

OFFICIAL

DATED 29th March 2017

(1) SOMERSET COUNTY COUNCIL

(2) DIMENSIONS SOMERSET SEV LTD

SERVICES AGREEMENT

Version Control

Version	Date	Comment
1.0	March 2017	Services Agreement Execution Version



Pinsent Masons

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THIS DEED is made on

2017

BETWEEN:

- (1) **SOMERSET COUNTY COUNCIL** of County Hall, Taunton, Somerset, TA1 4DY (the "**Authority**"); and
- (2) **DIMENSIONS SOMERSET SEV LTD**, a company registered in England and Wales under company number 10257343 whose registered office is at 1430 Arlington Business Park Theale, Reading, RG7 4SA (the "**Supplier**"),

(each a "**Party**" and together the "**Parties**").

WHEREAS:-

- (A) The Authority wishes to appoint a supplier to provide care and support services in respect of adults with learning disabilities including, inter alia, in connection with its duties under the 2014 Act.
- (B) In May 2015 the Authority advertised in the Official Journal of the European Union (reference 2015/S 041-070139, 2015/S 064-112770 and 2015/S 102-1859297), inviting prospective suppliers to submit proposals for the Services.
- (C) The Managing Sub-contractor is a leading provider of social care services and has experience in providing services similar to the Services.
- (D) On the basis of the Managing Sub-contractor's response to the advertisement and a subsequent tender process, the Authority selected the Managing Sub-contractor as its preferred supplier.
- (E) The Managing Sub-contractor entered into a direct agreement with the Authority under which it agreed to provide certain facilities in connection with the Services and to establish the Supplier as a social enterprise vehicle to deliver the Services. As contemplated by the direct agreement, the Authority has agreed to enter into a contract with the Supplier in accordance with the terms and conditions set out below.
- (F) The Authority is a best value authority under the 1999 Act and the functions in respect of which the Authority wishes to procure the Services are subject to the provisions of the 1999 Act.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
 - 1.2.4 references to termination include termination of all or part of this Agreement, as the case may be;
 - 1.2.5 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

- 1.2.6 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- 1.2.7 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.2.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.9 unless otherwise provided, references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Appendices are, unless otherwise provided, references to the paragraphs, parts and appendices of the Schedule or the Part of the Schedule in which the references appear; and
- 1.2.10 references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Appendices to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.4.1 the Clauses and Schedule 1 (Definitions);
 - 1.4.2 Schedules 2.1 (Specifications) and 2.3 (Service Levels) and their Appendices;
 - 1.4.3 any other Schedules and their Appendices (other than Schedule 4.1 (Supplier Solution) and its Appendices); and
 - 1.4.4 Schedule 4.1 (Supplier Solution) and its Appendices.
- 1.5 The Schedules and their Appendices form part of this Agreement.
- 1.6 No review, comment or approval by the Authority under the provisions of this Agreement shall operate to exclude or limit the Supplier's obligations or liabilities under this Agreement (or the Authority's rights under this Agreement).
- 1.7 Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Authority to the Supplier.
- 2. **DUE DILIGENCE**
- 2.1 The Supplier acknowledges that, subject to Clauses 2.3 and 12.12 (Maintenance) and the provisions of the Asset and Contract Transfer Agreement:
 - 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due

Diligence Information;

2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to:

- (a) the Authority Requirements;
- (b) the operating processes and procedures and the working methods of the Authority;
- (c) the ownership, functionality, capacity, condition and suitability for use in the Services of the Initial Transferring Assets and Initial Transferring Contracts; and
- (d) the condition and suitability for use of the Leased Premises and the Licensed Premises.

2.2 Subject to Clauses 2.3 and 12.12 (Maintenance), the Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of and nor shall the Supplier be entitled to recover any additional costs or charges arising as a result of:

2.2.1 any misinterpretation of the Authority Requirements; and/or

2.2.2 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

2.3 To the extent that there is a material inaccuracy or omission in the Due Diligence Information in relation to the Initial Transferring Assets and/or Initial Transferring Contracts and provided that:

2.3.1 the Supplier was not aware (or could not reasonably have been aware) of the material inaccuracy or omission at the Completion Date and the impact that it would have on the Supplier's ability to perform the Services or its Costs;

2.3.2 the Supplier notifies the Authority promptly upon becoming aware of the same and in any event within 2 months of the Services Commencement Date (or within 6 months of the Services Commencement Date, where the Supplier could not reasonably have known about the inaccuracy or omission within 2 months), such notification to include:

- (a) details of the material inaccuracy or omission; and
- (b) the impact of the material inaccuracy or omission on:
 - (i) the Supplier's ability to perform the Services in accordance with this Agreement; and/or
 - (ii) the Supplier's forecast Costs (whether an increase or a decrease),

2.3.3 the Supplier provides to the Authority such additional evidence as is reasonably required by the Authority in respect of the matters referred to in Clause 2.3.1; and

2.3.4 the Supplier has taken all reasonable steps to mitigate any adverse impact of the material inaccuracy or omission on the Services or the Costs,

then the Parties shall agree, using the Change Control Procedure, how that impact will be addressed (whether by way of temporary relief or extension of time or, where appropriate, an appropriate adjustment to the Service Charges to reflect increases or decreases in Costs).

3. RELATED DOCUMENTS

- 3.1 At the Effective Date the Supplier shall deliver to the Authority copies of:
 - 3.1.1 the Performance Bond;
 - 3.1.2 evidence that the Managing Sub-contractor and the Supplier are complying with the relevant obligations under the Direct Agreement and/or (as the case may be) this Agreement with respect to the obtaining of the Initial Pensions Bond;
 - 3.1.3 evidence of insurances that are required to be maintained under Clause 29.3; and
 - 3.1.4 the Internal Sub-contract.
- 3.2 Without prejudice to the provisions of Clause 3.3, if at any time an amendment is made to the Internal Sub-contract, or the Supplier enters into a new Internal Sub-contract (or any agreement which affects the interpretation or application of the Internal Sub-contract), the Supplier shall deliver to the Authority a conformed copy of each such amendment or agreement within 10 Working Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer or trustee of the Supplier.
- 3.3 The Supplier shall perform its obligations under, and observe all of the provisions of, the Internal Sub-contract and shall not:
 - 3.3.1 terminate or agree to the termination of all or part of the Internal Sub-contract;
 - 3.3.2 make or agree to any material variation of the Internal Sub-contract;
 - 3.3.3 in any material respect, depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that the Managing Sub-contractor in any material respect departs from its obligations (or waive or allow to lapse any rights they may have in a material respect), under the Internal Sub-contract; or
 - 3.3.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) the Internal Sub-contract,

unless the Authority has given its prior written consent to the proposed course of action (and any relevant documentation), such consent not to be unreasonably withheld or delayed.

4. **WARRANTIES**

- 4.1 The Authority represents and warrants that:
 - 4.1.1 it has full capacity and authority to enter into and to perform this Agreement;
 - 4.1.2 this Agreement is executed by its duly authorised representative;
 - 4.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
 - 4.1.4 save as disclosed to the Supplier prior to the Completion Date, it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on the performance of its obligations under this Agreement; and
 - 4.1.5 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms.
- 4.2 The Supplier represents and warrants that:
 - 4.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

- 4.2.2 it has (or will at the relevant time have) full capacity and authority to enter into and to perform this Agreement;
 - 4.2.3 this Agreement is executed by its duly authorised representative;
 - 4.2.4 it has (or will at the relevant time have) all necessary consents and regulatory approvals to enter into this Agreement;
 - 4.2.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
 - 4.2.6 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
 - 4.2.7 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
 - 4.2.8 at the Completion Date, the Managing Sub-contractor was not in any of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015, and should not therefore have been excluded from the procurement procedure associated with the award of the Direct Agreement and this Agreement;
 - 4.2.9 all written statements and representations in any written submissions made by the Managing Sub-contractor and/or the Supplier as part of the procurement process, including without limitation its response to the PQQ, ITN and ISFT, its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
 - 4.2.10 it has all necessary rights in and to the Deliverable Materials, the Supplier Materials and, so far as it is aware but without prejudice to the indemnity set out in Clause 22, the Third Party Materials and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
 - 4.2.11 the Initial Financial Model is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
 - 4.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement; and
 - 4.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 4.3 Each of the representations and warranties set out in Clauses 4.1 and 4.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 4.4 If at any time a Party becomes aware that a representation or warranty given by it under Clause 4.1

or 4.2 has been materially breached, is untrue or is misleading, it shall promptly notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

- 4.5 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which either Party may have in respect of breach of that provision by the Supplier.
- 4.6 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

5. TERM

5.1 This Agreement shall come into force on the Effective Date and unless terminated at an earlier date by operation of Law or in accordance with Clause 35 (Termination Rights), terminate:

5.1.1 at the end of the Initial Term; or

5.1.2 in the case an extension in accordance with Clause 5.2, at the end of the Extension Period.

5.2 The Authority may elect to extend the Initial Term:

5.2.1 at its sole discretion, by a period of 6 months from the end of the Initial Term; or

5.2.2 by agreement with the Supplier, by a period of 12, 18 or 24 months from the end of the Initial Term,

in each case by giving the Supplier at least 365 days' notice prior to the end of the Initial Term.

6. IMPLEMENTATION

6.1 The Supplier shall, subject always to the provisions of Clauses 33 (Authority Cause) and 34 (Force Majeure):

6.1.1 comply with Schedule 2.2 (Implementation) and the Implementation Plan;

6.1.2 ensure that the Services Commencement Date is achieved by the Planned Services Commencement Date); and

6.1.3 ensure that the SCD Preconditions have been fully satisfied by the Planned Services Commencement Date.

6.2 Simultaneously with this Agreement, the Supplier has executed an Asset and Contract Transfer Agreement which sets out the terms upon which certain Initial Transferring Assets and/or Initial Transferring Contracts shall transfer to the Supplier or its Sub-contractors in connection with delivery of the Services (and the Supplier agrees to comply with such agreement).

7. SERVICES

Services and Allocation of Services to Customers

7.1 The Supplier shall provide the following Services in each case from (and including) the Services Commencement Date:

7.1.1 Generic Services (applicable to all Individual Services); and

7.1.2 Individual Services as follows:

(a) Residential Care (Without Nursing) and Short Breaks Services;

(b) Supported Living and Domiciliary Care Services;

(c) Crisis Support Services;

(d) Daytime Support Services; and

(e) Employment Support Services.

7.2 Individual Services, as specified by the Authority from time to time, are to be supplied in respect of

Customers allocated to the Supplier by the Authority until the earliest of:

- 7.2.1 the date on which the relevant Customer ceases to be eligible for receipt of the Services in accordance with the Specifications;
- 7.2.2 the date on which the relevant Customer ceases to be eligible for receipt of the Services in accordance with Law; and
- 7.2.3 the relevant cessation date following notification by the relevant individual or the Authority that the relevant Service is not required.

7.3 The Supplier agrees that its relationship with the Authority is not exclusive and that the Authority may:

- 7.3.1 itself perform any services similar to any part of the Services; and/or
- 7.3.2 contract with any third party to perform any services similar to any part of the Services.

In this regard:

- (a) the Authority confirms that, as at the Effective Date and subject to the right of any Customer to change or cease his or her individual Services, it does not intend to re-commission services that would replace the Services during the Term; and
- (b) the Authority and the Supplier shall conduct such marketing and communications activity as may be agreed in writing in respect of the Services with a target audience of Customers and potential customers.

7.4 Subject to Clause 7.5, the Supplier shall ensure that the Services:

- 7.4.1 comply in all respects with the Specifications; and
- 7.4.2 are supplied in accordance with the Supplier Solution and the provisions of this Agreement.

7.5 At any time between the Effective Date and the Services Commencement Date, the Supplier may, acting reasonably, notify the Authority of any instances in which the services delivered by the Authority which are to be replaced by the Services are not compliant with the Specifications. In this case, the Parties shall work together in good faith to agree a rectification plan in respect of such Services, the first draft of which shall be proposed by the Supplier. The Supplier shall not be held to be in breach of Clause 7.4 if the Services do not comply with the Specifications in the aspects notified to the Authority pursuant to this Clause 7.5 provided that those are brought up to the standards set out in the relevant Specification in accordance with the agreed timetable set out in the rectification plan, and in any event within 12 months of the Services Commencement Date.

7.6 Although the Supplier Solution is included as part of this Agreement, the Supplier agrees that such inclusion shall not relieve the Supplier of its responsibility for ensuring compliance with Schedule 2.1 (Specifications).

7.7 The Supplier shall not be entitled to any increase in the Charges in relation to any change to the Supplier Solution unless and to the extent that:

- 7.7.1 the change arises from a change by the Authority to the Specifications; or
- 7.7.2 the Authority requests a change to the Supplier Solution (other than pursuant to Clause 7.8 or as a consequence of a Default by the Supplier);

unless otherwise agreed under the Change Control Procedure.

7.8 If the Supplier becomes aware of any conflict or inconsistency between the Specifications and the

Supplier Solution, the Supplier shall as soon as reasonably practicable and in any event within 20 Working Days:

- 7.8.1 notify the Authority of such conflict or inconsistency; and
- 7.8.2 in relation to any such conflict or inconsistency (and regardless of whether or not the Supplier gave notification as required by this Clause) at the Authority's request amend the Supplier Solution to address the conflict or inconsistency through the Change Control Procedure at no cost to the Authority.

Service Standards

7.9 The Supplier shall:

- 7.9.1 perform its obligations under this Agreement, including in relation to the supply of the Services, in accordance with:
 - (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Necessary Consents and any other requirements of and guidance issued by Regulatory Bodies; and
 - (d) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.9.1(a) to 7.9.1(c); and
- 7.9.2 ensure that, subject to Clauses 33 (Authority Cause) and 34 (Force Majeure), it has been awarded the Social Enterprise Mark accreditation no later than 18 months after the Services Commencement Date;
- 7.9.3 deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure best value.

7.10 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 7.9.1(a) to (c), the Supplier shall immediately notify the Authority in writing of such inconsistency and the Authority shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with provided that the requirement is compliant with applicable Law and consistent with any Necessary Consents.

Transformation

7.11 The Supplier shall transform the Services in accordance with Schedule 4.5 (Transformation) and the Transformation Plan, subject always to the provisions of Clauses 33 (Authority Cause) and 34 (Force Majeure).

Milestone Achievement and Delay

- 7.12 Subject to Clauses 33 (Authority Cause) and 34 (Force Majeure), the Supplier shall ensure that each Milestone is achieved on or before its Milestone Date.
- 7.13 A Milestone will be achieved when the Supplier has performed to the reasonable satisfaction of the Authority the tasks identified in this Agreement (including the Implementation Plan and/or Transformation Plan, as the case may be) to be associated with that Milestone (which may include the submission of a Deliverable such as the production of Documentation).
- 7.14 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay in respect of achievement of any Milestone it shall:

- 7.14.1 notify the Authority;

- 7.14.2 unless otherwise agreed through the Change Control Procedure, where requested by the Authority, acting reasonably, implement and comply with the Rectification Plan Process in order to rectify the issues and address the impact of the Delay or anticipated Delay; and
- 7.14.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

Supplier covenants

7.15 The Supplier shall:

- 7.15.1 at all times allocate sufficient resources with the appropriate technical expertise to provide the Services in accordance with this Agreement;
- 7.15.2 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 16 (Change), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- 7.15.3 ensure that any Documentation provided by the Supplier to the Authority is comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 7.15.4 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- 7.15.5 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- 7.15.6 notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- 7.15.7 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, in relation to the Supplier's obligations under this Agreement.

7.16 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

7.17 Without prejudice to Clauses 22.2 and 22.3 (IPRs Indemnity) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:

- 7.17.1 remedy any breach of its obligations in Clause 7.15.2 within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred and the timescales within which the body responsible for granting the consent, approval, licence or permission will grant the same);
- 7.17.2 remedy any breach of its obligations in Clause 7.15.1 and Clauses 7.15.3 to 7.15.5 inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
- 7.17.3 meet all the costs of, and incidental to, the performance of such remedial work;

and any failure of the Supplier to comply with its obligations under Clause 7.17.1 or Clause 7.17.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

Incidental Services

7.18 From the Services Commencement Date, the Supplier shall provide, with no change to the Charges, all other services, functions and responsibilities of non-material operational significance and cost not specifically described in this Agreement which are:

7.18.1 an inherent, customary or a necessary part of, or are incidental to the provision of, or would ordinarily be performed by a person performing the Services, or are required for the proper performance of the Supplier's obligations arising under or in connection with this Agreement;

7.18.2 related to the Services and are required to be performed for the Authority to meet requirements imposed by Law,

as if those services, functions and/or responsibilities were specifically described in this Agreement.

Authority Responsibilities

7.19 The Authority shall comply with its responsibilities set out in Schedule 2.1 (Specifications).

8. PROVIDING REGULATED SERVICES AND WORKING WITH STAKEHOLDERS**8.1 Statutory Obligations**

8.1.1 The Supplier acknowledges that it is a relevant partner for the purposes of section 6 of the 2014 Act. The Supplier agrees that it and its Sub-contractors will supply the Services, and that it will otherwise comply with this Agreement, in such a manner as supports the Authority's compliance with its obligations under the 2014 Act. Accordingly the Supplier shall, where relevant, ensure that the Services are consistent with the requirements of the 2014 Act and shall provide the Authority with such:

- (a) information and reports; and
- (b) co-operation and assistance (including attendance at meetings),

as are reasonably requested by the Authority from time to time in connection with its duties under the 2014 Act.

8.1.2 The Supplier further acknowledges that it will be a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006. Accordingly, the Supplier shall :

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service; and
- (b) monitor the level and validity of the checks under this Clause 8.1.2 for each member of staff.
- (c) not employ or use the services of any person who:
 - (i) it is or ought reasonably to be aware is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity; or
 - (ii) it is or ought reasonably to be aware otherwise presents a risk to Customers.

8.1.3 The Supplier warrants that at all times for the purposes of this Agreement it has no reason to believe that any member of the Supplier Personnel is barred from the activity in

accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder.

- 8.1.4 The Supplier shall refer information to the Independent Safeguarding Authority about any member of Supplier Personnel where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to Customers, children or other vulnerable adults.
- 8.1.5 The Supplier will comply with the requirements of the Health and Social Care Act 2008, including with respect to its status as a registered care provider and generally as a provider of regulated activities (as defined in that act).

8.2 Co-operation with Regulatory Bodies

8.2.1 The Supplier shall:

- (a) co-operate with any Regulatory Body (including where requested to do so by the Authority) with respect to any investigation which the Regulatory Body is carrying out and provide the Regulatory Body with all information which it reasonably requires in connection with that investigation;
- (b) review each recommendation which the Regulatory Body makes which relates to the Services or the manner in which they are delivered and deliver to the Authority details in writing of how it will respond to, and address, those recommendations; and
- (c) without prejudice to Clause 8.1.1, provide the Authority with all information and assistance which it reasonably requires to enable it to meet its obligations to the Regulatory Body from time to time.

8.2.2 The Supplier shall notify the Authority immediately if:

- (a) any Necessary Consent:
 - (i) is revoked, withdrawn, cancelled or modified; or
 - (ii) has not been renewed or replaced on the day next following the day on which it expired;
- (b) a Regulatory Body has commenced, or has given the Supplier or a Sub-contractor notice that it will commence, an investigation of the Supplier's or a Sub-contractor's business, operations, conduct or financial affairs;
- (c) any review by a Regulatory Body of the Supplier or a Sub-contractor's operational business has resulted in a performance rating that lies below the average for a provider of services of the type and size of the Supplier or Sub-contractor.

8.3 Working with Customers, Carers and Parents and other Stakeholders

- 8.3.1 The Supplier shall, in delivering the Services, consult and work in close co-operation with Customers (and carers and families of Customers and with Relevant Stakeholders including in accordance with the specific requirements set out in Schedule 2.1 (Specifications)).
- 8.3.2 The Supplier shall establish and maintain the corporate structure and the participation arrangements for Customers, carers and families with respect to its internal governance as set out in Schedule 4.2 (Corporate Structure of Supplier). No change in the Control of the Supplier shall occur without the prior written consent of the Authority.

9. SOCIAL ENTERPRISE OBJECTIVES AND CHARITABLE STATUS

Social Enterprise Objectives

- 9.1 The Supplier shall deliver the Services in a manner designed to meet the objectives set out in the Generic Services and, in addition, the requirements of the Social Enterprise Mark ("**Social Enterprise Objectives**"):

Charitable Status

- 9.2 The Supplier represents and warrants to the Authority that, at the Effective Date the Supplier is a company limited by guarantee and is established with fully charitable objects and has submitted an application to the Charity Commission for registration.
- 9.3 The Authority agrees to provide all reasonable assistance to the Supplier in answering questions raised by the Charity Commission as part of the process of the Supplier applying for registration. The Supplier shall inform the Authority when it is registered with the Charity Commission with details of its registered number.
- 9.4 The Supplier further represents and warrants to the Authority that, at the Effective Date, the Managing Sub-contractor is a charity.
- 9.5 If the Supplier is informed at any time during the Term following achievement of registration with the Charity Commission that it is not a charity the Supplier will immediately inform the Authority and such circumstances shall constitute a Novation Trigger.

10. SERVICE LEVELS

- 10.1 The Supplier shall:
- 10.1.1 provide the Services in such a manner so as to meet or exceed the Target Service Level for each Performance Indicator and each Key Performance Indicator; and
 - 10.1.2 comply with the provisions of Schedule 2.3 (Service Levels) in relation to the monitoring and reporting on its performance against the Performance Indicators and Key Performance Indicators.

Performance Failures

- 10.2 If in any Measurement Period a KPI Failure occurs:
- 10.2.1 Service Credits shall be deducted from the Service Charges in accordance with Paragraph 5 of Schedule 7.1 (Charges and Invoicing);
 - 10.2.2 in the case of a Material KPI Failure, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 10.2.1);
- 10.3 Service Credits shall be a non-exclusive financial remedy for a KPI Failure and shall be without prejudice to the Authority's other rights or remedies under this Agreement provided that any Service Credits that have been deducted from Service Charges as a result of a Default by the Supplier shall also be deducted from any damages claimed by the Authority in respect of that default. The Supplier acknowledges and agrees that Service Credits are designed to protect the legitimate interests of the Authority, are not an estimate of the loss or damage that may be suffered by the Authority as a result of the KPI Failure and nor are they onerous or a penalty.

11. SERVICES IMPROVEMENT

- 11.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 11. As part of this obligation the Supplier shall identify and report to the Contract Management Board once every 12 months on:

- 11.1.1 new or potential improvements to the Services including the quality, responsiveness, procedures, relevant performance mechanisms in relation to the Services;
 - 11.1.2 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and/or
 - 11.1.3 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority.
- 11.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 11.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

12. PREMISES, ASSETS AND MAINTENANCE

Premises

- 12.1 On the Services Commencement Date, the Authority shall grant to the Supplier, and the Supplier shall accept, the Leases and the Licences in accordance (including as to timing) with this Clause 12.
- 12.2 In relation to the Leases:
- 12.2.1 the Standard Commercial Property Conditions (2nd Edition) are incorporated into this Agreement insofar as it relates to the grant of the Leases;
 - 12.2.2 the Authority grants the Leases with full title guarantee;
 - 12.2.3 the Supplier agrees that:
 - (a) title to the Leased Premises has been deduced to it before the Effective Date;
 - (b) it has investigated and accepted that title; and
 - (c) it shall raise no requisitions or objections concerning that title save for standard requisitions on title and in relation to anything revealed by standard pre-completion searches and enquiries;
 - 12.2.4 the Authority shall grant the Leases free from encumbrances other than:
 - (a) those specified in the Standard Commercial Property Conditions (2nd Edition);
 - (b) any matters, other than financial charges contained or referred to in the entries or records made in registers maintained by HM Land Registry in the title deduced to the Supplier in accordance with Clause 12.2.3(a);
 - (c) any matters, other than the financial charges disclosed or which would have been disclosed by the searches and enquiries which a prudent supplier would have made before entering into this Agreement;
 - (d) interests that override first registration (as defined in Schedule 1 to the Land Registration Act 2002), interests that override registered dispositions (as defined in Schedule 3 to the Land Registration Act 2002) or interests the status of which is preserved as overriding by Schedule 12 to the Land Registration Act 2002 ("Overriding Interests");

- 12.2.5 the Authority knows of no Overriding Interests other than those (if any) already disclosed or apparent or discoverable on inspection of the Leased Premises or revealed by the usual searches and enquiries but subject to these, the Property is sold subject to all Overriding Interests;
- 12.2.6 the Authority confirms to the Supplier that it has disclosed to the Supplier all matters referred to in Clause 12.2.5 of which it is, or ought reasonably to have been, aware;
- 12.2.7 the Supplier acknowledges that in taking the Leases there are and have been no representations on the faith of which the Supplier is entering into this Agreement or the Leases made by or on behalf of the Authority other than any that are indicated in the representations contained in the written answers made by the Authority's solicitors to enquiries raised by the Supplier's (or the Managing Sub-contractor's) solicitors prior to the Effective Date;
- 12.2.8 the Supplier confirms that before it became contractually bound to enter into the tenancies created by the Leases pursuant to this Agreement:
- (a) the Authority served on the Supplier a notice dated 16 March 2017 in relation to the tenancy created by each of the Leases (the "Lease Notices") in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the "Order");
 - (b) the Supplier, or a person duly authorised by the Supplier, in relation to the Lease Notices made a statutory declarations (the "Lease Declarations") dated 21 March 2017 in a form complying with the requirements of Schedule 2 of the Order;
 - (c) where the Lease Declarations were made by a person other than the Supplier, the declarant was duly authorised by the Supplier to make the Lease Declarations on the Supplier's behalf; and
 - (d) the Authority and Supplier agree to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancies created by the Leases.
- 12.3 No later 10 Working Days before the Services Commencement Date, the Authority shall deliver an engrossment of the counterpart Leases and Licences to the Supplier. The Supplier shall execute and deliver the counterpart Leases as a deed and counterpart Licences to the Authority within a further 5 Working Days after receipt. The Authority shall execute the original Leases as a deed and original Licences and send the original Leases and Licences to the Supplier following completion of the Leases and Licences.
- 12.4 The Supplier shall apply for, and use reasonable endeavours to procure, registration of the Leases at the Land Registry as soon as reasonably practicable after the Leases are completed. The Authority shall use all reasonable endeavours to assist the Supplier in responding to any proper requisitions raised by the Land Registry of such documents that are in the Authority's possession relating to the freehold reversion as the Land Registry may request.
- 12.5 In relation to the Licences of the [REDACTED] for so long as and to the extent that it is able to do so, the Authority permits the Supplier to occupy these properties [REDACTED] in accordance with the terms set out within the forms of Licence contained within Appendix 2 of Schedule 5.1 (Premises) until either:
- 12.5.1 the relevant landlord for those properties grants a lease to the Supplier (or confers an alternative property interest on the Supplier) on terms that are reasonably acceptable to the Supplier and the Authority (and the Supplier shall not be entitled unreasonably to refuse an offer of a lease where it is on the terms of one of the relevant forms of Lease in Appendix 1 to Schedule 5.1 (Premises)); or

12.5.2 the Authority terminates the occupation of the Supplier under the applicable Licence, provided that:

- (a) the Supplier shall use all reasonable endeavours following the Effective Date to put in place the lease or alternative arrangement referred to in Clause 12.5.1 and shall keep the Authority informed as to the status of and any conclusion to its discussions with the relevant landlords; and
- (b) if the Authority proposes to or does terminate the occupation of the Supplier under the applicable Licence, it shall work with the Supplier to agree, using the Change Control Procedure, the consequential changes to the Services and/or the alternative property arrangements.

Asset Register

12.6 The Supplier shall, at all times during the Term, maintain an Asset Register containing accurate and up to date details of:

12.6.1 Authority Assets located at each Service Location;

12.6.2 the Supplier Equipment to include, for each individual item:

- (a) make, model and asset number;
- (b) ownership details;
- (c) purchase date, purchase price and then current Net Book Value;
- (d) status as either an Exclusive Assets or a Non-Exclusive Asset;
- (e) condition;
- (f) usage; and
- (g) location;

12.6.3 the Sub-contracts (to include a copy of each such Sub-contract); and

12.6.4 other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements),

in each case, to the extent that they are used in the provision of the Services.

12.7 Schedule 5.2 (Contracts and Licences) sets out the Sub-contracts (including software licences) that, as at the Effective Date, the Supplier intends to use in delivering Services.

12.8 The Supplier shall provide the Authority with a full copy of the Asset Register (and an updated list and/or copies of any then subsisting Sub-contracts) on an annual basis as part of the Annual Contract Report) and, in addition, within 5 Working Days of a written request from the Authority to do so. For the avoidance of doubt, each such provision shall constitute a Milestone deliverable by the relevant date (such date constituting the relevant Milestone Date) for the purposes of this Agreement.

Supplier Equipment

12.9 The Supplier shall be solely responsible for the cost of delivering Supplier Equipment to the Service Locations, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from Service Locations the subject of a lease or licence that ceases upon termination or expiry, including the cost of packing, carriage

and making good the Service Locations following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

- 12.10 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 12.11 Subject to the provisions of Clause 34 (Force Majeure), the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Service Levels.

Maintenance and Service Charges

- 12.12 Following the Effective Date and in accordance with the Implementation Plan, the Supplier shall create and maintain a rolling schedule of planned maintenance and/or replacement for the Maintained Equipment, the Leased Premises and the Licensed Premises (the "**Maintenance Schedule**") which shall:

12.12.1 comply with any relevant obligations of the Supplier under the relevant Leases and Licences;

12.12.2 in the case [REDACTED]

- (a) mirror the maintenance and repair obligations of the Authority under its lease for that property dated 1st April 2011 (details of which have been provided to the Supplier prior to the Effective Date), including where instructed to do so by the Authority or its managing agent from time to time, provided that repair in accordance with the schedule of condition attached to that lease shall be replaced by an obligation to repair in accordance with the schedule of condition provided to the Authority by the Supplier in the 5 Working Day period prior to the Effective Date showing the condition of the property at the Effective Date; and
- (b) on expiry or termination of that lease, continue to mirror those obligations or such alternative requirements as the Authority specifies,

and in all cases shall be as agreed with the Authority prior to the Services Commencement Date and upon any proposed update thereafter, such update to be carried out at least annually. Once the Maintenance Schedule has been agreed with the Authority, the Supplier shall only undertake such planned maintenance and/or replacement (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

- 12.13 The Supplier shall give as much notice as is reasonably practicable to the Authority prior to carrying out any Emergency Maintenance.
- 12.14 The Supplier shall carry out any necessary maintenance and/or replacement (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the Maintained Equipment or any part thereof has or may have developed a fault and/or in such condition as may adversely affect the Services. Any such maintenance and/or replacement shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the Services.
- 12.15 Subject to the Parties agreeing the Maintenance Schedule in accordance with Clause 12.12 and subject to Clause 12.16, the Supplier's aggregate liability in respect of Permitted Maintenance and Emergency Maintenance of the Maintained Equipment, Leased Premises and Licensed Premises (when taken together with the associated service charges) shall in no event exceed [REDACTED] in each Contract Year.
- 12.16 To the extent that the Authority or any Regulatory Body requires further maintenance to be performed in addition to Permitted Maintenance and Emergency Maintenance, or additional

incremental service charges to be paid, the Supplier shall carry out such further maintenance provided that, where it can be demonstrated that the Supplier will incur incremental cost over and above [REDACTED] in any Contract Year in undertaking such maintenance or paying such service charges, the Authority shall reimburse the Supplier in respect of such costs.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

13. FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 13.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (Charges and Invoicing).
- 13.2 If the Supplier fails to deliver its invoice within 180 days of the end of the month in which the invoice was required to be issued in accordance with Schedule 7.1 (Charges and Invoicing), the Charges shall cease to be due and/or payable and the Supplier shall be deemed to have waived its rights to payment of such Charges.
- 13.3 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 15 (Records, Reports, Audits and Open Book Data), Clause 25 (Freedom of Information), Clause 26 (Protection of Personal Data) and, to the extent specified therein, Clause 31 (Remedial Adviser) and Clause 32 (Step-In Rights).
- 13.4 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 13.5 If the Authority disputes any amount shown in an invoice:
- 13.5.1 the Authority shall, within 5 Working Days of receipt of the invoice, notify the Supplier of the reasons for disputing the invoice amount;
 - 13.5.2 where the dispute relates to only part of the invoice, the Supplier shall issue a credit note against the disputed invoice and issue two new invoices, one for the disputed portion and one for the undisputed portion, and the Authority shall pay the undisputed invoice in accordance with Clause 13.1; and
 - 13.5.3 Clauses 13.6 and 13.7 shall apply to the disputed invoice (or part thereof).
- 13.6 The Authority and the Supplier shall resolve any Dispute relating to invoices in accordance with the Dispute Resolution Procedure.
- 13.7 Where a Dispute in relation to a disputed invoice, or part thereof, is subsequently resolved:
- 13.7.1 the Supplier shall issue a credit note in relation to the invoice (or part thereof) which is found not to be payable following resolution of the Dispute; and
 - 13.7.2 Clause 13.1 shall apply to the invoice (or part thereof) which is found to be payable following the resolution of the Dispute, and for the purposes of calculating the relevant payment terms, such invoice (or part thereof) shall be deemed to be dated at the date of resolution of the Dispute.
- 13.8 Interest due on any sums in Dispute shall not accrue unless and until a payment becomes overdue following resolution of the Dispute.

VAT

- 13.9 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 13.10 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any

time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 13.10 shall be paid in cleared funds by the Supplier to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

Set-off

- 13.11 The Authority may set off any amount owed by the Supplier to the Authority against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- 13.12 If the Authority wishes to set off any amount owed by the Supplier to the Authority against any amount due to the Supplier pursuant to Clause 13.11 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Benchmarking

- 13.13 The Parties shall comply with the provisions of Schedule 7.3 (Benchmarking) in relation to the benchmarking of any or all of the Services.

Financial Distress

- 13.14 The provisions of Clauses 13.15 to 13.21 shall apply in relation to the assessment of the financial standing of the Supplier and the Managing Sub-contractor and the consequences of a change to that financial standing (including where such financial standing is relevant to the question of business failure for the purposes of section 48 of the 2014 Act).
- 13.15 The Supplier acknowledges and agrees that:
- 13.15.1 the Initial Credit Rating is the credit rating applicable to the Managing Sub-contractor as at the Completion Date; and
- 13.15.2 the Initial Financial Standing applies to the Supplier at the Effective Date.
- 13.16 During the Term the Supplier shall regularly monitor its financial standing and the Managing Sub-contractor's credit rating.
- 13.17 The Supplier shall notify the Authority in writing as soon as practicable following the occurrence of a Financial Distress Event (and in any event ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event).
- 13.18 In the event that the Authority reasonably believes that the Financial Distress Event could adversely impact the performance of this Agreement, the Supplier shall at the request of the Authority:
- 13.18.1 meet with the Authority as soon as practicable to review the effect of the Financial Distress Event on the continued performance of this Agreement;
- 13.18.2 as soon as practicable and in any event within 10 Working Days (taking into account the review made pursuant to Clause 13.18.1), provide a draft Financial Distress Service Continuity Plan for approval by the Authority explaining how the Supplier will mitigate or avoid the potential adverse impact of the Financial Distress Event on the performance of this Agreement and how continuity of Services will be maintained; and
- 13.18.3 provide such financial information as the Authority may reasonably require to enable the Authority to understand the financial position of the Supplier and/or Managing Sub-contractor (as the case may be) and/or the potential risks to performance of this Agreement.

- 13.19 The Supplier shall incorporate any reasonable comments provided by the Authority on the draft Financial Distress Service Continuity Plan and provide such number of revised drafts as may reasonably be required until the Authority has approved the Financial Distress Service Continuity Plan (which approval shall not be unreasonably withheld or delayed).
- 13.20 Following approval of any Financial Distress Service Continuity Plan pursuant to Clause 13.18, the Supplier shall implement the plan in accordance with its terms and review the plan on a regular basis and assess whether it remains adequate and up to date so as to ensure the continued performance of this Agreement.
- 13.21 The Authority shall be entitled to terminate this Agreement if:
- 13.21.1 the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Clause 13.17;
 - 13.21.2 the Authority, acting reasonably, does not approve a Financial Distress Service Continuity Plan (or any revised Financial Distress Service Continuity Plan) in accordance with Clauses 13.18 and/or 13.19; and/or
 - 13.21.3 the Supplier fails to implement any Financial Distress Service Continuity Plan (or any revised Financial Distress Service Continuity Plan) in accordance with Clause 13.20.

SECTION D - CONTRACT GOVERNANCE

14. GOVERNANCE

- 14.1 The Parties shall comply with the provisions of Schedule 8.1 (Governance) in relation to the management and governance of this Agreement.

Representatives

- 14.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 14.3 The initial Supplier Representative shall be the person named as such in Schedule 9.3 (Key Personnel). Any change to the Supplier Representative shall be agreed in accordance with Clause 17 (Supplier Personnel).
- 14.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

15. RECORDS, REPORTS, AUDITS AND OPEN BOOK DATA

Records

The Supplier shall comply with the provisions of Part A of Schedule 7.4 (Financial Reports) in relation to the maintenance of Open Book Data.

Reporting

- 15.1 The Parties shall comply with the provisions of:
- 15.1.1 Schedules 2.1 (Specifications) and 2.3 (Service Levels) in relation to the provision of Management Information; and
 - 15.1.2 Part B of Schedule 7.4 (Financial Reports) in relation to the provision of the Financial Reports.

Audits

- 15.2 During the Term and subsequently for a period of 3 years, the Authority, an auditor of the Authority and/or a Regulatory Body (or their respective agents or representatives) may conduct an audit, for the following purposes:
- 15.2.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement) and/or the Open Book Data;
 - 15.2.2 to review the integrity, confidentiality and security of any data relating to the Authority (including Authority Data) and/or Customers (including Customer Data);
 - 15.2.3 to review the Supplier's compliance with Clause 26 (Protection of Personal Data) and Clause 25 (Freedom of Information) and any other legislation applicable to the Services;
 - 15.2.4 to access any Customer Data or other records created during the provision of the Services;
 - 15.2.5 to respond to any Customer complaint;
 - 15.2.6 to comply with any requirement of a Regulatory Body;
 - 15.2.7 to review any books of account kept by the Supplier in connection with the provision of

the Services;

- 15.2.8 to carry out the audit and certification of the Authority's accounts;
 - 15.2.9 to carry out an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources or used the Services;
 - 15.2.10 to verify the accuracy and completeness of the Management Information delivered or required by this agreement; and/or
 - 15.2.11 to assess the Supplier's compliance with the Law.
- 15.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services (and, where reasonably practicable and where the Authority does not believe that such will prejudice its ability to conduct the audit, the Authority shall agree the timing and method of audit with the Supplier).
- 15.4 The Supplier shall on demand provide the Authority, auditors and any Regulatory Body (and/or their respective agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 15.4.1 all information requested by the above persons within the permitted scope of the audit;
 - 15.4.2 reasonable access to any Service Locations and to any Supplier Equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - 15.4.3 access to the Supplier's Personnel.
- 15.5 The Authority shall endeavour to (but is not obliged to) provide at least 10 Working Days' notice of its or, where possible, an auditor's or Regulatory Body's intention to conduct an audit.
- 15.6 Each Party shall bear its own costs and expenses incurred in respect of this Clause, unless the audit identifies a material failure by the Supplier to perform its obligations under this Agreement in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 15.7 If an audit identifies that the Supplier has failed to perform its obligations under this Agreement in any material manner, the Supplier shall comply with the Rectification Plan Process in order to rectify the issues (and if the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the Rectification Plan shall include a requirement for the provision of all such information).
- 15.8 If an audit identifies that:
- 15.8.1 the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
 - 15.8.2 the Authority has underpaid any Charges, the Authority shall, subject to Clause 13.2 (Charges and Invoicing), pay to the Supplier the amount of the under-payment within 20 days.

16. **CHANGE**

Change Control Procedure

- 16.1 Any requirement for a Contract Change shall be subject to the Change Control Procedure.

Change in Law

- 16.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with

the terms and conditions of this Agreement nor, save as expressly set out in this Agreement, be entitled to an increase in the Charges as the result of any change in Law.

16.3 If a change in Law occurs or will occur during the Term that causes or would cause this Agreement to be inconsistent with applicable Law, the Supplier shall notify the Authority as soon as reasonably practicable of the likely effects of that change, including:

16.3.1 whether any Contract Change is required to the Services or other term of this Agreement; and

16.3.2 its proposals for implementation of the change in Law;

16.3.3 using the Change Control Procedure, its proposed amendment to this Agreement (provided that this shall not entitle the Supplier to any change to or increase in the Charges);

16.4 Any variation to the Services or other term of this Agreement necessitated by a change in Law shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

17. SUPPLIER PERSONNEL

17.1 The Supplier shall:

- 17.1.1 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence; and
 - (b) are vetted in accordance with Good Industry Practice and, where applicable, the Disclosure and Barring Service requirements referred to in Clause 8.1;
- 17.1.2 ensure that at all times there are sufficient number of Supplier Personnel (including all relevant grades of supervisory staff) engaged in the provision of Services, including so as to cover periods of holiday, sickness and other absences;
- 17.1.3 subject to Schedule 9.1 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- 17.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier; and
- 17.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel and, in respect of continuity and handover arrangements for front line carers, comply with the specific provisions set out in Schedule 2.1 (Specifications).

Key Personnel

- 17.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.3 (Key Personnel) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 17.3 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 17.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out activities under Schedule 8.4 (Exit Management) unless:
 - 17.4.1 requested to do so by the Authority;
 - 17.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 17.4.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 17.4.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 17.5 The Supplier shall:
 - 17.5.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 3 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 17.5.2 ensure that any Key Role is not vacant for any longer than 10 Working Days, unless otherwise agreed by the Authority;

- 17.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
- 17.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- 17.5.5 ensure that any replacement for a Key Role:
 - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Income Tax and National Insurance Contributions

- 17.6 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:
 - 17.6.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - 17.6.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer and Pensions

- 17.7 Schedule 9.1 (Staff Transfer) and Schedule 9.2 (Pensions) apply with respect to employment and pension matters.

18. SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

- 18.1 The Supplier shall maintain and implement practices and policies with a view to sustaining a resilient and diverse supply chain in support of delivery of the Services.
- 18.2 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
 - 18.2.1 manage any Sub-contractors in accordance with Good Industry Practice; and
 - 18.2.2 comply with its obligations under this Agreement in the delivery of the Services.
- 18.3 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
 - 18.3.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;

- 18.3.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- 18.3.3 the proposed Key Sub-contractor employs unfit persons.
- 18.4 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.4 (Notified Key Sub-contractors).
- 18.5 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
 - 18.5.1 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (a) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (b) the conduct of audits set out in Clause 15 (Records, Reports, Audits and Open Book Data);
 - 18.5.2 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 35.1 (Termination by the Authority) and 36.3 (Payments by the Authority) and Schedule 7.2 (Payments on Termination) of this Agreement; and
 - 18.5.3 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority.

Supply chain protection

- 18.6 The Supplier shall ensure that all Sub-contracts:
 - 18.6.1 contain a provision requiring the Supplier to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days from the receipt of a valid and undisputed invoice;
 - 18.6.2 where the proposed Sub-contractor will Process any Personal Data include appropriate data protection requirements equivalent to those set out in Clauses 23 (Authority Data and Security Requirements) and 26 (Protection of Personal Data);
 - 18.6.3 save where the Authority has agreed otherwise in writing (acting reasonably), include:
 - (a) the FOIA requirements set out in Clause 25 (Freedom of Information); and
 - (b) a provision enabling the Supplier (or as appropriate Sub-contractor) to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority in connection with the expiry or termination of this Agreement.
- 18.7 If requested to do so by the Authority, the Supplier shall include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.3 (Service Levels) a summary of its compliance with the payment terms included within its Sub-contracts, such data to be certified by a director of the Supplier as being accurate and not misleading.

Termination of Sub-contracts

- 18.8 The Authority may require the Supplier to terminate a Sub-contract where:
 - 18.8.1 the acts or omissions of the relevant Sub-contractor have caused or materially

contributed to an Authority right of termination for a Supplier Termination Event pursuant to Clause 35.1 (Termination by the Authority); and/or

- 18.8.2 the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority.

Retention of Legal Obligations

- 18.9 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 18, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

19. INTELLECTUAL PROPERTY RIGHTS

19.1 Except as expressly set out in this Agreement:

19.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:

- (a) the Supplier Materials;
- (b) the Third Party Materials; and
- (c) the Deliverable Materials;

19.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:

- (a) the Authority Software;
- (b) the Authority Data; and
- (c) the Authority Background IPRs.

19.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 19.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

19.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

20. LICENCES GRANTED BY THE SUPPLIER

20.1 Notwithstanding any other provision of this Agreement (including Clause 20.2), the Supplier hereby grants to the Authority or shall procure the direct grant to the Authority of, a perpetual, worldwide, royalty-free, non-exclusive and irrevocable licence to use (which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate):

20.1.1 the Deliverable Materials;

20.1.2 all operating instructions and other documents and tools necessary for using, maintaining and supporting the Deliverable Materials,

in each case to the extent the Supplier or an Affiliate owns the Intellectual Property Rights in the Deliverable Materials and such licence to be for any purpose relating to the Services (or similar services) or for any purpose relating to the exercise of the Authority's business or functions, in either case whether during or after the Term. The Supplier shall notify the Authority in writing, no later than the time of delivery of each item of Deliverable Materials, where the Supplier or an Affiliate does not own the Intellectual Property Rights in the item concerned (and where no such notification is given the Intellectual Property Rights in the item shall be deemed to be owned by the Supplier).

20.2 The Supplier hereby grants to the Authority, or shall procure the direct grant to the Authority of, a worldwide, royalty-free, non-exclusive and irrevocable licence to use (which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate):

20.2.1 the Supplier Materials; and

20.2.2 subject to Clause 20.3, the Third Party Materials,

(in each case other than those to which Clause 20.1 applies) for any purpose relating to the Services and/or exercise of the Authority's rights under this Agreement during the Term and for a period of 12 months thereafter.

20.3 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Materials in accordance with the licence terms set out in Clause 20.2 the Supplier shall notify the Authority in writing giving details of what licence terms can be obtained from the relevant licensor and whether there are alternative providers which the Supplier could seek to use.

Authority's right to sub-license

20.4 The Authority shall be freely entitled to sub-license the rights granted to the Authority pursuant to Clause 20.1.

20.5 The Authority may sub-license the rights granted under Clauses 20.2 to a third party (including for the avoidance of doubt, any Relevant Stakeholder and/or any Replacement Supplier) provided that the sub-licence:

20.5.1 is on terms no broader than those granted to the Authority; and

20.5.2 authorises the third party to use the rights only for purposes relating to the Services and/or exercise of the Authority's rights under this Agreement.

Authority's right to assign/novate licences

20.6 The Authority shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licences granted to the Authority pursuant to Clauses 20.1 and 20.2 to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

20.7 Any change in the legal status of the Authority shall not affect the validity of any the licences granted to the Authority pursuant to Clauses 20.1 and 20.2 and the Successor Body to the Authority shall still be entitled to the benefit of the licences so granted.

20.8 If a licence granted to the Authority pursuant to Clauses 20.1 and 20.2 is novated or there is a change of the Authority's status, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Replacement Suppliers

20.9 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any automatic termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 20.

21. LICENCES GRANTED BY THE AUTHORITY

21.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use Authority Software, Authority Background IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Agreement, including the right to grant sub-licences to Sub-contractors provided that:

21.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier materially the same terms as set out in Clause 24 (Confidentiality); and

21.1.2 the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

- 21.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 21.1 and any sub-licence granted by the Supplier in accordance with Clause 21.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall (save to the extent and for such duration as is required by any Regulatory Body or Law):
- 21.2.1 immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
 - 21.2.2 at the discretion of the Authority, return or destroy (i) documents (ii) electronic records, databases and files (in machine readable and commonly-used format) and (iii) other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
 - 21.2.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data; and
 - 21.2.4 in the event that the Authority notifies the Supplier in accordance with Schedule 8.4 (Exit Management) that it intends to retender the Services or transfer the Services back to the Authority, at the discretion of the Authority, return or destroy any Customer Data.
- 21.3 Clause 21.2 shall be without prejudice to any separate agreement between the Authority and the Supplier which may apply to use of Authority Software, Authority Background IPRs and/or Authority Data (as the case may be) following cessation of the applicable licences under this Agreement.

22. IPRS INDEMNITY

- 22.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 22.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- 22.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - 22.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any other services or the IT environment;
 - (c) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (d) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 22.3 If the Supplier elects to procure a licence in accordance with Clause 22.2.1 or to modify or replace an item pursuant to Clause 22.2.2, without prejudice to the indemnity set out in Clause 22.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or

services including the additional costs of procuring, implementing and maintaining the substitute items.

23. **AUTHORITY DATA AND SECURITY REQUIREMENTS**

- 23.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 23.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement, for compliance with Law or as otherwise expressly authorised in writing by the Authority.
- 23.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (Specifications) or if none is specified in any format reasonably specified by the Authority.
- 23.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 23.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored in accordance with the business continuity and disaster recovery requirements of the Specifications.
- 23.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies the security requirements of this Agreement.
- 23.7 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take. If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- 23.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the business continuity and disaster recovery requirements specified in Schedule 2.1 (Specifications) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
- 23.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the business continuity and disaster recovery requirements specified in Schedule 2.1 (Specifications).

Malicious Software

- 23.8 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of malicious software in the IT environment (or as otherwise agreed by the Parties).

24. **CONFIDENTIALITY**

- 24.1 For the purposes of this Clause 24, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 24.2 Except to the extent set out in this Clause 24 or where disclosure is expressly permitted elsewhere

in this Agreement, the Recipient shall:

- 24.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 24.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - 24.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - 24.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 24.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 24.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 25 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - 24.3.2 the need for such disclosure arises out of or in connection with:
 - (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (b) the examination and certification of either Party's accounts (provided that the disclosure is made on a confidential basis) or for any examination of the Authority's accounts pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources or is making use of the Services; or
 - (c) the conduct of a Central Government Body review in respect of this Agreement; or
 - 24.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 24.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or Regulatory Body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 24.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- 24.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
 - 24.5.2 its auditors; and
 - 24.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 24.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in

this Agreement by the persons to whom disclosure has been made.

24.6 The Authority may disclose the Confidential Information of the Supplier:

- 24.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- 24.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 24.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 24.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 24.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- 24.6.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the audit rights pursuant to Clause 15, its step-in rights pursuant to Clause 32 (Step-In Rights), its rights to appoint a Remedial Adviser pursuant to Clause 31 (Remedial Adviser) and Schedule 8.4 (Exit Management); or
- 24.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 24.

24.7 Where the Supplier, in carrying out its obligations under this Agreement, is provided with Customer Data, the Supplier shall not disclose or make use of any such data otherwise than for the purpose of providing the Services (and for the purpose for which it was provided), unless the Supplier has obtained the relevant Customer's prior written consent or that of the Authority.

Transparency

24.8 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Authority shall determine whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions in this regard but shall have the final decision in its absolute discretion.

24.9 Notwithstanding any other provision of this Agreement:

- 24.9.1 the Supplier hereby gives its consent for the Authority to publish to the general public this Agreement in its entirety (subject to Clause 24.9.2 and with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Agreement agreed from time to time; and
- 24.9.2 it is agreed that the Financial Model and contents of Schedule 4.1 (Supplier Solution) shall not be published as contemplated by Clause 24.9.1.

24.10 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Agreement as permitted under Clauses 24.8 and 24.9.

25. FREEDOM OF INFORMATION

- 25.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. In this regard, the Supplier shall:
- 25.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - 25.1.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 4 Working Days of receipt;
 - 25.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - 25.1.4 not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
- 25.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 25.3 To the extent that the Supplier is deemed to be a public authority and therefore directly subject to the requirements of the FOIA and the EIRs, the Supplier shall, without prejudice to the requirements of Clause 25.1, notify the Authority of any Requests for Information relating to this Agreement that it receives in that capacity as soon as practicable and in any event within 2 Working Days of receipt and comply with any reasonable request from the Authority for additional Information in connection therewith.

26. PROTECTION OF PERSONAL DATA

26.1 Deemed Controller Provisions

- 26.1.1 The Parties shall each Process the Personal Data. The Parties acknowledge that the factual arrangement between them dictates the role of each Party in respect of the DPA. Notwithstanding the foregoing, the Parties anticipate that each Party shall act as a Data Controller in respect of the Processing of the Personal Data, and shall each be a Data Controller of the Personal Data acting in common, as follows:
- (a) the Authority shall be a Data Controller where it is Processing the Personal Data in relation to the carrying out of its statutory functions and responsibilities in respect of the relevant Data Subjects; and
 - (b) the Supplier shall be a Data Controller where it is Processing the Personal Data in relation to the performance of the Services with respect to those Data Subjects.
- 26.1.2 Notwithstanding Clause 26.1.1, if the Authority is deemed to be a joint Data Controller with the Supplier, the Parties agree that the Supplier shall be responsible for the compliance obligations imposed on a Data Controller by the DPA, and the Supplier shall do all necessary things to enable the Authority to perform such compliance obligations, save that each Party shall be responsible for compliance with its data security obligations set out in Clause 26.2.1(e) where the Personal Data has been transmitted by it, or while the Personal Data is in its possession or control.

26.2 Data Controller Obligations

26.2.1 Each Party shall:

- (a) comply in all respects with the DPA;
- (b) make due notification to the Information Commissioner's Office, including as to its use and Processing of the Personal Data and comply at all times with the DPA;
- (c) ensure it is not subject to any prohibition or restriction which would:
 - (i) prevent or restrict it from disclosing or transferring the Personal Data to the other Party, as required under this Agreement; or
 - (ii) prevent or restrict either party from Processing the Personal Data as envisaged under this Agreement;
- (d) ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) and are sufficient in scope to enable each party to Process the Personal Data as required in order to obtain the benefit of its rights, and to fulfil its obligations, under this Agreement in accordance with the DPA (and in the case of the Authority and the Relevant Stakeholders in order to enable them to fulfil their respective statutory functions);
- (e) maintain technical and organisational measures sufficient to comply at least with the obligations imposed on a Data Controller by the seventh data protection principle of the DPA, and take reasonable steps to ensure the reliability of any of each Party's respective personnel who have access to the Personal Data;
- (f) promptly, and in any event within forty-eight (48) hours of receipt of any request or correspondence, notify the other Party in the event that it receives:
 - (i) from a Data Subject (or third party on their behalf):
 - (1) a Data Subject Access Request (or purported Data Subject Access Request);
 - (2) a request to rectify, block or erase any Personal Data; or
 - (3) any other request, complaint or communication relating to the Authority's obligations under the DPA; and
 - (ii) any communication from the Information Commissioner's Office or any other Regulatory Body in connection with Personal Data,

in each case where the other Party is the Data Controller or joint Data Controller of or has some other legitimate interest in the Personal Data in question;
- (g) promptly, and in any event within twenty-four (24) hours, notify the other Party about any actual or suspected breach of Clause 26.2.1(e) and shall:
 - (i) implement any measures necessary to restore the security of compromised Personal Data; and
 - (ii) support the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects; and
- (h) not do anything which it knows or ought reasonably to know shall damage the reputation of the other Party or that Party's relationship with the Data Subjects.

26.2.2 The Supplier shall:

- (a) restrict the disclosure of the Personal Data to those of its Supplier Personnel who may be required by it to assist it in meeting its obligations under this Agreement and no other personnel shall have access to such Personal Data;
- (b) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under Clauses 23 (Authority Data and Security Requirements), 24 (Confidentiality) and this Clause 26;
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA).

26.3 Data Processor Obligations

26.3.1 To the extent that the Supplier is acting as Data Processor for and on behalf of the Authority in relation to Processing that it is carrying out arising out of, or in connection with, the provision of the Services, it shall:

- (a) comply with the obligations set out in Clauses 26.2.1(e), 26.2.1(f), 26.2.1(g), 26.2.1(h), and 26.2.2;
- (b) hold the Personal Data in such a manner that it is capable of being distinguished from other data or information processed by the Supplier;
- (c) use reasonable endeavours to notify the Authority if it is obliged to make a disclosure of the Personal Data under any statutory requirement, such notification to be made in advance of such disclosure or immediately thereafter unless prohibited by law; and
- (d) only process Personal Data for and on behalf of the Authority for the purpose of performing the Services and in accordance with this Agreement (and, where necessary, only on instructions from the Authority to ensure compliance with the DPA).

26.4 Transfers to a Third Party

26.4.1 If at any time during the term of this Agreement the Supplier wishes to appoint a Sub-contractor to process Personal Data in respect of which the Authority is the Data Controller and the Supplier is:

- (a) also a Data Controller (whether as a joint Data Controller or a Data Controller in common), the Supplier may appoint such a Sub-contractor provided that the Supplier provides the Authority with full details of the Sub-contractor before its appointment; or
- (b) the Data Processor, the Supplier may appoint such a Sub-contractor provided that all of the following conditions are fulfilled:
 - (i) the Supplier provides the Authority with full details of the Sub-contractor (including the results of the due diligence undertaken in

accordance with Clause 26.4.1(b)(ii)) before its appointment and the Authority has consented to such appointment in writing;

- (ii) the Supplier undertakes thorough due diligence on the proposed Sub-contractor, including a risk assessment of the information governance related practices and processes of the Sub-contractor, which shall be used by the Supplier to inform any decision on appointing the proposed Sub-contractor;
- (iii) the Sub-contractor contract is on terms which are substantially the same as the terms set out in this Agreement in respect of data processing and the Authority is a named third party beneficiary to those terms; and
- (iv) the Sub-contractor's right to process such Personal Data terminates automatically on expiry or termination of this Agreement for whatever reason.

26.4.2 The Supplier shall not disclose Personal Data in respect of which the Authority is Data Controller and the Supplier is Data Processor to any third party in any circumstances other than to a Sub-contractor appointed in accordance with this Clause 26.4, or as otherwise expressly authorised by the Authority.

26.4.3 Notwithstanding any consent or approval given by the Authority under this Clause 26.4, the Supplier shall remain primarily liable to the Authority for the acts, errors and omissions of any such third party and shall be responsible to the Authority for the acts, errors and omissions of such third party as if they were the Supplier's own acts, errors and omissions.

26.5 Complaints

In the event of a dispute or claim brought by a Data Subject or the Information Commissioner's Office or any other Regulatory Body against either or both of the Parties, the Parties will inform each other about any such disputes or claims, and will cooperate with each other (including by disclosing to each other such Personal Data as is necessary in connection with such dispute or complaint, subject at all times to clause 26.2.1(a)) with a view to settling them amicably in a timely fashion.

26.6 Processing of Personal Data outside of the European Economic Area

26.6.1 Regardless of the Supplier's treatment as a Data Controller or Data Processor, the Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "**Restricted Countries**"). If, after the Effective Date, the Supplier or any Sub-contractor (appointed in accordance with Clause 26.4) wishes to Process and/or transfer any Personal Data in or to any Restricted Countries, the following provisions shall apply:

- (a) the Supplier shall submit a Change Request to the Authority which, if the Authority agrees to such Change Request, shall be dealt with in accordance with the Change Control Procedure and Clauses 26.6.1(b)(ii) to 26.6.1(b)(iv);
- (b) the Supplier shall set out in its Change Request and/or Impact Assessment details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in any Restricted Countries;
 - (ii) the Restricted Countries which the Personal Data will be transferred to and/or Processed in;

- (iii) any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;
 - (c) in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice; and
 - (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Agreement or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries enters into a direct data processing agreement with the Authority on such terms as may be required by the Authority, and which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.
- 26.7 Within a reasonable timescale to be agreed between the Parties following termination or expiry of this Agreement, and in any event within 20 Working Days, the Supplier shall ensure that such fair processing notices are given to the Data Subjects (and are sufficient in scope) regarding any transition of the provision of the Services from (i) the Supplier to the Authority; or (ii) the Supplier to a Replacement Supplier.
- 26.8 The Supplier shall indemnify the Authority on demand and keep the Authority indemnified from and against any and all losses which the Authority or any Relevant Stakeholder may suffer or incur (directly or indirectly) in relation to the Supplier's failure to comply with its obligations under this Clause 26.
- 27. **PUBLICITY AND BRANDING**
- 27.1 Neither Party shall, save as set out in the communications strategy agreed between the Parties:
 - 27.1.1 make any press announcements or publicise this Agreement or its contents in any way; or
 - 27.1.2 use the other Party's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed. For the avoidance of doubt, the provisions of this Clause 27.1 shall not limit the Authority's disclosure obligations and rights nor limit the Authority's rights under Clause 25.
- 27.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE**28. LIABILITY****Indemnity for third party claims**

- 28.1 The Supplier shall indemnify and keep the Authority and each Relevant Stakeholder Beneficiary indemnified against any Claim made against any of them or any Losses suffered or incurred by any of them to the extent caused by a Default of the Supplier (or any act or omission of a Sub-contractor or member of any Supplier Personnel contributing to a Default of the Supplier).

Unlimited liability

- 28.2 Neither Party limits its liability for:

- 28.2.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- 28.2.2 fraud or fraudulent misrepresentation by it or its employees;
- 28.2.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 28.2.4 any liability to the extent it cannot be limited or excluded by Law.

- 28.3 The Supplier's liability in respect of:

- 28.3.1 any claims made against the Authority or any Relevant Stakeholder Beneficiary relating to personal injury or death in connection with this Agreement; and
- 28.3.2 the indemnities in Clause 13.10 (VAT), Clause 17.6 (Income Tax and National Insurance Contributions), Clause 22 (IPRs Indemnity), Clause 26.8 (Protection of Personal Data), Schedule 9.1 (Staff Transfer) and Schedule 9.2 (Pensions) (including their respective Appendices),

shall be unlimited.

- 28.4 The Authority's liability in respect of the indemnities in Schedule 9.1 (Staff Transfer) and Schedule 9.2 (Pensions) (including their respective Appendices) shall be unlimited.

Financial and other limits

- 28.5 Subject to Clauses 28.2 and 28.3 (Unlimited Liability) and Clauses 28.8 and 28.9 (Consequential losses):

- 28.5.1 the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority or any Relevant Stakeholder Beneficiary (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed [REDACTED]
- 28.5.2 the Supplier's aggregate liability in respect of all Service Credits incurred in any rolling period of 12 months shall be subject to the Service Credit Cap; and
- 28.5.3 the Supplier's aggregate liability in respect of all other Losses incurred by the Authority or a Relevant Stakeholder Beneficiary under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:

- (a) [REDACTED] in relation to Defaults occurring in the first Contract Year, an amount equal to [REDACTED]

- (b) in relation Defaults occurring during any subsequent Contract Year, an amount [REDACTED] of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
- (c) in relation to Defaults occurring after the end of the Term, an amount equal to [REDACTED] of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term,

provided that where any Losses referred to in Clause 28.5.3 have been incurred by the Authority and/or Relevant Stakeholder Beneficiary as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause [REDACTED]

- 28.6 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 28.5.3.
- 28.7 Subject to Clauses 28.2 and 28.4 (Unlimited Liability) and Clause 28.8 (Consequential Losses) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:
 - 28.7.1 the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 35.1.1 (Termination by the Authority) shall in no event exceed the Termination Payment; and
 - 28.7.2 the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event [REDACTED]

Consequential Losses

- 28.8 Subject to Clauses 28.2, 28.3 and 28.4 (Unlimited Liability) and Clause 28.9, neither Party shall be liable to the other Party for:
 - 28.8.1 any indirect, special or consequential Loss; or
 - 28.8.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 28.9 Notwithstanding Clause 28.8 but subject to Clauses 28.5 and 28.11, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
 - 28.9.1 any incremental operational and/or administrative costs and expenses reasonably incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 28.9.2 any evidenced wasted expenditure or charges;
 - 28.9.3 the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Agreement;
 - 28.9.4 any compensation or interest paid to a third party by the Authority; and
 - 28.9.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

28.10 Conduct of indemnity claims

- 28.10.1 This Clause 28.10 shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the "Indemnifier"), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the "Beneficiary").
- 28.10.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a "Claim"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 2 Working Days of receipt of the same.
- 28.10.3 Subject to Clause 28.10.2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Clause 28.10.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 28.10.4 With respect to any Claim conducted by the Indemnifier pursuant to Clause 28.10.2:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 28.10.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Clause 28.10.2;
 - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 2 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
 - (c) the Indemnifier fails to comply in any material respect with the provisions of Clause 28.10.3.
- 28.10.6 With respect to any Claim in respect of which the Authority is the Beneficiary and which the Authority, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Authority (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Authority's prior written consent. If the Authority withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Authority in respect of that amount which would have been recoverable by the Authority had it conducted the

Sensitive Claim with all due diligence. The Authority shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim to which this Clause 28.10.6 applies if, in the reasonable opinion of the Authority, the Claim is, or has become, a Sensitive Claim.

28.10.7 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

- (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

Mitigation

28.11 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

29. INSURANCE

29.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- 29.1.1 public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
- 29.1.2 employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
- 29.1.3 professional indemnity insurance where relevant to the Services provided, in an amount for each and every claim, act or occurrence or series of claims, acts or occurrences which is sufficient to cover the Supplier's liabilities under this Agreement; and
- 29.1.4 business interruption insurance at a level appropriate to the size and turnover of the Supplier's business;

(the "**Required Insurances**").

29.2 The insurance cover shall be in respect of all risks which may be incurred by the Supplier arising out of the Supplier's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

29.3 The Supplier shall give the Authority, prior to the Effective Date and thereafter upon request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

29.4 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

29.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement.

SECTION H – REMEDIES AND RELIEF

30. RECTIFICATION PLAN PROCESS

30.1 In the event that:

- 30.1.1 there is, or is reasonably likely to be, a Delay in respect of which the Authority has requested that the Rectification Plan Process apply under Clause 7.14.2 (Services);
- 30.1.2 in any Measurement Period there has been a Material KPI Failure; and/or
- 30.1.3 the Supplier commits a material Default that is capable of remedy and that has not been remedied (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a "**Notifiable Default**"), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

30.2 If:

- 30.2.1 the Supplier notifies the Authority pursuant to Clause 30.1 that a Notifiable Default has occurred; or
- 30.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority has already served a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

- 30.3 The "**Rectification Plan Process**" shall be as set out in Clauses 30.4 (Submission of the draft Rectification Plan) to 30.9 (Agreement of the Rectification Plan).

Submission of the draft Rectification Plan

- 30.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 30.2 (Notification). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

30.5 The draft Rectification Plan shall set out:

- 30.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
- 30.5.2 the actual or anticipated effect of the Notifiable Default;
- 30.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);
- 30.5.4 the intended outcomes of the Rectification Plan;

- 30.5.5 the resources to be applied in undertaking the steps referred to in Clause 30.5.3; and
 - 30.5.6 the governance arrangements to be followed in respect of the performance of the Rectification Plan.
- 30.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis.

Agreement of the Rectification Plan

- 30.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- 30.7.1 is insufficiently detailed to be capable of proper evaluation;
 - 30.7.2 will take too long to complete;
 - 30.7.3 will not prevent reoccurrence of the Notifiable Default; and/or
 - 30.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 30.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable (provided that where no rejection is notified by the Authority within 5 Working Days of receipt it shall be deemed to have notified its consent). If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 30.9 If the Authority consents (or, pursuant to Clause 30.8, is deemed to have consented) to the Rectification Plan:
- 30.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
 - 30.9.2 the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event (without prejudice to its other rights of termination including those relating to a Rectification Plan Failure).

31. REMEDIAL ADVISER

- 31.1 If:
- 31.1.1 any of the Intervention Trigger Events occur; or
 - 31.1.2 the Authority reasonably believes (and the Supplier agrees) that any of the Intervention Trigger Events are likely to occur,
- (each an "**Intervention Cause**"), the Authority may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:
- (a) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
 - (b) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 31.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 31.1 prior to or instead of

exercising its right to terminate this Agreement.

31.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

31.2.1 the Remedial Adviser shall be:

- (a) a person selected by the Supplier and approved by the Authority; or
- (b) if none of the persons selected by the Supplier has been approved by the Authority, acting reasonably, (or if no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;

31.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and

31.2.3 any right of the Authority to terminate this Agreement pursuant to Clause 35.1.2 (Termination by the Authority) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the "**Intervention Period**").

31.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

- 31.3.1 observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- 31.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- 31.3.3 write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
- 31.3.4 make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- 31.3.5 take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

31.4 The Supplier shall:

- 31.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- 31.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- 31.4.3 submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- 31.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser (provided that it is agreed that, without limitation, recommendations made by the Remedial Adviser that are not reasonably likely to have the effect of mitigating or avoiding the Intervention Cause shall be treated as being unreasonable recommendations); and

31.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

31.5 The Supplier shall be responsible for:

31.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and

31.5.2 its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 31.

31.6 If:

31.6.1 the Supplier:

(a) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or

(b) is in Default of any of its obligations under Clause 31.4; and/or

31.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a "**Remedial Adviser Failure**"), the Authority shall be entitled to terminate this Agreement pursuant to Clause 35.1.2 (Termination by the Authority).

32. STEP-IN RIGHTS

32.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this Clause 32 (Step-in Rights), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 24 (Confidentiality)). The Step-In Notice shall set out the following:

32.1.1 the action the Authority wishes to take and in particular the Services that it wishes to control (the "**Required Action**");

32.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;

32.1.3 the date on which it wishes to commence the Required Action;

32.1.4 the time period which it believes will be necessary for the Required Action;

32.1.5 whether the Authority will require access to the Supplier's premises and/or the Service Locations; and

32.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

32.2 Following service of a Step-In Notice, the Authority shall:

32.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

32.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;

32.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control;

46.4.4 Termination Notices; and

46.4.5 Dispute Notices.

46.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 46.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 46.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

46.6 This Clause 46 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure)).

47. DISPUTES

47.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the procedure set out in this Clause 47 (the "Dispute Resolution Procedure").

47.2 Both Parties' primary objective and intent is to have Disputes resolved at the appropriate level without the need for escalation. With this in mind, Disputes arising between the Parties shall be handled in the following manner:

47.2.1 either Party may initiate the Dispute Resolution Procedure by serving a Dispute Notice upon the other Party identifying that it is a Dispute Notice and setting out the material particulars of the Dispute;

47.2.2 the Dispute shall, in the first instance be referred to the level 1 representatives set out in the table below for resolution at a meeting to be arranged as soon as practicable after the service of the Dispute Notice but in any event within 2 Working Days;

47.2.3 if the Dispute cannot be resolved by the level 1 representatives within 10 Working Days of the referral, or within any other period agreed by the Parties, the Dispute shall be referred to the level 2 representatives set out in the table below for resolution, who shall meet within 2 Working Days after such referral, or such other period as the Parties may agree, in order to attempt to resolve the Dispute.

47.3 At each level of the Dispute Resolution Procedure set out above, if the Parties agree that the Dispute is a matter materially affecting any aspect of this Agreement or the relationship between the Parties, the Parties may elect immediately to escalate the Dispute to the next level and upon such election the Dispute shall be escalated to the next level.

47.4 Where a resolution of any Dispute is agreed, the agreement will be recorded in writing.

47.5 If any of the representatives of a Party named in the table below is unable to attend a meeting, the Party in question will ensure that a substitute with appropriate authority attends.

	Authority	Supplier
Level 1	Director of Adult Social Services	Luke Joy-Smith (Regional Managing Director)
Level 2	Chief Executive	Mark Horlock (Finance Director)

47.6 The Parties shall be deemed to have exhausted the Dispute Resolution Procedure if the Dispute has not been resolved within 30 Working Days of its referral to the level 2 representatives.

46. NOTICES

46.1 Any notices sent under this Agreement must be in writing.

46.2 Subject to Clause 46.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

46.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Supplier	Authority
Contact	Luke Joy-Smith (Regional Managing Director)	Head of Commercial and Procurement
Address	2nd Floor, Building 1430, Arlington Business Park, Theale, Reading, RG7 4SA	County Hall Taunton Somerset, TA1 4DY
Email	Luke.Joy-Smith@somerset.gov.uk	DMFitzgerald@somerset.gov.uk

46.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 46.2:

46.4.1 Step-In Notices;

46.4.2 Force Majeure Notices;

46.4.3 notices issued by the Supplier pursuant to Clause 35.3 (Termination by the Supplier);

- 42.2 In the event that any deemed deletion under Clause 42.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 42.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 42.2, the matter shall be dealt with in accordance with the Dispute Resolution Procedure except that if the level 2 representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 42.3.

43. **FURTHER ASSURANCES**

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Agreement.

44. **ENTIRE AGREEMENT**

- 44.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 44.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 44.3 Nothing in this Clause 44 shall exclude any liability in respect of misrepresentations made fraudulently.

45. **THIRD PARTY RIGHTS**

- 45.1 For the purposes of the CRTPA, this Agreement confers benefits upon:

45.1.1 Relevant Stakeholder Beneficiaries; and

45.1.2 the persons referred to in Clause 22.1 (IPRs Indemnity), any Replacement Supplier in respect of Schedule 8.4 (Exit Management) and of Schedule 9.1 (Staff Transfer) and those referred to in Schedule 9.2 (Pensions),

(each such person a "Third Party Beneficiary") in respect of the provisions relating to the Services (in the case of Relevant Stakeholder Beneficiaries) and in respect the specified provisions (in the case of the other persons referred to) (such provision being the "Third Party Provisions") and the Third Party Provisions are intended to be enforceable by the relevant Third Parties Beneficiaries by virtue of the CRTPA.

- 45.2 Subject to Clause 45.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 45.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 45.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 45.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

- 41.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 41.2 The Supplier shall not during the term of this Agreement:
 - 41.2.1 commit a Prohibited Act; and/or
 - 41.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 41.3 The Supplier shall during the term of this Agreement:
 - 41.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 41.3.2 keep appropriate records of its compliance with its obligations under Clause 41.3.1 and make such records available to the Authority on request.
- 41.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 41.1 and/or 41.2, or has reason to believe that it has or any of the Supplier Personnel have:
 - 41.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 41.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 41.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 41.5 If the Supplier makes a notification to the Authority pursuant to Clause 41.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 15 (Records, Reports, Audits and Open Book Data).
- 41.6 If the Supplier is in Default under Clauses 41.1 and/or 41.2, the Authority may by notice:
 - 41.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - 41.6.2 immediately terminate this Agreement.
- 41.7 Any notice served by the Authority under Clause 41.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).
- 42. **SEVERANCE**
- 42.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

performs any of the functions that previously had been performed by the Authority and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 38.2.

38.3 A change in the legal status of the Authority such that it ceases to be a local authority shall not affect the validity of this Agreement and this Agreement shall be binding on any Successor Body to the Authority.

38.4 Upon the occurrence of any of the following (each a "Novation Trigger"):

38.4.1 the Supplier ceasing to be a charity;

38.4.2 any other Supplier Termination Event occurs,

the Authority may serve notice upon the Supplier, copied to the Managing Sub-contractor, requiring the Supplier to effect a novation of this Agreement (and the Supplier's rights and obligations under Leases, Licences and any Asset and Contract Transfer Agreement) to the Managing Sub-contractor (acknowledging the Managing Sub-contractor's commitment to agree to such a novation under the terms of the Direct Agreement). Upon service of the Authority's notice:

(a) the Supplier shall, and shall procure that the Managing Sub-contractor shall, enter into a novation under which the rights and obligations under such agreement (and the associated rights and obligations under Leases, Licences and any Asset and Contract Transfer Agreement) shall be transferred from the Supplier to the Managing Sub-contractor (subject to the Authority providing its agreement thereto);

(b) the novation shall be upon the terms set out in the agreed form in Appendix 2 to Schedule 4.2 (Corporate Structure of Supplier) and shall be executed no later than 10 Working Days of the Authority notification (subject to the Authority's execution thereof by such date).

39. **WAIVER AND CUMULATIVE REMEDIES**

39.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

39.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

40. **RELATIONSHIP OF THE PARTIES**

Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

41. **PREVENTION OF FRAUD AND BRIBERY**

41.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

41.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

SECTION J - MISCELLANEOUS AND GOVERNING LAW

37. COMPLIANCE

Health and Safety

- 37.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with all applicable Law regarding health and safety and shall at all times take all such precautions as are necessary to protect the health and safety of all persons who may be affected by the provision of the Services including Customers, Supplier Personnel and members of the public.
- 37.2 On request the Supplier shall provide to the Authority copies of the Supplier's health and safety risk assessments relating to the Services and shall comply with any obligations relating to health and safety reporting set out in this Agreement.

Community Safety

- 37.3 The Authority has a statutory duty under Section 17 of the Crime and Disorder Act 1998 and Police and Justice Act 2006 to prevent crime, disorder and the misuse of drugs, alcohol and other substances in the county of Somerset. The Supplier will take reasonable and appropriate action to inhibit the causes and consequences of criminal, abusive, intimidatory and antisocial behaviour wherever possible.
- 37.4 The Supplier shall comply with any obligations relating to community safety reporting set out in this Agreement showing how community safety has been considered in relation to the provision of Services under this Agreement.

Equality and Diversity

- 37.5 The Supplier shall:
- 37.5.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (b) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- 37.5.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

38. ASSIGNMENT AND NOVATION

- 38.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority (such consent, where the Supplier proposes to novate all of its rights and obligations to the Managing Sub-contractor, not to be unreasonably withheld or delayed).
- 38.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to any body which

Payments by the Authority

- 36.3 If this Agreement is terminated by the Authority pursuant to Clause 35.1.1 (Termination by the Authority), the Authority shall pay the Supplier the Termination Payment (which shall be the Supplier's sole remedy for the termination of this Agreement).
- 36.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 35.1.2, 35.1.3 and/or 35.1.4 (Termination by the Authority), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- 36.4.1 payments in respect of any Assets or apportionments in accordance with Schedule 8.4 (Exit Management), where applicable; and
 - 36.4.2 payments in respect of unpaid Charges for Services received up until the Termination Date.
- 36.5 The costs of termination incurred by the Parties shall lie where they fall if the Authority terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 35.1.3 (Termination by the Authority) or in connection with the Initial Pensions Bond pursuant to Clause 35.1.5.

Payments by the Supplier

- 36.6 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of termination or expiry.
- 36.7 If this Agreement is terminated by the Supplier pursuant to Clause 35.3.3 (Termination by the Supplier), the Supplier shall pay the Authority a sum equivalent to the Authority's Direct Losses resulting from such termination which shall include the Authority's cost of procuring Replacement Services but, for the avoidance of doubt, shall not include the associated incremental costs described in Clause 28.9.3 (which, together, shall be the Authority's sole remedy for the termination of this Agreement).

No cross termination

- 36.8 The Authority's rights of termination under this Agreement are independent of any rights under any other agreement between the Authority and the Supplier and (save as set out in such other agreement) shall not, of themselves, give the Authority a right to terminate any such other agreement.

Termination for Convenience

35.5 In relation to the right of either Party to terminate this Agreement for convenience:

35.5.1 the relevant Party's Termination Notice shall be served no later than 3 months following the date on which the:

(a) policy change, change in Law or change in the way that the Supplier delivers Services; or

(b) policy change or change in the Authority's published commissioning strategy,

(as the case may be) occurs or, if later, the date on which the Party is, or ought reasonably to be, aware of the same;

35.5.2 the Supplier shall not be entitled to exercise its right to terminate for convenience under Clause 35.3.3 prior to the expiry of the second Contract Year or during the final 12 months of the Term (regardless of whether the Term is brought to an end by effluxion of time or by early termination).

35.6 If the Authority terminates this Agreement by issuing a Termination Notice for the failure of the Supplier to procure the execution of the Initial Pensions Bond by the Planned Services Commencement Date pursuant to Clause 35.1.5 or Clause 35.1.2 under limb (n) of the definition of Supplier Termination Event, then:

35.6.1 each Party's rights and obligations under the Asset and Contract Transfer Agreement shall cease to have effect and the Initial Transferring Assets and Initial Transferring Contracts shall not transfer to the Supplier or its Sub-contractors; and

35.6.2 the Authority shall not grant to the Supplier the Leases and Licences which are due to be entered into pursuant to this Agreement and any Leases and Licences entered into prior to the Services Commencement Date shall be terminated with immediate effect.

36. CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

36.1 The provisions of Clauses 13.4 (Charges and Invoicing), 13.9 and 13.10 (VAT), 13.11 and 13.12 (Set-off and Withholding), 15 (Records, Reports, Audits and Open Book Data), 17.6 (Income Tax and National Insurance Contributions), 19 (Intellectual Property Rights), 20 (Licences Granted by the Supplier), 22.1 (IPRs Indemnity), 24 (Confidentiality), 25 (Freedom of Information), 26 (Protection of Personal Data), 28 (Liability), 36 (Consequences of Expiry or Termination), 42 (Severance), 44 (Entire Agreement), 45 (Third Party Rights), 47 (Disputes) and 49 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 7.1 (Charges and Invoicing), 7.2 (Payments on Termination), 7.4 (Financial Reports), 8.4 (Exit Management), 9.1 (Staff Transfer) and 9.2 (Pensions), shall survive the termination or expiry of this Agreement.

Exit Management

36.2 The Parties shall comply with the provisions of Schedule 8.4 (Exit Management), the relevant provisions of Schedules 9.1 (Staff Transfer) and 9.2 (Pensions) and any current Exit Plan in relation to:

36.2.1 the orderly cessation of Services under this Agreement; and/or

36.2.2 where required, the orderly transition of the Services to the Authority or a Replacement Supplier including where such transition follows a re-procurement of services similar to the Services.

Termination Event; and/or

- 35.2.4 has the right to terminate this Agreement under Clauses 35.1.1, 35.1.2 or Clause 35.1.3, it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement (in the case of Clause 35.1.2 or Clause 35.1.3 to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances).

Termination by the Supplier

- 35.3 The Supplier may by issuing a Termination Notice to the Authority, terminate this Agreement:

35.3.1 if the Authority fails to pay any undisputed sum due to the Supplier under this Agreement which in aggregate exceeds the average monthly Charge based on the Charges for the three months prior to the month in which the failure to pay arose, and such amount remains outstanding 30 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier;

35.3.2 if the Authority commits a material Default which is irremediable or commits a material Default that is capable of remedy and fails to remedy the same within 40 Working Days of a notice from the Supplier to do so; or

35.3.3 for convenience at any time (subject to the provisions of Clause (b) and Clause 35.5),

provided that:

- (a) within 5 Working Days of the date of issue of the Termination Notice, the Authority shall notify the Supplier of the required Termination Date (which shall not be less than 20 Working Days or more than 365 days from the date of the issue of the Termination Notice);
- (b) where the Supplier is terminating this Agreement under Clause 35.3.3, it shall only do so following service of a notice informing the Authority that it is considering such a termination and providing details of the reasons for considering this course of action (acknowledging that this shall be limited to material policy change at a national level or where there is a change in the Authority's published commissioning policy following the Effective Date that gives rise to a material conflict with the Supplier's published strategy, which at the Effective Date is set out in the document entitled "Boundaries and Beliefs" dated July 2016); and
- (c) following termination by the Supplier pursuant to Clause 35.3.1, and during the subsequent Exit Period, the Authority shall continue to be under an obligation to pay the Supplier all sums as they become due and payable under this Agreement.

Partial Termination

- 35.4 The Parties shall agree the effect of any Contract Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:

35.4.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;

35.4.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and

35.4.3 the Supplier shall not be entitled to reject the Contract Change.

SECTION I – TERMINATION AND EXIT MANAGEMENT

35. TERMINATION RIGHTS

Termination by the Authority

35.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:

35.1.1 for convenience at any time (subject to Clauses 35.2.1 and 35.5);

35.1.2 if a Supplier Termination Event occurs;

35.1.3 if a Force Majeure Event endures for a continuous period of more than 90 days;

35.1.4 for Procurement Reasons; or

35.1.5 if the Supplier fails to procure the execution of the Initial Pensions Bond by the Planned Service Commencement Date and such failure does not arise as a result of an Initial Pensions Bond Default,

and this Agreement shall terminate on the date specified in the Termination Notice which shall not be:

- (a) less than 1 Working Day in the case of a termination under Clause 35.1.2 pursuant to limb (n) of the definition of Supplier Termination Event or a termination under Clause 35.1.5;
- (b) less than 20 Working Days in the case of a termination under Clauses 35.1.2 (other than pursuant to limb (n) of the definition of Supplier Termination Event), 35.1.3 or 35.1.4;
- (c) less than 180 days in the case of a termination under Clause 35.1.1; or
- (d) more than 365 days from the date of the issue of the Termination Notice.

35.2 Where the Authority:

35.2.1 is terminating this Agreement under Clause 35.1.1, it shall only do so following service of a notice informing the Supplier that it is considering such a termination and providing details of the reasons for considering this course of action (acknowledging that this shall be limited to material policy change at a national level, where the Authority ceases to be required by Law to make provision for services similar to the Services or where a change in the way in which the Supplier delivers the Services gives rise to a material conflict with the Authority's commissioning strategy);

35.2.2 is terminating this Agreement under Clause 35.1.2 due to the occurrence of limb (b) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default;

35.2.3 is terminating this Agreement under Clause 35.1.4 due to the occurrence of:

- (a) either limb (a) and/or (c) of the definition of Procurement Reasons, such termination shall be deemed to be a termination for convenience by the Authority provided that, save as specified in Clause 36.4, no compensation or other payment of any kind shall be payable by the Authority for such termination whether pursuant to Clause 36.3 or otherwise;
- (b) limb (b) of the definition of Procurement Reasons, such termination shall be deemed for all purposes to be a termination for Default pursuant to a Supplier

Supplier can demonstrate was caused by the Force Majeure Event (and, where relevant, the Implementation Plan and/or Transformation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Force Majeure Event); and/or

- (c) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

34.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

34.8 Relief from liability for the Affected Party under this Clause 34 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 34.7.

34. FORCE MAJEURE

- 34.1 Subject to the remaining provisions of this Clause 34 (and, in relation to the Supplier, subject to its compliance with its business continuity and disaster recovery obligations in Schedule 2.1 (Specifications)), a Party may claim relief under this Clause 34 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 34.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 34.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 34 to the extent that consequences of the relevant Force Majeure Event:
- 34.3.1 are capable of being mitigated by any of the Services including the business continuity and disaster recovery services in Schedule 2.1 (Specifications), but the Supplier has failed to do so; and/or
 - 34.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 34.4 Subject to Clause 34.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 34.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 34.6 Where, as a result of a Force Majeure Event:
- 34.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event, it shall not be liable for any Default arising as a result of such failure;
 - 34.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:
 - (a) the Authority shall not be entitled:
 - (i) to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 35.1.3 (Termination by the Authority);
 - (ii) during the continuance of the Force Majeure Event to exercise its rights under Clause 31 (Remedial Adviser) as a result of such failure; or
 - (iii) to receive Service Credits to the extent that a KPI Failure has been caused by the Force Majeure Event; and/or
 - (b) where reasonably requested by the Supplier, the Authority shall postpone any relevant Milestone Date by a period equal to the period of delay that the

can demonstrate that the Default would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 33):

- 33.1.1 the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Default was caused by the Authority Cause;
- 33.1.2 the Authority shall not be entitled to exercise any rights to the extent those rights arise as a result of that Default;
- 33.1.3 where the Default constitutes the failure to achieve a Milestone by its Milestone Date:
 - (a) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
 - (b) where reasonably requested by the Supplier, the Implementation Plan and/or Transformation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause; and/or
- 33.1.4 where the Default constitutes a KPI Failure:
 - (a) the Supplier shall not be liable to accrue Service Credits;
 - (b) the Supplier shall be entitled to invoice for the Service Charges for the relevant Services affected by the Authority Cause,

in each case, to the extent that the Supplier can demonstrate that the KPI Failure was caused by the Authority Cause.

For the avoidance of doubt, a Default for the purposes of this Clause 33 will include a Notifiable Default, any form of KPI Failure, a Delay, Step-In Trigger Event and/or Intervention Trigger Event.

- 33.2 In order to claim any of the rights and/or relief referred to in Clause 33.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Default, give the Authority notice (a "**Relief Notice**") setting out details of:

- 33.2.1 the Default;
- 33.2.2 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;
- 33.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- 33.2.4 the relief claimed by the Supplier.

- 33.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Default and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief, consulting with the Supplier where necessary. If the Authority does not agree with the contents of the Relief Notice, it shall refer the matter as a Dispute to the Dispute Resolution Procedure.

- 33.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including the duration and consequences of any Delay or anticipated Delay.

- 33.5 Any Contract Change that is required to the Implementation Plan pursuant to this Clause 33 shall be implemented in accordance with the Change Control Procedure.

and

32.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 32.

32.3 For so long as and to the extent that the Required Action is continuing, then:

32.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

32.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 32.4 shall apply to Deductions from Charges in respect of other Services; and

32.3.3 the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.

32.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:

32.4.1 the degradation of any Services not subject to the Required Action; or

32.4.2 the non-achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to a reasonable and proportionate adjustment of the Charges (to be requested by the Supplier and agreed using the Change Control Procedure).

32.5 Before ceasing to exercise its step in rights under this Clause 32 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:

32.5.1 the Required Action it has actually taken; and

32.5.2 the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 32.6.

32.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.

32.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

32.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 32, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

32.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or

32.8.2 limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

33. **AUTHORITY CAUSE**

33.1 Notwithstanding any other provision of this Agreement, if the Supplier has committed a Default and

47.7 Subject to Clause 47.8, following exhaustion of the Dispute Resolution Procedure, Disputes may be referred to the courts for resolution in accordance with Clause 49.

47.8 Nothing in this Dispute Resolution Procedure shall prevent either Party from seeking from any court of competent jurisdiction an order restraining the other Party from doing any act or compelling the other Party to do any act.

47.9 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

48. COUNTERPARTS

48.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

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

49. GOVERNING LAW AND JURISDICTION

49.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

49.2 Subject to the Dispute Resolution Procedure, the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

IN WITNESS whereof this document has been executed as a Deed and is delivered and takes effect on the date first above written.

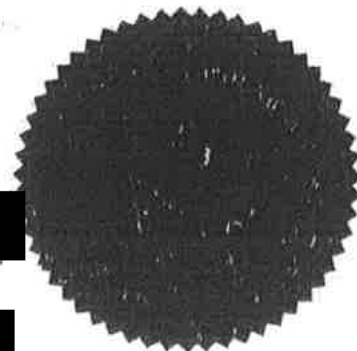
Number in Register
29085

EXECUTED as a Deed (but not delivered until dated) by affixing the common seal of SOMERSET COUNTY COUNCIL in the presence of:

)
)
)
)

Authorised Signatory

Name



OFFICIAL

EXECUTED as a Deed (but not delivered
until dated) by DIMENSIONS SOMERSET
SEV LTD acting by an Authorised Signatory
in the presence of:

[REDACTED]

Company Secretary

[REDACTED]

Name

[REDACTED]

Authorised Signatory

[REDACTED]

Name