

DATED

2021

THE MAYOR AND BURGESSES OF THE LONDON
BOROUGH OF MERTON (1) AND
CHAS 2013 LIMITED (2)

SOLE SHAREHOLDER AGREEMENT

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THIS AGREEMENT dated the _____ day of _____ 2021

IS MADE BETWEEN

1. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON**, of Civic Centre, London Road, Morden, SM4 5DX (“the **Council**”); and
2. **CHAS 2013 LIMITED** incorporated and registered in England and Wales with company number 08466203 whose registered office is at Civic Centre, London Road, Morden, SM4 5DX (“the **Company**”).

BACKGROUND

- A. The Company was incorporated in England and Wales on 28 March 2013 and has one ordinary share of £1 in issue, which is registered in the name of and the beneficial ownership of the Council.

~~(B) The Company has been established with the aim of being commercially focused, to provide the Council with increased revenue that will be used to benefit the community. The Company has been established for the purpose of making profit by way of more efficient operation of businesses in particular by delivering Health and Safety and Risk Management assessments and supporting services and establishing a data base of contractors containing assessment and management information relevant to health and safety assessment, standards and performance.~~

~~(C) The Company shall carry on business in accordance with the terms and conditions of this Agreement~~

~~(D) This agreement sets out the terms upon which the Council will participate in the Company as its shareholder. The Council shall exercise its rights as shareholder in relation to the company in accordance with the terms and condition of this Agreement~~

AGREED TERMS

1. INTERPRETATION

- 1.1. In this agreement:

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;

Articles means the articles of association of the Company;

Associated Person means a person (including an employee, agent or Subsidiary) who performs services for or on behalf of the Company;

Board means the board of Directors of the Company as constituted from time to time;

Business means the business of the Company as set out in clause 2;

Business Day means a day (other than a Saturday or Sunday) on which the banks in the City of London are open for business;

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Business Plan means the business plan for the time being adopted by the Company in accordance with clause 4;

CA 2006 means the Companies Act 2006;

Chairman means the person chosen to preside over a meeting of the Directors;

Company means CHAS 2013 Limited;

Confidential Information means any information or data in whatever form disclosed, which by its nature is confidential or which the disclosing party acting reasonably states in writing to the receiving party is to be regarded as confidential, or which the disclosing party acting reasonably has marked 'confidential' (including, without limitation, information concerning the business, affairs, customers, clients or suppliers of a party, financial information, or marketing or development or work force plans and information, and information relating to services or products) but which is not personal data (as defined in the Data Protection Act 2018 and General Data Protection Regulations 2018), pursuant to an FOIA or EIRs request, or information which is published as a result of government policy in relation to transparency;

Council Non-Executive Director means a Director that is an officer or employee of the Council;

Delegations Matrix means the matrix of decision-making and approval, as may be amended from time to time in accordance with the Articles (the first version of which is contained in Schedule 1);

Director means a director of the Company;

Environmental Information Regulations means the Environmental Information Regulations 2004;

Executive Director means a Director that is an officer or employee of the Company;

Financial Year in relation to the Company means its accounting reference period of 12 months ending on 31 March.

FOIA means the Freedom of Information Act 2000;

Group means the Company and its subsidiary undertakings from time to time, or any of them as the context requires and Group Company shall be construed accordingly;

Independent Non-Executive Director means a Director that is not an officer, employee or member of the Council or the Company;

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

Intellectual Property Rights means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents,

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information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Local Government Transparency Code: means the code of practice issued by Government from time to time to meet the Government's desire for greater transparency in local decision making processes and to give greater power to the public to contribute to the decision making process

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;

Shares means the ordinary shares of £1 each in the issued share capital of the Company; and

Subsidiary has the meaning given in the CA 2006.

- 1.2. A reference to a statutory provision includes a reference to:
 - 1.2.1. a statutory amendment, consolidation or re-enactment (whether before or after the date of this agreement);
 - 1.2.2. statutory instruments or subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) or orders made under the statutory provision (whether made before or after the date of this agreement); and
 - 1.2.3. statutory provisions of which the statutory provision is an amendment, consolidation or re-enactment.
- 1.3. Reference to:
 - 1.3.1. a person includes a legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate);
 - 1.3.2. a statutory or regulatory body shall include its successors and any substituted body;
 - 1.3.3. an individual includes, where appropriate, his personal representatives;
 - 1.3.4. the singular includes the plural and vice versa, and
 - 1.3.5. one gender includes all genders.
- 1.4. Unless otherwise stated, a reference to a clause or schedule is a reference to a clause or schedule to this agreement and a reference to this agreement includes its schedules;
- 1.5. Clause headings in this agreement are for ease of reference only and do not affect its construction;
- 1.6. In construing this agreement the so-called *eiusdem generis* rule does not apply and

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accordingly the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.

- 1.7. For the purposes of this agreement **party** means a party to this agreement and reference to **parties** shall be to all or more than one of them as applicable.
- 1.8. Where a provision of this agreement imposes an obligation, cost or liability on two or more parties, that obligation, costs or liability shall be construed as being against those parties jointly and severally, and where a provision of this agreement gives a claim, benefit or right to two or more parties, that claim, benefit or right attaches to those parties **jointly**.

Commented [FH1]: What situations does CHAS envisage this would arise and this clause 1.8 apply?

2. BUSINESS

2.1. The Business of the Company shall be:

- 2.1.1. to operate as a commercial company established for the purpose of making profit by way of more efficient operation of businesses in particular by delivering health and safety and risk management services;
- 2.1.2. to pursue any activities reasonably incidental and/or complementary to clause 2.1.1, and to that end, to develop, finance and direct subsidiary and associated companies to undertake any other business activities which seem to the company to further these objects or to enhance the value of the company's assets, property, rights or services.

together with any activities reasonably incidental to the above.

2.2 The principle place of business of and for management of the Company and of each other Group Company shall be within the London Borough of Merton, unless otherwise agreed in writing by the Council.

2.3 The Company shall procure that the Directors shall circulate a draft Pay Policy Statement relating to the next Financial Year to the Council on or before 1 February of the then current Financial Year. The Council shall use reasonable endeavours to respond and confirm whether it has approved the Pay Policy Statement by 31 March of the then current Financial Year.

2.4 The Company shall remunerate the Directors and employees of the Company only in accordance with the Pay Policy Statement.

2.5 The Company shall inform the Council of the commencement of any claim, proceedings or other litigation brought by or settling or defending any claim, proceedings or other litigation brought against the Group, except in relation to debt collection in the ordinary course of the business of the Group.

3. MATTERS REQUIRING THE CONSENT OF THE COUNCIL

- 3.1. With the exception of those matters requiring the approval of the Council under the Delegations Matrix, the management of the Company shall be vested in the Directors.
- 3.2. 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, the Delegations Matrix and to any other express provisions of this agreement. In particular, the Directors shall exercise all voting rights and other powers of control available to them in relation to the Company so as

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to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this agreement, the Company shall:

3.2.1. 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

3.2.2. transact all its business on arm's length terms.

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

3.4. ~~The Company shall not carry out any activity which would bring adverse publicity or cause damage to the reputation of the Council or cause the Council to be in breach of legislation.~~

3.5. The Company shall ensure that none of the matters requiring the approval of the Council under the Delegations Matrix shall be carried out without the prior approval in writing of the Council, ~~save for where such matters have been contemplated in a Business Plan previously approved by the Council.~~ save for where such matters have already been specifically authorised as part of the agreement to the annual business plan.

~~3.3-3.6.~~ The Council may, in its absolute discretion, delegate its decision making in relation to any matter relating to the Company or this agreement to such of its officers as it shall determine and such person shall have all of the rights of the Council under this agreement and in relation to the Company save as notified to the Company from time to time.

~~3.4-3.7.~~ The Board may, in its absolute discretion in accordance with the Articles, delegate any of the powers which are conferred on them under the Articles and Delegation Matrix to such person or committee as they think fit.

4. BUSINESS PLAN

4.1. ~~The Business Plan is a rolling three year strategic and annual business plan (unless otherwise agreed by the Council) for the Company prepared by the Board and it shall include in relation to the Financial Year to which it relates:~~

(a) a cashflow statement giving:

(i) an estimate of the working capital requirements; and

(ii) an indication of the amount (if any) that it is considered prudent to retain, for the purpose of meeting those requirements, out of those profits of the previous Financial Year that are available for distribution to the Council as shareholder;

(b) a monthly projected profit and loss account;

- (c) an operating budget (including capital expenditure requirements) and balance sheet forecast;
- (d) a management report giving business objectives for the year;
- (e) a financial report which shall include an analysis of the estimated results of the Company for the previous Financial Year compared with the Business Plan for that year, identifying variations in sales, revenues, costs, write offs and other material items;
- (f) A report on any potential acquisitions or disposals of assets by the Company;
- (g) A management report confirming any proposals to amalgamate or merge with any other company or business undertaking or acquiring or purchasing a company or other business.
- (h) A management report on proposals to form any Company subsidiary or associated undertaking, acquiring shares in any other company or entity (subscription or transfer) such that the Company becomes a Subsidiary, entering into joint ventures or partnerships (incorporated or not).
- (i) A report on the Company's plans to issue any loan capital in the Company or entering into any commitment with any person with respect to the issue of any loan capital and 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 in the ordinary course of business) or granting any credit (other than in the normal course of trading) or giving any guarantee (other than in the normal course of trading) or indemnity
- (j) A report on any planned alteration in the nature/scope of the Business, or closing down/commencing any new business where the same is not ancillary or otherwise incidental to the business of the Company.
- (k) A report on any plans to enter into (or agreeing to enter into) any borrowing arrangement on behalf of the company and giving any security in respect of such borrowing (including creating or granting any Encumbrance 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 other than liens arising in the ordinary course of business or any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business).
- (l) A report on the Company's plans to Enter into any arrangement, contract or transaction above an overall value of £1,000,000.00 (one million pounds) either in the singular or, where the same are related, in the aggregate.
- (m)** A management report on proposed staff pay including bonus scheme;
- (n) A report on any proposed creation of Intellectual Property Rights;

- (o) A financial report on the dividend forecast;
- (p) A management report as to the Company's performance in relation to the rolling three year strategic Business Plan
- (g) A management report as to the Company's policy for the recruitment of employees, additional employees and the pay and conditions of employment of employees of the Company including:
 - (i) proposals concerning the establishment or amendment to any pension scheme or granting any pension rights to any Director, officer, employee, former Director, officer or employee (in each case) of any Group Company, or any member of any such person's family;
 - (ii) Approving the Pay Policy Statement or any changes to the Pay Policy Statement or establishing or amending any profit-sharing, bonus or other incentive scheme of any nature for any Director, officer or employee of, or consultant to, any Group Company.]
- (r) A management report on any amendments made to the policies and procedures of the Company (with the policies and procedures attached as a schedule to the report) and in particular to the following policies and procedures:
 - (i) Procurement policy
 - (ii) HR policy
 - (iii) Equalities policy
 - (iv) H&S policy
 - (v) gifts & hospitality policy
 - (vi) Cyber security
 - (v) Whistleblowing
 - (vi) Fraud & corruption
 - (vii) the policy for the approval and payment of exceptional expenses. Exceptional expenses means payment of any exceptional or unusual expenses to any Director, officer or employee if, or consultant to, any Group Company such as (but without limitation), non-standard hotel accommodation and foreign travel.

4.2 The Company shall ~~prepare the business plan and circulate it a revised version of the then current Business Plan~~ to the Council by the end of the last week of ~~December~~ January in each year for the approval of the Council. The Council will use reasonable endeavours to approve the Business Plan at the earliest opportunity, and in no circumstances later than the end of February. Subject to the receipt of approval from the Council, the Directors shall (in accordance with this agreement) consider and, if appropriate, adopt the updated and revised Business Plan. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received approval from the Council.

~~Each Business Plan shall provide sufficient detail to allow informed decision making by the Council.~~

4.3 Notwithstanding any other provision of this clause 4, following the requisite approval of the amended or updated and revised Business Plan the amended or updated and revised Business Plan shall become the Business Plan for the relevant financial year. For any period when a proposed Business Plan presented under clause 4.1 has not been approved and

adopted by the Directors in accordance with this agreement the relevant existing Business Plan shall continue to be the Business Plan of the Company.

5. DIRECTORS

~~5.1 Unless the Council shall determine otherwise, there shall be a minimum number of four (4) Directors on the Board and shall include no less than one (1) Council Non-Executive Director.~~

5.1 Unless the Council shall determine otherwise, there shall be a minimum number of three (3) and a maximum of eight (8) Directors on the Board. Subject to article 13 of the Articles of Association, the Board shall be made up as follows:

- (i) up to two (2) Executive Directors;
- (ii) up to two (2) Independent Non-Executive Directors;
- (iii) up to four (4) Council Non-Executive Directors.

5.2 The number of Council Non-Executive Directors shall at all times be equal to or exceed the aggregate number of Executive Directors and Independent Non-Executive Directors.

5.3 The post of Chairman shall at all times be held by a Council Non-Executive Director. The Chairman shall have a casting vote. If the Chairman for the time being is unable to attend any meeting of the Board, or is not participating in a meeting of the Board, the participating directors must appoint ~~appoint another Council Non-Executive as Chair..one of themselves to act as chair.~~

6. ACCOUNTING AND OTHER INFORMATION

~~6.1 The Company agrees with the Council 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 Council informed of the progress of each Group Company's business and affairs and in particular will procure that the Council 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.~~

6.1 The Company shall supply the Council with the financial and other information necessary to keep the Council informed about how effectively the Business is performing and in particular shall supply the Council with:

(i) a copy of each year's Business Plan for approval in accordance with clause ~~Error!~~

Reference source not found.4.2:

(ii) a copy of the audited accounts of the Company prepared in accordance with the laws

(iii) applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom, within the timescales set by the Council's external auditors;

(iv) a going concern statement

(iv) monthly management accounts of the Company to be supplied within the timescales required by the Council's monthly monitoring timetable and the accounts shall include a profit and loss account, a balance sheet and a cashflow statement and such other information as the Council may reasonably require; and

(v) if requested by the Council, a copy of a report prepared by the Company in respect of each Financial Year, demonstrating the implementation by the Company of Adequate Procedures, such report to be provided within twenty (20 Business Days of the end of the Financial Year to which it relates.

6.2 All books, records, accounts and documents relating to the business and the affairs of the Company and its subsidiaries shall (upon reasonable prior notice) be open to the inspection of the Council's designated officers and executives, who shall be entitled to make any copies thereof as he or she deems appropriate to protect its interests as a shareholder. Any information secured as a consequence of such examinations shall be kept confidential by the Council and its designated officers and executives in accordance with the terms of clause 8-save where the request is made by the Council for the provision of any documents, information and correspondence necessary to enable the Council to comply with filing, elections, returns or any other requirements of HM Revenue & Customs or any other revenue or tax authority or is required by law, court order or any governmental or regulatory authority.

6.3 The Company shall inform the Council of any agreement with any relevant authority for tax purposes in relation to the Company, its business, assets or undertakings or making a claim, disclaimer, election or consent.

6.4 Notwithstanding the Company in the Delegations Matrix approves its statutory accounts, the Company shall supply the Council the statutory accounts prior to approval and no later than 5 working days before such approval is given by the Board.

7. TERMINATION

7.1 This agreement shall terminate upon:

- (i) the written agreement of the parties in accordance with the terms agreed; or
- (ii) when a resolution is passed by the Council or creditors of the Company, or any order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the creditors, the Council or other contributors.

7.2 On termination of this Agreement, the following clauses shall continue in force:

- (i) Clause **Error! Reference source not found.**1 (Interpretation);
- (ii) this clause;
- (iii) Clause 8 (Confidentiality);
- (iv) Clause 10 (Assignment and Other Dealings);
- (v) Clause 12 (Entire Agreement);
- (vi) Clause 9 (Variation and Waiver);
- (vii) Clause 17 (Costs);
- (viii) Clause 18 (No Partnership or Agency);
- (ix) Clause 19 (Communications);
- (x) Clause 20 (Severance); and
- (xi) Clause **Error! Reference source not found.**28 (Governing Law and Jurisdiction).

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

7.4 Where, following an event referred to in clause **Error! Reference source not found.**7.1(iii), the Company is to be wound up and its assets distributed, the parties shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that, before dissolution:

- (i) all existing contracts of the Company are performed to the extent that there are sufficient resources;
- (ii) the Company shall not enter into any new contractual obligations;
- (iii) the Company's assets are distributed as soon as practical;
- (iv) all Intellectual Property Rights owned by or (to the extent that it is able to do so) licenced to the Company and all data relating to the Company and its Business are transferred to the Council at nil cost; and
- (v) any assets transferred to the Company pursuant to any relevant agreement shall be returned to the Council or as the Council directs.

8. CONFIDENTIALITY

8.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 06-2.

8.2 Each party may disclose the other party's Confidential Information:

- i. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 8; or
- ii. as may be required by law, court order or any governmental or regulatory authority.

8.3 Each party acknowledges that the other party is subject to the requirements of the

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FOIA and the Environmental Information Regulations, and shall each facilitate the other party's compliance with its Information disclosure requirements in clauses ~~086.4~~ and ~~086.7~~.

8.4 If either party (the **Recipient**) receives a Request for Information in relation to Information that the other party is holding and which the Recipient does not hold itself, the Recipient shall refer to the other Party such Request for Information as soon as practicable and in any event within ~~three~~ **five (35)** Business Days of receiving a Request for Information, and the other party shall:

(i) provide the Recipient with a copy of all such Information in the form that the Recipient requires as soon as practicable and in any event within 10 Business Days (or such other period as the Recipient acting reasonably may specify) of the Recipient's request; and

(ii) provide all necessary assistance as reasonably requested by the Recipient to enable the Recipient 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.

8.5 Following notification under clause 8.4, and up until such time as the other party has provided the Recipient with all the Information specified in clause ~~086.4~~, the other party may make representations to the Recipient 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 Recipient shall be responsible for determining, at its absolute discretion:

(i) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

(ii) whether Information is to be disclosed in response to a Request for Information, and in no event shall the other party respond directly to a Request for Information unless the Request for Information is addressed to it.

8.6 Where a party (the "Recipient") receives a request for information in relation to information which it is holding on behalf of the other party in relation to this Agreement, it shall:

(i) transfer the request for information to the other party as soon as practicable after receipt and in any event within three (3) Business Days of receiving a request for information;

(ii) provide the other party with a copy of all information in its possession or power in the form that the other party requires within ten (10) Business Days (or such longer period as the other party may specify) of the other party requesting that information; and

(iii) provide all necessary assistance as is reasonably requested by the other party to enable it to respond to a request for information within the time for compliance set out in the FOIA or the EIRs.

8.7 The parties acknowledge that (notwithstanding the provisions of clause ~~06.1~~) the Recipient may be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the other party:

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(i) in certain circumstances without consulting with the other party; or

(ii) following consultation with the other party and having taken their views into account.

8.8 Each Party shall transfer to the other party any Request for Information which it receives but is addressed to the other party as soon as practicable and in any event within 3 Business Days of receiving it.

8.9 The parties acknowledge that any lists provided which list or outline Confidential Information are of indicative value only and that a Recipient may nevertheless be obliged to disclose Confidential Information in accordance with clause 8.7.

8.10 The Company shall comply with the Local Government Transparency Code.

9. **ANTI-CORRUPTION**

9.1 The Company undertakes to the Council that:

- (a) it will not, and will procure that all Associated Persons do not, in the course of the operation of the Business, engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
- (b) it has and will 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; and
- (c) from time to time, at the reasonable request of the Council, it will confirm in writing that it has complied with its undertakings under clause 9.1(a) and clause 9.1(b) and will provide any information reasonably requested by the Council in support of such compliance.

9.2 Breach of any of the undertakings in this clause shall be deemed to be a material breach of this Agreement.

10. **DATA PROTECTION**

10.1 The parties undertake to comply with the provisions of the Data Protection Act 2018 and the General Data Protection Regulations 2018 in so far as the same relates to any subject matter of this Agreement.

11. **VARIATION AND WAIVER**

11.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives). In the context of this clause, writing does not include email.

11.2 A waiver of any right or remedy under this Agreement or by law is only effective if it is given in writing and is signed by the person waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.

11.3 A failure or delay by any person to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

11.4 No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 A person that waives any right or remedy provided under this Agreement or by law in relation to one person, or takes or fails to take any action against that person, does not affect its rights or remedies in relation to any other person.

11.6 The rights and remedies provided in this agreement are cumulative and not exclusive of any other rights or remedies.

12. ASSIGNMENT AND OTHER DEALINGS

12.1 Subject to clause ~~0120.3~~, neither party shall assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement (or any other document referred to in it) without the prior written consent of the other party.

12.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

12.3 The Council shall at any time be entitled to assign, transfer, sub-contract, novate or otherwise dispose of this agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

13. Warranties

13.1 Each party warrants and represents to the other party that:

- (i) it has full power and authority and has obtained all necessary authorities and consents to enter into and perform its obligations under this Agreement and such other agreements and arrangements referred to in this Agreement; and
- (ii) the signing of this Agreement and the performance of its obligations under this Agreement and the other agreements and arrangements referred to in this Agreement will not result in a breach of any other agreement or arrangement to which it is a party, nor give rise to any right of termination of any other agreement or arrangement to which it is a party.

14. ANNOUNCEMENTS

14.1 Subject to clause ~~014.2~~, neither party shall make, or permit any person to make, any public announcement, communication or circular (announcement) concerning this Agreement without the prior written consent of the other party. The parties shall consult together on the timing, contents and manner of release of any announcement.

14.2 Where an announcement is required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction, the party required to make the announcement shall

promptly notify the other party. The party concerned shall make all reasonable attempts to agree the contents of the announcement before making it.

15. DISPUTE RESOLUTION

15.1 The parties shall endeavour to resolve a dispute arising in connection with this agreement by referring the dispute for resolution to, in the case of the Council, the Council's monitoring officer and, in the case of the Company, a Director that is not a Council Non-Executive Director. If such persons are unable to resolve the dispute either party may request mediation by serving a notice for mediation ("Mediation Notice") on the other party and sending a copy to the Centre for Effective Dispute Resolution (CEDR) or to such alternative mediator as the parties may agree. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. The mediation will start not later than ten (10) Business Days after the date of the Mediation Notice, and the costs of such mediation shall be borne in such proportions as the mediator may determine to be fair and reasonable in all the circumstances or if the mediator makes no such determination by the parties in equal proportions.

15.2 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this agreement until the dispute resolution process provided for in this clause ~~-3~~ has ended or the other party has failed to participate in the dispute resolution process, provided that the right to issue proceedings is not prejudiced by a delay.

16. ENTIRE AGREEMENT

16.1 This agreement (together with any documents referred to in it) constitutes the entire agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each party acknowledges that in entering into this agreement (and any documents referred to in it), it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement or those documents.

VARIATION

~~A purported variation of this agreement is not effective unless in writing and signed by or on behalf of both parties.~~

Commented [FH2]: Already covered by clause 11

INVALIDITY

~~If a provision of this agreement is held to be illegal or unenforceable, in whole or in part, under an enactment or rule of law, it shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected. The parties agree to negotiate in good faith to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be illegal or unenforceable.~~

Commented [FH3]: Covered by clause 22 below

17. STATUS OF THIS AGREEMENT

17.1 Each party shall, to the extent that it is able to do so, exercise all its voting rights and

other powers in relation to the Company to procure that the provisions of this Agreement are properly and promptly observed and given full force and effect according to the spirit and intention of this Agreement.

17.2 If there is any ambiguity or discrepancy between the provisions of this agreement and the Articles or of the Delegations Matrix, then the provisions of this agreement shall prevail.

~~17.3 The parties shall, when necessary, exercise their powers of voting and any other rights and powers they have to amend, waive or suspend a conflicting provision in the Articles to the extent necessary to permit the Company and its Business to be administered as provided in this Agreement.~~

18. CONSENTS

18.1 Consents, notices, approvals or agreements to be given by the Council under this agreement shall be given in writing.

18.2 Where a consent and/or permission is required under this agreement from one party to the other that consent and/or permission should not be unreasonably withheld or delayed.

19. COSTS

19.1 Except as expressly provided in this Agreement, each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement (and any documents referred to in it).

20. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between the parties or constitute any party the agent of another party.

21. COMMUNICATIONS

21.1 Any notice or other communication under or in connection with this agreement shall be in writing and shall be delivered personally or sent by first-class post or by email as follows:

(i) If to the Council, to:

Address: Civic Centre, London Road, Morden, SM4 5DX

Email address: []

marked for the attention of the Chief Executive

(ii) if to the Company, to:

Address: Civic Centre, London Road, Morden, SM4 5DX

Email address: []

Marked for the attention of the Managing Director

or to such other person, address or email address as any party may specify by notice in writing to the other.

21.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

(i) if delivered personally, when left at the address referred to in clause 2014.1;

(ii) if sent by mail, two Business Days after posting it;

21.3 if sent by email, at the time of transmission,

provided always that a notice given in accordance with the above but received on a day which is not a Business Day or after business hours on a Business Day will only be deemed to be given on the next Business Day. In the event of issues with IT systems that prevent the email from being sent at the time of transmission notice will be deemed to be given on the next Business Day after the email has been received.

21.4 To prove service, it is sufficient to prove that:

(i) if delivered by hand, the notice was delivered to the correct address; or

(ii) if sent by post, the envelope containing the notice was properly addressed, paid for and posted; or

(ii) if sent by email, the notice was properly addressed in that the subject heading of the email must clearly state that the email is a notice being sent pursuant to this Agreement and reference the relevant clause; and sent to the email address of the recipient.

21.5 This clause 2014 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22. SEVERANCE

22.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

22.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

23. THIRD PARTY RIGHTS

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

23.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person.

24. COUNTERPARTS

24.1 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

24.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format), shall take effect as delivery of an executed counterpart of this agreement. If email method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

24.3 No counterpart shall be effective until each party has executed at least one counterpart.

25. RIGHTS AND REMEDIES

25.1 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

25.2 Without prejudice to any other rights or remedies that a party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of [this agreement] by that party. Accordingly, the other party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

26. GOVERNING LAW AND JURISDICTION

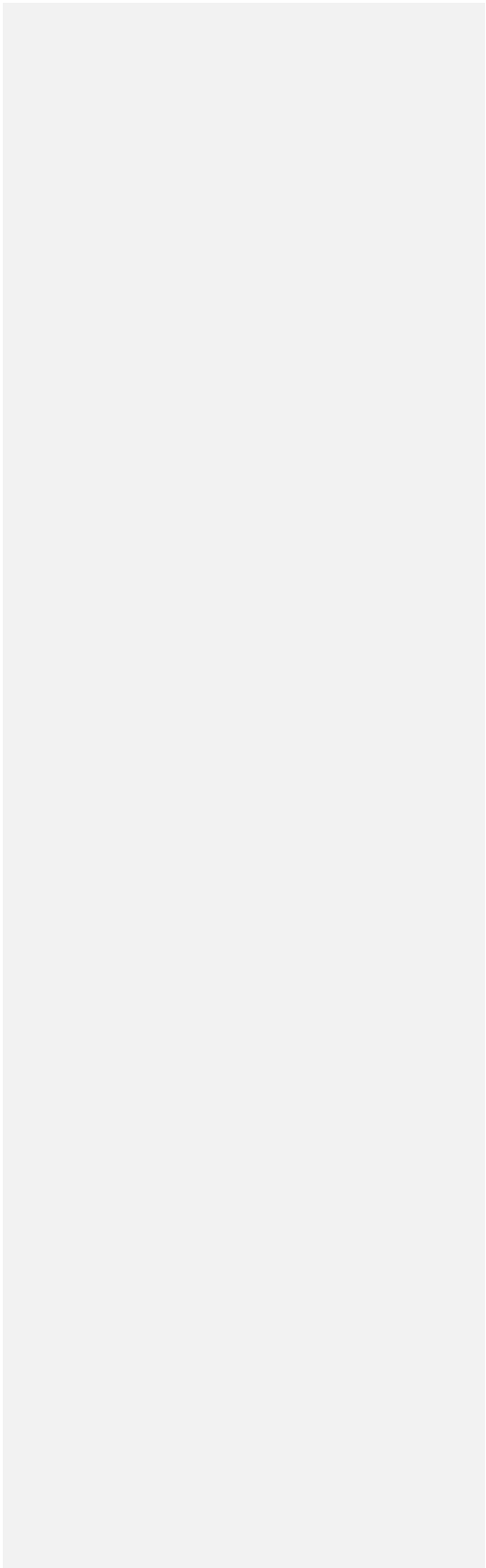
26.1 This agreement and the rights and obligations of the parties shall be governed by and construed in accordance with the laws of England and Wales.

26.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute or claim arising out of or in connection with this agreement or any of the documents to be executed pursuant to this agreement or their subject matter or formation (including non-contractual disputes or claims).

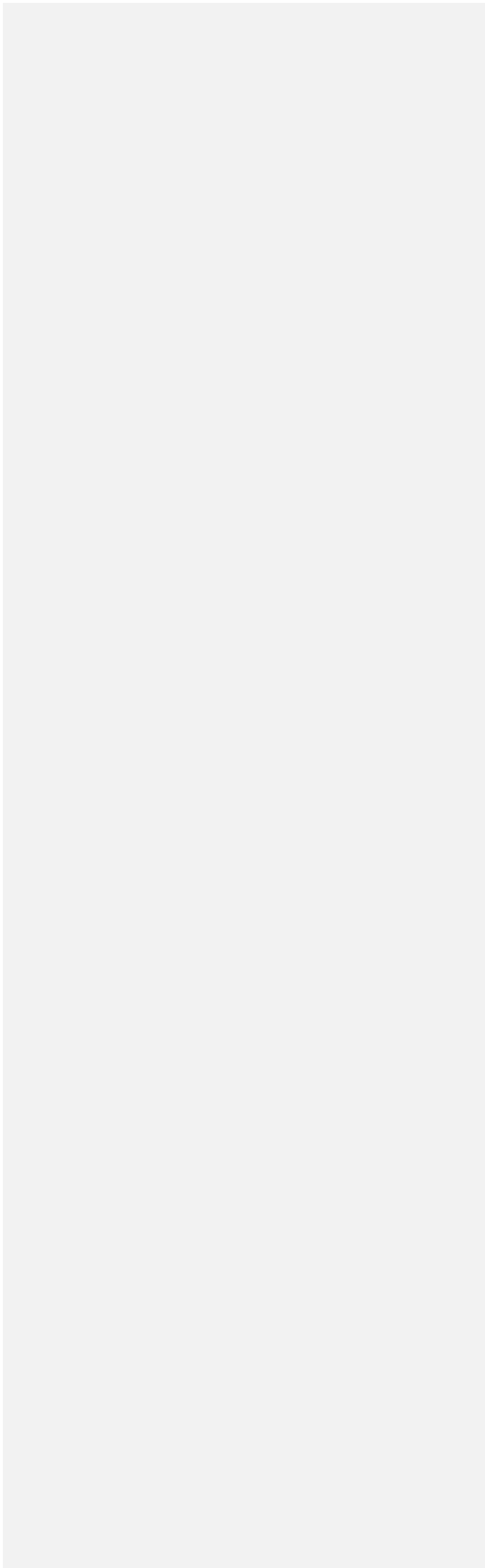
This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed

SIGNATURE PAGE

SCHEDULE 1
Delegations Matrix



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