

CONSULTATION DRAFT

AGREEMENT FOR THE SALE AND PURCHASE OF THE SHARE CAPITAL OF [COMMUNITY REHABILITATION COMPANY (CRC)]

DATED ●

THE SECRETARY OF STATE FOR JUSTICE

AND

[PURCHASER]

AND

[PURCHASER'S GUARANTOR]

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THIS AGREEMENT is made on ●

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** of 102 Petty France, London SW1H 9AJ (the **Seller**); and
- (2) **[PURCHASER]** (registered number ●) whose registered office is at ● (the **Purchaser**); and
- (3) **[PURCHASER'S GUARANTOR]** (registered number ●) whose registered office is at ● (the **Purchaser's Guarantor**).

BACKGROUND:

- (A) In January 2013, the Government published the Consultation Paper 'Transforming Rehabilitation: A revolution in the way we manage Offenders' outlining the Secretary of State for Justice's proposals for Transforming Rehabilitation.
- (B) In May 2013, the Government published the Response to Consultation 'Transforming Rehabilitation: A Strategy for Reform' setting out how the Government will transform the way offenders are rehabilitated to make progress in driving down reoffending rates.
- (C) On ● 2013, the Secretary of State for Justice issued an invitation to tender for the contract to manage offender services in the community, with the services allocated nationally to contractors across a number of geographical lots.
- (D) In response to the invitation to tender, the Purchaser submitted a proposal explaining how it would provide the services.
- (E) The Seller now wishes to:
 - (i) appoint [*Community Rehabilitation Company (CRC)*] (the **Company**) and the Company wishes to be appointed as a provider of services on the terms set out in the Services Agreement; and
 - (ii) sell and the Purchaser wishes to purchase ● ordinary shares with a nominal value of £● each in the issued share capital of the Company on the terms set out in this agreement.
- (F) The Seller is beneficially entitled to all the issued share capital of the Company.
- (G) The Purchaser's Guarantor is the ultimate holding company of the Purchaser and is willing to guarantee the obligations of the Purchaser under this agreement.

IT IS AGREED as follows:

1. INTERPRETATION

- 1.1 In addition to terms defined elsewhere in this agreement, the definitions and other provisions in Schedule 6 apply throughout this agreement, unless the contrary intention appears.
- 1.2 In this agreement, unless the contrary intention appears, a reference to a clause, subclause or schedule is a reference to a clause, subclause or schedule of or to this agreement. The schedules form part of this agreement.

1.3 The headings in this agreement do not affect its interpretation.

2. SALE AND PURCHASE OF THE SHARES

2.1 The Seller shall sell and the Purchaser shall purchase the Shares.

2.2 The Shares shall be sold with full title guarantee and together with all rights attaching to them.

2.3 The consideration for the sale of the Shares shall be £●.

3. PRE-COMPLETION COVENANTS

Until Completion the Seller shall, to the extent permitted by applicable law and regulation:

- (a) procure that the Purchaser and its agents and advisers are given reasonable access to the Properties and to the books and records of the Company during normal business hours on any Business Day and on reasonable notice to the Seller;
- (b) provide such information regarding the businesses and affairs of the Company as the Purchaser may reasonably require;
- (c) exercise all rights and powers available to it with a view to procuring that, except with the written consent of the Purchaser (such consent not to be unreasonably withheld or delayed), the Company shall not depart in any material respect from the ordinary course of its day-to-day business; and
- (d) save in the normal course of business, not make any material change in the terms and conditions of employment of any of its employees or employ or terminate (except for good cause) the employment of any person.

4. COMPLETION

4.1 Subject to clause 4.2, Completion shall take place at the offices of the Seller at 10.00 a.m. on the Completion Date (or at such other place, at such other time and/or on such other date as the Seller and the Purchaser may agree).

4.2 If, on the Completion Date, the validity of the Deed of Amendment is subject to challenge by way of legal proceedings (whether by judicial review or otherwise), the Seller and the Purchaser agree to postpone Completion until the Deed of Amendment has been determined to be valid by a court of competent jurisdiction in a judgment that has become final in that it is no longer subject to appeal or other review.

4.3 At Completion:

- (a) the Seller shall observe and perform the provisions of Part 1 of Schedule 5; and
- (b) the Purchaser shall observe and perform the provisions of Part 2 of Schedule 5.

4.4 The Purchaser shall not be entitled in any circumstances to rescind or terminate this agreement after Completion.

5. POST-COMPLETION COVENANTS

5.1 As soon as reasonably practicable (and, in any event, within two Business Days) after Completion, the Purchaser shall deliver to the Seller a certified copy of a certificate of incorporation on change of

name in respect of the Company, reflecting the change of name of the Company effected by the resolutions referred to in paragraph (a)(xi) of Part 1 of Schedule 5.

- 5.2 With effect from Completion, the Purchaser shall procure that the Company shall not other than as permitted in the Service Agreement:
- (a) use or display (including on or in its business stationery, documents, signs, promotional materials or website) any name, mark or logo which is the same as or similar to, or is likely to be confused or associated with, any name, mark or logo of the Seller, any Seller Related Party or the Crown; or
 - (b) represent that the Seller, any Seller Related Party or the Crown retains any connection with the Company.

6. INDEBTEDNESS

- 6.1 The Seller shall procure that on Completion all indebtedness owing immediately before Completion from the Seller to the Company (other than amounts owing by way of trade credit in the ordinary course of trading as a result of goods or services supplied on normal arm's length terms) is or has been satisfied in full together with all interest accruing on it up to (but excluding) Completion.
- 6.2 The Purchaser shall procure that on Completion all indebtedness owing immediately before Completion from the Company to the Seller (other than amounts owing by way of trade credit in the ordinary course of trading as a result of services supplied on normal arm's length terms) is satisfied in full together with all interest accruing on it up to (but excluding) Completion. The Seller shall notify the Purchaser in writing of the amount of such indebtedness at least three Business Days before Completion. Such indebtedness shall be repaid in full to the Seller in immediately available funds in the relevant currency without any withholding or deduction (except as required by law, in which case the Company shall, where applicable, provide to the Seller a valid certificate of deduction of Tax) by telegraphic transfer to the account of the Seller notified in advance.

7. SELLER'S WARRANTIES

- 7.1 The Seller warrants to the Purchaser that, except as disclosed to the Purchaser in the Data Room, each of the Warranties is, subject to clause 7.2, true and accurate on the date of this agreement.
- 7.2 Clause 7.1 shall apply as if:
- (a) none of the Warranties, other than those set out in paragraph 1.11 of Schedule 3, relate in any way to regulatory and compliance matters;
 - (b) none of the Warranties, other than those set out in paragraph 1.12 of Schedule 3, relate in any way to the Properties or any of them;
 - (c) none of the Warranties, other than those set out in paragraph 1.18 of Schedule 3, relate in any way to employment matters; and
 - (d) none of the Warranties, other than those set out in paragraph 2 of Schedule 3, relate in any way to Taxation.
- 7.3 The Warranties and any Warranty Claim shall be subject to the limitations and other provisions set out in Schedule 4.

8. PURCHASER'S AND PURCHASER'S GUARANTOR'S WARRANTIES

Each of the Purchaser and the Purchaser's Guarantor warrants to the Seller that:

- (a) it has the power to execute and deliver this agreement, and each of the other Transaction Documents to which it is or will be a party, and to perform its obligations under each of them and has taken all action necessary to authorise such execution and delivery and the performance of such obligations;
- (b) this agreement constitutes, and each of the other Transaction Documents to which it is or will be a party will, when executed, constitute legal, valid and binding obligations of the Purchaser and the Purchaser's Guarantor, as the case may be, in accordance with its terms;
- (c) the execution and delivery by the Purchaser or the Purchaser's Guarantor, as the case may be of this agreement and of each of the other Transaction Documents to which it is or will be a party and the performance of the obligations of the Purchaser or the Purchaser's Guarantor, as the case may be under it and each of them do not and will not conflict with or constitute a default under any provision of:
 - (i) any agreement or instrument to which the Purchaser or the Purchaser's Guarantor is a party; or
 - (ii) the constitutional documents of the Purchaser or the Purchaser's Guarantor; or
 - (iii) any law, lien, lease, order, judgment, award, injunction, decree, ordinance or regulation or any other restriction of any kind or character by which the Purchaser or the Purchaser's Guarantor is bound; and
- (d) all authorisations from, and notices or filings with, any governmental or other authority that are necessary to enable the Purchaser or the Purchaser's Guarantor, as the case may be to execute, deliver and perform its obligations under this agreement and each of the other Transaction Documents to which it is or will be a party have been obtained or made (as the case may be) and are in full force and effect and all conditions of each such authorisation have been complied with.

9. EMPLOYEES, PENSIONS AND INCENTIVES

- 9.1 On and after Completion, the Seller shall indemnify the Purchaser against any liability arising from any employee of the Company (or any individual who claims to have a contract of employment with the Company) which arises out of any act or omission by the Seller or by the Company or any other event, matter or circumstance occurring before Completion.

For the purposes of this clause, **liability and liabilities** includes any award, compensation, damages, fine, loss, order, penalty or payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by any enforcement, regulatory or supervisory body and of implementing any requirements which may arise from any such investigation); legal costs and expenses being assessed on an indemnity basis.

- 9.2 The Purchaser covenants with the Seller and NPS that it shall not and shall procure that no other member of the Purchaser's Group (including, following Completion, the Company) for the time being shall for a period of two years after Completion:

- (a) induce or attempt to induce any person who is at Completion a senior or key employee of NPS to leave the employment of NPS; or

(b) employ or attempt to employ any person who is at Completion a senior or key employee of NPS.

9.3 Each of the restrictions in subclause 9.2 above shall be enforceable independently of each of the others and its validity shall not be affected if any of the others is invalid.

9.4 If any of those restrictions is void but would be valid if some part of the restriction were deleted, the restriction in question shall apply with such modification as may be necessary to make it valid.

9.5 The Purchaser acknowledges that the above provisions of subclause 9.2 are no more extensive than is reasonable to protect the Seller.

9.6 The covenants in this clause may be enforced by NPS against the Purchaser under the Contracts (Rights of Third Parties) Act 1999. The provisions of this clause may be varied or terminated by agreement between the parties (and the Seller may also release or compromise in whole or in part any liability in respect of rights or claims contemplated by this clause) without the consent of NPS.

[Note to Purchaser: The Seller will require the Purchaser to continue to comply with any relevant transfer scheme that has applied to transferring staff.]

10. ANNOUNCEMENTS AND CONFIDENTIALITY

10.1 Subject to clauses 10.6 and 10.7, the Seller shall (and shall procure that, in respect of the period up to Completion, the Company, and each such person's advisers and connected persons, shall) and the Purchaser shall (and shall procure that each member of the Purchaser's Group, and, in respect of the period from Completion, the Company, and each such person's advisers and connected persons, shall):

(a) not make or authorise any public or private announcement concerning the sale and purchase of the Shares or any related or ancillary matter except (i) with the written approval of the other parties or (ii) where required by Legislation; and

(b) keep confidential the provisions listed in Schedule ● (the **Commercially Sensitive Information**), and the negotiations relating to, each Transaction Document.

10.2 The parties agree that the provisions of this agreement and the Tax Deed (other than the Commercially Sensitive Information) shall not be treated as confidential and may be disclosed without restriction. The Purchaser and the Purchaser's Guarantor acknowledge and agree that the Seller will publish this agreement and the Tax Deed on a website.

10.3 The parties acknowledge that the National Audit Office has the right to publish details of this agreement (including Commercially Sensitive Information) in its relevant reports to Parliament.

10.4 The Purchaser:

(a) shall, and shall procure that each other member of the Purchaser's Group for the time being shall, keep confidential all information provided to it by or on behalf of the Seller or otherwise obtained by it in connection with this agreement which relates to the Seller or any Seller Related Party; and

(b) shall procure that, if after Completion the Company holds confidential information relating to the Seller or any Seller Related Party, the Company shall after Completion keep that information confidential and shall return that information to the Seller or destroy it, in either case without retaining copies.

- 10.5 Except to the extent specified in such clauses, the provisions of clauses 10.1 and 10.4 shall apply before, on and after Completion.
- 10.6 Nothing in clauses 10.1(b) or 10.4 prevents any confidential information being disclosed:
- (a) where the confidential information disclosed comprises only information set out in an announcement in the Agreed Form;
 - (b) with the written approval of the other parties;
 - (c) to a Taxation Authority for the purpose of dealing with the Tax affairs of the Seller, the Purchaser or the Company; or
 - (d) to the extent required by any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned, but if a person is so required to disclose any confidential information, the relevant party shall promptly notify the other parties, where practicable and lawful to do so, before the disclosure occurs and shall co-operate with the other parties regarding the timing and content of such disclosure or any action which the other parties may reasonably elect to take to challenge the validity of such requirement.
- 10.7 Nothing in clauses 10.1(b) or 10.4 prevents any confidential information being disclosed to the extent:
- (a) required to enable any person to enforce its rights under any Transaction Document or for the purpose of any dispute proceedings;
 - (b) that the information is disclosed on a strictly confidential basis by a person to its professional advisers, auditors or bankers;
 - (c) that the information is disclosed by the Seller on a strictly confidential and need to know basis to another Seller Related Party or any other department, office or agency of the Government or by the Purchaser on a strictly confidential and need to know basis to another member of the Purchaser's Group; or
 - (d) that the information is in or comes into the public domain (other than as a result of a breach of this clause).
- 10.8 The provisions of this clause are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

11. GUARANTEE BY PURCHASER'S GUARANTOR

- 11.1 The Purchaser's Guarantor unconditionally and irrevocably:
- (a) guarantees to the Seller the payment when due of all amounts payable by the Purchaser under or pursuant to this agreement and the other Transaction Documents;
 - (b) undertakes to ensure that the Purchaser will perform when due all its obligations under or pursuant to this agreement and the other Transaction Documents;

- (c) agrees that if and each time that the Purchaser fails to make any payment when it is due under or pursuant to this agreement or any other Transaction Document, the Purchaser's Guarantor must on demand (without requiring the Seller first to take steps against the Purchaser or any other person) pay that amount to the Seller as if it were the principal obligor in respect of that amount; and
- (d) agrees as principal debtor and primary obligor to indemnify the Seller against all losses and damages sustained by it flowing from any non-payment or default of any kind by the Purchaser under or pursuant to this agreement or any other Transaction Document.

11.2 The Purchaser's Guarantor's obligations under this agreement shall not be affected by any matter or thing which but for this provision might operate to affect or prejudice those obligations, including without limitation:

- (a) any time or indulgence granted to, or composition with, the Purchaser or any other person;
- (b) the taking, variation, renewal or release of, or neglect to perfect or enforce this agreement, any other Transaction Document or any right, guarantee, remedy or security from or against the Purchaser or any other person;
- (c) any variation or change to the terms of this agreement or any other Transaction Document; or
- (d) any unenforceability or invalidity of any obligation of the Purchaser, so that this agreement shall be construed as if there were no such unenforceability or invalidity.

11.3 (a) Until all amounts which may be or become payable under this agreement and the other Transaction Documents have been irrevocably paid in full, the Purchaser's Guarantor shall not as a result of this agreement or any payment or performance under this agreement be subrogated to any right or security of the Seller or claim or prove in competition with the Seller against the Purchaser or any other person or claim any right of contribution, set-off or indemnity.

(b) The Purchaser's Guarantor will not take or hold any security from the Purchaser in respect of this agreement and any such security which is held in breach of this provision will be held by the Purchaser's Guarantor in trust for the Seller.

11.4 The Purchaser's Guarantor must reimburse the Seller for all legal and other costs (including VAT) incurred by it in connection with the enforcement of the Purchaser's Guarantor's obligations under this agreement.

12. NOTICES

12.1 Any notice or other communication to be given under this agreement or the Tax Deed must be in writing (which includes fax, but not any other form of Electronic Communication) and must be delivered or sent by post or facsimile to the party to whom it is to be given at its address set out below:

(a) to the Seller at:

●

Fax: ●

marked for the attention of ●,

(b) to the Purchaser at:

●

Fax: ●

marked for the attention of ●,

(c) to the Purchaser's Guarantor at:

●

Fax: ●

marked for the attention of ●,

or at any such other address or facsimile number as it shall have notified to the other parties in accordance with this clause. Any notice or other communication sent by post shall be sent by prepaid first class recorded delivery post (if within the United Kingdom) or by prepaid airmail (if elsewhere).

12.2 Any notice or other communication shall be deemed to have been given:

(a) if delivered, on the date of delivery; or

(b) if sent by post, on the second Business Day after it was put into the post; or

(c) if sent by fax, on the date of transmission, if transmitted before 3.00 p.m. (local time at the country of destination) on any Business Day, and in any other case on the Business Day following the date of transmission.

12.3 In proving the giving of a notice or other communication, it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted by prepaid first class recorded delivery post or by prepaid airmail or that the facsimile message was properly addressed and transmitted, as the case may be.

12.4 This clause shall not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this agreement.

13. ASSIGNMENTS

13.1 Subject to clause 13.2 and clause 13.3 no party may assign, transfer or otherwise dispose of any of its rights or transfer (including by way of novation) or otherwise dispose of any of its obligations under this agreement or the Tax Deed without the prior written consent of all the parties (or, in the case of the Seller, the Purchaser only) and any such purported assignment, transfer or disposal shall be void.

13.2 The restrictions in clause 13.1 shall not prevent the Seller from assigning, transferring (including by way of novation) or otherwise disposing of (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) all (and not part only of) its rights and obligations under this agreement and the Tax Deed to:

- (a) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
- (b) any local authority which has sufficient financial standing or financial resources to perform the obligations on the part of the Seller under this agreement and the Tax Deed; or
- (c) any other public body whose obligations under this agreement and the Tax Deed are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Purchaser) by the Seller or a Minister of the Crown,

provided that such person has the legal capacity, power and authority to become a party to and to perform the obligations on the part of the Seller under this agreement and the Tax Deed, and if it does so:

- (i) the assignee may enforce the obligations on the part of the Purchaser under this agreement (including the Warranties) and under the Tax Deed as if it had been named in this agreement and in the Tax Deed as the Seller; and
- (ii) the assignment shall be without cost to the Purchaser and shall not in any way operate so as to increase the liability or reduce the rights of any of the parties under this agreement or the Tax Deed.

13.3 The restrictions in clause 13.1 shall not prevent the Purchaser from assigning all (and not part only of) its rights under this agreement and the Tax Deed for the purposes of obtaining financing and if it does so:

- (a) as between the Seller, the Purchaser and the Purchaser's Guarantor, the Seller may nevertheless enforce this agreement and the Tax Deed against the Purchaser and the Purchaser's Guarantor as if the assignment had not occurred; and
- (b) the assignment shall be without cost to the Seller and shall not in any way operate so as to increase the liability or reduce the rights of any of the parties under this agreement or the Tax Deed.

14. PAYMENTS

14.1 Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made to the Seller or the Purchaser under this agreement or the Tax Deed shall be made in pounds sterling by transfer of the relevant amount into the relevant account on the date (and, if applicable, at or before the time) the payment is due for value on that date and in immediately available funds. The relevant account for a given payment is:

- (a) if that payment is to the Seller, the account of the Seller at:

bank: [name and address]
 sort code: ●
 account number: ●
 account name: ●,

or such other account as the Seller shall, not less than three Business Days before the date that payment is due, have specified by giving notice to the Purchaser for the purpose of that payment; and

- (b) if that payment is to the Purchaser, the account of the Purchaser at:

bank: [name and address]
sort code: ●
account number: ●
account name: ●,

or such other account as the Purchaser shall, not less than three Business Days before the date that payment is due, have specified by giving notice to the Seller for the purpose of that payment.

15. GENERAL

- 15.1 The receipt by the Purchaser or the Purchaser's Solicitors (if applicable) of any document to be delivered at Completion to the Purchaser shall discharge the Seller's obligation to deliver it to the Purchaser.
- 15.2 Each of the obligations, warranties and undertakings set out in this agreement (excluding any obligation which is fully performed at Completion) shall continue in force after Completion.
- 15.3 Time is not of the essence in relation to any obligation under this agreement unless:
- (a) time is expressly stated to be of the essence in relation to that obligation; or
 - (b) one party fails to perform an obligation by the time specified in this agreement and another party serves a notice on the defaulting party requiring it to perform the obligation by a specified time and stating that time is of the essence in relation to that obligation.
- 15.4 Except as otherwise expressly provided in this agreement, each party shall pay the costs and expenses incurred by it in connection with the entering into and completion of this agreement.
- 15.5 This agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this agreement by executing a counterpart. Facsimile signatures shall be valid and binding to the same extent as original signatures.
- 15.6 The rights of each party under this agreement:
- (a) may be exercised as often as necessary;
 - (b) except as otherwise expressly provided by this agreement, are cumulative and not exclusive of rights and remedies provided by law; and
 - (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any such right is not a waiver of that right.

- 15.7 Save as expressly stated in this agreement, no term of this agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement. This clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

16. WHOLE AGREEMENT

- 16.1 This agreement, the other Transaction Documents and the Services Agreement contain the whole agreement between the parties relating to the transactions contemplated by the Transaction Documents and the Services Agreement and supersede all previous agreements, whether oral or in

writing, between the parties relating to these transactions [except the confidentiality agreement dated ● between ● and ●]. Except as required by statute, no terms shall be implied (whether by custom, usage or otherwise) into this agreement.

16.2 Each party:

- (a) acknowledges that in agreeing to enter into this agreement, the other Transaction Documents and the Services Agreement it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those repeated in the Transaction Documents or the Services Agreement) made by or on behalf of any other party before the entering into of this agreement;
- (b) waives all rights and remedies which, but for this subclause 16.2, might otherwise be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance; and
- (c) acknowledges and agrees that no such express or implied representation, warranty, collateral contract or other assurance may form the basis of, or be pleaded in connection with, any claim made by it under or in connection with this agreement.

16.3 Nothing in this clause limits or excludes any liability for fraud.

17. GOVERNING LAW AND JURISDICTION

17.1 This agreement and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

17.2 Any dispute arising out of or in connection with this agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this agreement) (a **Dispute**) shall be resolved in accordance with this clause.

Consultation

17.3 If a Dispute arises, the parties shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

Adjudication

17.4 Without prejudice to clause 17.3 above, any party may give the other parties notice of intention to refer the Dispute to adjudication and an adjudicator (the **Adjudicator**) shall be selected in accordance with clause 17.5 below.

17.5 The Adjudicator nominated to consider a Dispute referred to him shall be selected on a strictly rotational basis from the panel of experts appointed in accordance with the following:

- (a) the experts shall be wholly independent of the parties and any of the major competitors of the Company;
- (b) the panel shall be comprised of three experts who shall be appointed jointly by the parties;
- (c) if any member of a panel resigns, a replacement expert shall be appointed by the parties as soon as practicable after the date of the resignation; and
- (d) if the parties are unable to agree on the identity of the experts to be appointed to the panel within ● Business Days, the President for the time being of the Chartered Institute of

Arbitrators shall appoint the expert within 20 Business Days after any application for that appointment by any party.

- 17.6 Within five Business Days after appointment in relation to a particular Dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Dispute.
- 17.7 In any event, the Adjudicator shall provide to the parties his written decision on the Dispute, within 20 Business Days after his appointment (or any other period as the parties may agree in writing after the reference, or 30 Business Days from the date of reference if the party which referred the Dispute agrees). Unless the parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the Arbitrator, the Adjudicator's decision shall be binding on the parties who shall immediately give effect to the decision.
- 17.8 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- 17.9 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- 17.10 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this agreement.
- 17.11 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.
- 17.12 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

Arbitration

- 17.13 If:
- (a) any party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause 17.7; or
 - (b) the parties so agree,

then any party may (within 20 Business Days after receipt of the Adjudicator's decision, where appropriate), notify the other parties of its intention to refer the Dispute to arbitration. Such notification shall invite the other parties to concur in the appointment of a sole arbitrator who shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than 10 years' standing (the **Arbitrator**). If the parties are unable within 10 Business Days to agree the identity of the Arbitrator, any party may request the President of the Law Society to make the appointment.

- 17.14 The Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this agreement, to vary or cancel the decision of the Adjudicator and, where appropriate, to order financial compensation to be paid by one party to another. The arbitration shall take place in London.
- 17.15 The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary.
- 17.16 The Arbitrator shall deliver his decision on any matter referred to him within 20 Business Days of concluding any hearings which may have been held in connection with the matter and in any event within three months (or such other period as the parties may agree) of his appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on the parties. The costs of the arbitration will be in the discretion of the Arbitrator.
- 17.17 The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this clause 17 and shall give effect forthwith to every decision of the Adjudicator and the Arbitrator delivered under this clause.

18. LANGUAGE

The language of this agreement and the transactions envisaged by it is English and all notices to be given in connection with this agreement must be in English. All demands, requests, statements, certificates or other documents or communications to be provided in connection with this agreement and the transactions envisaged by it must be in English or accompanied by a certified English translation; in this case the English translation prevails unless the document or communication is a statutory or other official document or communication.

AS WITNESS this agreement has been signed by the parties (or their duly authorised representatives) on the date stated at the beginning of this agreement.

SCHEDULE 1
THE COMPANY

Company name:

Registered number:

Registered office:

Date and place of incorporation:

Directors:

Secretary:

VAT number:

Accounting reference date:

Auditors:

Issued capital:

SCHEDULE 2
PROPERTIES
PART 1
FREEHOLD

Description:

Legal owner:

Beneficial owner:

Present use:

PART 2
LEASEHOLD

Description:

Date of and parties to lease:

Legal owner:

Beneficial owner:

Term:

Present rent:

Next rent review:

Present use:

SCHEDULE 3

SELLER'S WARRANTIES

1. GENERAL

1.1 Incorporation and capacity of Seller

The Seller has the requisite power and authority to enter into and perform, and has taken all necessary corporate action to authorise the execution and performance of, its obligations under the Transaction Documents.

1.2 Valid obligations

This agreement and the other Transaction Documents constitute or will, when executed by the Seller, constitute valid and binding obligations of the Seller.

1.3 Recitals and schedules

The particulars relating to the Company set out in Schedule 1 to this agreement are true and accurate.

1.4 Incorporation of the Company

The Company is a company validly existing under the laws of England with full power and authority to conduct its business as presently conducted.

1.5 Statutory books

The statutory books (including the registers and minute books) of the Company have been properly kept and, so far as the Seller is aware, the Company has not received a written notice or allegation that any of them is incorrect or should be rectified.

1.6 Ownership of Shares

- (a) The shares described in Schedule 1 to this agreement constitute the whole of the issued and allotted share capital of the Company and are fully paid up.
- (b) There is no Encumbrance on, over or affecting any of the Shares.
- (c) The Seller is entitled to transfer or procure the transfer of the full legal and beneficial ownership in the Shares to the Purchaser on the terms set out in this agreement.

1.7 Subsidiaries and associates

The Company is not the holder or beneficial owner of, nor has agreed to acquire, any shares of any other corporation.

1.8 Ownership of assets

All of the assets of the Company included in the Management Accounts (save for assets sold since the Management Accounts Date) are legally and beneficially owned by the Company free from any Encumbrance.

1.9 Information

Except in the ordinary course of business, all material records and information belonging to the Company (whether or not held in written form) are in its exclusive possession or under its control, and all such records and information are subject to access by it.

1.10 Management accounts

The Management Accounts have been prepared in good faith and enable a reasonable judgment to be made as to the income and expenditure of the Company for that period and of the assets and liabilities of the Company as at the Management Accounts Date.

1.11 Compliance with laws

So far as the Seller is aware, the Company has not done or omitted to do anything, the doing or omission of which amounts to a contravention of any statute, order, regulation or the like giving rise to any material fine, penalty or other liability or sanction on the part of the Company.

1.12 Properties [*To be confirmed when property portfolio identified*]

- (a) The Properties are the only real property owned, controlled, used or occupied by the Company and all deeds and documents necessary to prove title to them are in the possession of the Company.
- (b) The Company is the legal and beneficial owner in possession of each of the Properties, and together with the NPS is in exclusive occupation of each of them and has a good title to each of them.
- (c) The Company has a permanent legal easement or, in the case of a Leasehold Property a legal easement for the term of the relevant Lease, free from onerous or unusual conditions, to all rights necessary for the current use and enjoyment of each of the Properties.
- (d) No right or facility necessary for the current use and enjoyment of any of the Properties is enjoyed on terms entitling any person to terminate or curtail it save, in the case of a Leasehold Property, on determination of the relevant Lease.
- (e) The Properties are free from any Encumbrance.
- (f) None of the Properties is subject to any rights in favour of any third party which materially interfere with its current use.
- (g) No outgoings are payable in respect of any of the Properties except national non-domestic rates, charges for the supply of water and the provision of sewerage services and, in the case of each Leasehold Property, rent and service charge.
- (h) There is no covenant, restriction, burden or stipulation affecting any Property which conflicts with its current use.

1.13 Systems

- (a) For the purposes of this paragraph, **Systems** means the software, hardware, network and telecommunications equipment and internet-related information technology that are material to the Company in connection with the operation of its business as currently conducted.
- (b) Brief details of the Systems are contained in the Data Room.

- (c) There have, since the Relevant Date, been no security breaches, breakdowns, malfunctions, data loss, failures or other defects in the Systems which have had a material adverse effect on the operations of the Company.

1.14 Contracts

- (a) The subsisting material contracts to which the Company is a party are set out in the Data Room.
- (b) The Company is not a party to any subsisting material contract which:
 - (c) was entered into otherwise than in the ordinary course of business; or
 - (d) has an outstanding term of more than three years without provision to terminate on six months' notice or less; or
 - (e) restricts its freedom to carry on the whole or any material part of its business as it does at present.
- (f) The Company has not, since the Relevant Date, received written notice that it is in default under any agreement, mortgage, charge, lien or pledge which is material to the financial position of the Company.

1.15 Litigation

Except as claimant in the collection of debts arising in the ordinary course of business, as far as the Seller is aware, the Company is not a claimant or defendant in or otherwise a party to any litigation, arbitration or administrative proceeding which is in progress and which is material in relation to the Company nor, so far as the Seller is aware, has any such proceeding been expressly threatened in writing by or against the Company since the Relevant Date.

1.16 Insurances

The Company has taken out insurances on the bases and in respect of the risks referred to in the list of insurance cover contained in the Data Room.

1.17 Solvency

- (a) No administrator, receiver or administrative receiver has been appointed in respect of the whole or any part of the assets or undertaking of the Company.
- (b) No order has been made and no resolution has been passed for the winding-up of the Company and, so far as the Seller is aware, no petition has been presented for that purpose.
- (c) The Company is not insolvent (within the meaning of the Insolvency Act 1986) or unable to pay its debts and the Company has not stopped paying its debts as they fall due.
- (d) No voluntary arrangement, compromise or similar arrangement with creditors has been proposed, agreed or sanctioned in respect of the Company.

1.18 Employees

- (a) The Seller has disclosed to the Purchaser in respect of the Company:

- (b) a list of all senior salaried employees (i.e. earning more than £● per annum) showing, by reference to appropriate categories, remuneration payable and other principal benefits provided, as well as a brief description of their terms and conditions of employment; and
- (c) brief details of the numbers of other employees and a brief description of their terms and conditions of employment.
- (d) There is not in existence any written or unwritten contract of employment between the Company and a director or an employee of the Company which cannot be terminated by 12 months' notice or less without giving rise to a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal).
- (e) There is not outstanding any agreement or arrangement to which the Company is a party for profit-sharing or for payments to any of its directors or employees of bonuses or for incentive payments or other similar matters and there are no other material payments to employees which have not been disclosed.
- (f) None of the current directors or managing directors of the Company has given or been given notice to terminate his employment.
- (g) No dispute has arisen since the Relevant Date between the Company and a material number or category of its employees or with any trade union.

1.19 Data

- (a) The Data set out in the Data Room has been prepared after due and careful enquiry and is reasonably believed to be true and accurate in all material respects.
- (b) Save as expressly provided in this paragraph 1.19(a), the Seller does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Project Data and neither the Seller nor an Seller Related Party shall be liable to the Purchaser in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Project Data or (ii) any failure to make available to the Purchaser any materials, documents, drawings, plans or other information relating to this agreement.

2. TAX

2.1 Taxation liabilities

All Taxation of any nature whatsoever for which the Company is liable and which has fallen due for payment has been duly paid.

2.2 Taxation returns

- (a) All notices, computations and returns which ought to have been submitted to a Taxation Authority by the Company since the Relevant Date have been properly and duly so submitted and all information, notices, computations and returns submitted to a Taxation Authority since the Relevant Date are true, accurate and complete in all material respects and are not the subject of any material dispute nor, so far as the Seller is aware, are likely to become the subject of any material dispute with a Taxation Authority.
- (b) Since the Relevant Date, all material records which the Company is required to keep for Taxation purposes have been duly kept and are available for inspection at the premises of the Company.

3. PENSIONS

[To follow]

SCHEDULE 4

WARRANTY CLAIMS

1. Acknowledgement

The Purchaser acknowledges and agrees that it is not aware of any matter or circumstance which is inconsistent with any of the Warranties or makes any of them untrue or inaccurate.

2. Notice

If the Purchaser or the Company becomes aware of a matter or circumstance which may give rise to a Warranty Claim, the Seller shall not be liable in respect of it unless the Purchaser gives notice to the Seller specifying that matter or circumstance in reasonable detail (including, without limitation, the Purchaser's estimate, on a without prejudice basis, of the amount of such claim) as soon as reasonably practicable (and in any event within 30 days) after it or the Company (as the case may be) becomes aware of that matter or circumstance. The Seller shall not be liable for any losses in respect of a Warranty Claim to the extent that they are increased, or are not reduced, as a result of any failure by the Purchaser to give notice as contemplated by this paragraph.

3. Exclusions

3.1 The Seller shall not be liable in respect of a Warranty Claim to the extent that the matter or circumstance giving rise to that claim:

- (a) was taken into account in the Management Accounts or is otherwise reflected in the Management Accounts (including, without limitation, by way of a note or a statement in any report forming part of the Management Accounts); or
- (b) is the subject of a claim under the Tax Deed and the Purchaser receives a payment in respect thereof under the Tax Deed; or
- (c) is or arises directly or indirectly from any matter or circumstance disclosed in the Data Room; or
- (d) is a matter or circumstance of which the Purchaser has actual, imputed or constructive knowledge at the date of this agreement (and, without prejudice to the generality of the foregoing, the Purchaser shall be deemed to have actual knowledge of the contents of the Data Room; or
- (e) has been or is made good or is otherwise compensated for without cost to the Purchaser or the Company.

3.2 The Seller shall not be liable in respect of a Warranty Claim to the extent the relevant liability would not have arisen but for:

- (a) any change after Completion of the date to which the Company makes up its accounts or in the bases, methods, principles or policies of accounting of the Company other than a change which is reported by the auditors for the time being of the Company to be necessary in their opinion because such bases, methods, principles or policies of accounting as at the date of Completion are not in accordance with any published accounting practice or principle then current; or

- (b) any act or omission of the Company on or before Completion carried out at the written request of the Purchaser or any act or omission of the Purchaser or the Company after Completion; or
- (c) any failure or omission by the Company to make any valid claim, election, surrender or disclaimer, to give any valid notice or consent or to do any other thing under the provisions of any enactment or regulation relating to Taxation after Completion, the making, giving or doing of which was taken into account in computing the provisions for Taxation in the Management Accounts; or
- (d) any claim, election, surrender or disclaimer made or notice or consent given after Completion by the Company under the provisions of any enactment or regulation relating to Taxation other than any claim, election, surrender, disclaimer, notice or consent assumed to have been made, given or done in computing the amount of any allowance, provision or reserve in the Management Accounts or which is made at the prior request of the Seller pursuant to its rights under the Tax Deed; or
- (e) a cessation, or any change in the nature or conduct, of any trade carried on by the Company at Completion, being a cessation or change occurring on or after Completion.

3.3 The Seller shall not be liable in respect of a Warranty Claim related to a Taxation liability if any profits or amount to which the relevant Taxation is attributable were earned or received by or accrued to the Company but were not reflected in the Management Accounts.

4. Financial limits

The liability of the Seller under or in respect of the Warranties and the Tax Deed shall be limited as follows:

- (a) the Seller shall not be liable in respect of, and there shall be disregarded for all purposes, any Warranty Claim or claim under the Tax Deed unless the amount of the damages to which the Purchaser would, but for this subparagraph, be entitled as a result of that Warranty Claim or claim under the Tax Deed exceeds £●;
- (b) the Seller shall not be liable in respect of any Warranty Claim except to the extent that the amount of damages resulting from any and all Warranty Claims (other than claims disregarded as contemplated by subparagraph (a) above) exceed in aggregate £●; and
- (c) the maximum aggregate liability of the Seller in respect of any and all Warranty Claims and any and all claims under the Tax Deed shall not exceed £●.

5. Time limits

The liability of the Seller in respect of the Warranties shall terminate (but without prejudice to the rights and obligations of the parties under the Tax Deed):

- (a) on the fourth anniversary of the date of this agreement in respect of those Warranties set out in paragraph 2 (Tax) of Schedule 3; and
- (b) on the first anniversary of the date of this agreement in respect of all other Warranties,

except in respect of any Warranty Claim of which notice is given to the Seller as contemplated by paragraph 2 of this Schedule 4 before the relevant date. The liability of the Seller in respect of any Warranty Claim shall in any event terminate if proceedings in respect of it have not been

commenced within six months after the giving of notice of that Warranty Claim as contemplated by paragraph 2 of this Schedule 4 (or, if the Warranty Claim is based on a liability which is contingent only, within three months after such contingent liability gives rise to an obligation to make a payment) unless that Warranty Claim arises as a result of, or in connection with, a Third Party Claim (as defined in paragraph 8 of this Schedule 4) and the Seller shall have assumed conduct of that Third Party Claim in accordance with paragraph 8 of this Schedule 4.

6. Assessment of damages

Any damages in respect of a Warranty Claim shall be assessed on the basis of the loss of or cost to the Company attributable to the matter or circumstance giving rise to that Warranty Claim. In particular, but without limitation, there shall be taken into account the amount by which any Taxation, for which the Purchaser or the Company is now or in the future accountable or liable to be assessed, is reduced or extinguished as a result of the matter or circumstance giving rise to the relevant Warranty Claim, such Taxation to be calculated on the basis of rates of Taxation prevailing at the time of the Warranty Claim.

7. Payment of damages

Any payment made by the Seller in respect of a Warranty Claim or under the Tax Deed shall, to the maximum extent possible, be deemed to be a reduction in the Consideration.

8. Third party claims

8.1 If a Warranty Claim (other than a claim in respect of those Warranties set out in paragraph 2 (Tax) of Schedule 3 (a **Tax Warranty Claim**))¹ arises as a result of, or in connection with, a liability or alleged liability of the Company to a third party (a **Third Party Claim**), then the Seller may, at any time before any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Claim or the Third Party Claim is otherwise disposed of, give notice to the Purchaser that it elects to assume the conduct of any dispute, compromise, defence or appeal of the Third Party Claim and of any incidental negotiations on the following terms:

- (a) the Seller shall indemnify the Purchaser and the Company against all liabilities, charges, costs and expenses which they may incur in taking any such action as the Seller may request pursuant to subparagraphs (b) and (c) below;
- (b) the Purchaser shall procure that the Company makes available to the Seller such persons and all such information as the Seller may request for assessing, contesting, disputing, defending, appealing or compromising the Third Party Claim;
- (c) the Purchaser shall procure that the Company takes such action to assess, contest, dispute, defend, appeal or compromise the Third Party Claim as the Seller may request and does not make any admission of liability, agreement, settlement or compromise in relation to the Third Party Claim without the prior written approval of the Seller; and
- (d) the Seller shall keep the Purchaser informed of the progress of the Third Party Claim and provide the Purchaser with copies of all relevant documents and such other information in its possession as may be requested by the Purchaser (acting reasonably).

8.2 If a Warranty Claim other than a Tax Warranty Claim arises as a result of, or in connection with, a Third Party Claim, the Purchaser shall, until the earlier of such time as the Seller shall give any

¹ Note: a separate Tax Deed will be entered into by the Seller. The Tax Deed will include provisions relating to the conduct of a Tax Warranty Claim that will apply to the Tax Warranties listed at paragraph 2 of Schedule 3.

notice as contemplated by subparagraph 8.1 and such time as any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Claim or the Third Party Claim is otherwise finally disposed of:

- (a) procure that the Company consults with the Seller, and takes account of the requirements of the Seller, in relation to the conduct of any dispute, defence, compromise or appeal of the Third Party Claim;
- (b) keep, or procure that the Company keeps, the Seller promptly informed of the progress of the Third Party Claim and provide, or procure that the Company provides, the Seller with copies of all relevant documents and such other information in the Purchaser's or the Company's possession as may be requested by the Seller; and
- (c) procure that the Company shall cease to defend the Third Party Claim or make any admission of liability, agreement or compromise in relation to the Third Party Claim without the prior written consent of the Seller.

8.3 Nothing in this paragraph 8 shall require the provision by any person of any information to the extent such provision would contravene any applicable law or regulation or would breach any duty of confidentiality owed to any third party. If any information is provided by any person (the **Provider**) to any other person (the **Recipient**) pursuant to this paragraph 8:

- (a) that information shall only be used by the Recipient in connection with the Third Party Claim and clause 0 of this agreement shall in all other respects apply to that information; and
- (b) to the extent that information is privileged:
 - (c) no privilege shall be waived by reason of or as a result of its being provided to the Recipient; and
 - (d) if a third party requests disclosure by the Recipient in relation to that information, if the Recipient is the Seller or the Purchaser, the Recipient shall or, if the Recipient is the Company, the Purchaser shall procure that the Recipient shall promptly notify the Provider and, to the extent it can do so, itself assert privilege in opposition to that disclosure request.

8.4 The provisions of paragraph ● (Conduct of Tax Claims) of Schedule ● of the Tax Deed shall have effect as if expressly incorporated into this paragraph 8, so that those provisions shall apply to a Tax Warranty Claim.

9. **Mitigation**

Nothing in this agreement shall be deemed to relieve the Purchaser from any common law duty to mitigate any loss or damage incurred by it as a result of any of the Warranties being untrue or inaccurate.

10. **Recovery from third parties**

10.1 If:

- (a) the Seller makes a payment in respect of a Warranty Claim (the **Damages Payment**);

- (b) at any time after the making of such payment the Company or the Purchaser receives any sum which would not have been received but for the matter or circumstance giving rise to that Warranty Claim (the **Third Party Sum**);
- (c) the receipt of the Third Party Sum was not taken into account in calculating the Damages Payment; and
- (d) the aggregate of the Third Party Sum and the Damages Payment exceeds the amount required to compensate the Purchaser in full for the loss or liability which gave rise to the Warranty Claim in question (such excess being the **Excess Recovery**),

the Purchaser shall, promptly following receipt of the Third Party Sum by it or the Group Company, repay to the Seller an amount equal to the lower of (i) the Excess Recovery and (ii) the Damages Payment, after deducting (in either case) all costs incurred by the Purchaser or the Group Company in recovering the Third Party Sum.

10.2 If the Purchaser or the Company is or may be entitled to recover from a person (including any Taxation Authority, but excluding the Seller) a sum in respect of any Warranty Claim, then:

- (a) the Purchaser or the Company shall give the Seller full details of the entitlement as soon as practicable and in any event within ten Business Days of the Purchaser or the Company becoming aware of those details;
- (b) the Purchaser shall at the request of the Seller and at the Seller's expense take all appropriate steps to recover or to procure the recovery of the sum, keeping the Seller fully informed of the progress of any action taken;
- (c) the Purchaser shall as soon as practicable and in any event within ten Business Days of recovery of any sum, pay an amount equal to that sum to the Seller including any interest or repayment supplement received on or in respect of the amount payable to the Seller so far as it does not exceed any payments already made by the Seller in respect of the Warranty Claim and pay to the Seller any interest or repayment supplement received on or in respect of the amount payable to the Seller; and
- (d) so far as not paid to the Seller, the amount of the sum recovered (including any interest or repayment supplement) shall be carried forward and set against any future payment or payments which become due from the Seller under this agreement.

11. Insurance

Without prejudice to the Purchaser's duty to mitigate any loss in respect of any of the Warranties being untrue or inaccurate, if in respect of any matter which would otherwise give rise to a Warranty Claim, the Company is entitled to claim under any policy of insurance (or would have been so entitled had it maintained in force its insurance cover current at Completion), the amount of insurance monies to which the Company is or would have been entitled shall reduce *pro tanto* or extinguish that Warranty Claim.

12. Company

The Purchaser shall refrain from doing, and shall procure that the Company shall refrain from doing, any act or thing (other than in the ordinary course of business of the Company) which may give rise to a Warranty Claim which would not otherwise arise.

13. Contingent liabilities

If any Warranty Claim is based upon a liability which is contingent only, the Seller shall have no obligation to make a payment in respect thereof unless (and until) such contingent liability gives rise to an obligation to make a payment before:

- (a) the seventh anniversary of the date of this agreement if the Warranty Claim is in respect of those Warranties set out in paragraph 2 (Tax) of Schedule 3; or
- (b) the third anniversary of the date of this agreement if the Warranty Claim is in respect of any other Warranty.

14. Waiver of set off rights

The Purchaser waives any and all rights of set off, counterclaim, deduction or retention against or in respect of any of its payment obligations under this agreement, any of the other Transaction Documents or the Services Agreement which it might otherwise have by virtue of any Warranty Claim.

15. Remedy of breaches

If the matter or circumstance giving rise to a Warranty Claim is capable of remedy, the Seller shall have no liability in respect of that Warranty Claim unless the relevant matter or circumstance is not remedied within 30 days after the date on which the Seller is given notice as contemplated by paragraph 2 of this Schedule 4 in relation to that matter or circumstance. The Purchaser shall procure that the Seller is given the opportunity in that 30 day period to remedy the relevant matter or circumstance and shall, without prejudice to paragraph 9 of this Schedule 4, provide, and shall procure that the Company shall provide, all reasonable assistance to the Seller to remedy the relevant matter or circumstance.

16. On sales

The Seller shall have no liability in respect of any Warranty Claim arising out of a matter or circumstance affecting the Company if the notice given under paragraph 2 of this Schedule 4 in relation to the relevant matter or circumstance is given at a time when the Company has ceased to be a subsidiary of the Purchaser.

17. Overprovisions

If the amount of any provision, allowance or reserve in the Management Accounts (other than an Overprovision as defined in the Tax Deed) shall transpire to be an overprovision, the Purchaser shall as soon as reasonably practicable pay to the Seller a sum equal to the amount overprovided.

18. Undervaluations

If the value of any asset in the Management Accounts shall transpire to be an undervaluation, the Purchaser shall as soon as reasonably practicable pay to the Seller a sum equal to the amount by which the relevant asset is undervalued.

19. Consequential loss

The Seller shall have no liability under or in respect of the Warranties for any loss of business or profits, or in connection with any indirect or consequential loss or any punitive or aggravated damages, arising out of any matter or circumstance giving rise to a Warranty Claim.

SCHEDULE 5

COMPLETION

PART 1

SELLER'S OBLIGATIONS

At Completion, the Seller shall procure:

- (a) the delivery to the Purchaser of:
 - (i) duly executed transfers in favour of the Purchaser or its nominee(s) of all the Shares;
 - (ii) the share certificate(s) representing the Shares (or an express indemnity in the case of any found to be missing);
 - (iii) such waivers or consents as may be necessary to enable the Purchaser or its nominee(s) to become the registered holder of all the Shares;
 - (iv) the certificate of incorporation, common seal, minute books, statutory registers and share certificate books of the Company;
 - (v) the title deeds and documents relating to the Properties;
 - (vi) the Tax Deed duly executed by the Seller;
 - (vii) the duly executed Deed of Amendment whose validity:
 - (A) is not subject to challenge by way of legal proceedings (whether by judicial review or otherwise); or
 - (B) has been determined by a court of competent jurisdiction in a judgment that has become final in that it is no longer subject to appeal or other review;
 - (viii) the resignations of all the directors (except ●) and the secretary of the Company, in each case acknowledging (by way of deed) that he has no claim against the Company, whether for loss of office or otherwise;
 - (ix) the resignation of the auditors of the Company, in each case confirming that, in accordance with section 519 of the Companies Act 2006, there are no circumstances connected with their resignation which should be brought to the attention of the members or creditors of the Company and that no fees are due to them, together with a statement prepared by the Company for the purposes of section 523(2)(b)(i) of the Companies Act 2006 setting out the reasons for the auditors ceasing to hold office;
 - (x) a certified copy of the resolutions of the board of directors of the Seller authorising the execution of this agreement, the Tax Deed and each of the other Transaction Documents to which it is or will be a party; and
 - (xi) valid shareholder resolutions changing the name of the Company to ●; and
- (b) that a board meeting of the Company is held at which it is resolved that:

- (i) such persons as the Purchaser nominates are appointed as additional directors and the secretary of the Company;
- (ii) its registered office is changed to ●;
- (iii) the transfers referred to in paragraph (a)(i) (subject only to their being duly stamped) are approved for registration;
- (iv) ● are appointed as auditors; and
- (v) its bank mandates are revised in such manner as the Purchaser requires.

PART 2

PURCHASER'S OBLIGATIONS

At Completion, the Purchaser shall:

- (a) make a payment to the Seller of an amount equal to the Consideration;
- (b) deliver to the Seller a certified copy of the resolutions of the board of directors of the Purchaser authorising the execution of this agreement, the Tax Deed and each of the other Transaction Documents to which it is or is to be a party; and
- (c) deliver to the Seller:
 - (i) a counterpart of the Tax Deed, duly executed by the Purchaser; and
 - (ii) the Parent Company Guarantee, duly executed by ●.

SCHEDULE 6

INTERPRETATION

1. In this agreement:

Adjudicator has the meaning given in clause 17.4;

Agreed Form means, in relation to any document, the form of that document which has been initialled for the purpose of identification by the Seller's Solicitors and either the Purchaser or the Purchaser's Solicitors (if applicable) or otherwise by or on behalf of the Seller and the Purchaser;

Arbitrator has the meaning given in clause 17.13;

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

Completion means completion of the sale and purchase of the Shares in accordance with this agreement;

Completion date means ●;

Consideration means the consideration for the sale of the Shares set out in clause 2.3;

Crown means one or more of Her Majesty's Secretaries of State, another Minister of the Crown, the Lords Commissioners of Her Majesty's Treasury, the Treasury Solicitor, any body corporate wholly owned by any of the foregoing or any other person acting on behalf of the Crown and **Crown representative** shall be construed accordingly;

Data means ● [*Note to Purchaser: To be determined*];

Data Room means the documents referred to in the index of data room documents, in the Agreed Form, annexed to this agreement;

Deed of Amendment means the deed of amendment (in the Agreed Form) to the Services Agreement;

Dispute has the meaning given in clause 17.2;

Electronic Communication means an electronic communication as defined in the Electronic Communications Act 2000;

Encumbrance means any option, right to acquire, mortgage, charge, pledge, lien or other form of security or encumbrance and any agreement to create any of the foregoing;

GAAP means generally accepted accounting principles and practices in the United Kingdom, including all Statements of Standard Accounting Practice, Financial Reporting Standards and Urgent Issues Task Force Abstracts issued by the Accounting Standards Board;

Lease means, in relation to a Leasehold Property, the lease under which that Leasehold Property is held;

Leasehold Properties means those Properties shortly described in Part 2 of Schedule 2 and **Leasehold Property** means any of them;

Legislation has the meaning given in the Services Agreement;

Management Accounts means the unaudited management accounts of the Company as at, and for the ● month period ended on, the Management Accounts Date in the Agreed Form;

Management Accounts Date means ●;

NPS means the National Probation Service;

Parent Company Guarantee means ●;

Project Data has the meaning given in the Services Agreement;

Properties means the properties shortly described in Schedule 2 and **Property** means any of them;

Purchaser's Group means the Purchaser, all its subsidiary undertakings and parent undertakings and all the other subsidiary undertakings of each of its parent undertakings (other than the Company);

Purchaser's Solicitors means ●;

Relevant Date means, in relation to the Company, the later of (i) the date which is two years prior to the date of execution of this agreement, (ii) the date of incorporation of the Company and (iii) the date the Company became a subsidiary of the Seller;

Seller Related Party means Authority Related Party as defined in the Services Agreement;

Seller's Solicitors means Allen & Overy LLP of One Bishops Square, London E1 6AD;

Services Agreement means the services agreement between the Seller and the Company dated ● 2014 relating to the management of offender services in the community;

Shares means ● issued ordinary shares in the capital of the Company legally and beneficially owned by the Seller, as set out in Schedule 1;

subsidiary means a subsidiary for the purposes of the Companies Act 2006;

subsidiary undertaking and **parent undertaking** have the meanings given in section 1162 of the Companies Act 2006;

Tax, Taxes, Taxation and **Taxation Authority** have the meanings given to them in the Tax Deed;

Tax Deed means the tax deed in the Agreed Form;

Transaction Documents means this agreement, the documents referred to in it and any other agreements executed or to be executed by the parties on Completion (excluding the Services Agreement);

Warranties means the statements set out in Schedule 3;

Warranty Claim means a claim by the Purchaser the basis of which is that a Warranty is, or is alleged to be, untrue or inaccurate; and

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

2. Where any statement in Schedule 3 is qualified by the expression **so far as the Seller is aware or to the best of the Seller's knowledge, information and belief** or any similar expression, that statement shall be deemed to refer to the actual knowledge of the Seller after enquiry of the following individuals: ●.
3. In this agreement any reference, express or implied, to an enactment (which includes any legislation in any jurisdiction) includes:
 - (a) that enactment as amended, extended or applied by or under any other enactment (before or after signature of this agreement);
 - (b) any enactment which that enactment re enacts (with or without modification); and
 - (c) any subordinate legislation made (before or after signature of this agreement) under that enactment, including (where applicable) that enactment as amended, extended or applied as described in subparagraph (a), or under any enactment which it re-enacts as described in subparagraph (b),

except to the extent that any legislation or subordinate legislation made or enacted after the date of this agreement would create or increase the liability of the Seller under this agreement.

4. In this agreement:
 - (a) words denoting persons include bodies corporate and unincorporated associations of persons;
 - (b) references to an individual or a natural person include his estate and personal representatives; and
 - (c) subject to clause 13, references to a party to this agreement include the successors or assigns (immediate or otherwise) of that party.

SIGNATORIES

Signed by)
for THE SECRETARY OF STATE FOR)
JUSTICE

Signed by)
for [PURCHASER])

Signed by) s
for [PURCHASER'S GUARANTOR])