

Report of the Head of HR and OD

## **City of York Trading Limited Update**

### **Purpose of Report**

1. To approve the appointment to the City of York Trading Limited (trading as WorkwithYork, WorkwithSchools and WorkwithYorkshire) (“**CYT**” or the “**Company**”) Board of two Independent Non-Executive Directors, whose CVs are both contained within **Exempt Annex A**.
2. To approve in principle the acquisition by CYT the certain assets of an outside third-party company (referred to in this report as “**Company W**”) in line with the report at **Exempt Annex B**.
3. Under the terms of the CYT Shareholders Agreement dated 1 April 2021 (the “**Shareholders Agreement**”) and CYT’s Articles of Association adopted on 17 January 2012 (the “**Articles**”), and Article 12 (**Shareholders Committee**) of the Constitution of the Council of the City of York (“**CYC**”) to recommend to the Directors of CYT which Council Non-Executive Director should be appointed as permanent Chair of the Board of Directors of the Company.
4. The CVs are both exempt due to them containing personal details and the acquisition report update is exempt due to commercial sensitivities.

### **5. Recommendations**

- i) Approve the appointment to the Company of two new Independent Non-Executive Directors whose CVs are contained within **Exempt Annex A**, and delegate authority to the Board of Directors of the Company and the Company Secretary to pass any necessary Board resolutions, make all necessary filings with the Registrar of Companies and all necessary updates to the statutory registers, letterhead, website, etc. of the Company in relation to said appointments.

Reason: To ensure CYT has an appropriate number of Non-Executive Directors on its Board as required by the CYT Shareholders Agreement.

- ii) Approve in principle the acquisition of the identified assets of Company W by CYT in accordance with proposals in this report at **Exempt Annex B**, and delegate authority to the Board of Directors of CYT to take any necessary steps to negotiate the terms and conditions of and conclude the acquisition of Company W in line with the contents of and proposals set out within this report and the annexes hereto.

Reason: To enable further growth of CYT's non-Council recruitment business in line with the Company's business plan.

- iii) Inform the Board of Directors of CYT which Council Non-Executive Director the Shareholder wishes to be appointed as permanent Chair of the Board of Directors of the Company as required by the Shareholders Agreement, and delegate authority to the Board of Directors of the Company and the Company Secretary to pass any necessary Board resolutions and make all necessary updates to the statutory registers, letterhead, website, etc. of the Company in relation to said appointment.

Reason: To ensure Board has a Chair nominated by the Shareholder as required by the Shareholders Agreement.

## **Background and analysis**

6. CYT was formed in 2011 with the intention of supplying temporary staff to CYC as WorkwithYork, to local schools as WorkwithSchools and permanent and temporary staff to other outside organisations as WorkwithYorkshire. CYC is the sole shareholder of the Company.
7. Through the Company, CYC makes a cost saving compared to the cost of agency staff on the open market and is also able to secure staff to cover hard-to-fill roles where permanent recruitment is challenging. In addition, the payment of an annual dividend from the Company's overall profits is designed to assist CYC's financial position.
8. The Company's Board of Directors currently comprises Karen Bull (the "**Managing Director**") with Non-Executive Directors ("**NEDs**") Cllr Kallum Taylor, Cllr Ian Cuthbertson, Cllr Jason Rose, and Ann Vickers, and usually meets monthly to consider financial and performance reports and discuss strategy

going forward. Cllr Ian Cuthbertson is current acting Chair of the Board, pending the Company being notified of a final decision by the Shareholder.

9. The Company advertised for new NEDs following the resignation of a previous independent NED in September 2023. The Company received a very good response and in November 2023, shortlisted and interviewed. As these are transitional times for the Company, in line with the CYT Shareholders Agreement, the Shareholder is asked to approve the appointment of the two successful candidates as independent Non-Executive Directors. The CVs of both candidates have been provided to the Shareholder as **Exempt Annex A**. In summary however, one candidate is a Marketing Consultant and former Marketing Director, the other a Delivery & Transformation Director.
10. In line with CYC's budget savings, its use of WorkwithYork agency staff from the Company has reduced substantially during 2022/23. Accordingly, considering the Company's long-term business plan to grow its recruitment business outside of CYC, initial enquiries have been made during the year with a number of potential acquisition targets.
11. Following recent productive discussions, the Company now seeks the Shareholder's agreement in principle for the acquisition of Company W, in line with the proposals contained in **Exempt Annex B**.

## **Risk Management**

12. There are no specific risk issues arising from this report.

## **Implications**

### **13. Financial Implications**

There are no financial implications in relation to CYC arising from this report.

### **14. HR Implications**

There are no HR implications arising in relation to CYC from this report, however, please refer to **Annex C** regarding the appointment of Non-Council NEDs under the Company's governing documents and Article 12 (**Shareholders Committee**) of the CYC Constitution.

## 15. Legal Implications

- (a) The legal and governance implications under the Company's governing documents and Article 12 (**Shareholders Committee**) of the CYC Constitution relevant to both the NED appointments and the acquisition of Company W are set out in **Annex C**.
- (b) The proposals within this report have no immediate impact on the recently concluded service agreement between CYC and CYT dated 7<sup>th</sup> September 2023, subject to ongoing monitoring of CYT's current Teckal status (see below). Should CYT lose its Teckal status, the Company must consult with the Shareholder Committee forthwith who (along with the advice of officers from CYC Finance, Procurement, Legal, HR, etc.) to determine what course of action to take under the service agreement.
- (c) Notwithstanding 15(b) above, whilst the acquisition of Company W in the short to medium term should have no adverse material impact on CYC and its relationship with the Company, it must be acknowledged by Committee Members that the whole point of this acquisition is for CYT to grow its recruitment business beyond CYC whose requirements have in recent years been decreasing. CYT's commercial (i.e., non-CYC related) activity must be carefully monitored to ensure that the minimum thresholds/requirements for Teckal Companies set out in Regulation 12(1) of the Public Contract Regulations 2015, specifically Regulation 12 (1)(b) (i.e., "...more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority..."). If at any point it looks like CYT's commercial activity should start to outweigh its activity in relation to CYC, the Company must consult with the Shareholder Committee forthwith who (along with the advice of officers from CYC Finance, Procurement, Legal, HR, etc.) to determine what course of action to take.
- (d) The CVs are both exempt under Section 100I and paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972 due to them containing personal details, and the acquisition report update is exempt under Section 100I and paragraphs 3 and 4 of Schedule 12A of the 1972 Act due to commercial sensitivities.

## 16. **Procurement Implications**

Subject to 15(b) and 15(c) above, there are no procurement implications in relation to CYC arising from this report.

## 17. **Health & Wellbeing Implications**

There are no health & wellbeing implications in relation to CYC arising from this report.

## 18. **Environment & Climate Action Implications**

There are no environment & climate implications in relation to CYC arising from this report.

## 19. **Affordability Implications**

There are no affordability implications in relation to CYC arising from this report.

## 20. **Equalities & Human Rights Implications**

(a) CYC recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).

(b) There are no equalities or human rights implications in relation to CYC arising from this report.

## 21. **Data Protection & Privacy Implications**

Subject to the continuing exempt and confidential status of the information in **Exempt Annexes A and B** to this report, there are no data protection & privacy implications in relation to CYC arising from this report.

## 22. **Communications Implications**

Subject to the continuing exempt and confidential status of the information in **Exempt Annexes A and B** to this report, there are no communications implications in relation to CYC arising from this report. The Company however

should liaise and consult with CYC around any publicity with regards the proposed appointments and acquisition of Company W.

### 23. Economy Implications

There are no economic or city development implications in relation to CYC arising from this report.

### 24. Other Implications

There are no crime and disorder, information technology, property or other implications arising from this report.

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Helen Whiting Head of HR and OD <a href="mailto:helen.whiting@york.gov.uk">helen.whiting@york.gov.uk</a>	<b>Report Approved</b>	✓	<b>Date</b> 11 December 2023
<b>Wards Affected:</b>			All
<b>For further information please contact the author of the report</b>			

### Annexes:

**Exempt Annex A** – details of two proposed Independent Non-Executive Directors including their CVs.

**Exempt Annex B** – report on proposed acquisition of Company W.

**Annex C** – Summary of Legal & Governance Implications