

DATED

2015

FLINTSHIRE COUNTY COUNCIL

- to -

COMMUNITY BENEFIT AGREEMENT

Relating to

The ongoing community use of premises known as

**Gareth Owens
Chief Officer (Governance)
Flintshire County Council
County Hall
Mold
Flintshire
CH7 6NR**

File Ref:

THIS DEED is made on

2015

- (1) **FLINTSHIRE COUNTY COUNCIL** of County Hall, Mold, Flintshire. (“the Council”); and
- (2)(Company No.....) whose registered office istrading as (“the Provider”)

RECITALS

- 1 The Provider has requested that the Council grants the Lease to enable it to deliver the Services to its Service Users.
- 2 The Council is willing to grant the Lease to the Provider provided that the Provider uses its reasonable endeavours to maximise achievement of the Outcomes and report on this in each year of the Lease and on that basis the parties have agreed to execute this deed supplemental to the provisions of the Lease

WHEREBY IT IS AGREED as follows:

1 Definitions and Interpretation

- “the Council’s Designated Officer”** the person specified in the Schedule hereto or such other person so appointed from time to time.
- “the Lease”** a lease of the Premises granted by the Council to the Provider on the date of this Agreement
- “Person”** includes an individual, partnership, company and unincorporated and incorporated associations.
- “Premises”** means the

“Services”	the delivery of services of general benefit to the community from the Premises.
“Outcomes”	the outcomes sought to be achieved by the Provider through the use of the premises for the provision of the Services to its Service Users
“Service Users”	users of the Premises who have the Services delivered to them by the Provider
“Working Day”	any day Monday to Friday (excluding Bank and other public holidays) between the hours of 9.00am and 5.00pm when the Council’s main offices are open for business.

- 1.1 Masculine gender includes the feminine and singular includes the plural.
- 1.2 Where applicable expressions used in this Agreement shall have the meaning given to them in the Schedule to this Agreement. In the event of any conflict between the terms of this Agreement and any Schedule to this Agreement the terms of this Agreement shall prevail.

2 Delivery of Outcomes by the Provider and Contributions by the Council

- 2.1 In consideration of the Council granting the Lease (the Provider) shall use its reasonable endeavours to maximise achievement of the Outcomes in each calendar year of the Contract Period through the delivery of the Services to its Service Users at the Premises. .
- 2.2 Without prejudice to the provisions of Clause 7 the Provider will supply documentary evidence to the Council as to what Outcomes have been achieved in each calendar year of the Contract Period no later than the Last Working Day in [May] during the Contract Period.
- [2.3 Provided that the Provider is not in breach of its obligations to the Council contained within this Agreement and those contained within the Lease the Council shall make the following contributions to the Provider towards its initial costs of operating from the Premises –

(Capital Payment Terms)]

2.4 In the event that the Provider is in breach of its obligations to the Council contained within this Agreement or those contained within the Lease the Council shall not be obliged to make the contributions to the Provider specified in clause 2.3 until any such breach has been remedied to the reasonable satisfaction of the Council.

3 Liability and Insurance

3.1 The Provider shall keep the Council indemnified and held harmless from and against all actions, proceedings, costs, compensation, expenses, demands, loss and damage whatsoever arising out of or in connection with the acts or omissions of the Provider in relation to this Agreement except where the same shall arise from the breach, default, negligence or wilful misconduct of the Council.

3.2 Nothing in this agreement shall seek to exclude liability for death or personal injury resulting from any act, default or negligence of the Provider, any liability that cannot lawfully be excluded or limited or any liability to the extent satisfied by or recoverable under any insurances held by the Provider.

3.3 The Provider undertakes and agrees to take out and maintain Employers Liability Insurance, Professional Indemnity Insurance and Public Liability insurance to provide adequate cover against any liability incurred by the Provider under this Agreement in the sum specified in the Schedule. The Provider will provide evidence of the insurances specified in the Schedule upon request by the Council.

4 Assignment and Sub-contracting

4.1 The Provider shall not employ sub-agents sub-contractors or otherwise delegate to any third party the performance of any of its obligations under this Agreement without the prior written consent of the Council which it may withhold in its absolute discretion.

4.2 The Provider shall not assign, encumber, dispose of or otherwise transfer any of its rights under this Agreement without the prior written consent of the Council which it may in its absolute discretion withhold.

5 Confidentiality

- 5.1 The Provider shall not without the prior written consent of the Council's Designated Officer during the Contract Period or at any time thereafter make use of for its own purposes, or disclose to any person (except as may be required by law), the Agreement or any information contained therein or in any material provided to the Provider by the Council pursuant to the Agreement or prepared by the Provider pursuant to the Agreement, all of which information shall be deemed to be confidential.
- 5.2 Neither the Provider nor its employees servants or agents shall divulge or dispose or part with possession, custody or control of any confidential material or information provided to the Provider by the Council pursuant to the Agreement, or prepared or obtained by the Provider pursuant to the Agreement, other than in accordance with the express written instructions of the Council.
- 5.3 the Provider shall indemnify and keep indemnified the Council against all actions, claims, demands, damages, costs charges and expenses whatsoever in respect of any breach by the Provider its servants or agents of this clause.
- 5.4 For the avoidance of doubt nothing in this Agreement shall override any duty of disclosure of information by the Council in accordance with the Freedom of Information Act 2000 unless such information falls within an exemption contained within that Act. The Council is subject to the Freedom of Information Act (FOIA) and the Environmental Information Regulations ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts. the Provider shall assist and cooperate with the Council (at the Provider's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.

6 Inspection of Documents

- 6.1 The Council's Designated Officer shall at all reasonable times be permitted by the Provider to inspect and examine any books, records, accounts or any other documents held by the Provider as may be deemed by the Council's Designated Officer to be relevant to the performance of this Agreement.
- 6.2 The Provider shall at the end of the term of this Agreement or at the request of the Council during the term of this Agreement promptly deliver to the Council all written materials in their possession concerning the Outcomes.
- 6.3 In order to assist the Council in its record keeping and monitoring requirements the Provider shall keep and maintain for six (6) years full and accurate records of the Outcomes.

7 Information and Monitoring

- 7.1 The Provider will at all times give to the Council as soon as possible upon request all such information as the Council may reasonably require in connection with the performance of the Services and achievement of the Outcomes.
- 7.2 The Provider agrees that it shall meet and continue to meet any monitoring requirements reasonably specified by the Council from time to time including those specified in the Outcomes. The Provider shall in any event provide to the Council an annual report on each anniversary of this agreement which provides a comprehensive review of its performance over the previous 12 months including but not limited to Outcomes monitoring, quality of service delivery and information obtained from Service Users regarding the Services and the Outcomes.

7.3 The Parties shall meet at least once in [June] of each year of the Contract Period to review the past performance and future delivery of the Outcomes and the provision of the Services to the Service Users. The Parties shall from time to time meet and review the Outcomes on three months notice from the other party not more than once in each year of the Contract period (and may agree to meet at any other time at their own discretion) and consider such changes if any as may be reasonably necessary from time to time to reflect changes in the Council's social growth and social value models and outcomes. Any changes to the Outcomes must be agreed by both the Council and the Provider and recorded in writing to be effective.

8 Termination

8.1 This Agreement shall forthwith terminate on the expiry or earlier dermination (whatsoever and howsoever arising) of the Lease.

8.2 The Council shall be entitled to terminate this Agreement forthwith upon written notice to the Provider if the Provider commits a material breach of this Agreement which is incapable of remedy or if capable of remedy is not remedied within twenty (20) Working Days of the Council serving written notice on the Provider specifying the breach and requiring its remedy. The Parties agree that the failure to use reasonable endeavours to maximise the achievement of the Outcomes by the Provider in accordance with the provisions of clause 2.1 of this Agreement or the failure of the Provider to comply with the provisions of clause 2.2 are each a material breach of this agreement which is incapable of remedy entitling the Council to forthwith terminate this agreement.

8.3 The Council shall be entitled to terminate this Agreement forthwith upon written notice to the Provider if the Provider is enters into liquidation (except for the purposes of solvent amalgamation or reconstruction), makes any voluntary arrangement with its creditors, or becomes insolvent, or has a receiver manager/administrator, administrative receiver or administrator appointed for all or part of its assets, business or property. The Council shall also be entitled to terminate this Agreement forthwith if the Provider is convicted of a criminal offence or ceases to carry on business.

8.4 Where the Agreement is terminated in accordance with any of the provisions of this clause the Council will give notice of the termination to the Provider and the Provider will have no claim against the Council for damages or otherwise by reason of such termination. Any delay or forbearance by the Council in exercising any right of determination shall not in any respect constitute a waiver nor shall the Provider have any redress whatsoever against the Council for the termination of this Agreement in accordance with the provisions of this clause.

9 Misrepresentation

9.1 The Provider shall not at any time knowingly make any untrue or derogatory statement in relation to the Council and in particular shall not after the termination of the Agreement represent itself as being engaged by or connected in any way with the Council or use for trade or any other purpose whatsoever the name of the Council or any name suggesting any connection or capable of confusion therewith other than as expressly agreed in writing with the Council's Designated Officer.

10 Nature of this Agreement

10.1 The Provider shall have no power, as agent or otherwise, to legally bind or undertake on behalf of the Council any commitment or liability, except to the extent that the Council may direct in writing. Nothing in this Agreement shall create or be deemed to create a partnership between the parties and no party shall be responsible for the acts or omissions of the employees or representatives of the other parties. For the avoidance of doubt the Provider is not providing the Services to its Services Users in any capacity on behalf of the Council by reason of anything contained in this Agreement.

11 Notices

11.1 Any notice, consent or the like required to be given hereunder shall be given in writing and may be given either by hand or sent by post addressed to the recipient party at its address contained herein (or to some other address as shall have been notified in writing by such party to the other from time to time) and any notice given by post shall be deemed to have been served on the expiration of seventy-two (72) hours after the same is correctly addressed and posted.

12 Other Agreements

- 12.1 In entering into this Agreement, each party acknowledges that it does not do so on the basis of, and does not rely on any representation, warranty or other provision except as expressly provided in this Agreement and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law. This Agreement supersedes any agreements made or existing between the parties before or simultaneously with this Agreement in relation to the subject matter of this Agreement (all of which shall be deemed to have been terminated by mutual consent with effect from the commencement date of this Agreement) and constitutes the entire understanding between the parties in relation to the subject matter of this Agreement. Except as otherwise permitted by this Agreement, no change to its terms shall be effective unless it is in writing and signed by or on behalf of the parties.

13 Governing Law

- 13.1 This Agreement shall be construed under English and Welsh law and each of the parties hereto submits to the non-exclusive jurisdiction of the English and Welsh Courts.

14 The Contracts (Rights of Third Parties) Act 1999

- 14.1 The parties to this Agreement do not intend any of its terms to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

15 General

- 15.1 Save as may be agreed neither party shall be entitled to assign its rights and obligations hereunder to any third party.
- 15.2 If any part of this Agreement is found by any court or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 15.3 Each Party shall pay its own legal expenses incurred in the preparation and execution of this Agreement.

15.4 No delay or failure by any Party to exercise any of its powers, rights or remedies under this Agreement shall operate as a waiver of them, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

IN WITNESS whereof the parties have executed this deed the day and the year before written above.

The Common Seal of the Council
was affixed in the presence

Chair

Chief Officer (Governance)/
Senior Solicitor

Signed as a Deed by the Provider acting
by two directors or two directors and
the company secretary

Director signature

Director name

Director/Company Secretary signature

Director/Company Secretary name

THE SCHEDULE

PART 1 CONTRACT PARTICULARS

1	AGREEMENT DATED	2015
2	THE PROVIDER'S ADDRESS	AS STATED IN THE ATTACHED AGREEMENT
3	THE COUNCIL'S ADDRESS	AS STATED IN THE ATTACHED AGREEMENT
4	PLACE FOR DELIVERY OF THE OUTCOMES	THE PREMISES
5	THE OUTCOMES	THE OUTCOMES LISTED IN PART 2 OF THIS SCHEDULE.
6	CONTRACT PERIOD Commencement Date: End Date:	This Agreement shall commence on the date of this Agreement and shall continue until either the Lease expires or is otherwise determined (when this agreement shall automatically terminate) or until this Agreement is terminated in accordance with the provisions of this Agreement
7	PUBLIC LIABILITY INSURANCE AND EMPLOYER'S LIABILITY INSURANCE	The Provider will put in force and keep in force with an insurance company of repute the following insurances : Public Liability Insurance in the sum of £5,000,000 [five million pounds] Employers Liability Insurance in the sum of [£5,000,000] [five million pounds] Professional Indemnity Insurance in the sum of £5,000,000 [five million pounds]
8	THE COUNCIL'S DESIGNATED OFFICER	Name; IAN BANCROFT Chief Officer (Organisational Change)

PART 2 THE OUTCOMES

The Provider shall use its reasonable endeavours to maximise achievement of the following outcomes (“the Outcomes”) in each calendar year of the Contract Period through the delivery of the Services to its Service Users at the Premises in accordance with the terms of this Agreement.

The Provider will demonstrate this by reporting delivery against the following Outcomes annually beginning in April 2016 for the period of the Lease in accordance with the terms of this Agreement:-

Requirement

– annual report covering what the organisation has done in relation to the community benefits listed below, this is the basis for provision of the peppercorn rent.

Detail of Report

- To include a narrative of what has been done against each of the 7 themes including any quantifiable information against the more detailed measures under the themes

Community Benefits Themes and Measures

(1) Recruiting and training of economically inactive people – sometimes referred to as Targeted Recruitment and Training (TR&T) opportunities, covering:

- Apprenticeships & Pathways to Apprenticeships
- Traineeships
- work experience / internships
- graduate placements
- work trials
- voluntary work opportunities
- National Vocational Qualifications
- training of retained staff

(2) Supporting Other Community initiatives including:

- donations of equipment;
- donation of in-kind labour;
- landscaping, building services support to regenerate communal areas;
- sponsorships and cash donations to organisations / charities based in Wales.

(3) Contributions to education:

- work placements – secondary school and college students;
- visits to primary schools to engage younger children
- landscaping & building services in school grounds – playgrounds, wild life areas;
- curriculum support – donations of equipment, classroom resources / lesson plans;

(4) Environmental initiatives:

- micro-energy generation;
- reduced waste to landfill;
- recycling of eligible materials;
- reduced water consumption;
- managing business mileage.

(5) Reductions in Demand for Public Services including Health and Social Care

- Reduction in demand for public services
- Number of people supported to live independently
- Reduction in permanent admissions to residential or nursing care
- Reduction in avoidable hospital admissions

(6) Impact of volunteers

- Numbers of new volunteers
- Number of volunteers placed with community groups
- Number of young volunteers

(7) Impact of Community Businesses

- Number of new community businesses established
- Number of constituted groups developing into community businesses
- Number of community assets sustained