, procurement activity had required the use of waivers.

The detailed waivers referred to in the report would be considered in Part 2 of the meeting.

Members referred to the member working group appointed last year to consider an overview of the procurement process, including a close examination of a number of specific procurements. Members had found this to be a useful exercise and asked that it be repeated for the coming year. The Director of Finance and Customer Services responded that a suitable session would be provided.

**RESOLVED**

That the Sub-Committee

1. approves the 2 pipeline projects in Appendix 1, column H to the report as business as usual;
2. notes the reason for 2 waivers approved between 1<sup>st</sup> February 2023 and 31<sup>st</sup> March 2023 (24 in total in 2022/23);
3. notes the reason for 1 non-adherence approved between 1<sup>st</sup> February 2023 and 31<sup>st</sup> March 2023 (4 in total in 2022/23); and
4. notes the update on the contract management system.

**11 EXCLUSION OF THE PRESS AND PUBLIC**

**RESOLVED**

That the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1, 2, 3 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972 and the public interest would not be served in publishing the information.

**12 PROCUREMENT PIPELINE**

Some members of the Sub-Committee were unable to access the restricted documents. It was therefore agreed that this item be deferred.

**13 PROPOSED COMPANY MATTERS**

The Director of Governance and Compliance gave an oral update on a matter relating to service delivery by Ansa. The previous reports on the matter had been made available to members of the Sub-Committee before the meeting. A briefing paper setting out the current position was shared with members at the meeting.

The Director, under authority delegated to him previously, consulted the Sub-Committee on a set of recommendations within the briefing paper.

Kevin Melling, Managing Director of Ansa, was present for this item and addressed members' questions.

Tom Shuttleworth, Interim Director of Environment and Neighbourhoods, was also in attendance for this item as the Director of CERF, the shareholder of Ansa.

Members asked if a suitable communications response could be prepared if needed. The Chair asked the Director to take the matter away for consideration.

**RESOLVED** (unanimously)

That

1. The update be noted;
2. The recommendations set out in the briefing paper be supported; and
3. Further updates be submitted to future meetings.

At this point, Messrs Melling and Suttleworth left the meeting.

#### 14 **EXTRA CARE HOUSING PFI SCHEMES**

The Director of Finance and Customer Services gave an oral update on the Cheshire Extra Care PFI contract. A briefing paper setting out in detail the background to the matter was shared with members at the meeting.

**RESOLVED**

That the update be noted.

The meeting commenced at 3.30 pm and concluded at 6.38 pm

Councillor N Mannion (Chair)



*Working for a brighter future together*

## **Finance Sub-Committee**

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|                             |  |
|-----------------------------|--|
| <b>Date of Meeting:</b>     | 7 September 2023   |
| <b>Report Title:</b>        | Wholly-owned Companies Governance Review – Board Composition and Shareholder Agreement |
| <b>Report of:</b>           | David Brown, Director of Governance and Compliance                                     |
| <b>Report Reference No:</b> | FSC/35/23-24   |
| <b>Ward(s) Affected:</b>    | ALL  |

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### **1. Purpose of Report**

- 1.1 At its meeting on 7 September 2022, the Finance Sub Committee (as Shareholder Committee) agreed changes to the Council's current arrangements in respect of its wholly owned companies, to improve governance and ensure that the Finance Sub-Committee is properly informed, in accordance with its responsibility as the shareholder committee. The Committee also agreed to set up a Shareholder Working Group to undertake a full review of the structure and governance of the Council's wholly owned companies, in line with published guidance and the CIPFA toolkit.
- 1.2 This report sets out the recommendations of the Shareholder Working Group.

### **2. Executive Summary**

This report sets out the key findings of the Shareholder Working Group, having regard to its review of compliance with the published CIPFA guidance and the company purpose for the wholly owned companies. Its conclusions regarding the most effective approach to designing the Council's longer term company governance, reporting and board arrangements are:

- (a) There should be a revised Board structure to support good governance.

- (b) There should be an observer appointed to the Board to report direct to the Shareholder committee.
- (c) Immediate attention to be given to rectifying some areas, including the removal of the Cheshire East Residents First (the group structure) from the governance structure and relevant documentation.
- (d) A further in-depth review of Shareholder documentation to be undertaken.
- (e) The risk appetite of the Council in respect of company risk is overall rated as 'Low' and risks should be appropriately mitigated to this position.
- (f) Risk mitigation and controls are to be improved
- (g) The Wholly Owned Company Working Group should continue, to report on future proposals for improving governance.

### **3. Recommendations**

#### **3.1. That the Sub-Committee Agrees that:**

- (a) From 19 July 2023 (date of Full Council), the Board of Directors of each of the wholly owned companies will be comprised as follows:
  - One elected Member on the Board of each company to support local knowledge and service user functions. The Member will be appointed by Finance Sub-Committee following an open expression of interest and a transparent process; and
  - Two Council Officers be appointed to the Board of each company, being 1x Finance Officer (on the recommendation of the Chief Finance Officer) and 1x Service specific officer (on the recommendation of the Chief Executive); and
  - The Managing Director of the wholly owned company
  - At least one Director may be appointed through external advert, being an independent sector specialist appointed for their expertise by the Finance Sub-Committee, supported by the Council's HR service.
- (b) An Observer will continued to be appointed to the Board as the Shareholder representative by the Finance Sub-Committee from amongst its number. The Observer will have the right to access all information and documents, to attend all meetings and to ask questions of each Board.

- 3.2** All current and future Director appointments will be subject to a Shareholder approved service contract, and all Directors will be required to enter into this contract as part of their new or continuing appointment.
- 3.3** The amended shareholder agreements set out in appendices 1 and 2 are adopted from 19 July 2023.
- 3.4** That Cheshire East Resident First (CERF) no longer forms part of the governance structure of any Council wholly owned companies and any shares it holds are transferred to Cheshire East Council.
- 3.5** That the Shareholder Working Group be asked to continue to:-
- (a) undertake a full detailed review of the Shareholder Agreements against the CIPFA guidance and other good practice,
  - (b) to ensure that companies support the Council's strategic objectives and decision-making
  - (c) an appropriate and proportionate mechanism for control and review of risk is developed.
  - (d) consider the purpose of Orbitas bereavement services and Tatton Park Enterprises
  - (e) consider the creation of a timely mechanism for seeking shareholder permissions between scheduled committee meetings
  - (f) develop a business planning template to be implemented across the wholly owned companies
- 3.6** That company risk registers and strategic decisions made by the companies form part of the reporting and monitoring mechanisms
- 3.7** Recommend to Corporate Policy Committee that companies risks should be a separate category on the strategic risk register.
- 3.8** That the Council's risk appetite in respect of the companies is 'Low' and that the companies should maintain a low risk approach to business activity.

#### **4. Reasons for Recommendations**

- 4.1** The governance of wholly owned local authority companies (WoC) has come under significant scrutiny following very public failures resulting in the publication of Public Interest Reports for a number of Councils. Those reports highlight those failings in the governance of those companies which resulted in "institutional blindness" and a failure to recognise, understand, and address commercial pressures and conflicts of interest. Those governance failings resulted in high profile financial losses and reputational damage to the Councils and in some cases external intervention from Government.

- 4.2** Guidance was produced by Local Partnerships in 2021 and was a recommended outcome of the review of Nottingham City Council. It provides a toolkit for use when reviewing both the Council's governance arrangements for overseeing the entities and holding them to account and reviewing the governance arrangements of wholly owned companies. In the light of the high-profile company failures, CIPFA have also published guidance aimed at mitigating the risk to local authorities of company ownership. Whilst framed as guidance, its status is such that external audit work will take this into account when considering our control framework and level of assurance the Council is able to provide.
- 4.3** The Shareholder Working Group has carried out a review in accordance with the guidance and accompanying checklist and is making some immediate recommendations and has identified areas for further consideration.
- 4.4** The recommendations in this report, if adopted, will:
- Put in place arrangements to reduce identified risks in the current structure.
  - Provide a transparent and clear line of accountability on the reporting of risk, business planning and performance to the Finance Sub Committee (as Shareholder committee).
  - Give assurance to the Audit and Governance Committee and provide evidence for the Annual Governance Statement.
  - Inform and advise senior officers on performance and allow timely instructions to be given to commissioning officers.
  - Help to develop a long-term approach for the Council as Shareholder.
  - Put in place governance arrangements which reflect good practice as set out in the guidance.
  - Promote open and transparent decision making (both by the Council as shareholder and by the Boards of the companies), open to scrutiny and demonstrating value for money in the delivery of Council services, which play an important part in the delivery of the Council's environmental objectives.
  - Create a governance structure that meets statutory requirements, mandatory guidance, recommended good practice, and reflects the approach to risk adopted by the Council.
  - Be sustainable over the medium term, including the Medium-Term Financial Strategy (MTFS).
- 4.5** The service criteria and detail of the service provision on an operational or day to day basis sit with commissioning arm of the Council. There will be an overlap with the Shareholder committee, in so far as changes to the service requirements may alter the financial viability of a wholly owned company, but in the main both the requirements of the commissioning arm and the Shareholder committee should align e.g. the commissioning arm will wish to be reassured there are sufficient well trained staff, and the Shareholder committee will wish to ensure that the Directors have a proper staff recruitment and retention policy.



- 4.6** The purpose of this report is to ensure the Shareholder oversight and control is adequate.

## **5 Other Options Considered**

The options considered are:

**OPTION 1 - Do Nothing.** This is not recommended, as the Council would not be able to demonstrate that it has considered best value and taken into account good practice recommendations.

**OPTION 2 – Company Self Assessment and Transparency.** No changes made to the company boards and they are required to self-assess risks and propose any mitigations, and report on company performance for scrutiny purposes, purpose and benefits of the structure and upon the qualities and effectiveness of the Board. This is not recommended, as the Council as Shareholder would not be taken a proactive approach to companies which are delivering statutory services and on which it relies.

**OPTION 3 – Maintain the current position with a shareholder observer appointed.** This would provide for greater transparency but would mean that no action could be taken for some time, which is not considered to be appropriate in relation to the exposure of the Council and the need to improve the governance.

**OPTION 4 – Change and strengthen the governance in line with the recommendations of the Shareholder Working Party.** This is the recommended option as it presents the best opportunity for improving governance and transparency, for the reasons set out in this report.

## **6 Background**

- 6.1** The Working Group held two workshop sessions with officers, to discuss key issues in greater detail and to work through the checklist of issues to be considered. At its first workshop in November the issues of membership of company boards and the commissioning/shareholder functions were considered, and at its next workshop in December 2022 members considered risk and control of the wholly owned companies.
- 6.2** The Council has two remaining wholly owned companies that are engaged in service delivery; ANSA Environmental Services Limited (TSS Transport Services Solutions Limited having divided between ANSA and the Council on 31 March 2022) and Orbitas Bereavement Services Limited (which remains a separate company acting as agent in the delivery of the Councils bereavement services).
- 6.3** A third company, Tatton Park Enterprises Ltd, was also set up as a wholly owned company in order to supply catering services within Tatton Park. Its operations are limited to this function.

## **7 Membership of Boards**

- 7.1** A Councillor who is a Director of a wholly owned company has a whole set of duties and responsibilities they must comply with in law, under the Companies Act 2006. By way of example, they have a statutory duty to promote the success of the company for the benefit of its members (i.e. the Shareholder) as a whole. Any company director (whether or not a councillor) must comply with their director's responsibilities, as failure to do so could risk significant reputational damage, may result in disqualification of the Director, and could even possibly be a criminal offence. Conflicts of interest must therefore be identified at the earliest stage, and they are not always obvious. A Director's duties may at times cause a conflict between the role of Councillor and Company Director, where the best interests of the Council are not necessarily the same as the best interests of the Company.
- 7.2** For example, there may be instances when the requirements of the Council will necessitate that the Company arrange its priorities or carry out delivery in a manner which is less than optimal when compared with the Company's overall objectives, or where a Councillor is on a Committee which is considering services provided by the Company. In such cases a Director/Councillor would be required to act in the best interest of the Company, which may conflict with the Councillor's role as an elected member, and the public interest.
- 7.3** There is not, currently, a Council Conflicts of Interest policy in place. The standing exemption granted by Audit and Governance Committee to directors of companies must be renewed every four years. The purpose of the exemption is to ensure Councillors are able to participate in the democratic process, but it is currently phrased broadly, and it applies to all circumstances including those where a councillor would be obliged to vote on council business in accordance with the company's interests. As the number of 'member' directors is likely to be limited for the future, the need for such a wide exemption can be reconsidered to ensure it is still appropriate.
- 7.4** The Working Group considered the statutory requirements and responsibilities placed on Directors and felt that it was necessary to ensure a balance between member oversight and knowledge, while having the support of officers and independent directors with industry expertise to bring specialist knowledge of the subject area. The working group felt that the inclusion of a member as director ensured that the Council retained a strong voice on the Board and when considering non delegable duties and core services such as waste collection members have unique insight through their role as elected representative. The inclusion of a sector specialist not only provided a specialist skill set but also an industry perspective and a

proportionate degree of challenge to mitigate against the risk that the Board became inward looking.

**7.5** Their recommendation was that all members of a company board should have a service contract in place, approved by the Shareholder committee, and that the composition of the board should be as follows:-

- a) One elected Member as a Director. That Member to be appointed on merit (where possible) by the Finance Sub Committee following an open expression of interest/appointment process;
- b) Two Council Officers; one Finance Officer (on the recommendation of the Chief Finance Officer) and one Service specific officer (on the recommendation of the Chief Executive) to provide expertise and challenge;
- c) Not less than one independent Director, selected and appointed by the Finance Sub-Committee on the grounds of their sector specialism and expertise. There would be an open and transparent recruitment process for these appointments, supported by the Council's HR service.
- d) Managing Director of the company

In addition, there would be one Member of the Finance Sub Committee as an Observer (as opposed to a Director) to challenge and ask question from the Shareholder perspective. The Observer should be entitled to all documents and supporting papers they require to carry out their role, as well as being invited to all meetings. The inclusion of a member of the Finance Sub-Committee as an Observer provides an open and transparent way for the Shareholder to understand the management and operation of the Council's wholly owned company at Board level.

**7.6** The Working Group felt that all directors' appointments should be subject to review and that there should be some form of performance management in place. The company should ensure that all Directors are provided with sufficient and appropriate training, updated periodically, and which should be demonstrated via a structured training programme and performance review.

**7.7** An agreed programme of training (for both Directors and Observers) for all existing Directors and new Directors was requested by the Shareholder Committee This has not yet been achieved.

## **8 Purpose of the Companies**

**8.1** The Working Group was invited to consider the purpose of each of the companies as it is important to ensure that the purposes for which they were set up still remain relevant. Members were reminded that the 'Teckal

Exemption' had been used to award the contracts to the wholly owned companies, and of the criteria for this:-

- the contracting authority exercises control over that economic entity that is similar to that which it exercises over its own departments (known as the "control test"); and
- the economic entity carries out the essential part of its activities with the contracting authority (known as the "function test").

Members agreed to recommend that the companies continue to operate on a 'Teckal' basis as they considered that the criteria were still being met, and this would mean that the current contractual relationship (direct award of a contract for operation of services) can remain in place. Members asked for further work to be considered on the merits of using a wholly owned company structure to provide statutory service and this is considered further under risk.

## **9. Shareholder Function**

- 9.1** The Council makes decisions as Shareholder through the Finance Sub Committee, whose terms of reference include the following:-

*“making decisions as Shareholder, reviewing and approving Business plans, including risk registers and commissioning services and functions from the Council’s ASDVs”*

- 9.2** The Council’s original governance arrangements were predicated on a group structure being in place with Cheshire East Residents First (CERF - a group structure) taking an active role in the arrangements, however this is no longer the case. The Council’s Shareholder function is now discharged through the Finance Sub-Committee, which (through the Shareholder Working Group) reviews the business cases of the wholly owned companies and communicates with the Boards. CERF does not play an active role and is in the process of being dissolved, and therefore the Shareholder Agreements have been revised on an interim basis to remove the existing anomalies and they should be immediately adopted to reflect the current position. A Shareholder Agreement sets out the respective roles of the Board and the Shareholder and sets out the powers of the Board and the reserved matters i.e., those decisions for which the approval of the Shareholder is needed. It is necessary to undertake a further detailed review of the Shareholder Agreements to reflect both the Council’s new style of governance, members recommendations and guidance and other good practice.

## **9 Risk**

- 9.1** The Working Group considered its risk profile in respect of ANSA, which the Council uses to provide statutory services. If ANSA begins to fail in any way then the Council will need to step into ensure continuity of a statutory service. As the service is essentially underwritten by the Council and it cannot be allowed to fail, then the limitation of liability by creating a company structure is largely illusory as the Council must, in any event, ensure that the services to residents continue. The Council, through the Shareholder, needs to have a clear understanding at all times of the financial position of ANSA and the level of risk to which the Council is exposed. Key risks relate to residual liability, and minimum controls in place must include guarantees, indemnity statements, subsidy controls, improved financial oversight, incentivisation of behaviours and clearer distinction between Shareholder and commissioner. Recent events also highlight the issues around non-delegable duties and of appropriate control, oversight, and instructions on the activity of the contractor/company.
- 9.2** In the event of any further expansion or increase in traded services for ANSA or the other wholly owned companies, there needs to be a clear understanding of how the Shareholder retains oversight of the associated risk and who agrees to accept that risk (bearing in mind that ultimately the Shareholder will have to step in if there is a prospective failure of the wholly owned company. Shareholder risk is different from service committee risk, as the Council has direct control over the services it directly provides.
- 9.3** The Working Group was invited to consider the risks present as a consequence of operating a company, both in terms of its non-delegable statutory functions and the drive to make profit/reduce the management fee and the mechanisms by which the Council exercises control over its companies. It was asked to consider any further arrangements it felt should be put in place to support good governance and it recommended that, in view of the level of risk appropriate controls should be put in place during the further review of the Shareholder Agreement, to ensure that a low level of risk is maintained.

## **10 Control of Companies**

- 10.1** Business plans have been reviewed on an annual basis and recent changes to reporting and monitoring processes have been introduced to ensure that that the financial positions of the companies are scrutinised by the Council, but it is not clear whether the Council has had sight of the companies strategic risk registers and reviewed the risk/levels of risks they (and by

extension the Council) are exposed to, so as to be clear of the impact of any financial or other pressure on the company and thereby the Council as Shareholder.

- 10.2** The review of the risk registers and strategic decisions made by the wholly owned companies should now form part of the regular reporting and monitoring mechanisms. The Shareholder having already required quarterly reporting to take place. The Working Group recommended that Corporate Policy Committee may wish to ensure the Council's strategic risk register reflects risks relating to wholly owned companies.
- 10.3** The Working Group recommended that a Council-led business planning template be developed and implemented across the wholly owned companies to ensure the Shareholder is fully appraised of all relevant information and is able to hold each Company and its Directors to account against the agreed business case, in order to assess if outcomes are achieved.
- 10.4** The Shareholder Agreement is an agreement which sets out the rules by which the Shareholder and the wholly owned company decide their rights and obligations and sets out how the company should be managed. It is currently set out as a series of limitations on the Directors' powers to do things, rather than setting up a framework for the operation of the company and specifying the parameters within which they should be operating. For instance, it limits the wholly owned company's ability to seek legal advice in contemplation of legal proceedings without the Shareholders permission, but it does not set a framework for how and where the wholly owned companies can obtain their legal advice.

The other control mechanisms are specific e.g. guarantees but as the Shareholder will be keen to limit liability falling on the Council in any circumstances a restricted definition is not particularly relevant. This in part reflects the previous governance with a group company arrangement through CERF. These matters all need to be addressed in the revised Shareholder Agreements for the future review.

## **11 Consultation and Engagement**

This report will be shared with the Directors of the current wholly owned companies.

## **12 Legal Implications**

- 12.1** The legal implications are set out in the body of this report. There are significant liability issues relating to the functioning of wholly owned companies. Some are a direct function of ownership whilst others relate to how services would be

provided in the event of default of the wholly owned company. Other issues relate to conflicts of interest, overlapping liabilities or non-delegable duties etc. It is important that issues are identified and essential to hold timely reviews to ensure compliance with the most recent standards in good governance.

- 12.2** There has been significant public interest in this area following the high-profile company failures in other local authorities. CIPFA Guidance on Council Owned Companies formally sets out requirements for audit purposes. Taking immediate steps and putting in place arrangements for review in the longer term will demonstrate that the Council is taking a proactive approach in reviewing and amending its governance processes

### **13. Finance Implications**

- 13.1 There are significant financial risks involved in failure of wholly owned company governance. For example, a failure of statutory services through a wholly owned company will result in urgent funding and if the wholly owned company has provided indemnities or entered into third party agreements the liability can escalate significantly.
- 13.2 The Council must ensure the value for money criteria remains at the forefront of its thinking and that the Annual Governance Statement properly reflects the risk profile of the Council's holdings.
- 13.3 Officers are not remunerated as any directorship is considered to be part of their role.
- 13.4 The directors remuneration is paid by the company and will in the future be subject to a formal agreement. This is also reported on the Member remuneration disclosure.

### **14. Policy Implications**

Good corporate governance is at the heart of the Council's core values, and this report supports the priority of 'Open and Fair'. It also supports our financial priorities in ensuring that the Council's finances are well managed.

### **15. Equality**

There are no direct equality impacts arising from this report.

### **16. Human Resources**

- 16.1 Each wholly owned company will be required to have a shareholder approved service agreement in relation to each director and that agreement will set out the company's obligations to each Director. The wholly owned companies



have a difference in approach to staffing matters, whistleblowing etc., and it will be necessary to consider if the HR and other policies of each wholly owned company align with those of the Council or whether these need to be reconsidered.

- 16.2 The recruitment of external independent Directors will require the support of HR services to ensure the Council's processes are followed.

## **17. Risk Management**

The overall risk profile of the Council cannot be separated from any potential wholly owned company failure either in terms of statutory service provision or financial liability. The proposals are designed to properly understand the Council's risk exposure and where possible reduce risk. The Working Group also recommends that clearly identified risks should be placed on the strategic risk register to enable the Council to have an overall view of risk across all its areas.

## **18. Rural Communities**

The governance of wholly owned companies has no direct implications for residents. All residents will be directly impacted if companies are not able to provide services and evidence value for money.

## **19. Children and Young People/Cared for Children**

The governance of wholly owned companies has no direct implications for Children and Young People.

## **20. Public Health**

The governance of wholly owned companies has no direct implications for Public Health

## **21. Climate Change**

The governance of wholly owned companies has no direct implications for climate change. However, the Councils' policies on a sustainable approach can be strengthened through ensuring it influences its wholly owned companies to deliver within the Council's policy framework where possible.

| <b>Access to Information</b> |  |
|------------------------------|--|
| Contact Officer:             | David Brown  |
| Appendices:                  | Appendix 1 & 2 - shareholder agreements<br>Appendix 3 minutes from the working group |
| Background Papers:           | NIL  |





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**Dated**

**2023**

**Cheshire East Borough Council**  
and  
**Ansa Environmental Services Limited**

**Shareholder Agreement**

**Dated**

**2023**

**Parties**

- (1) **Cheshire East Borough Council** whose principal office is at Westfields, Middlewich Road, Sandbach, Cheshire CW11 1HZ (the **Council**); and
- (2) **Ansa Environmental Services Limited** a company incorporated and registered in England and Wales with registered number 08714767 whose registered office is at Environmental Hub Cledford Lane, Ansa Environmental Services Limited, Middlewich, Cheshire, England, CW10 0JR [(the **Company**)].

**Introduction**

- (A) The Company was incorporated under the Companies Act 2006 on 2 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 environmental and transport services and such other services as from time to time are contracted for as between the Company and the Council to include without limitation waste management, street cleansing, grounds maintenance and fleet maintenance.

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]<sup>1</sup>.

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

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<sup>1</sup> 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 function 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  
**ANSA ENVIRONMENTAL  
SERVICES LIMITED**  
acting by KEVIN MELLING,  
a Director,

.....  
Director



**Dated**

**2023**

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

**Shareholder Agreement**

**Dated**

**2023**

**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]<sup>1</sup>.

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

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<sup>1</sup> 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 function 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

**Shareholder Working Group**  
**Friday 10 February 2023, 1.30pm, Microsoft Teams**  
**Minutes**

**PRESENT**

Cllr S Corcoran (Chair)

Councillors D Jefferay, S Handley and L Smetham

**IN ATTENDANCE**

Alex Thompson, Director of Finance and Customer Services

Paul Goodwin, Head of Finance

Janet Witkowski, Head of Legal Services

Nikki Bishop, Democratic Services Officer

**ALSO IN ATTENDANCE (item 4)**

Cllr Joy Bratherton, Orbitas Chair

Kevin Melling, Managing Director

Mark Darbyshire, Chief Operating Office

Helen Green, Finance Business Partner

**1.0 APOLOGIES**

Councillor David Brown was not in attendance.

**2.0 DECLERATIONS OF INTEREST**

In the interest of openness, Cllr Smetham declared that she had previously held a Board Member position with Orbitas.

**3.0 ASDV GOVERNANCE REVIEW – FEEDBACK FROM SHAREHOLDER WORKING GROUP WORKSHOPS**

The Working Group considered the ASDV Governance Review – Feedback from Shareholder Working Group Workshops report. The report proposed a number of changes to the makeup of the ASDV Company Boards, immediate variations to the shareholder agreement, a further, more in depth review of the Shareholder Agreement and revised arrangements for the setting, management and reporting of risk and how this is controlled through consents, reporting and business planning.

Cllr Handley put on record her thanks to the late Cllr Steve Carter for all his efforts on bringing this work forward.

### **ACTIONS AGREED:**

The Working Group agreed the report for onward journey to the Finance Sub Committee, subject to the following amendments being made:

1. Report to be amended to include reference to remuneration levels. It was agreed that there should be some level of remuneration for both the Elected Member and external industry specialist Director positions.
2. A recommendation to be included within the report which advises on the remuneration levels for the above-mentioned positions. It was proposed that this was between £5k-£10k and the individual companies would be responsible for agreeing the exact levels of remuneration within this range.
3. It was proposed that the role of 'Observer to the Board' (appointed from the Finance Sub Committee) is considered by the IRP for views on the level of remuneration that should be set.

## **4.0 ORBITAS BUSINESS PLAN**

The Working Group received a presentation from representatives of Orbitas on the Orbitas Business Plan for 2023-25. An overview of the company's current position was provided along with aspirations for future direction, how Orbitas will get there and the anticipated outcomes. It was highlighted that the Business Plan was the first to be prepared since Orbitas was awarded its eight-year contract with the Council.

Key updates provided by Orbitas included:

- Orbitas highlighted how the last few years had been particularly challenging as a result of the COVID-19 pandemic and rapidly increasing demand for services, however, things had started to settle back down and Orbitas was in a much stronger position.
- In the time the company had been trading a strong and positive reputation has been developed.
- Handyman services received a lot of positive feedback.
- Every £1 spent by the Council, the Orbitas return is approx. £2.60.
- Healthy retained reserves - £386k – part of the Business Plan looks how this can be utilised in the future.
- Maintained Charter for the Bereaved 'Gold Award' status.
- Macclesfield second chapel – it was highlighted that there was very high demand for services in Macclesfield. The constraints related to the chapel slots that are available in the day. Opening a second chapel would allow up to 12-13 services to be undertaken each day. It was a key priority to get this project progressed.

The Working Group made the following comments:

- Concerns were raised in relation to the 'Handy-man' service which no longer included plumbers or electricians however this change had not been updated on the website. Members felt this wasn't good use of



residents' time nor Orbitas' time. Costs of the service were also queried. Kevin Melling confirmed that Orbitas aimed to offer value for money where possible.

- It was noted that the Business Plan referred to increased returns to Cheshire East by 44% which is positive, however members queried for more information around the efficiencies referenced within the report.
- Members queried pay increases for staff. Kevin Melling confirmed that this is in line with inflation. (really?)
- Members requested more detail around the Macclesfield Chapel project.

**ACTIONS AGREED:**

1. Kevin Melling to investigate concerns raised in relation to the handyman information on the website to ensure this is up to date.
2. Helen Green to provide a detailed breakdown of accounts (previous three years) to provide a fuller picture (including detail around figures for Director, Management and Administrative salaries and why the budget for 23/24 is 20% higher than 22/23 and income regeneration for Orbitas).
3. Kevin Melling to share the full Risk Register with the Working Group.

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## Finance Sub-Committee Work Programme 2023-24

| Report Reference | Finance Sub-Committee | Title  | Purpose of Report  | Lead Officer                              | Consultation and Engagement Process and Timeline | Equality Impact Assessment | Part of Budget and Policy Framework | Corporate Plan Priority | Exempt Item and Paragraph Number |
|------------------|-----------------------|--|--|---|--|----------------------------|-------------------------------------|-------------------------|----------------------------------|
| FSC/13/23-24     | 02/11/2023            | Subsidy Control Act Update                                 | To provide Committee with an overview of the impact of the subsidy control act on council business and provide an overview of the processes that are required to be put in place to monitor and report on council generated subsidies. | Director of Finance and Customer Services | No   | No                         | No                                  | Open                    | No                               |
| FSC/16/23-24     | 02/11/2023            | Financial Management Code                                  | The purpose of this report is to inform the Sub Committee of the current status of the Council's compliance with CIPFA's Financial Management Code and to advise on next steps.  | Director of Finance and Customer Services | No   | No                         | Yes                                 | Open                    | No                               |
| FSC/18/23-24     | 02/11/2023            | Second Financial Review of 2023/24 (Finance Sub Committee) | This report outlines how the Council is managing resources to provide value for money services during the 2023/24 financial year. The  | Director of Finance and Customer Services | No   | No                         | Yes                                 | Open                    | No                               |

## Finance Sub-Committee Work Programme 2023-24

|              |            |   |  |   |     |    |     |      |    |
|--------------|------------|---|--|---|-----|----|-----|------|----|
|              |            |   | purpose of the report is to note and comment on the Second Financial Review and Performance position of 2023/24 and approve Supplementary Estimates and Virements.   |   |     |    |     |      |    |
| FSC/19/23-24 | 02/11/2023 | Medium Term Financial Strategy Consultation 2024/25 - 2027/28 (Finance Sub Committee) | All Committees were being asked to provide feedback in relation to their financial responsibilities as identified within the Constitution and linked to the budget alignment approved by the Finance Sub-Committee in March 2023. Responses to the consultation would be reported to the Corporate Policy Committee to support that Committee in making recommendations to Council on changes to the current financial strategy. | Director of Finance and Customer Services | Yes | No | Yes | Open | No |

## Finance Sub-Committee Work Programme 2023-24

|              |            |  |   |   |     |     |     |                   |     |
|--------------|------------|--|---|---|-----|-----|-----|-------------------|-----|
| FSC/22/23-24 | 02/11/2023 | Cheshire Pension Fund Briefing (Financial Review 1)          | The purpose of this report is to present the latest in a series of briefing notes in respect of key items being presented to the Cheshire Pension Fund Committee                          | Director of Finance and Customer Services | No  | No  | Yes | Open              | No  |
| FSC/21/23-24 | 02/11/2023 | Companies Business Plans                                     | The purpose of this report is to enable the Sub Committee, as representing the Council as Shareholder, to consider the medium term business plans of the Council's wholly owned companies | Director of Finance and Customer Services | No  | No  | Yes | Open              | No  |
| FSC/20/23-24 | 02/11/2023 | Business Rates Discretionary Relief Review - Recommendations | To provide members with any recommendations following completion of the Business Rates Discretionary Relief Working Group   | Director of Finance and Customer Services | TBC | TBC | No  | Open              | No  |
| FSC/15/23-24 | 02/11/2023 | Section 106 Key Findings - Internal Audit Report             | To provide the Committee with the key findings from Internal Audit's review of arrangements for the management and monitoring of Section 106 funds.                                       | Director of Finance and Customer Services | No  | No  | No  | Open; Fair; Green | TBC |

## Finance Sub-Committee Work Programme 2023-24

|              |            |   |  |   |     |    |     |      |    |
|--------------|------------|---|--|---|-----|----|-----|------|----|
| FSC/29/23-24 | 11/01/2024 | Third Financial Review of 2023/24 (Finance Sub Committee)   | This report outlines how the Council is managing resources to provide value for money services during the 2023/24 financial year. The purpose of the report is to note and comment on the Third Financial Review and Performance position of 2023/24 and approve Supplementary Estimates and Virements.                | Director of Finance and Customer Services | No  | No | Yes | Open | No |
| FSC/23/23-24 | 11/01/2024 | Medium Term Financial Strategy Consultation 2024/25 - 2027/28 Provisional Settlement Update (Finance Sub Committee) | All Committees were being asked to provide feedback in relation to their financial responsibilities as identified within the Constitution and linked to the budget alignment approved by the Finance Sub-Committee in March 2023. Responses to the consultation would be reported to the Corporate Policy Committee to | Director of Finance and Customer Services | Yes | No | Yes | Open | No |

## Finance Sub-Committee Work Programme 2023-24

|              |            |  |  |   |    |    |     |      |    |
|--------------|------------|--|--|---|----|----|-----|------|----|
|              |            |  | support that Committee in making recommendations to Council on changes to the current financial strategy.  |   |    |    |     |      |    |
| FSC/24/23-24 | 11/01/2024 | MTFS Strategies – Investment Strategy          | To note and comment on the Council's Investment Strategy in light of the ongoing budget consultation document and to set out the Council's approach to managing investments in 2024/25.  | Director of Finance and Customer Services | No | No | Yes | Open | No |
| FSC/25/23-24 | 11/01/2024 | MTFS Strategies – Treasury Management Strategy | The Treasury Management Strategy details the activities of the Treasury Management function in the forthcoming year 2024/25. To review the draft Treasury Management Strategy as part of the performance management framework. | Director of Finance and Customer Services | No | No | Yes | Open | No |

## Finance Sub-Committee Work Programme 2023-24

|              |            |   |  |   |    |    |     |      |    |
|--------------|------------|---|--|---|----|----|-----|------|----|
| FSC/26/23-24 | 11/01/2024 | MTFS Strategies – Capital Strategy                  | The Capital Strategy is a key document for the Council and forms part of the authority's integrated revenue, capital and balance sheet planning. It provides a high level overview of how capital expenditure, capital financing and treasury management activity contribute to the provision of services. It also provides a framework within which the Council's capital investment plans will be delivered. | Director of Finance and Customer Services | No | No | Yes | Open | No |
| FSC/27/23-24 | 11/01/2024 | MTFS Strategies – Reserves Strategy                 | To provide information about the requirements to maintain financial reserves and to provide statements on the types of reserves and current and predicted balances.  | Director of Finance and Customer Services | No | No | Yes | Open | No |
| FSC/30/23-24 | 11/01/2024 | Cheshire Pension Fund Briefing (Financial Review 2) | The purpose of this report is to present the latest in a series of briefing notes in respect of key  | Director of Finance and Customer Services | No | No | Yes | Open | No |



## Finance Sub-Committee Work Programme 2023-24

|              |            |   |  |   |    |    |     |      |     |
|--------------|------------|---|--|---|----|----|-----|------|-----|
|              |            |   | items being presented to the Cheshire Pension Fund Committee.  |   |    |    |     |      |     |
| FSC/31/23-24 | 11/01/2024 | Procurement Pipeline                            | The purpose of this report is to enable Finance Sub Committee to fulfil its responsibilities in relation to the oversight of the procurement pipeline of the Council. This report provides an update of the pipeline of procurement activity, confirms the contracts awarded by the Council since April 2023 and provides an update on the number of cases where and reasons why procurement activity has required the use of waivers. | Director of Finance and Customer Services | No | No | No  | Open | Yes |
| FSC/32/23-24 | 04/03/2024 | Service Budgets 2024/25 (Finance Sub Committee) | The purpose of the report is to set out the allocation of budgets for 2024/25, for all Committees, following Council's approval of the   | Director of Finance and Customer Services | No | No | Yes | Open | No  |

## Finance Sub-Committee Work Programme 2023-24

|              |            |                      |  |   |    |    |    |      |     |
|--------------|------------|----------------------|--|---|----|----|----|------|-----|
|              |            |                      | Medium Term Financial Strategy in February 2024  |   |    |    |    |      |     |
| FSC/33/23-24 | 04/03/2024 | Procurement Pipeline | The purpose of this report is to enable Finance Sub Committee to fulfil its responsibilities in relation to the oversight of the procurement pipeline of the Council. This report provides an update of the pipeline of procurement activity, confirms the contracts awarded by the Council since April 2023 and provides an update on the number of cases where and reasons why procurement activity has required the use of waivers. | Director of Finance and Customer Services | No | No | No | Open | Yes |

## Finance Sub-Committee

7 September 2023

## Procurement Pipeline

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**Report of: Alex Thompson, Director of Finance and Customer Service, S151**

**Report Reference No: FSC/12/23-24**

**Ward(s) Affected: All**

### Purpose of Report

- 1 The purpose of this report is to enable Finance Sub Committee to fulfil its responsibilities in relation to the oversight of the procurement pipeline of the Council. This report provides an update of the pipeline of procurement activity, an update on the contracts awarded this financial year, and provides an update on the number of cases where and reasons why procurement activity has required the use of waivers.
- 2 This report supports the Council being open and working transparently with its residents, businesses, and partners.
- 3 **Ensuring that there is transparency in all aspects of Council decision making** (page 3 and 13 Corporate Plan 2021 to 2025) by publishing a pipeline of procurement activity and contracts awarded on the Councils Open Data.
- 4 **Ensuring that there is transparency in all aspects of Council decision making** (page 3 and 13 Corporate Plan 2021 to 2025) by implementing a contract management system to provide greater governance and transparency in the way the council manages its contracts.
- 5 **Support a sustainable financial future for the council, through service development, improvement and transformation** (page 3 and 13 Corporate Plan 2021 to 2025) by improving the visibility of contracts

ensuring that outcomes are met or exceeded, contract and supply chain risk is managed, and efficiency savings are secured.

## Executive Summary

- 6 The report provides an overview of procurement activity across the council during 2023 – 2024 financial year. This includes the pipeline of high value (over £1m) procurement activity, all contracts awarded since 1<sup>st</sup> April 2023 which is also available on the Councils transparency pages, the number and reasons for waivers to the Contract Procedure Rules and the number of non-adherences to the Contract Procedure Rules.
- 7 The responsibilities of the Finance Sub Committee include the oversight of procurement. To manage these responsibilities the Sub Committee can request to review procurement activity through the establishment of a Procurement Working Group. The working group will review several completed procurements and report back to the Finance Sub Committee.
- 8 The Procurement Working Group Terms of Reference were approved on the 6<sup>th</sup> of July 2022, a copy is available at Appendix 3. Would the Finance Sub Committee like to establish a new working group to review 2022/2023 procurement activity?

## RECOMMENDATIONS

The Finance Sub-Committee is recommended to:

1. Approve the 1 pipeline projects in Appendix 1 column H as business as usual.
2. Note the reason for 4 waivers approved between 1<sup>st</sup> April 2023 and 31<sup>st</sup> August 2023 (4 in total in 2023/24).
3. Note the contracts awarded since April 2023, Appendix 2.
4. Approve the membership and Chair of the Procurement Working Group.

## Background

- 9 The sub-committee has responsibility for the oversight of procurement. Procurement is the process of acquiring goods, works or services from third parties including wholly owned subsidiary bodies of the Council.

The process spans the whole commissioning cycle and is generally covered by the Public Contract Regulations 2015 (PCR's) 2015.

- 10 To ensure compliance with the PCR's, the Constitution and the Commissioning Framework a procurement pipeline of work is maintained which the Committee should review as part of their responsibilities. This is attached at Appendix 1.
- 11 The procurement pipeline provides a list of all the Council's scheduled procurement activity above £1m. The Committee should be reassured that significant decisions are well managed and therefore consider reviewing important or valuable contracts. The pipeline is also available on the [Cheshire East Transparency Pages](#).
- 12 A Significant Decision is ““A decision which is likely to result in the local authority incurring non-routine expenditure which is, or the making of non-routine savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; and / or is likely to be significant in terms of its effects on communities living or working in an area comprising one or more wards or electoral divisions in the area of the Council. For these purposes, savings and expenditure are 'significant' if they are equal to or greater than £1,000,000, unless the context requires otherwise”.
- 13 Significant Decisions are decisions that need to go to committee. The definition was simplified to a decision over £1m but this was causing unnecessary activity as the Council has regular 'business as usual' decisions over £1m which would still have required routine reports to committee. To ensure alignment with the Council's vision to be Open the Sub-Committee has responsibility to oversee the procurement pipeline, this means members are sighted on all procurement activity and approve any procurement which is classified as business as usual in column G to ensure the process remains proportionate. The procurements requiring approval are shown in Appendix 1, approval required.
- 14 Oversight is important as in a normal operating year the Council spends more than £350m with external parties which need to be procured in accordance with the PCRs 2015, ensuring value for money and that the Council's Social Value principles and objectives are achieved.
- 15 During August 2022 Finance Sub Committee established a Procurement Working Group to review the previous 12 months procurement activity and provide feedback to the Committee on the process and approach to value for money. This supported the Sub Committee in dispensing its responsibilities for procurement planning. The Sub Committee can re-establish the working group at any time to

review procurement activity and provide assurance that processes are being followed.

- 16 The Local Government Transparency Code was published in 2015 which details, amongst other things, the procurement information local authorities are required to publish. Cheshire East Council publishes a monthly spend report which details the previous months spend and on a quarterly basis contracts awarded, a procurement pipeline and purchase card spend. This is all available on the Councils transparency pages. Appendix 2 provides a list of all contracts awarded over £5000 since April 2023. The Council also complies with the Public Contract Regulations and publishes all contracts above £25k on Contracts Finder and Find a Tender.
- 17 The contract procedure rules set out the necessary controls that are used to manage related spending. There are occasions where it is appropriate to waive these rules with the proper authority. Waivers are pre-approved variations from the Contract Procedure Rules, and these form part of the procurement process.
- 18 All waivers approved in the periods between Finance Sub-Committees will be presented to the next Committee meeting. The number of waivers to be reported to this meeting is 4. These will be considered in part 2 of the agenda.

| <b>Waivers</b> | <b>2016-2017</b> | <b>2017-2018</b> | <b>2018-2019</b> | <b>2019-2020</b> | <b>2020 - 2021</b> | <b>2021-2022</b> | <b>2022-2023</b> | <b>2023-2024</b> |
|----------------|------------------|------------------|------------------|------------------|--------------------|------------------|------------------|------------------|
|                | 40               | 20               | 16               | 17               | 25                 | 37               | 24               | 4                |

- 19 Any breach of, or non-adherence to, the Contract Procedure Rules is reported to the Chief Finance Officer and Monitoring Officer on discovery. The relevant Director or their delegated representative are required to outline the reasons for the breach and the steps taken to prevent recurrence. The number of non-adherences to present to this meeting is 0.

| <b>Non-Adherence</b> | <b>2016-2017</b> | <b>2017-2018</b> | <b>2018-2019</b> | <b>2019 - 2020</b> | <b>2020-2021</b> | <b>2021-2022</b> | <b>2022-2023</b> | <b>2023-2024</b> |
|----------------------|------------------|------------------|------------------|--------------------|------------------|------------------|------------------|------------------|
|                      | 33               | 10               | 5                | 1                  | 3                | 3                | 4                | 0                |

## Consultation and Engagement

- 20 Consultation and engagement have been undertaken with Cheshire East Council staff who have a role within Commission, Procuring and Contract Managing goods, services or works for the Council.

### **Reasons for Recommendations**

- 21 To ensure compliance with the Public Contract Regulations 2015 (PCRs), the Constitution and the Commissioning Framework a procurement pipeline of work is maintained which the Committee should review as part of their responsibilities. This is attached at Appendix 1.
- 22 Column G of the pipeline identifies which procurements are categorised as business as usual and which are categorised as Significant Decisions and require service committee approval. This is due to them incurring non-routine expenditure or having a significant effect on communities.
- 23 The Contract Procedure Rules set out the necessary controls that are used to manage related spending. There are occasions where it is appropriate to waive these rules with the proper authority.
- 24 Waivers are pre-approved variations from the Contract Procedure Rules, and these form part of the procurement process.

### **Other Options Considered**

- 25 There is an option not to publish a pipeline of procurement activity that classifies business as usual activity and significant decisions. This option would lead to all procurement activity requiring detailed reports to Committees in addition to the existing oversight from the Finance Sub-Committee and exception reporting to the Audit and Governance Committee. This would cause additional work for officers having to draft routine reports for committee for business-as-usual expenditure. This option is not recommended as the Finance Sub-Committee can provide suitable assurance that spending is, or is not, routine and within the Budget and Policy Framework.
- 26 The responsibility of the Sub-Committee is to establish a procurement forward plan, which is provided at Appendix 1. Other information such as the past spend, review of waivers and approval of significant decisions could therefore be removed from this report as an alternative option. This option is not recommended as the Corporate Plan supports transparency which is enhanced by providing additional context around procurement activity.

### **Implications and Comments**

*Monitoring Officer/Legal*

- 27 The Council's commercial legal team will work with procurement and seek to ensure that the Council's procurement activity complies with the PCR's and the Council's contract rules; and will look to advise on the appropriate form of contracts to be used.

*Section 151 Officer/Finance*

- 28 The recommendations in this report do not impact on the Council's Medium Term Financial strategy (MTFS).

*Policy*

- 29 New policies regarding Contract Management and the roles and responsibilities

*Equality, Diversity and Inclusion*

- 30 All tenders issued by the Council include a Selection Questionnaire which asks bidders to confirm obligations in environmental, social and labour laws. This is a self-declaration which provides a formal statement that the organisation making the declaration has not breached any of the exclusion grounds, including Equality Legislation. If a serious misrepresentation is found in the Selection Questionnaire, bidder may be excluded from the procurement procedure, and from bidding for other contracts for three years.
- 31 All Cheshire East Council contracts have a clause stating "the supplier shall perform its obligations under the Contract in accordance with all applicable equality Law and the Council's equality and diversity policy as provided to the Supplier from time to time".

*Human Resources*

- 32 There are no direct implications for HR.

*Risk Management*

- 33 Contract and supplier risks and issues will be managed through the new Contract Management System ensuring supply chain risks are monitored and managed appropriately with visibility across the Council.

*Rural Communities*

- 34 There are no direct implications for rural communities.

*Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)*



35 There are no direct implications for children and young people.

*Public Health*

36 There are no direct implications for public health.

*Climate Change*

37 Carbon and the environment form part of the Council's Social Value Policy and Framework. How the Council measures the outcomes and performance from the supply chain will be through the Contracts Management Framework.

| <b>Access to Information</b> |  |
|------------------------------|--|
| Contact Officer:             | Lianne Halliday, Senior Manager Procurement<br>Lianne.halliday@cheshireeast.gov.uk   |
| Appendices:                  | Appendix 1 Pipeline (spreadsheet)<br>Appendix 2 Contracts (spreadsheet)<br>Appendix 3 Procurement Working Group ToR<br>Appendix 4 CPR Waiver Categorisations |
| Background Papers:           | None/exempt  |

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Appendix 1 - Pipeline

| Pipeline   | Project Status | Date Tender to be advertised | Estimated Contract start date | Overall Project Budget | Department                                       | Finance sub committee approval  | Approval required |
|--|----------------|------------------------------|-------------------------------|------------------------|--|---|-------------------|
| Care at Home (Adults)  | Pre tender     | 24/11/2023                   | 04/09/2024                    | £ 140,000,000.00       | Integrated Commissioning Thriving and Prevention | Adults and Health Committee March 2022                                      |                   |
| DPS - Home to School & Commercial Transport                        | Live           | 06/07/2023                   | 01/09/2023                    | £ 120,000,000.00       | Highways   | 07/07/2022  |                   |
| Provision of a Managed Service for Temporary Agency Staff          | Pre tender     | 28/07/2023                   | 01/04/2024                    | £ 60,000,000.00        | Human Resources                                  | 07/06/2023  |                   |
| DPS Complex Needs_21 Months Extension/Modification                 | Live           | 17/08/2023                   | 01/12/2023                    | £ 59,685,064.00        | Integrated Commissioning Thriving and Prevention | BAU   | Yes               |
| Household Waste Recycling Centres                                  | Pre tender     | 01/11/2023                   | 01/11/2024                    | £ 45,000,000.00        | Environmental Services                           | Environment and Communities Committee - Approval Required                   |                   |
| Handforth Garden Village Primary Infrastructure Works              | Pre tender     | 02/10/2023                   | 01/02/2024                    | £ 37,000,000.00        | Economic Development                             | Economy and Growth Committee Approval Required                              |                   |
| Paediatric Speech Language & Communication Therapy Services (SALT) | Forward plan   | 01/09/2024                   | 01/04/2025                    | £ 17,500,000.00        | Children's                                       | Children's and Families Committee - Approval Required                       |                   |
| Care at Home Prime & Framework Providers Price Uplift              | Live           | 17/08/2023                   | 21/09/2021                    | £ 16,767,400.00        | Integrated Commissioning Thriving and Prevention | Adult and Health Committee - Approved 27th March 2023                       |                   |
| Cheshire Archives Project  | Live           | 16/01/2023                   | 01/07/2023                    | £ 10,000,000.00        | Culture and Tourism                              | Economy and Growth Committee 14th March 23                                  |                   |
| Domestic Energy Retrofit Works                                     | Live           | 30/07/2023                   | 01/11/2023                    | £ 8,100,000.00         | Housing  | Economy and Growth Committee 30th November 2021                             |                   |
| Housing Related Support  | Pre tender     | 01/09/2023                   | 01/04/2024                    | £ 5,831,000.00         | Housing  | Economy and Growth Committee - 10th July 2023                               |                   |
| Congleton Greenway Bridge  | On hold        |                              |                               | £ 5,300,000.00         | Highways   | Highways Service Committee - Approval required - on hold for project review |                   |
| Supply of Water and Wastewater Services.                           | Live           | 01/08/2023                   | 01/04/2024                    | £ 3,800,000.00         | Estates  | 07/09/2022  |                   |
| Apprenticeships DPS  | Pre tender     | 01/06/2023                   | 01/08/2023                    | £ 3,000,000.00         | Human Resources                                  | 07/06/2023  |                   |
| Emotionally Healthy Children & Young People                        | Forward plan   | 30/05/2024                   | 01/04/2024                    | £ 2,000,000.00         | Health Improvement                               | Adult and Health Committee - Approval Required 25/09/2023                   |                   |
| TADIC - Conversion of Offices                                      | Live           | 09/05/2023                   | 19/06/2023                    | £ 2,000,000.00         | Estates  | Economy and Growth Committee 14th March 23                                  |                   |
| Merchant Acquiring   | Pre tender     | 10/03/2023                   | 01/04/2024                    | £ 2,000,000.00         | Finance  | 08/03/2023  |                   |
| Universal Information & Advice                                     | Forward plan   | 10/10/2023                   | 03/04/2024                    | £ 1,108,000.00         | Integrated Commissioning New Models of Care      | Adult and Health Committee - Approval Required 25/09/2023                   |                   |
|  |                |                              |                               |                        |  |   |                   |

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## Appendix 2 - All Contracts Report April 2023

| Contract Ref | Contract: Contract Name  | Status          | Start Date | End Date   | Awarded Value  | Department   |
|--------------|--|-----------------|------------|------------|----------------|--|
| C1801        | Contract for the Provision of Hydropower Scheme at Congleton Weir                | Active          | 01/08/2023 | 31/07/2053 | £42,000,000.00 | Environmental Services   |
| C0949        | Children and Family Support Services   | Active          | 01/04/2023 | 31/03/2028 | £22,000,000.00 | Integrated Metal Health, Learning and Development and Families |
| C1991        | Springfield School Expansions - Construction Contract                            | Active          | 10/04/2023 | 13/03/2025 | £ 6,315,368.09 | Educational Infrastructure and Outcomes                        |
| C2182        | Cluster Model - Short Stay Beds  | Active          | 01/04/2023 | 31/03/2024 | £ 5,574,695.79 | Integrated Commissioning New Models of Care                    |
| C2012        | Gypsy and Traveller Transit Site at Cledford Hall Farm Main Contract             | Active          | 15/06/2023 | 25/02/2025 | £ 2,784,564.79 | Housing  |
| C2238        | The Dingle Primary School Expansions Building Contract                           | Active          | 01/09/2023 | 23/02/2025 | £ 1,168,488.52 | Educational Infrastructure and Outcomes                        |
| C2109        | SALT (Speech & Language Therapy)   | Active          | 01/04/2023 | 31/03/2024 | £ 987,384.00   | Early Help and Prevention                                      |
| C1798        | Supply, Install, Remove, Refurbish and Store Vertical Lifts for Domestic         | Active          | 01/08/2023 | 31/05/2025 | £ 960,000.00   | Housing  |
| C2071        | SALT (Speech & Language Therapy)   | Active          | 01/04/2023 | 31/03/2024 | £ 907,478.00   | Children's Development and Partnerships                        |
| C2183        | Cluster Model - Inspired Life Beds   | Active          | 01/04/2023 | 31/03/2024 | £ 808,216.00   | Integrated Commissioning New Models of Care                    |
| C2024        | External Financial Auditors  | Active          | 01/04/2023 | 31/03/2028 | £ 775,000.00   | Finance  |
| C2184        | Cluster Model - Lovett Care Beds   | Active          | 01/04/2023 | 31/03/2024 | £ 688,287.60   | Integrated Commissioning New Models of Care                    |
| C1846        | Public & Statutory Notice and HR Recruitment Advertising Services                | Active          | 01/06/2023 | 31/05/2026 | £ 600,000.00   | Procurement  |
| C1056        | Supported Lodging Accommodation for Young People                                 | Active          | 01/04/2023 | 31/03/2026 | £ 588,723.62   | Integrated Metal Health, Learning and Development and Families |
| C2185        | Cluster Model - Maria Mallaband (6) Beds   | Active          | 01/04/2023 | 31/03/2024 | £ 584,001.60   | Integrated Commissioning New Models of Care                    |
| C1918        | Information Technology Research and Advisory Services                            | Active          | 01/04/2023 | 31/03/2026 | £ 570,000.00   | ICT Strategy   |
| C2194        | System Resilience - Short Stay Beds  | Active          | 01/04/2023 | 31/03/2024 | £ 562,450.57   | Integrated Commissioning New Models of Care                    |
| C2177        | Cluster Model - Community Health Beds  | Active          | 01/04/2023 | 31/03/2024 | £ 558,972.96   | Integrated Commissioning New Models of Care                    |
| C1478        | Fresh Start Accommodation & Support Service                                      | Active          | 01/04/2023 | 31/03/2024 | £ 516,498.00   | Housing  |
| C2186        | Cluster Model - Laurel Bank Beds   | Active          | 01/04/2023 | 31/03/2024 | £ 508,394.25   | Integrated Commissioning New Models of Care                    |
| C2007        | Buglawton Primary School - Remodelling/Extension of Classrooms LVCS Lot 2 Main   | Active          | 01/05/2023 | 30/09/2024 | £ 477,063.88   | Educational Infrastructure and Outcomes                        |
| C2195        | System Resilience - Croftwood Care Beds  | Active          | 01/04/2023 | 31/03/2024 | £ 441,107.14   | Integrated Commissioning New Models of Care                    |
| C2060        | Adult Social Care Review   | Active          | 05/06/2023 | 30/09/2023 | £ 400,000.00   | Integrated Commissioning Thriving and Prevention               |
| C2191        | Cluster Model - Barker Care Beds   | Active          | 01/04/2023 | 31/03/2024 | £ 391,072.50   | Integrated Commissioning New Models of Care                    |
| C2193        | Cluster Model - Springcare (Macclesfield) Beds                                   | Active          | 01/04/2023 | 31/03/2024 | £ 387,169.08   | Integrated Commissioning New Models of Care                    |
| C1897        | Handforth Garden Village Primary Infrastructure Works - Design Opt               | Active          | 06/04/2023 | 29/09/2023 | £ 350,000.00   | Economic Development   |
| C2130        | Provision of Mental Health Blocked Beds at Eden Mansions Care Home               | Active          | 01/04/2023 | 31/03/2024 | £ 312,000.00   | Integrated Commissioning Thriving and Prevention               |
| C2189        | Cluster Model - Methodist Homes Beds   | Active          | 01/04/2023 | 31/03/2024 | £ 305,766.55   | Integrated Commissioning New Models of Care                    |
| C1834        | Solar Together   | Active          | 16/06/2023 | 31/03/2027 | £ 235,863.00   | Environmental Services   |
| C2187        | Cluster Model - Croftwood Care Beds  | Active          | 01/04/2023 | 31/03/2024 | £ 233,643.50   | Integrated Commissioning New Models of Care                    |
| C1744        | Microsoft Unified Support  | Active          | 01/04/2023 | 31/03/2024 | £ 233,232.58   | ICT Services   |
| C1864        | Integrated community support for the 'Community and Discharge Support Team'      | Active          | 01/07/2023 | 31/03/2024 | £ 209,190.50   | Communities and Integration                                    |
| C2188        | Cluster Model - Canterbury Care Beds   | Active          | 01/04/2023 | 31/03/2024 | £ 206,465.42   | Integrated Commissioning New Models of Care                    |
| C1016        | Care Leavers Mentoring Service   | Active          | 01/07/2023 | 30/06/2026 | £ 202,500.00   | Cared for Children and Care Leavers                            |
| C1066        | EDRMS Enhancement & Support Filer Web System                                     | Active          | 01/04/2023 | 31/03/2026 | £ 190,373.94   | ICT Strategy   |
| C2056        | TADIC - Conversion of existing office @ Muni Build. - PCSO                       | Active          | 18/07/2023 | 28/03/2025 | £ 189,347.06   | Economic Development   |
| C2190        | Cluster Model - Cygnet Health Care Beds  | Active          | 01/04/2023 | 31/03/2024 | £ 175,309.98   | Integrated Commissioning New Models of Care                    |
| C1793        | Taxi Licensing Vehicle Tests   | Active          | 10/07/2023 | 09/07/2027 | £ 160,000.00   | Neighbourhood Services   |
| C1921        | Email and Identity Management Architecture Service                               | Active          | 12/04/2023 | 31/03/2024 | £ 135,000.00   | ICT Services   |
| C1809        | P497 Information Assurance and Data Management Programme                         | Active          | 03/04/2023 | 03/04/2024 | £ 133,524.00   | ICT Strategy   |
| C1794        | Strategic IT Research and Advisory Services                                      | Active          | 01/04/2023 | 31/03/2025 | £ 129,000.00   | ICT Strategy   |
| C1826        | P499 Adults Childrens and Public Health (ACPH) planning and Programme Consultant | Active          | 03/04/2023 | 29/03/2024 | £ 114,540.00   | Environmental Services   |
| C2045        | KOFAX Support and maintenance  | Active          | 01/04/2023 | 31/03/2025 | £ 108,169.14   | ICT Services   |
| C1749        | P498 Adults, Childrens and Public Health (ACPH) support the delivery             | Active          | 03/04/2023 | 29/03/2024 | £ 98,000.00    | Environmental Services   |
| C1861        | Outdoor Uniforms   | Active          | 01/04/2023 | 31/03/2027 | £ 96,638.40    | Culture and Tourism  |
| C1869        | P490 Adult Numeracy Courses - Multiply Programme Lot 2                           | Active          | 01/04/2023 | 31/03/2024 | £ 96,390.00    | Integrated Metal Health, Learning and Development and Families |
| C1871        | P490 Adult Numeracy Courses - Multiply Programme Lot 4                           | Active          | 01/04/2023 | 31/03/2024 | £ 96,390.00    | Integrated Metal Health, Learning and Development and Families |
| C1677        | P490 Adult Numeracy Courses - Multiply Programme Lot 1                           | Active          | 01/04/2023 | 31/03/2024 | £ 96,390.00    | Integrated Metal Health, Learning and Development and Families |
| C1666        | CCTV Fibre Optic   | Active          | 03/07/2023 | 02/07/2024 | £ 89,400.00    | ICT Strategy   |
| C2061        | NW Crewe package - Cadent gas diversion  | Active          | 01/05/2023 | 01/10/2023 | £ 68,297.45    | Infrastructure   |
| C2044        | Executive Search and Selection   | Active          | 02/05/2023 | 31/10/2023 | £ 60,900.00    | Integrated Metal Health, Learning and Development and Families |
| C2199        | System Resilience - Lovett Care Beds   | Active          | 01/04/2023 | 31/03/2024 | £ 57,428.57    | Integrated Commissioning New Models of Care                    |
| C1718        | Disability Adaptation Works SR2000927  | Active          | 31/07/2023 | 30/07/2024 | £ 55,839.98    | Housing  |
| C1606        | Insurance Policies - Lot 7 Personal Accident/ Business Travel                    | Active          | 01/04/2023 | 31/03/2026 | £ 53,951.50    | Audit and Risk   |
| C2027        | Local Bus Service No. 38 Crewe – Congleton - Macclesfield                        | Active          | 23/04/2023 | 31/03/2024 | £ 52,373.00    | Strategic Transport and Parking                                |
| C1848        | Lifelong Learning 2023/24  | Active          | 01/08/2023 | 31/07/2024 | £ 49,928.00    | Educational Infrastructure and Outcomes                        |
| C2170        | Cohesion Projects Support  | Active          | 31/07/2023 | 31/03/2024 | £ 48,944.00    | Communities and Integration                                    |
| C1898        | P502 ICT SharePoint Programme 2023-24  | Active          | 01/04/2023 | 29/09/2023 | £ 48,300.00    | ICT Services   |
| C2232        | Lifelong Learning 2023/24  | Active          | 01/08/2023 | 31/07/2024 | £ 48,056.00    | Educational Infrastructure and Outcomes                        |
| C2038        | Domestic Disability Adaptation Works SR2002958                                   | Active          | 07/08/2023 | 06/08/2024 | £ 45,350.00    | Housing  |
| C1374        | Business Process Mapping requirements  | Active          | 01/05/2023 | 30/04/2026 | £ 45,056.00    | Business Change  |
| C2020        | The Dingle Primary School Expansions PCSO  | Active          | 26/04/2023 | 10/01/2024 | £ 42,378.81    | Educational Infrastructure and Outcomes                        |
| C2036        | Domestic Disability Adaptation Works SR2001539                                   | Active          | 21/08/2023 | 20/08/2024 | £ 41,930.00    | Housing  |
| C2026        | Local Bus Service No. 37 Sandbach – Middlewich - Winsford                        | Active          | 23/04/2023 | 31/03/2024 | £ 41,430.00    | Strategic Transport and Parking                                |
| C2065        | Handforth Garden Village: Valuation Inputs                                       | Active          | 14/08/2023 | 10/11/2023 | £ 41,000.00    | Economic Development   |
| C2010        | Broker Fees for Financial Instruments 2023/24                                    | Active          | 01/04/2023 | 31/03/2024 | £ 40,000.00    | Finance  |
| C2009        | Broker Fees for Financial Instruments 2023/24                                    | Active          | 01/04/2023 | 31/03/2024 | £ 40,000.00    | Finance  |
| C2008        | Broker Fees for Financial Instruments 2023/24                                    | Active          | 01/04/2023 | 31/03/2024 | £ 40,000.00    | Finance  |
| C2011        | Broker Fees for Financial Instruments 2023/24                                    | Active          | 01/04/2023 | 31/03/2024 | £ 40,000.00    | Finance  |
| C2231        | Lifelong Learning 2023/24  | Active          | 01/08/2023 | 31/07/2024 | £ 35,964.00    | Educational Infrastructure and Outcomes                        |
| C1868        | GovRoam Provision  | Active          | 11/04/2023 | 10/04/2026 | £ 33,840.00    | ICT Services   |
| C2021        | UK Shared Prosperity Fund – Project Proposal Assessment                          | Active          | 31/05/2023 | 06/10/2023 | £ 30,000.00    | Economic Development   |
| C2152        | P524 Lifestyle Survey 2023   | Active          | 01/08/2023 | 30/11/2023 | £ 30,000.00    | Adult Safeguarding   |
| C2233        | Medical Equipment for Integrated Service Delivery                                | Active          | 01/07/2023 | 31/08/2023 | £ 30,000.00    | Care4CE  |
| C2198        | System Resilience - Mavern Healthcare One Beds                                   | Active          | 01/04/2023 | 31/03/2024 | £ 29,464.29    | Integrated Commissioning New Models of Care                    |
| C2070        | Wider Borough Carbon Action Plan 2024-2029                                       | Active          | 19/06/2023 | 31/10/2023 | £ 24,862.50    | Environmental Services   |
| C2022        | Vehicle Lease for Renault Traffic  | Active          | 16/05/2023 | 15/05/2026 | £ 24,106.89    | Integrated Commissioning New Models of Care                    |
| C2209        | Air Quality Awareness Idling Signage   | Active          | 31/07/2023 | 31/03/2024 | £ 24,000.00    | Regulatory Services  |
| C1790        | Safeguarding Adults Board Independent Chair                                      | Active          | 07/04/2023 | 06/02/2024 | £ 24,000.00    | Adult Safeguarding   |
| C2085        | Decorating Christmas Mansion at Tatton Park                                      | Active          | 20/07/2023 | 03/01/2024 | £ 24,000.00    | Culture and Tourism  |
| C0935        | Audi Q4 Lease Vehicle  | Active          | 26/06/2023 | 25/06/2026 | £ 23,814.72    | Governance and Democratic Services                             |
| C2256        | Independent technical expert advisory services                                   | Expired - Still | 01/09/2023 | 31/08/2024 | £ 23,760.00    | Estates  |
| C2197        | System Resilience - Astley Care Beds   | Active          | 01/04/2023 | 31/03/2024 | £ 22,100.00    | Integrated Commissioning New Models of Care                    |
| C2138        | TLT - Future High Street Funds- Southern Gateway Professional Fees               | Active          | 20/06/2023 | 20/06/2024 | £ 22,000.00    | Highways   |
| C2053        | Domestic Disability Adaptation Works - SR2005479                                 | Active          | 21/06/2023 | 20/06/2024 | £ 21,640.00    | Housing  |
| C2172        | Cheshire East Needs Assessment   | Active          | 18/06/2023 | 31/10/2023 | £ 21,000.00    | Children's Safeguarding  |
| C2222        | Continuing Instructions to Browne Jacobson on Crewe Youthzone Project            | Active          | 02/05/2023 | 31/12/2025 | £ 20,000.00    | Legal  |
| C2086        | Enterprise Vault Software Upgrade  | Active          | 01/06/2023 | 31/05/2024 | £ 19,550.00    | ICT Services   |
| C1824        | Sharepoint Migration Tool - Licences   | Active          | 09/04/2023 | 08/04/2025 | £ 19,271.12    | ICT Services   |
| C1912        | Copyright Licensing  | Active          | 01/04/2023 | 31/03/2024 | £ 19,014.00    | Business Change  |
| C2081        | Family Hubs Transformation - Youth delivery space                                | Active          | 01/07/2023 | 30/06/2024 | £ 18,900.00    | Early Help and Prevention                                      |
| C2055        | Executive Search & Selection - Head of Highways, Head of Rural Cultural Economy  | Active          | 24/05/2023 | 31/08/2023 | £ 18,870.00    | Highways   |
| C1885        | Scope 3 Procurement Carbon Footprint Analysis                                    | Active          | 03/05/2023 | 03/05/2024 | £ 18,200.00    | Environmental Services   |
| C1862        | MEB Barn Owl Mitigation  | Active          | 06/04/2023 | 26/03/2028 | £ 18,125.00    | Highways   |
| C2174        | TADIC - Conversion of existing office @ Muni Build. - RIBA Stage 3-6 Lot 3       | Active          | 04/07/2023 | 30/05/2025 | £ 18,060.70    | Economic Development   |
| C2241        | Disability Adaptation Works SR2004827  | Active          | 31/07/2023 | 30/07/2024 | £ 17,500.00    | Housing  |
| C2062        | Firewall & Web Content Filtering Service (Smoothwall) plus Load balancer         | Active          | 20/06/2023 | 19/06/2024 | £ 17,401.80    | ICT Strategy   |

| Contract Ref | Contract: Contract Name  | Status           | Start Date | End Date   | Awarded Value  | Department   |
|--------------|--|------------------|------------|------------|----------------|--|
| C2146        | Apprenticeship - Chartered Manager Degree (Health & Social Care) level 6         | Active           | 09/05/2023 | 31/05/2025 | £ 15,000.00    | Human Resources  |
| C2135        | Creative Producer Ly2  | Active           | 10/05/2023 | 31/12/2023 | £ 15,000.00    | Culture and Tourism  |
| C2229        | Garden Waste Subscription Service Resident Mailer                                | Active           | 18/08/2023 | 18/11/2023 | £ 14,300.00    | Communications   |
| C2003        | Crewe Wayfinding Design  | Active           | 02/05/2023 | 14/09/2023 | £ 14,050.00    | Economic Development   |
| C2077        | Apprenticeship - MsC in Education Leadership and Management Level 7              | Active           | 18/05/2023 | 20/01/2025 | £ 14,000.00    | Human Resources  |
| C2162        | Apprenticeship- MSc in Education Leadership & Management – Senior Leader level 7 | Active           | 06/07/2023 | 28/06/2025 | £ 14,000.00    | Human Resources  |
| C2031        | Disability Adaptation Works SR2003740  | Active           | 04/04/2023 | 04/04/2024 | £ 13,904.06    | Housing  |
| C2243        | Disability Adaptation Works SR2004399  | Active           | 08/08/2023 | 07/08/2024 | £ 13,480.00    | Housing  |
| C2000        | Team Support Charge - SIMS Support Unit annual charge                            | Active           | 01/04/2023 | 31/03/2024 | £ 12,757.50    | Educational Infrastructure and Outcomes                        |
| C2196        | System Resilience - Littleton Holdings Beds                                      | Active           | 01/04/2023 | 31/03/2024 | £ 12,350.00    | Integrated Commissioning New Models of Care                    |
| C2176        | MEB Assurance Review   | Active           | 04/07/2023 | 31/12/2023 | £ 11,500.00    | Infrastructure   |
| C2035        | Disability Adaptation Works SR2993584  | Active           | 18/04/2023 | 17/04/2024 | £ 11,432.98    | Housing  |
| C2204        | Disability Adaptation Works SR2004733  | Active           | 18/07/2023 | 17/07/2024 | £ 10,100.00    | Housing  |
| C2046        | Badger Vaccination Programme 2023  | Active           | 01/05/2023 | 31/08/2023 | £ 10,000.00    | Culture and Tourism  |
| C2063        | Dental Epidemiological Survey (year 5)   | Active           | 01/04/2023 | 31/03/2024 | £ 10,000.00    | Health Improvement   |
| C2212        | Supply of off contract Community Equipment                                       | Active           | 01/04/2023 | 31/03/2024 | £ 10,000.00    | Integrated Commissioning Thriving and Prevention               |
| C2016        | Topspeed Courier Services  | Active           | 01/04/2023 | 31/03/2024 | £ 10,000.00    | Legal  |
| C2171        | Application - WiFi Analysis and Network Monitor                                  | Active           | 23/07/2023 | 22/07/2026 | £ 9,350.00     | ICT Services   |
| C2002        | Lease of Letter Openers  | Active           | 20/04/2023 | 19/04/2026 | £ 9,303.51     | Governance and Democratic Services                             |
| C1561        | Tender Management Solution   | Active           | 31/07/2023 | 30/07/2027 | £ 9,240.00     | Procurement  |
| C2078        | Apprenticeship - Commercial Procurement and Supply Level 4                       | Active           | 24/04/2023 | 20/04/2025 | £ 9,000.00     | Human Resources  |
| C2156        | Apprenticeship- Teacher level 6  | Active           | 01/07/2023 | 31/07/2024 | £ 9,000.00     | Human Resources  |
| C2157        | Apprenticeship- Teacher level 6  | Active           | 01/07/2023 | 31/07/2024 | £ 9,000.00     | Human Resources  |
| C2097        | Apprenticeship - Marketing Manager Level 6                                       | Active           | 28/06/2023 | 31/01/2025 | £ 9,000.00     | Human Resources  |
| C2158        | Apprenticeship- Teacher level 6  | Active           | 01/07/2023 | 31/07/2024 | £ 9,000.00     | Human Resources  |
| C2206        | Apprenticeship- Level 6 Marketing Manager  | Active           | 23/08/2023 | 23/03/2025 | £ 9,000.00     | Human Resources  |
| C2225        | HAF - Holiday Activity and Food Programme - Active Sports Group                  | Active           | 01/07/2023 | 30/09/2023 | £ 9,000.00     | Early Help and Prevention                                      |
| C2200        | Supply of CCTV Cameras   | Active           | 01/08/2023 | 31/07/2026 | £ 8,400.00     | Regulatory Services  |
| C2018        | P505 Forestry Services Advisor   | Active           | 08/08/2023 | 08/08/2024 | £ 8,320.00     | Strategic Planning   |
| C2245        | Disability Adaptation Works SR2000670  | Active           | 07/08/2023 | 06/08/2024 | £ 8,266.00     | Housing  |
| C2213        | AIM Training   | Active           | 24/07/2023 | 30/01/2024 | £ 8,140.00     | Education Partnership and Pupil Support                        |
| C2116        | Apprenticeship -Professional Accounting or Taxation Technician level 4           | Active           | 18/05/2023 | 17/10/2024 | £ 8,000.00     | Human Resources  |
| C1924        | iNetwork Membership Subscription   | Active           | 01/04/2023 | 31/03/2024 | £ 7,960.00     | ICT Strategy   |
| C2069        | Coventry City Council - West Midlands Teaching Partnership Fee                   | Active           | 01/04/2023 | 31/03/2024 | £ 7,894.00     | Child in Need and Child Protection                             |
| C2230        | Consultancy Services for Definitive Map Modification Order Application           | Active           | 31/07/2023 | 30/11/2023 | £ 7,800.00     | Customer Service   |
| C1903        | Renewal of Web-Based Client Relationship Management System                       | Active           | 01/04/2023 | 01/04/2024 | £ 7,500.00     | Economic Development   |
| C2159        | Hive - Data Intelligence System  | Active           | 01/04/2023 | 31/03/2024 | £ 7,500.00     | Customer Service   |
| C2216        | Apprenticeship- Teaching Assistant level 3                                       | Active           | 20/06/2023 | 20/04/2025 | £ 7,000.00     | Human Resources  |
| C2242        | Disability Adaptation Works SR2004527  | Active           | 31/07/2023 | 30/07/2024 | £ 6,955.00     | Housing  |
| C2247        | Disability Adaptation Works SR2005987  | Active           | 10/08/2023 | 09/08/2024 | £ 6,890.00     | Housing  |
| C2023        | Cemeteries Strategy Update   | Active           | 10/05/2023 | 31/08/2023 | £ 6,800.00     | Environmental Services   |
| C2079        | Perception Theatre   | Expired - Still  | 01/04/2023 | 01/05/2023 | £ 6,500.00     | Adult Safeguarding   |
| C2150        | Gypsy and Traveller Transit Site at Cledford Hall Farm - Lot 5 CoW               | Active           | 10/07/2023 | 24/10/2025 | £ 6,320.00     | Housing  |
| C2227        | Definitive Map Modification Order Application                                    | Active           | 31/07/2023 | 30/11/2023 | £ 6,150.00     | Customer Service   |
| C1999        | Guide Dogs Habilitation Services   | Active           | 01/05/2023 | 31/12/2023 | £ 6,100.00     | Educational Infrastructure and Outcomes                        |
| C2223        | HAF - Holiday Activity and Food Programme - The Wingate Special Children's Trust | Active           | 01/07/2023 | 30/09/2023 | £ 6,072.75     | Early Help and Prevention                                      |
| C2104        | Apprenticeship - Early Years Educator Level 3                                    | Active           | 16/05/2023 | 17/02/2025 | £ 6,000.00     | Human Resources  |
| C2214        | Apprenticeship- Early Years Educator level 3                                     | Active           | 20/06/2023 | 20/02/2025 | £ 6,000.00     | Human Resources  |
| C2252        | NWCP - UU Professional Fees  | Active           | 16/08/2023 | 16/08/2024 | £ 6,000.00     | Infrastructure   |
| C2205        | Apprenticeship- Level 3 Early Years Educator                                     | Active           | 04/07/2023 | 05/04/2025 | £ 6,000.00     | Human Resources  |
| C2148        | Apprenticeship- Early Years Educator level 3                                     | Active           | 16/05/2023 | 17/02/2025 | £ 6,000.00     | Human Resources  |
| C2149        | Apprenticeship- Early Years Educator level 3                                     | Active           | 06/06/2023 | 07/03/2025 | £ 6,000.00     | Human Resources  |
| C2058        | Adelaide School 2 Storey Extension RIBA Stage 1-2 - CRCS Lot 5                   | Active           | 02/05/2023 | 29/02/2024 | £ 5,993.00     | Educational Infrastructure and Outcomes                        |
| C2246        | Disability Adaptation Works SR2004862  | Active           | 08/08/2023 | 07/08/2024 | £ 5,970.00     | Housing  |
| C2131        | Disability Adaptation Works SR2004736  | Active           | 12/06/2023 | 11/06/2024 | £ 5,200.00     | Housing  |
| C2163        | Apprenticeship- Business Administration level 3                                  | Active           | 13/06/2023 | 14/09/2024 | £ 5,000.00     | Human Resources  |
| C2118        | Apprenticeship - Business Administration level 3                                 | Active           | 16/05/2023 | 15/12/2024 | £ 5,000.00     | Human Resources  |
| C2143        | SCEP Knife Angel Project   | Active           | 01/05/2023 | 31/03/2024 | £ 5,000.00     | Adult Safeguarding   |
| C1890        | Appliance and Servers - Maintenance and Support                                  | Active           | 01/04/2023 | 31/03/2024 | £ 4,740.50     | ICT Strategy   |
| C1908        | Load Balancers Software update   | Active           | 01/04/2023 | 31/03/2024 | £ 4,511.04     | ICT Services   |
| C2119        | Apprenticeship - Team Leader or Supervisor level 3                               | Active           | 15/05/2023 | 31/10/2024 | £ 4,500.00     | Human Resources  |
| C2147        | Apprenticeship - Team Leader or Supervisor level 3                               | Active           | 15/05/2023 | 31/10/2024 | £ 4,500.00     | Human Resources  |
| C2087        | Roadmapping Tool   | Active - Renewal | 04/05/2023 | 03/05/2024 | £ 3,912.01     | ICT Services   |
| C2039        | Online Accessibility software for Cheshire East Council website                  | Active           | 19/05/2023 | 19/05/2024 | £ 3,844.00     | ICT Strategy   |
| C2224        | HAF - Holiday Activity and Food Programme - Central Cheshire Buddy Scheme        | Active           | 01/07/2023 | 30/09/2023 | £ 3,598.00     | Early Help and Prevention                                      |
| C2049        | Disability Adaptation Works SR1793868  | Active           | 26/04/2023 | 25/04/2024 | £ 3,025.00     | Housing  |
| C2076        | Buglawton Primary School RIBA Stage 5-6 - Lot 3                                  | Active           | 08/05/2023 | 28/06/2024 | £ 2,385.32     | Educational Infrastructure and Outcomes                        |
| C1938        | CAV Annual support and maintenance   | Active           | 01/04/2023 | 31/03/2024 | £ 1,883.06     | ICT Services   |
| C2091        | Office 365 Reporting Tool  | Active           | 26/07/2023 | 25/07/2024 | £ 1,549.31     | ICT Services   |
| C2236        | Cross browser testing platform   | Active           | 22/08/2023 | 21/08/2024 | £ 1,154.77     | ICT Services   |
| C2202        | Hardware Support (Bull Escala)   | Active           | 18/07/2023 | 17/10/2023 | £ 1,104.00     | ICT Services   |
| C1997        | MapInfo Pro-Maintenance  | Active           | 01/04/2023 | 31/03/2024 | £ 769.87       | ICT Services   |
| C2219        | Database/Software for Advice & Support Service, client caseload                  | Active           | 31/07/2023 | 30/07/2024 | £ 550.00       | Education Partnership and Pupil Support                        |
| C2215        | SAN SSL Certificate  | Active           | 29/07/2023 | 29/07/2024 | £ 358.00       | ICT Services   |
| C2030        | Domain Lease   | Active           | 15/04/2023 | 14/04/2025 | £ 19.98        | ICT Services   |
| C2033        | CAH Adults Framework - Homecarers Ltd T/a Starcare Ltd                           | Active           | 24/04/2023 | 03/09/2024 | £ -            | Integrated Commissioning New Models of Care                    |
| C2032        | CAH Adults Framework - Eunha Healthcare Ltd                                      | Active           | 24/04/2023 | 03/09/2024 | £ -            | Integrated Commissioning New Models of Care                    |
| C1995        | CSP Agreement Everybody Health & Leisure   | Active           | 01/05/2023 | 14/12/2026 | £ -            | ICT Strategy   |
| C1732        | DPS Complex Needs - We Change Lives (WCL)  | Active           | 30/04/2023 | 25/11/2023 | £ -            | Integrated Commissioning Thriving and Prevention               |
| C2054        | Elections Poll Cards   | Active           | 01/09/2023 | 30/08/2025 |                | Governance and Democratic Services                             |
| C2126        | Children & Family Support Service - Exceptional Support                          | Active           | 01/07/2023 | 29/02/2028 |                | Integrated Metal Health, Learning and Development and Families |
| C2153        | Speciality Baths   | Active           | 10/07/2023 | 09/07/2025 |                | Housing  |
| C2125        | Children & Family Support Service - CareUK Living                                | Active           | 01/07/2023 | 29/02/2028 |                | Integrated Metal Health, Learning and Development and Families |
| C2127        | Children & Family Support Service - Rubylife Care Ltd                            | Active           | 01/07/2023 | 29/02/2028 |                | Integrated Metal Health, Learning and Development and Families |
| C2151        | Speciality Baths   | Active           | 10/07/2023 | 09/07/2025 |                | Economic Development   |
| C2220        | Apprenticeships DPS  | Active           | 01/08/2023 | 31/07/2027 |                | Human Resources  |
| C2051        | Domestic Disability Adaptation Works - SR2003526                                 | Active           | 31/07/2023 | 30/07/2024 |                | Housing  |
| C2052        | Domestic Disability Adaptation Works - SR2004229                                 | Active           | 31/07/2023 | 30/07/2024 |                | Housing  |
| C2037        | Domestic Disability Adaptation Works SR2002157                                   | Active           | 01/08/2023 | 31/07/2024 |                | Housing  |
| C1884        | Cheshire Archives Project  | Active           | 03/08/2023 | 28/02/2025 |                | Culture and Tourism  |
| C2128        | Children & Family Support Service - Wellbeing For Us                             | Active           | 01/07/2023 | 29/02/2028 |                | Integrated Metal Health, Learning and Development and Families |
| Total        | 188  |                  |            |            | £97,914,582.45 |  |
|              |  |                  |            |            |                |  |



**Procurement Working Group**

**TERMS OF REFERENCE**

**1. Purpose of the Procurement Working Group (“the Group”)**

1.1 The Group will review and analyse past procurement projects and report back to Finance Sub-Committee (“the Sub-Committee”). The Group will report their observations on the process and the approach to Value for Money.

1.2 The Group will:

- 1.2.1 Review several (ideally 3 to 5) procurement projects from the past 12 months and report back to the Sub Committee.
- 1.2.2 Support the Sub-Committee in dispensing its responsibilities for procurement forward planning.

**2. Membership**

2.1 The Group shall normally consist of 5 members

3 elected members, drawn from the Finance Sub-Committee, the chair of the group shall be appointed by the Sub Committee.

- 2.1.1. 1 Officer representing Procurement
- 2.1.2. 1 Officer representing legal.

**3. In Attendance**

3.1 To support the work of the Group the Chair may invite additional individuals to attend each meeting as follows

- 3.1.1 Officer(s) representing the Commissioning in services; depending on the procurement projects being reviewed.

**4. Functions**

4.1 The core function of the Group is to:

- 4.1.1 Provide assurance that the procurement projects followed the Contract Procedure Rules and achieved value for money.
- 4.1.2 Provide assurance that the procurement projects comply with the Public Contract Regulations 2015;

4.2 The Working Group shall provide advice to the Sub-Committee on any potential risks to the Cheshire East Council associated with the current arrangements.

**5. Frequency of Meetings**

5.1 The Group will meet during the period September to November 2023. The number of meetings will be determined by the Group.

## Appendix 3 – Terms of Reference for Procurement Working Group

5.2 The Chair of the Group will report the Group's observations back to the Sub-Committee in accordance with the Sub-Committee Work Programme.

### **6. Administration**

6.1 Minutes and agendas will be distributed no later than 5 clear working days prior to the meeting.

### **7. Principal Information Management needs**

- Contracts Register
- All tender documentation
- Contractual information
- Review of Atamis



**CPR WAIVERS – CATEGORIES FOR INTERNAL REPORTING**

| Category Ref | Ref Description  |
|--------------|--|
| A            | Genuine Emergency - which warrant an exception to the requirements of competition  |
| B            | Specialist Education or Social Care Requirements   |
| C            | Genuine Unique Provider - e.g. from one source or contractor, where no reasonably satisfactory alternative is available.   |
| F            | No valid tender bids received; therefore, direct award can be substantiated  |
| G            | Lack of Planning   |
| H            | Any other valid general circumstances up to the EU threshold   |
| I            | No time to undertake a tendering exercise, therefore extension necessary to avoid non-provision of deliverables  |
| J            | Procurement from any other source would be uneconomic at this time   |
| K            | Added value being offered by the Provider(s)   |
| L            | Extension is best option as highlighted in request form  |
| D            | Compatibility with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure  |
| V            | Covid-19 Exemption   |
| E            | In-depth Knowledge, skills and capability of project/services already in existence with consultants/providers carrying out related activity – therefore procuring new consultants/skills would be uneconomic given the investment in previous, related work. |

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