

Dated

1 December

2015

CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

AND

WIRRAL METROPOLITAN BOROUGH COUNCIL

AND

EDSENTIAL COMMUNITY INTEREST COMPANY

SHAREHOLDERS' AGREEMENT

IN RELATION TO

EDSENTIAL COMMUNITY INTEREST COMPANY

Final version 9

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THIS DEED OF AGREEMENT is made on

1 December

2015

BETWEEN:

(1) **CHESHIRE WEST AND CHESTER BOROUGH COUNCIL** of HQ, Nicholas Street, Chester CH1 2NP (CWAC);

(2) **WIRRAL METROPOLITAN BOROUGH COUNCIL** of Town Hall, Brighton Street, Wallasey CH44 8ED (WMBC)

(each individually a **Shareholder** and collectively the **Shareholders**); and

(3) **EDSENTIAL COMMUNITY INTEREST COMPANY** (company number 09550258) whose registered office is c/o Cheshire West and Chester Borough Council, 4 Civic Way, Ellesmere Port, Cheshire CH65 0BE (the **Company**).

BACKGROUND

(A) The Shareholders have decided to establish the Company for the purposes of the Business.

(B) The Shareholders and the Company are entering into this Agreement to ensure that the Shareholders retain control over the strategic direction and key decisions of the Company.

(C) The Shareholders and the Company shall work together in good faith, in the spirit of co-operation to secure delivery of efficient, high quality services and maximise profitability in accordance with their mutual aims.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise:

Accounting Reference Date means 31 March;

Articles means the articles of association of the Company in the agreed form as amended or replaced from time to time in accordance with this Agreement;

Board means the board of directors of the Company;

Business has the meaning given in clause 2;

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

Business Plan means the initial operational business plan and budget of the Company to be agreed and adopted by the Shareholder Board in respect of the first Financial Year of the Company (or part thereof), and any subsequent operational annual business plan and budget of the Company adopted

in accordance with clause 2 from time to time, which shall include, but not be limited to, a cash flow statement, monthly projected profit and loss account, operating budget, management report giving business objectives for the relevant Financial Year, financial report with analysis of the estimated as compared with the actual results for the previous Financial Year (as appropriate); **CEDR** means the Centre for Dispute Resolution;

Companies Act means the Companies Act 2006;

Confidential Business Information means, in relation to a person, all technical, commercial, financial or other information of whatever nature relating to that person's business, products, developments, services, trade secrets, know-how, personnel, supplies or historic, current or potential customers, whether or not designated as confidential and whether disclosed orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or by any other means;

Deed of Adherence means a deed in the form or substantially in the form set out in Schedule 2;

Defaulting Shareholder has the meaning given in clause 10.1.2;

Director means a director of the Company;

EIR means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

Encumbrance includes any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect;

Financial Year means in relation to the Company, each financial accounting period of 12 months ending on the Accounting Reference Date other than in relation to the first accounting reference period which shall start to run on and from incorporation of the Company to and including the Accounting Reference Date in the next following calendar year, or such longer or shorter period as the Shareholders shall from time to time determine, acting by a majority;

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

LGPS Fund means the Local Government Pension Scheme fund, being a national pension scheme for employees and councillors working in local government;

None-Defaulting Shareholder has the meaning given in clause 10.1.2;

Non-Executive Director means a director appointed to the Board jointly by the Shareholders in accordance with the requirements set out in clauses 6.4 and 6.5;

Proceedings means any proceeding, suit or action (including arbitration) arising out of or in connection with this Agreement or the Business;

Prohibited Act means any of the following acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Public Body Shareholder a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; or

(c) committing any offence:

(i) under the Bribery Act 2010;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Public Body Shareholder;

Public Body means a contracting authority as such term is defined in the Public Contracts Regulations 2015 (as may be amended from time to time);

Reserved Matters means the matters specified in Schedule 3;

Shareholder Board means a board appointed by the Shareholders of the Company comprising elected members and officers of each of the Shareholders established with the terms of reference and membership contained in Schedule 7 to this Agreement;

Shareholders means the person(s) identified as Shareholders in the parties clause of this Agreement and any persons subsequently admitted as a Shareholder in the Company in accordance with clause 8, but excluding any person who ceases to be a Shareholder in the Company at any time;

Strategic Plan has the meaning set out in clause 2.5; and

Working Hours means 9.00 a.m. to 5.00 p.m. on a Business Day.

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 references to clauses, paragraphs, recitals and Schedules are references to clauses and paragraphs of, and recitals and schedules to, this Agreement. The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules. The recitals and

headings to clauses and Schedules are for convenience only and shall not affect the construction or interpretation of this Agreement;

1.2.2 a reference to a statute or a statutory provision includes a reference to:

(a) the statute or statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and

(b) any subordinate legislation made under the statute or statutory provision (whether before or after the date of this Agreement),

provided that any such modification, re-enactment or legislation made after the date of this Agreement does not materially change the relevant provision;

1.2.3 references to a person shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality);

1.2.4 references to any gender shall include every gender, and the singular shall include the plural and vice versa;

1.2.5 a person shall be deemed to be connected with another if that person is connected with that other within the meaning of section 1122 Corporation Tax Act 2010;

1.2.6 words and expressions defined in the Companies Act shall have the same meanings when used in this Agreement;

1.2.7 references to writing or written shall include any mode of reproducing words in a legible and non-transitory form excluding e-mail;

1.2.8 references to a party or the parties are to a party or the parties to this Agreement from time to time and any person who agrees to be bound by the provisions of this Agreement from time to time but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time;

1.2.9 in construing this Agreement, the rule known as ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word(s) other or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;

1.2.10 references to a month shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month;

1.2.11 any requirement upon a Shareholder to procure a particular matter or thing shall be deemed to include an obligation to exercise its powers as a Shareholder, and to use its reasonable

endeavours to procure that any Director appointed by it shall (subject to his fiduciary and other legal duties owed to the Company) exercise his powers as a director, to procure such matter or thing; and

1.2.12 references to a document in the agreed form are to a document in a form agreed by the Shareholders and initialled by or on behalf of each of them for the purpose of identification.

2 THE BUSINESS PLAN

2.1 The business of the Company (the **Business**) shall be:

2.1.1 to provide and carry on activities which benefit all the inhabitants of the administrative areas of Cheshire West and Chester and Wirral councils and elsewhere, and in particular schools, educational facilities, children, young people, parents and adults by the provision of educational and support services ;

2.1.2 during any period for which a Business Plan has been adopted and is in force, to undertake such other business(es) as is or are set out in that Business Plan; and

2.1.3 to undertake such other business(es) as the Shareholders may from time to time determine.

2.2 For the first Financial Year the initial Business Plan shall be prepared and agreed by the Board and submitted for the approval of the Shareholders within 6 months of the date of this Agreement or such other time period as the parties shall agree; and the Business Plan shall not be implemented unless approved by a majority of the Shareholders.

2.3 Thereafter, the Directors shall prepare in respect of each subsequent Financial Year, for the approval of the Shareholders acting by a majority, the Strategic Plan and an Annual Business Plan to include (amongst other matters) a strategy for the lawful allocation of surpluses generated by the Company.

2.4 The Business Plan for each subsequent Financial Year shall be:

2.4.1 prepared and agreed by the Board in accordance with the timetable set out in the Strategic Plan; and

2.4.2 submitted (no later than 31st January in the immediately preceding Financial Year) for consideration, adoption and approval by a majority of the Shareholders, subject to any changes or revisions agreed by a majority of the Shareholders, either in writing or at a general meeting as soon as possible after it has been submitted .

2.5 The Shareholders shall procure that the Company and the Directors shall, within 9 months of the date of this Agreement, prepare in respect of the Business a rolling five year strategic plan for the consideration and approval of a majority of the Shareholders (the **Strategic Plan**).

2.6 The Shareholders agree to work together in good faith to procure that the Business Plan and the Strategic Plan are prepared in accordance with clauses 2.3 and 2.4.

2.7 The Company agrees to work with the Shareholders and do all things necessary to prepare and implement the Business Plan and the Strategic Plan.

2.8 The parties intend the Strategic Plan to be an evolving document which shall be kept under review by the Shareholder Board. Any changes to the Strategic Plan shall be required to be submitted for consideration and approval by the Shareholder Board.

3 SHAREHOLDER ACCESS TO INFORMATION RELATING TO THE COMPANY AND/OR THE BUSINESS

3.1 The Company shall provide the information set out in Schedule 6 to the Shareholder Board at such times and in the format specified in Schedule 6, together with such additional or alternative information as the Shareholder Board may reasonably require from time to time.

3.2 Each Shareholder and its authorised representatives (including internal and external auditors and other inspection bodies) together with the Shareholder Board shall have the right, on giving to the Company reasonable advance notice, during normal Working Hours to inspect the books and records of the Company and any subsidiary of the Company from time to time, and to be supplied with all trading, financial management information, monthly reports, quarterly reports and minutes of any progress meetings and other information in such form as it or they may reasonably require to keep such Shareholder and the Shareholder Board properly informed about the business and affairs of the Company and any subsidiary of the Company, and shall have the right (at such Shareholder's expense) to take copies of any such books and records or parts thereof.

4 FINANCING THE COMPANY AND RETURNS

4.1 The Company will be funded primarily through cash flow and payments received from customers of the Business for the delivery of services by the Company to them.

4.2 Individual costs associated with the delivery of services provided by the Company in respect of the Business to a Shareholder in accordance with contractual arrangements made between a Shareholder and the Company will be borne by the Shareholder who has received such services.

4.3 Any additional operating costs incurred by the Company will be attributed to the Shareholder who has received a benefit from the incurring of such operating costs, where possible. Any costs which cannot be directly allocated to a single Shareholder will be allocated to Shareholders in equal proportion. 4.4 The allocation of any surpluses of the Company shall be made by reference to the Articles.

4.5 If the Company requires equity or debt finance in addition to that already provided by the Shareholders pursuant to this Agreement, it shall endeavour to seek and obtain such equity or debt finance for such amount and on such terms from the Shareholders, or as otherwise determined by the Shareholders. Such equity or debt finance may, for example, be obtained by way of subscriptions by a Shareholder for further shares in the Company, grants, loans from a Shareholder to the Company or borrowing from a third party, subject always to the proviso that any such third party lender will not acquire the right to participate in the share capital of the Company or otherwise in the Company's business.

5 MANAGEMENT OF THE COMPANY

5.1 With the exception of the Reserved Matters, the Business and all affairs of the Company shall be managed by the Board. To that end but subject to those exceptions, the Board shall have full and

complete authority, power and discretion to direct, manage and control the Business, the affairs and any properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Business.

5.2 The Shareholders and the Company agree (and agree to procure) that the Board shall operate in accordance with the provisions of this Agreement and the Business Plan then in force.

5.3 The adoption of a Business Plan in accordance with clause 2 requires the unanimous approval of the Board.

5.4 Once a Business Plan has been so approved unanimously by the Board by a majority of the Shareholders, as regards the matters specifically contained in the Business Plan or any matter which has been delegated through the Business Plan for decision-making purposes to the Board or any other person:

5.4.1 clause 5.5 shall cease to have effect in respect of those matters; and

5.4.2 any reference in this Agreement to the unanimous approval of the Shareholders (or similar wording) shall be amended so that it is a reference to the approval (but not unanimous approval) of the Board (acting by majority) or the approval of that other person, as the case may be,

and the Company shall not undertake any business or action which is inconsistent with the Business Plan then in force or omit to undertake any action which is required by that Business Plan except with the approval of the Shareholders acting by a majority.

5.5 If a Reserved Matter is neither:

5.5.1 specifically contained in the Business Plan then in force; or

5.5.2 delegated through the Business Plan for decision-making purposes to the Board or any other person,

the Shareholders shall procure that such Reserved Matter shall not be undertaken by the Company (or any subsidiary of the Company from time to time) without the unanimous approval of the Shareholders (and a reference to the Company in Schedule 3 shall include a reference to each such subsidiary from time to time).

5.6 The Shareholders shall exercise its voting rights and other powers of control lawfully available to it to procure that the Company and any subsidiary of the Company from time to time shall, and in so far as it may legally do so, the Company agrees that it shall:

5.6.1 procure that the terms of this Agreement are properly and promptly observed and given full force and effect according to the spirit and intention of the Agreement;

5.6.2 carry on and conduct its business and affairs in accordance with:

(a) the Business Plan;

(b) the Strategic Plan;

(c) the Articles;

(d) all laws relating to community interest companies as amended from time to time;

(e) sound governance and good business practice;

(f) in a proper and efficient manner, for the benefit of the community ;

(g) this Agreement; and

5.6.3 use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own and operate its assets and to access and operate information and technology equipment and systems made available by each of the Shareholders and to carry on its Business properly and effectively and in accordance with the Business Plan.

6 BOARD OF DIRECTORS

6.1 The Shareholders shall, by ordinary resolution of the Shareholders or by notice in writing sign by a majority of the Shareholders, be entitled to appoint and remove Directors to the Board, the Chair of meetings of the Board and the Company Secretary in accordance with the Articles.

6.2 The Shareholders may appoint and remove a Director by ordinary resolution or by giving notice in writing to the Company in accordance with the Articles.

6.3 The Shareholders shall jointly indemnify and keep indemnified the Company against any claim connected with the removal of a Director in accordance with clause 6.2 and the Articles.

6.4 The Shareholders agree that the Board shall consist of the following Directors, each of whom shall be agreed jointly by the Shareholders (acting by a majority):

6.4.1 at least two, but no more than three executive Directors who shall not be employed by, or an elected member of, any Shareholder; and

6.4.2 two executive Directors (in total), one such executive Director being employed by CWAC and one being employed by WMBC; and

6.4.3 three Non-Executive Directors who shall be head or deputy head teachers employed as such in the administrative area of each of the Shareholders; and

6.4.4 one Non-Executive Director who shall be a governor of a school located in the administrative area of each of the Shareholders and not be employed by, or an elected member of, a Shareholder, or a head or deputy head teacher.

6.5 The Shareholders agree that the Non-Executive Directors shall have suitable experience and skills to provide independent challenge and input into Board decisions and that the Chair of the Board shall be the Non-Executive Director appointed in accordance with clause 6.4.4 unless resolved otherwise by a majority of the Shareholders (the **Governor Director**).

7 TRANSFER OF SHARES

7.1 No Shareholder shall create any Encumbrance over, transfer, or otherwise dispose of or give any person any rights in or over any share or interest in any share in the Company unless it is:

7.1.1 permitted under this Agreement or the Articles;

7.1.2 has the prior written consent of all other Shareholders; and

7.1.3 carried out in accordance with the terms of this Agreement and the Articles (as the case may be).

7.2 Except for transfers to which all other Shareholders give their prior written consent, no Shareholder shall transfer any shares unless it transfers all (and not some only) of the shares held by it.

7.3 Subject to clauses 7.1 and 7.2, a Shareholder (Seller) wishing to transfer its shares in the capital of the Company (Sale Shares) shall give twelve months' notice in writing (Transfer Notice) to the other Shareholders (Continuing Shareholders) specifying the details of the proposed transfer, including the price for each Sale Share, which shall be the Fair Value of each Sale Share as calculated in accordance with clause 7.14 (Proposed Sale Price) and each Continuing Shareholder's proportionate entitlement to the Sale Shares, being the same proportion of the Sale Shares as the proportion that the number of ordinary shares held by it bears to the total number of ordinary shares held by the Continuing Shareholders (in respect of each Continuing Shareholder, its Entitlement). For the avoidance of doubt, the Fair Value shall be calculated prior to the Transfer Notice being given.

7.4 Within 30 Business Days of receipt (or deemed receipt) of a Transfer Notice, a Continuing Shareholder shall be entitled (but not obliged) to give notice in writing (Acceptance) to the Seller stating that it wishes to purchase its Entitlement at the Sale Price. A Continuing Shareholder may, in its Acceptance, indicate that it would be willing to purchase a particular number of Sale Shares in excess of its Entitlement (Extra Shares). No Continuing Shareholder shall be entitled to purchase less than its Entitlement to Sale Shares.

7.5 If, on the expiry of the relevant 30 Business Day period referred to in clause 7.4, the total number of Sale Shares applied for is greater than the available number of Sale Shares, each accepting Continuing Shareholder shall be allocated its Entitlement and applications for Extra Shares shall be allocated in accordance with such applications or, in the event of competition, among those Continuing Shareholders applying for Extra Shares in such proportions as equal (as nearly as may be) the proportions of all the shares of the same class held by such Continuing Shareholders, such allocations and completion of Sale Shares to take effect twelve months after the issuing of the Transfer Notice by the Seller, unless all Shareholders unanimously agree completion can take place at an earlier date.

7.6 If, on the expiry of the relevant 30 Business Day period referred to in clause 7.4, the total number of Sale Shares applied for is less than the available number of Sale Shares, the Shareholders shall procure that the Company is immediately wound up.

7.7 If, on the expiry of the relevant 30 Business Day period referred to in clause 7.4, the total number of Sale Shares applied for is greater than or equal to the available number of Sale Shares, completion of those Sale Shares accepted by Continuing Shareholders under clause 7.4 (and, where, relevant, clause 7.5) shall take place in accordance with this clause 7.

7.8 On completion of a transfer of shares made in accordance with this Agreement and the Articles:

7.8.1 the Seller shall deliver to the Company the resignations of any Directors appointed by the Seller, in each case acknowledging that they have no claims against the Company, to take effect at completion of the sale of the shares; and

7.8.2 the parties shall procure that the Company shall repay any Shareholder Loans made to it by the Seller (together with any interest accrued on such Shareholder Loans) and the parties shall use their reasonable endeavours to procure that the Seller is released from any guarantees, security arrangements and other obligations that it has given in respect of the Company and its Business and shall no longer be a party to this Agreement.

7.9 At completion of a sale of shares in accordance with this clause 7, the Seller shall:

7.9.1 execute and deliver a transfer of the shares to the buyer together with the relevant certificate(s) or an indemnity, in a form reasonably satisfactory to the buyer, in respect of any lost certificate, together, in either case, with such other evidence (if any) as the buyer may reasonably require to prove good title to the shares or enable it to be registered as the holder of the shares;

7.9.2 warrant that it has no right to require the Company to issue it with any share capital or other securities and that no Encumbrance affects any unissued shares or other securities of the Company;

7.9.3 warrant that it is selling the shares with full title guarantee; and

7.9.4 warrant that no commitment has been given to create an Encumbrance affecting the shares being sold (or any unissued shares or other securities of the Company) and that no person has claimed any rights in respect thereof.

7.10 At completion of a sale of shares in accordance with this clause 7, the buyer shall pay the purchase price to the Seller.

7.11 The parties shall procure the registration (subject to due stamping by the buyer) of the transfer of shares in the Company pursuant to this clause 7 and each of them consents to such transfer and registration pursuant to this Agreement and the Articles.

7.12 If the Seller fails to complete the transfer of shares as required under this clause 7, the chairman of the Company (or, failing him, one of the other Directors, or some other person nominated by the buyer) may, as agent on behalf of the Seller:

7.12.1 complete, execute and deliver in his name all documents necessary to give effect to the transfer of the relevant shares to the buyer; and

7.12.2 receive the purchase price and give a good discharge for it.

7.13 If on the completion of the sale of the Sale Shares in accordance with this clause 7, the Company is owned by a single Shareholder, this Agreement shall automatically terminate in accordance with clause 9.2.2.

7.14 The Fair Value for any Sale Share shall be the price per share determined in writing by the Valuers on the following bases and assumptions:

7.14.1 valuing each of the Sale Shares as a proportion of the total value of all the issued shares in the capital of the Company without any premium or discount being attributable to the percentage of the issued share capital of the Company which they represent;

7.14.2 if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;

7.14.3 the sale is to be on arms' length terms between a willing seller and a willing buyer;

7.14.4 the shares are sold free of all Encumbrances; and

7.14.5 the sale is taking place on the date the Valuers were requested to determine the Fair Value.

8 NEW SHAREHOLDERS

8.1 Admitting a person as a new Shareholder is a Reserved Matter and therefore shall be subject to the provisions of Schedule 3, and shall also be subject to such person executing a Deed of Adherence.

8.2 Each person admitted as a new Shareholder shall be entitled to the same rights and subject to the same obligations as all other Shareholders at that time, as detailed in this Agreement and any reference to "Shareholders" in this Agreement shall include a reference to any person admitted as a new Shareholder.

9 TERMINATION

9.1 Subject to the provisions of clause 9.2, the provisions of this Agreement shall continue in force until the Shareholders agree in writing to terminate it.

9.2 This Agreement shall, unless the Shareholders otherwise agree, automatically terminate on the first to occur of the following dates:

9.2.1 the effective date of a winding up of the Company; or

9.2.2 the date the Company is owned by a single Shareholder.

9.3 Termination of this Agreement in respect of any Shareholder for any reason shall not affect any accrued rights or liabilities of any person or any liability or obligation arising under or pursuant to the Articles or any other agreement or arrangement between any of the parties hereto and save where this Agreement expressly provides to the contrary, affect the provisions of:

9.3.1 clause 1 (Definitions and Interpretation);

- 9.3.2 this clause 9 (Termination);
- 9.3.3 clause 14 (Assignment and Subcontracting);
- 9.3.4 clause 16 (Remedies and Waivers);
- 9.3.5 clause 17 (Entire Agreement);
- 9.3.6 clause 19 (Conflict with the Articles);
- 9.3.7 clause 20 (Severance);
- 9.3.8 clause 21 (Confidentiality);
- 9.3.9 clause 24 (Notices);
- 9.3.10 clause 25 (Costs and Expenses);
- 9.3.11 clause 26 (Set-off);
- 9.3.12 clause 27 (No Partnership or Agency);
- 9.3.13 clause 28 (Counterparts); and
- 9.3.14 clause 30 (Governing Law and Jurisdiction),

which shall continue in full force and effect after termination.

9.4 Where the Company is to be wound up and its assets distributed, the parties shall agree a suitable and lawful basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

- 9.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;
- 9.4.2 the Company shall not enter into any new contractual obligations;
- 9.4.3 the Company is dissolved and its assets are lawfully distributed as soon as practical

10 DISPUTES

10.1 For the purposes of this Agreement, a Dispute shall have occurred when any of the following events occur:

10.1.1 the Shareholders by reason of a disagreement between themselves are unable to approve any of the following decisions within ten (10) Business Days of the date on which the matter for decision was first presented to them:

- (a) the approval and acceptance of a Business Plan, presented to the Shareholders by the Company, in accordance with clause 2.3; or
- (b) the approval of a Reserved Matter; or

10.1.2 any one or more Shareholders (**Non-Defaulting Shareholder(s)**) notify/ies a Shareholder (**Defaulting Shareholder**) that they believe the Defaulting Shareholder to be in material breach of this Agreement; or

10.1.3 the Shareholders are unable to agree the basis for dealing with the interests and assets of the Company upon a winding up. Save where (and to the extent) provided otherwise in this Agreement, any Dispute shall be resolved in accordance with Part 1 (Escalation) or Part 2 (Mediation) of Schedule 5 (Dispute resolution procedure).

11 ENFORCEMENT OF THE COMPANY'S RIGHTS

11.1 The Company undertakes with all Non-Defaulting Shareholders that if any Defaulting Shareholder or any person connected with any such Shareholder:

11.1.1 is in material breach of any obligation which the Defaulting Shareholder owes to the Company (whether under this Agreement, or otherwise); or

11.1.2 has misapplied or retained or become liable or accountable for any money or property of the Company or any subsidiary of the Company from time to time; or

11.1.3 has been guilty of any misfeasance or breach of fiduciary or other duty in relation to the Company or any such subsidiary; or

11.1.4 is under any obligation to indemnify the Company or any such subsidiary against any liability, the prosecution of any right of action of the Company or any such subsidiary in respect thereof shall be passed to the Directors of the Non-Defaulting Shareholders who shall have full authority on behalf of the Company to negotiate, litigate and settle any claim arising therefrom and the Defaulting Shareholder shall take all steps within its power to give effect to the provisions of this clause 11.1.

12 UNLAWFUL FETTER ON THE COMPANY'S POWERS

12.1 Notwithstanding any other provision contained in this Agreement, the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of the Company, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

13 WARRANTIES

13.1 Each Shareholder warrants to the other Shareholders and to the Company that it has full power and authority to enter into and perform this Agreement and all other agreements or documents which it is required to enter into pursuant to this Agreement, and such agreements and documents (including for the avoidance of doubt, this Agreement) will when executed constitute, binding obligations on such Shareholder.

14 ASSIGNMENT AND SUB-CONTRACTING

14.1 This Agreement is personal to the parties and no party shall assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior

written consent of each other party. Each party hereby undertakes and represents to the other parties that it is entering into this Agreement only for its own benefit.

14.2 This Agreement shall be binding on and shall endure for the benefit of each party's successors.

15 FURTHER ASSURANCE

15.1 Each party shall at its own cost and expense, on being required to do so by another party now or at any time in the future, do or procure the doing of all such acts and things and/or execute or procure the execution of all such deeds and documents in a form satisfactory to such other party which such other party may reasonably consider necessary for giving effect to this Agreement.

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 or any future 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 ENTIRE AGREEMENT

17.1 This Agreement and the documents referred to in it (including the Articles and any Deed of Adherence) constitute the entire agreement between the parties relating to the Company and supersede all previous agreements between the parties relating to such matters.

17.2 Each of the parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and/or the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement. Each of the parties waives:

17.2.1 all rights and remedies which, but for this clause 17.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and

17.2.2 all rights and remedies, other than remedies for breach of contract available in respect of a breach of this Agreement and/or the documents referred to in it, which, but for this clause 17.2,

might otherwise be available to it in respect of the falsity of any representation or warranty set out in this Agreement and/or the documents referred to in it,

provided that nothing in this clause 17.2 shall limit or exclude any liability for fraud or dishonesty on the part of any party.

18 VARIATION

18.1 No variation to the terms of this Agreement shall be effective unless made in writing and signed by each of the parties and any person who agrees to be bound by this Agreement.

19 CONFLICT WITH THE ARTICLES

19.1 If any provision of this Agreement is inconsistent with a provision of the Articles, then the terms of this Agreement shall prevail and the Shareholders agree to procure the making of any amendment to the Articles at the next general meeting of the Company required in order to make them consistent with the provisions of this Agreement.

20 SEVERANCE

20.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

20.2 Without prejudice to the generality of clause 20.1, if any provision of this Agreement or the Articles shall be found by any court or administrative body of competent jurisdiction to be unenforceable against or by the Company, the Shareholders shall procure that the provision is nevertheless put into effect to the greatest extent possible.

20.3 If any provision of this Agreement is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such deletions as may be necessary to make it valid or enforceable.

20.4 The parties agree, in the circumstances referred to in clause 20.1 and if clause 20.3 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision but for such invalidity or unenforceability.

21 CONFIDENTIALITY

21.1 Each Shareholder undertakes that it will not at any time hereafter use or disclose to any person, except in the proper course of its duties as a local authority any Confidential Business Information which may have or may in future come to its knowledge, provided that a Shareholder may share such information:

21.1.1 with its professional advisers or to those of its directors, shareholders, officers, employees, advisers and representatives who are directly concerned with the Company (or any subsidiary of the Company from time to time) or the Business; or

21.1.2 as may be required by any applicable law or by any supervisory or regulatory body with whose rules it is necessary for that party to comply; or

21.1.3 in connection with any proceedings arising out of or in connection with this Agreement; or

21.1.4 once it becomes generally known otherwise than by reason of a breach of this clause 21.1.

21.2 Each Shareholder shall use its reasonable endeavours to prevent the use or disclosure of any Confidential Business Information otherwise than in accordance with this clause 21.

22 FREEDOM OF INFORMATION

22.1 The Shareholders and the Company acknowledge that the Shareholders and the Company are subject to the requirements of the FOIA and the EIR and the Shareholders and the Company shall, where reasonable, assist and co-operate (at their own expense) with the party receiving the request for information to enable the receiving party to comply with these information disclosure obligations.

22.2 Where the Company receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of a Shareholder in relation to the provision of services to a Shareholder or to schools in its administrative area , it shall:

22.2.1 transfer the request for information to the Shareholder as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;

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

22.2.3 provide all necessary assistance as reasonably requested by the Shareholder to enable the Shareholder to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

22.3 Where a Shareholder receives a request under FOIA or EIR which relates to the operations of the Company, it shall notify the other Shareholders and the Company and afford them an opportunity to make any comments or representations in respect of the disclosure of the information sought. The other Shareholders and the Company shall respond within five Business Days of receipt of this notification. The Shareholder or the Company responding to the request shall take into account any such comments or representations in so doing and shall not respond to the request until the five Business Day response period referred to above has passed.

23 PREVENTION OF BRIBERY

23.1 The Company:

23.1.1 shall not, and shall procure that any Director, Shareholder, officer, employee, adviser or representative of the Company shall not, in connection with this Agreement commit a Prohibited Act;

23.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by a Public Body Shareholder, or that an agreement has been reached to that effect, in connection with the execution of this Agreement excluding any arrangement of which full details have been disclosed in writing to a Public Body Shareholder before execution of this Agreement.

23.2 The Company shall:

23.2.1 if requested, provide a Public Body Shareholder with any reasonable assistance, at the Public Body Shareholder's reasonable cost, to enable the Public Body Shareholder to perform any activities required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

23.2.2 within five (5) Business Days of the date of this Agreement, and annually thereafter, certify the Public Body Shareholder in writing (such certification to be signed by an officer of the Company) compliance with this clause 23 by the Company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Company shall provide such supporting evidence of compliance as the Public Body Shareholder may reasonably request.

23.3 The Company shall have an anti-bribery policy (which shall be disclosed to the Public Body Shareholders) to prevent any Director, Shareholder, officer, employee, adviser or representative of the Company from committing a Prohibited Act and shall enforce it where appropriate.

23.4 If any breach of clause 23.1 is suspected or known, the Company must notify the relevant Public Body Shareholder immediately.

23.5 If the Company notifies the Public Body Shareholder that it suspects or knows that there may be a breach of clause 23.1, the Company must respond promptly to the Public Body Shareholder's enquiries, co-operate with any investigation, and allow the Public Body Shareholder to audit books, records and any other relevant documentation.

23.6 The Public Body Shareholder may terminate this Agreement by written notice with immediate effect if the Company, Director, Shareholder, officer, employee, adviser or representative of the Company (in all cases whether or not acting with the Company's knowledge) breaches clause 23.1.

23.7 Any notice of termination under clause 23.6 must specify:

23.7.1 the nature of the Prohibited Act;

23.7.2 the identity of the party whom the Public Body Shareholder believes has committed the Prohibited Act; and

23.7.3 the date on which this Agreement will terminate.

23.8 Despite clause 10 (Disputes), any dispute relating to:

23.8.1 the interpretation of clause 23; or

23.8.2 the amount or value of any gift, consideration or commission;

shall be determined by the Public Body Shareholder and its decision shall be final and conclusive.

23.9 Any termination of this Agreement under clause 23.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Public Body Shareholder.

24 NOTICES

24.1 Any notice or other communication to be served under this Agreement shall be delivered or sent by first class post or electronic communication to the party to be served at its address or email address as set out in Schedule 4 or in any Deed of Adherence (as the case may be).

24.2 Subject to clause 24.3 and in the absence of earlier receipt, any notice or communication shall be deemed to have been served:

24.2.1 if delivered personally, at the time of delivery;

24.2.2 if sent by first class post, two (2) Business Days after the date of posting; and

24.2.3 if sent by email, forty eight (48) hours after the time of sending

24.3 Any notice or communication served under this Agreement outside Working Hours in the place to which it is addressed shall be deemed not to have been served until the start of the next period of Working Hours in such place.

24.4 In proving service of a notice or communication, it shall be sufficient to prove that delivery was made or that the envelope containing the notice or communication was properly addressed and posted as a prepaid first class letter, or in the case of electronic communication, that it was sent to the email address of the recipient.

25 COSTS AND EXPENSES

25.1 All costs and expenses incurred by the Shareholders in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other documents referred to in it shall be borne equally by the Shareholders, save for any private advice sought by any Shareholder which shall be for the cost of that Shareholder.

25.2 All costs and expenses incurred by the Company in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other documents referred to in it shall be borne by the Company.

26 SET-OFF

26.1 All amounts falling due under this Agreement shall be paid in full without any set-off or counterclaim.

27 NO PARTNERSHIP OR AGENCY

27.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or any of them, or to authorise any party to act as agent for any other party, and no party

shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way.

28 COUNTERPARTS

28.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each person who is a party at the date hereof has executed at least one counterpart.

28.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts so executed together constitute but one and the same instrument.

29 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

29.1 The parties to this Agreement do not intend that any of its terms should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.

30 GOVERNING LAW AND JURISDICTION

30.1 This Agreement is governed by and shall be construed in accordance with the laws of England and each party submits to the exclusive jurisdiction of the courts of England for all purposes relating to this Agreement.

30.2 Each party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this Agreement being served on it in accordance with the provisions of clause 24. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

This Agreement has been executed as a DEED and takes effect on the date stated at the beginning of this Agreement.

SCHEDULE 1 – PARTICULARS OF THE COMPANY

1 Registered number: 09550258

2 Date of incorporation: 20 April 2015

3 Place of incorporation: England and Wales

4 Class of company: Community Interest Company limited by shares

5 Registered office: c/o Cheshire West and Chester Borough Council, 4 Civic Way, Ellesmere Port, Cheshire CH65 0BE

6 Accounting Reference Date: 31 March

7 Directors:

Ian McGrady, Managing Director of the Company

Mark Parkinson, Head of Education at CWAC

David Armstrong, Assistant Chief Executive at WMBC

SCHEDULE 2 – DEED OF ADHERENCE

THIS DEED is made on [] 20[]

(A) BY [] of [] (the **Covenantor**) in favour of the persons whose names are set out in the schedule to this deed and is SUPPLEMENTAL to the Shareholders' Agreement dated [] 2015 made by (1) Cheshire West and Chester Borough Council, (2) Wirral Metropolitan Borough Council and (3) Edsential Community Interest Company (company number: 09550258) (the **Shareholders' Agreement**)

THIS DEED WITNESSES as follows:

1 The Covenantor confirms that it has been given and read a copy of the Shareholders' Agreement and covenants with each person named in the schedule to this deed to perform and be bound by all the terms of the Shareholders' Agreement, except Clauses [] and [], as if the Covenantor were a Shareholder who is party to the Shareholders' Agreement.

2 This deed is governed by the laws of England and Wales.

IN WITNESS WHEREOF this deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

[Parties to Shareholders' Agreement including those who have executed earlier deeds of adherence

Executed as a deed by)

EDSENTIAL COMMUNITY INTEREST)

COMPANY, acting by [] a director) Director

in the presence of)

Witness signature

Witness name

Witness address

.....

.....

.....

Witness occupation

SCHEDULE 3 – RESERVED MATTERS

All Reserved Matters shall be considered at general meetings of the Company and shall be only be effective if approved unanimously by the Shareholders.

The following matters are Reserved Matters unless (where relevant) they have been approved in advance by the Shareholders under the Business Plan:

1. Appointment of Directors and removal of Directors.
2. Appointment and removal of the Company secretary.
3. Varying in any respect the Articles or the rights attached to any of the shares in the Company.
4. Creating a subsidiary or acquiring shares in another company or participating in any joint venture or partnership (incorporated or not).
5. Selling or disposing of any part of the Business.
6. Amalgamating or merging with any other company or business.
7. Entering into any new arrangement, contract or transaction with a value over £250,000 pa AND a contract length in excess of three years OR a contract which is not incidental or ancillary to the primary business of the Company.
8. Adopting or amending the annual Business Plan and any material in-year changes.
9. Adopting or amending the 5 year Strategic Plan.
10. Changing the Company's name or registered office.
11. Creating or agreeing to create a charge/security/encumbrance over the Company's assets, shares or income.
12. Adopting or changing remuneration and redundancy policies including:
 - 1) pay increases to employees which in aggregate exceed the percentage rate allowed for pay increases in the latest valuation of the Local Government Pension Scheme fund (being a national pension scheme for employees and councillors working in local government) prior to the award of the pay increase in question; and
 - 2) the award of pay increases to employees which in aggregate exceed any pay increases that the Company is required to make by law (including, for these purposes, pursuant to its obligations arising under, or as a consequence of, the TUPE Regulations, any code of practice and/or any National Joint Council for Local Government Services or Joint Negotiating Committee for Local Council Employees arrangements);

- 3) the award of pay increases to employees which in aggregate exceed any pay increases that the Company is obliged to offer pursuant to the terms and conditions of employment in place as at the Service Transfer Date (including under any collective agreement);
- 4) termination of the employment contract of an employee who is aged 55 or over at the time, by reason of redundancy or in the interests of efficiency or otherwise allowing such employee to retire on those grounds.
13. Making changes to any pension arrangements of any employees or officers of the Company (excluding arrangements for auto enrolment and opt out).
14. Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
15. Agreeing the remuneration of Directors (including contractual redundancy and performance related pay).
16. Approving the admission of further shareholders to the Company and agreeing any rights or restrictions attached to the shares allocated to them.
17. Agreeing the appointment and removal of the chair of the Board of Directors (except where the chair is absent in which case the board of directors will appoint an alternate chair).
18. Not used .
19. Deciding what (if any) goods and services Directors may provide for the Company.
20. Not used.
21. Changing the nature of the Company's business or commencing any new business which is not ancillary or incidental to the business.
22. Making of any acquisition or disposal of any material assets by the Company. The definition of 'Material' for this purpose being set as part of the annual Business Plan process by the Company and Shareholders.
23. Making any loan (otherwise than by way of a 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.
24. 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. Material for this purpose being any arrangements, contracts or transactions with a value or cumulative value over £500,000 in any financial year.
25. Granting rights (by licence or otherwise) in or over any intellectual property or software owned or used by the Company.

26. Increasing or reducing the amount of the Company's issued share capital, granting any option or other interest or over or in the Company's share capital, redeeming or purchasing any of the Company's shares, or otherwise altering, or effecting any reorganisation of, the Company's share capital.

27. Introducing for the benefit of any current or former director, employee or any other person, any incentive scheme or arrangement (including, without limitation, any share option or share award plan, and any commission, profit sharing or bonus scheme).

28. Incurring any borrowings in excess of £50,000 in aggregate from time to time other than in the ordinary and usual course of business, or issuing any loan capital.

29. Appointing any agent or intermediary to conduct the whole or any part of the Business.

SCHEDULE 4 – CONTACT DETAILS

Cheshire West and Chester Council

Address: HQ

Nicholas Street

Chester

CH1 2NP

For the attention of: Head of Governance (Vanessa Whiting)

Email address: Vanessa.whiting@cheshirewestandchester.gov.uk

Wirral Metropolitan Borough Council

Address: Town Hall

Brighton Street

Wallasey

CH44 8ED

For the attention of: Colin Hughes

Email address: colinhughes@wirral.gov.uk

or, in each case, such other address/or email address as may be notified by the relevant party to the other parties from time to time.

SCHEDULE 5 - DISPUTE RESOLUTION PROCEDURE

Part 1 - ESCALATION

1 APPLICATION OF PART 1

This Part 1 applies to any Dispute.

2 ESCALATION PROCEDURES

2.1 The Shareholders shall use all reasonable endeavours to resolve the Dispute on an amicable basis within 15 Business Days of the same arising (the first day of that 15 Business Day period being the first Business Day after any Shareholder has given notice in writing to the other Shareholders stating that, in its belief, a Dispute has arisen) (such period being the **Shareholder Resolution Period**).

2.2 If the Shareholders have not resolved the Dispute prior to the expiry of the Shareholder Resolution Period, the **Senior Representatives** (being the senior representative of each Shareholder with the authority to settle the Dispute) shall meet in good faith in an effort to resolve the Dispute.

2.3 If the Senior Representatives have resolved the Dispute within 15 Business Days of the expiry of the Shareholder Resolution Period (the **Senior Representatives Resolution Period**) (the first day of that 15 Business Day period being the first Business Day after the expiry of the Shareholder Resolution Period), they shall issue a joint written statement to the Shareholders informing the Shareholders of their decision. The Shareholders shall be bound by that decision.

Part 2 - MEDIATION

1 APPLICATION OF PART 2

This Part 2 shall apply if:

1.1 the Senior Representatives have not resolved the Dispute prior to the expiry of the Senior Representatives Resolution Period in accordance with Part 1; and

1.2 any Shareholder which is a party to the Dispute serves a notice in writing on the other Shareholder referring the Dispute to mediation (a **Mediation Referral Notice**) within 15 Business Days of the expiry of the Senior Representatives Resolution Period (the first day of that 15 Business Day period being the first Business Day after the expiry of the Senior Representatives Resolution Period).

2 MEDIATION

2.1 On the service of a Mediation Referral Notice, the Shareholders shall jointly appoint a mediator to mediate the Dispute, the cost of which shall be borne equally by the Shareholders.

2.2 If:

2.2.1 the Shareholders do not agree on the appointment of a mediator under paragraph 2.1 with 15 Business Days of service of the Mediation Referral Notice (the first day of that 15 Business Day period being the first Business Day after the service of the Mediation Referral Notice); or

2.2.2 the person appointed or to be appointed is unable or unwilling to act,

the mediator shall be appointed by the Chief Executive for the time being of CEDR following a request made by any Shareholder to the Chief Executive for that purpose.

2.3 The mediation shall be conducted in London in the English language in accordance with the current CEDR Model Mediation Procedure, which is deemed to be incorporated in this Agreement

2.4 If an agreement is reached on the Dispute during the mediation, that agreement shall be reduced to writing and, once signed by the parties to the Dispute, shall be binding on all parties.

2.5 Unless concluded with a written legally binding agreement, the mediation shall be concluded in confidence and without prejudice to the rights of any of the parties in any further Proceedings.

SCHEDULE 6 – REPORTING REQUIREMENTS

Part 1 - General Requirements

1 The Company shall operate on an open book accounting basis and shall produce an annual report to the Shareholders by 1 June for the previous Financial Year setting out the overall performance of the Company assessed against the Annual Business Plan and provide this to the Shareholder Board.

2 The Company shall if requested to do so by the Shareholder Board report to the Shareholders Board in accordance with its reporting timescales.

3 The Company recognises the importance of engaging with other stakeholders and shall comply with reasonable requests for information and attendance at meetings of the Shareholders' partners and other stakeholder groups as reasonably nominated by the Shareholders from time to time.

4 The Company shall provide to the Shareholders copies of the reports maintained pursuant to this Schedule 6 and all other information and data relating to the services to be provided by the Company on expiry or termination of this Agreement.

5 The Company shall provide to each of the Shareholders a copy of each:

5.1 set of annual accounts of the Company prepared in accordance with the laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom, within nine months of the end of the year to which the annual accounts relate;

5.2 set of quarterly management accounts of the Company within 40 Business Days of the end of each quarter to which the management accounts relate, which shall include a profit and loss account, a balance sheet and a cash flow statement;

5.3 Business Plan;

5.4 Strategic Plan;

Part 2 – Accounting Requirements

6 The Company shall comply with all statutory accounting and filing requirements.

6.1 The Company shall also produce financial and performance reports assessed against the Annual Business Plan in such format as the Shareholder Board may require including:

6.2 quarterly management accounts (including third party income)

6.3 profit and loss statement and forecast to end of financial year

6.4 adjusted balance sheet and cashflow statements at end of financial year

6.5 quarterly unadjusted balance sheets and cashflow statements

7 The Company shall also provide dependant on the availability of full balance sheet;

- 7.1 the current ratio (Current assets to current liabilities)
- 7.2 creditor and debtors days,
- 7.3 Gross and net profit margins
- 7.4 cashflow forecast
- 7.5 debt management report
- 7.6 review of achievement towards Income and other targets.

Part 3 – Performance Data

- 8. The Company shall provide the following performance data:
 - 8.1. Number of customers won/lost (compared to target)
 - 8.2 Gross profit on new business (compared to target)
 - 8.3 Value of new business (compared to target)
 - 8.4 Staff productivity
 - 8.5 Staff sickness levels
 - 8.6 Staff turnover rates
 - 8.7 Reporting against key success criteria (as defined in the Business Plan)

Part 4 – Other Management Information

- 9. The Company, as a minimum shall have policy and/or procedure documents in place that detail its approach to:
 - 9.1 HR policy & staff procedures: recruitment and selection / training and monitoring (appraisal) / discipline and grievance / sickness absence / Code of Conduct, insurance arrangements and monitoring
 - 9.2 Financial procedures: procurement / cash handling / accounting procedures / budget setting / audit / end of year accounts / fees and charges / concessionary policies
 - 9.3 Equality & diversity: equality impact assessments / demographic profiling of sites / employees / training
 - 9.4 Health & safety: risk assessments and management / accident reporting and monitoring
 - 9.5 Customer Care and standards: Comments, complaints and compliments / Freedom of Information / communication and feedback / community engagement / partnership working
 - 9.6 Building operation documents (NOP & EAP): operational working practices

9.7 Data protection: commitment to protecting personal data and how this commitment will be implemented with regards to the collection and use of personal data / ensuring the data protection and archiving principles are complied with.

10. Policies and procedures may be amended by the Company from time to time subject to any necessary approvals in accordance with Schedule 3 (Reserved Matters).

11. The Company will provide an annual summary and review of the following datasets to the Shareholder Board or at such other interval agreed by a majority of the Shareholders to enable meaningful discussions to be had regarding obtainment of operational and financial objectives and to inform the business planning process:

Type of data – detail and timing requirement

Customer / Staff data:

Quarterly Customer comments and complaints

Annual Customer satisfaction review

Review of Health & Safety incidents and reports

Security/Data Protection:

Quarterly security/data protection breaches

SCHEDULE 7 – MEMBERSHIP AND TERMS OF REFERENCE OF THE SHAREHOLDER BOARD

MEMBERSHIP

The Shareholder Board shall comprise the following members, agreed and appointed jointly by the Shareholders:

1. The section 151 officer from CWAC or their nominated representative;
2. The section 151 officer from WMBC or their nominated representative;
3. The Monitoring Officer from CWAC or their nominated representative;
4. The Monitoring Officer from WMBC or their nominated representative;
5. The elected member of the CWAC Cabinet, or their deputy, with delegated authority to exercise their authority's vote as a shareholder at any meeting of the Shareholders of the Company;
6. The elected member of the WMBC Cabinet, or their deputy, with delegated authority to exercise their authority's vote as a shareholder at any meeting of Shareholders of the Company;
7. The Strategic Director from CWAC with responsibility for education matters or their nominated representative; and
8. The [Strategic - ?] Director from WMBC with responsibility for education matters or their nominated representative.
9. The Managing Director and Chair of the Board of Directors may attend and speak but may not vote at meetings of the Shareholder Board to advise the Shareholder Board at the invitation and absolute discretion of the members of the Shareholder Board present at the meeting.

TERMS OF REFERENCE

1. The role of the Shareholder Board is:-
 - a. To provide strategic direction and to oversee the performance of those services which are provided directly and indirectly to schools, academies and other customers by the Company to ensure effective delivery of such services for the benefit of children and young people in the administrative areas of the Shareholders or elsewhere; and
 - b. To provide guidance, advice and support to the elected members of CWAC and WMBC, or their deputies, upon the use of their delegated authority to exercise their

authority's vote as a Shareholder of the Company at any meeting of the Shareholders of the Company.

2. The Shareholder Board is specifically responsible for:
 - a. Considering and agreeing the five year Strategic Plan;
 - b. Considering and agreeing the Business Plan for each Financial Year;
 - c. Agreeing the respective responsibilities of CWAC and WMBC to support the delivery of the approved Business Plan and Strategic Plan;
 - d. Ensuring that such responsibilities are clearly documented in the Business Plan (or similar);
 - e. Ensuring that the services are provided within the policy and budget set by the authorities;
 - f. Approving and monitoring the service delivery arrangements for the Statutory Services provided by the Company on behalf of the authorities;
 - g. Ensuring that those arrangements enable each authority's statutory obligations to be met and initiating remedial action where appropriate ;
 - h. Agreeing the basis for apportioning cost between the two authorities and the amount to be apportioned;
 - i. Reviewing the performance of the Company and initiating additional / remedial action where appropriate; and
 - j. Providing an annual report to each of the two authorities.
3. The Shareholder Board shall meet as and when required and at least twice during each Financial Year. A meeting of the Shareholder Board may be called by any Shareholder on 5 Business Days' notice to the other Shareholder (or any such shorter notice as is agreed by the Shareholders from time to time). A meeting of the Shareholder Board shall usually be held prior to any meeting of the Shareholders of the Company.
4. The quorum for Shareholder Board meetings shall not be less than half of the total number of persons entitled to attend the meeting.
5. Questions arising at a Shareholder Board meeting shall be decided by majority consensus.

The common seal of
CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

was affixed in the presence of:

Kathryn Brodie

Authorised signatory



6688

The common seal of
WIRRAL METROPOLITAN BOROUGH COUNCIL

was affixed in the presence of:

Alison

Authorised signatory

NUMBER IN SEAL BOOK: 639614



Executed as a Deed by

EDSENTIAL COMMUNITY INTEREST COMPANY

acting by _____, a director, Director

in the presence of:

Signature.....

Name.....

Address.....

.....

.....

.....

Occupation.....

The common seal of

CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

was affixed in the presence of:

.....

Authorised signatory

The common seal of

WIRRAL METROPOLITAN BOROUGH COUNCIL

was affixed in the presence of:

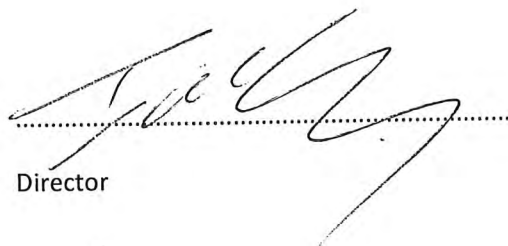
.....

Authorised signatory

Executed as a Deed by

EDSENTIAL COMMUNITY INTEREST COMPANY

acting by IAN McGRADY, a director,


.....
Director

in the presence of:

Signature..... Paul Cassidy

Name..... PAUL CASSIDY

Address..... CHESHIRE WEST & CHESTER

COUNCIL, HQ 58 NICHOLAS STREET,

CHESTER, CH1 2WP

.....

Occupation..... SOLICITOR