

OFFICIAL SENSITIVE
CPA 08, SOUTH YORKSHIRE, BIDDER 382

**AGREEMENT FOR THE SALE AND PURCHASE OF THE
SHARE CAPITAL OF THE SOUTH YORKSHIRE COMMUNITY
REHABILITATION COMPANY LIMITED**

DATED

THE SECRETARY OF STATE FOR JUSTICE

AND

SODEXO LIMITED

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THIS AGREEMENT is made on

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** of 102 Petty France, London SW1H 9AJ (the **Seller**); and
- (2) **SODEXO LIMITED** (registered number 00842846) whose registered office is at One Southampton Row, London WC1B 5HA (the **Purchaser**).

BACKGROUND:

- (A) In January 2013, the Government published the Consultation Paper 'Transforming Rehabilitation: A revolution in the way we manage Offenders' outlining the Secretary of State for Justice's proposals for Transforming Rehabilitation.
- (B) In May 2013, the Government published the Response to Consultation 'Transforming Rehabilitation: A Strategy for Reform' setting out how the Government will transform the way offenders are rehabilitated to make progress in driving down reoffending rates.
- (C) On 19 September 2013, the Secretary of State for Justice published Contract Notice "3190-2-Reducing Reoffending-MC-CN" in the Official Journal of European Union.
- (D) The Seller now wishes to:
 - (i) appoint The South Yorkshire Community Rehabilitation Company Limited (the **Company**) and the Company wishes to be appointed as a provider of services on the terms set out in the Services Agreement; and
 - (ii) sell and the Purchaser wishes to purchase ten ordinary shares with a nominal value of £1 in the issued share capital of the Company on the terms set out in this agreement.
- (E) The Seller is beneficially entitled to all the issued share capital of the Company.

IT IS AGREED as follows:

1. INTERPRETATION

- 1.1 In addition to terms defined elsewhere in this agreement, the definitions and other provisions in Schedule 8 apply throughout this agreement, unless the contrary intention appears.
- 1.2 In this agreement, unless the contrary intention appears, a reference to a clause, subclause or schedule is a reference to a clause, subclause or Schedule of or to this agreement. The Schedules form part of this agreement.
- 1.3 The headings in this agreement do not affect its interpretation.

2. SALE AND PURCHASE OF THE SHARES

- 2.1 The Seller shall sell and the Purchaser shall purchase the Shares.
- 2.2 The Shares shall be sold with full title guarantee and together with all rights attaching to it.
- 2.3 The initial consideration for the sale of the Shares shall be £10 (the **Initial Consideration**).

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- 2.4 The Initial Consideration shall be adjusted following Completion as follows:
- (a) if the Net Assets exceed £10, it shall be increased by the amount by which the Net Assets exceed that amount, subject to a maximum increase of £100,000; and
 - (b) if the Net Assets are less than £10, it shall be reduced by the amount by which the Net Assets are less than that amount.
- 2.5 If as a result of such an adjustment:
- (a) the amount of the Initial Consideration is increased, the Purchaser shall make a payment to the Seller of a sum equal to that increase; or
 - (b) the amount of the Initial Consideration is reduced, the Seller shall make a payment to the Purchaser of a sum equal to that reduction.
- 2.6 Any such payment shall be made within 10 Business Days following the day on which the Statement of Financial Position is delivered by the Seller to the Purchaser as contemplated by Schedule 6.

3. PRE-COMPLETION COVENANTS

- 3.1 In the period up to Completion, the Seller:
- (a) shall procure that the Company shall issue and allot nine ordinary shares and a special share to the Seller; and
 - (b) may modify any of the Statutory Transfer Schemes or The Offender Management Act 2007 (Probation Services) Staff Transfer Scheme 2014 pursuant to the terms thereof.
- 3.2 In the period from and including 1 January 2015 to Completion, the Seller may make a scheme pursuant to paragraph 2 (*Property transfer schemes*) or paragraph 5 (*Staff transfer schemes*) of Schedule 2 to the Offender Management Act 2007.
- 3.3 Subject to subclauses 3.1 and 3.2, until Completion, the Seller shall, to the extent permitted by the Interim Services Agreement and applicable law and regulation:
- (a) procure that the Purchaser and its agents and advisers are given reasonable access to the Properties and to the books and records of the Company during normal business hours on any Business Day and on reasonable notice to the Seller;
 - (b) provide such information regarding the businesses and affairs of the Company as the Purchaser may reasonably require;
 - (c) exercise all rights and powers available to it with a view to procuring that, except with the written consent of the Purchaser (such consent not to be unreasonably withheld or delayed), the Company shall not depart in any material respect from the ordinary course of its day-to-day business; and
 - (d) save in the normal course of business, not make any material change in the terms and conditions of employment of any of the Company's employees or employ or terminate (except for good cause) the employment of any person.

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- 3.4 Subject to subclauses 3.1 and 3.2, until Completion, the Seller shall, to the extent permitted by applicable law and regulation, procure that the Company shall not:
- (a) save for under and in accordance with the Interim Services Agreement:
 - (i) borrow any money (except routine drawings and other than normal trade credit in the ordinary course of business);
 - (ii) amend any contract which would result in any material change in the nature or scope of the operations of the Company;
 - (iii) incur any single expenditure exceeding £5,000 on capital account;
 - (iv) institute or settle any litigation which is likely to result in a payment to or by the Company of £5,000 or more except for any litigation in relation to: (A) any matter relating to this agreement; (B) any matter within the scope of a current accounting provision; or (C) any litigation which is covered by the indemnity in subclause 9.1;
 - (v) acquire any assets with a book value exceeding £5,000 except in the ordinary course of business; and
 - (vi) dispose of or create an Encumbrance in respect of any assets with a book value exceeding £5,000 except in the ordinary course of business; and
 - (b) agree to any material amendment to the Interim Services Agreement.

4. COMPLETION

4.1 Subject to subclause 4.2, Completion shall take place on the Completion Date (or on such other date as the Seller and the Purchaser may agree in writing).

4.2 Subject to subclause 4.6, if:

- (a) on or prior to the Completion Date, the validity of the Services Agreement or the Transaction is subject to challenge by way of legal proceedings (whether by judicial review or otherwise), Completion shall be postponed until, in relation to each applicable legal proceeding, the lawfulness of the Services Agreement or the Transaction (as applicable) has been upheld by a court of competent jurisdiction in a judgment that has become final in that it is no longer subject to appeal or other review (**Determination**); or
- (b) prior to the Completion Date, the validity of the Services Agreement or the Transaction has been subject to challenge by way of legal proceedings (whether by judicial review or otherwise) and, in the reasonable opinion of the Seller, it would be incompatible with the judgment of the court, to proceed with Completion, Completion shall be postponed until the Seller has taken all such steps as are required such that to proceed with Completion would no longer be incompatible with the judgment of the court.

In either case, the Seller shall notify the Purchaser in writing of the revised Completion Date, which in relation to subclause (a) shall be as soon as reasonably practicable after the Determination and in relation to subclause (b) shall be as soon as reasonably practicable after the steps referred to in subclause (b) have been completed.

4.3 At Completion:

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

4.4 The Purchaser shall not be entitled in any circumstances to rescind or terminate this agreement from the date of this agreement.

4.5 A failure by the Purchaser to observe and perform the provisions of Part 2 of Schedule 5 at Completion in accordance with subclause 4.3(b) above could cause irreparable harm and/or significant loss to the Seller, which may not be ascertainable or adequately remedied by damages. Accordingly, the Purchaser acknowledges and agrees that, should the Purchaser be in breach of subclause 4.3(b) above:

- (a) notwithstanding any other rights or remedies available to the Seller, the Seller may without proof of special damages seek an immediate injunction, specific performance or other equitable remedy in respect of such breach; and
- (b) the Purchaser shall not oppose any application by the Seller for any such remedy.

4.6 If Completion does not take place on or before the Long-stop Date:

- (a) except for this subclause, clauses 1, 10, 11, 12, 13, 14, 15, 16 and 17, and the provisions of Schedule 8, all the provisions of this agreement shall lapse and cease to have effect; but
- (b) neither the lapsing of those provisions nor their ceasing to have effect shall affect any accrued rights or liabilities of any party in respect of damages for non-performance of any obligation under this agreement falling due for performance prior to such lapse and cessation.

5. POST-COMPLETION EMPLOYEE DATA ADJUSTMENT

5.1 At any time within 60 days after the Completion Date, the Purchaser can require by written notice to the Seller that the Purchaser and the Seller meet (at a time and place to be mutually agreed by the Purchaser and the Seller acting reasonably) to discuss and agree the Employee Data Adjustment.

5.2 The written notice referred to in clause 5.1 must attach an Updated Employee Data Template together with all supporting data relating to the information included in the Updated Employee Data Template. The Purchaser must answer all reasonable enquiries made by the Seller in respect of the Updated Employee Data Template and supporting data.

5.3 The Seller and the Purchaser shall (each acting reasonably) meet to discuss and agree:

- (a) a lump sum (the **Fixed Employee Data Adjustment**); and/or
- (b) a change to the figures in Band 6 of the Fixed FFS column of each table in Appendix 3 to Schedule 11 of the Services Agreement (the total aggregate amount of those changes, the **Ongoing Employee Data Adjustments**),

which, in aggregate, achieves, so far as is reasonably practicable, a position in which, in respect of each Contract Year (as defined in the Services Agreement), the Purchaser is in no better or worse financial position as a result of the payment of the Fixed Employee Data Adjustment and/or the Ongoing Employee Data Adjustments than it would have been had the information in the Employee Data Template been true and accurate as at 1 June 2014.

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- 5.4 At the same time as the Seller and the Purchaser agree the Ongoing Employee Data Adjustments, they shall agree a corresponding change to the figures in each of the other Bands in the Fixed FFS column of each table in Appendix 3 to Schedule 11 of the Services Agreement (the **Other FFS Bands**).
- 5.5 The Employee Data Adjustment shall be subject to the limitations and other provisions set out in Schedule 7.
- 5.6 If the Purchaser and the Seller cannot agree a Fixed Employee Data Adjustment and/or any element of the Ongoing Employee Data Adjustments (or any of the corresponding changes to the Other FFS Bands) within one month after the Purchaser has responded to all reasonable enquiries made by the Seller pursuant to clause 5.2, the item or items in dispute shall first be escalated in accordance with clause 41.1 of the Services Agreement. If the dispute is not resolved in accordance with clause 41.1 of the Services Agreement, it shall, notwithstanding clause 41.2(a) of the Services Agreement, be referred to adjudication in accordance with clause 41.2 of the Services Agreement and all experts appointed under clause 41.2(b)(ii) or 41.2(b)(v) of the Services Agreement shall be members of the Institute of Chartered Accountants in England and Wales.
- 5.7 If a Fixed Employee Data Adjustment is agreed in writing between the Seller and the Purchaser, or resolved in accordance with clause 5.6, the Seller shall pay to the Purchaser such Fixed Employee Data Adjustment.
- 5.8 The Seller must pay any Fixed Employee Data Adjustment to the Purchaser on or before the date falling two months after that Fixed Employee Data Adjustment is agreed in writing between the Seller and the Purchaser or resolved in accordance with clause 5.6.

6. INDEBTEDNESS

- 6.1 The Seller shall procure that on Completion all indebtedness owing immediately before Completion from the Seller to the Company (other than amounts owing by way of trade credit in the ordinary course of trading as a result of goods or services supplied on normal arm's length terms) is or has been satisfied in full together with all interest accruing on it up to (but excluding) Completion.
- 6.2 The Purchaser shall procure that on Completion all indebtedness owing immediately before Completion from the Company to the Seller (other than amounts owing by way of trade credit in the ordinary course of trading as a result of services supplied on normal arm's length terms) is satisfied in full together with all interest accruing on it up to (but excluding) Completion. The Seller shall notify the Purchaser in writing of the amount of such indebtedness at least three Business Days before Completion. Such indebtedness shall be repaid in full to the Seller in immediately available funds in the relevant currency without any withholding or deduction (except as required by law, in which case the Company shall, where applicable, provide to the Seller a valid certificate of deduction of Tax) by telegraphic transfer to the account of the Seller notified in advance.
- 6.3 For the purposes of this clause 6, indebtedness shall include all amounts owed by the Seller to the Company or by the Company to the Seller under and in accordance with the terms of the Interim Services Agreement.

7. SELLER'S WARRANTIES

- 7.1 The Seller warrants to the Purchaser that, except as disclosed to the Purchaser in the Data Room or, in respect of paragraph 1.21(d) of Schedule 3 only, the Disclosure Letter:
- (a) each of the Warranties (other than the Warranties set out in paragraphs 1.7 and 1.8 of Schedule 3) is, subject to subclause 7.2, true and accurate on the date of this agreement; and

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- (b) each of the Warranties set out in paragraphs 1.1, 1.2, 1.7 and 1.8 of Schedule 3 is true and accurate at Completion.

7.2 Clause 7.1 shall apply as if:

- (a) none of the Warranties, other than those set out in paragraph 1.13 of Schedule 3, relate in any way to regulatory and compliance matters;
- (b) none of the Warranties, other than those set out in paragraph 1.15 of Schedule 3, relate in any way to the Properties or any of them;
- (c) none of the Warranties, other than those set out in paragraph 1.21 of Schedule 3, relate in any way to employment matters; and
- (d) none of the Warranties, other than those set out in paragraph 2 of Schedule 3, relate in any way to Taxation.

7.3 The Warranties and any Warranty Claim shall be subject to the limitations and other provisions set out in Schedule 4.

8. PURCHASER'S WARRANTIES

The Purchaser warrants to the Seller that:

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

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9. EMPLOYEES

9.1 On and after Completion, the Seller shall indemnify the Purchaser against any liability arising in respect of any current or former employee of the Company (or any individual who claims to have a contract of employment with the Company) which arises out of:

- (a) any act or omission by the Seller, the Company or the Probation Trust before Completion; or
- (b) any other event, matter or circumstance occurring before Completion while that employee was employed by either the Seller, the Company or the Probation Trust.

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

9.2 If the Purchaser becomes aware of any matter which might give rise to a claim for an indemnity under this clause from the Seller, the following provisions shall apply:

- (a) the Purchaser shall give written notice to the Seller of the matter in respect of which the indemnity is being claimed (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Seller with respect to the matter. If the matter has become the subject of any proceedings the Purchaser shall give the notice within sufficient time to enable the Seller time to contest the proceedings before any first instance judgement in respect of such proceedings is given;
- (b) the Purchaser shall:
 - (i) take such action and institute such proceedings, and give such information and assistance, as the Seller or its insurers may reasonably request to dispute, resist, defend, compromise, remedy, mitigate or appeal, the matter or enforce against any person (other than the Seller) the rights of the Purchaser or its insurers in relation to the matter;
 - (ii) in connection with any proceedings related to the matter (other than against the Seller) use professional advisers nominated by the Seller or its insurers and, if the Seller or its insurers so request, allow the Seller or its insurers the exclusive conduct of the proceedings in each case on the basis that the Seller will fully indemnify the Purchaser for all costs incurred as a result of any request or nomination by the Seller or its insurers; and
 - (iii) not admit liability in respect of or settle the matter without the prior written consent of the Seller, such consent not to be unreasonably withheld or delayed; and
- (c) if the Seller has conduct of any litigation and negotiations in connection with a claim, the Seller will promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the claim, to cause the Purchaser to be in breach of its obligations to its current or past employees or to cause the Purchaser's business interests to be materially prejudiced.

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- 9.3 The Purchaser covenants with the Seller that it shall not and shall procure that no other member of the Purchaser's Group (including, following Completion, the Company) for the time being shall for a period of two years after Completion:
- (a) induce or attempt to induce any person who is at Completion a senior or key employee of the Seller to leave the employment of the Seller; or
 - (b) employ or attempt to employ any person who is at Completion a senior or key employee of the Seller.
- 9.4 The Seller covenants with the Purchaser that it shall not for a period of two years after Completion:
- (a) induce or attempt to induce any person who is immediately following Completion a senior or key employee of the Company to leave the employment of the Company; or
 - (b) employ or attempt to employ any person who is immediately following Completion a senior or key employee of the Company.
- 9.5 The restrictions in subclauses 9.3 and 9.4 shall not prevent the Seller or the Purchaser from publishing any recruitment advertisement in any local or national newspaper or other publication or on any website, or from negotiating with or employing any person who replies to any such advertisement or who initiates any contact with the Seller or the Purchaser.
- 9.6 Each of the restrictions in subclauses 9.3 and 9.4 shall be enforceable independently of each of the others and its validity shall not be affected if any of the others is invalid.
- 9.7 If any of those restrictions is void but would be valid if some part of the restriction were deleted, the restriction in question shall apply with such modification as may be necessary to make it valid.
- 9.8 The Purchaser and the Seller acknowledge that the above provisions of subclauses 9.3 and 9.4 are no more extensive than is reasonable to protect the other.

10. ANNOUNCEMENTS AND CONFIDENTIALITY

- 10.1 Subject to subclauses 10.6 and 10.7, the Seller shall (and shall procure that, in respect of the period up to Completion, the Company, and each such person's advisers and connected persons, shall) and the Purchaser shall (and shall procure that each member of the Purchaser's Group, and, in respect of the period from Completion, the Company, and each such person's advisers and connected persons, shall):
- (a) not make or authorise any public or private announcement concerning the sale and purchase of the Shares or any related or ancillary matter except (i) with the written approval of the other parties or (ii) where required by Legislation; and
 - (b) keep confidential the provisions listed in Schedule 4 of the Services Agreement (the **Commercially Sensitive Information**), and the negotiations relating to, each Transaction Document.
- 10.2 The parties agree that the provisions of this agreement and the Tax Deed (other than the Commercially Sensitive Information) shall not be treated as confidential and may be disclosed without restriction. The Purchaser acknowledges and agrees that the Seller will publish this agreement and the Tax Deed on a website.

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- 10.3 The parties acknowledge that the National Audit Office has the right to publish details of this agreement (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 10.4 The Purchaser:
- (a) shall, and shall procure that each other member of the Purchaser's Group for the time being shall, keep confidential all information provided to it by or on behalf of the Seller or otherwise obtained by it in connection with this agreement which relates to the Seller or any Seller Related Party; and
 - (b) shall procure that, if after Completion the Company holds confidential information relating to the Seller or any Seller Related Party, the Company shall after Completion keep that information confidential and shall return that information to the Seller or destroy it, in either case without retaining copies.
- 10.5 Except to the extent specified in such clauses, the provisions of subclauses 10.1 and 10.4 shall apply before, on and after Completion.
- 10.6 Nothing in subclauses 10.1(b) or 10.4 prevents any confidential information being disclosed:
- (a) where the confidential information disclosed comprises only information set out in an announcement in the Agreed Form;
 - (b) with the written approval of the other parties;
 - (c) to a Taxation Authority for the purpose of dealing with the Tax affairs of the Seller, the Purchaser or the Company; or
 - (d) to the extent required by any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned, but if a person is so required to disclose any confidential information, the relevant party shall promptly notify the other parties, where practicable and lawful to do so, before the disclosure occurs and shall co-operate with the other parties regarding the timing and content of such disclosure or any action which the other parties may reasonably elect to take to challenge the validity of such requirement.
- 10.7 Nothing in subclauses 10.1(b) or 10.4 prevents any confidential information being disclosed to the extent:
- (a) required under and in accordance with the terms and conditions of the Services Agreement;
 - (b) required to enable any person to enforce its rights under any Transaction Document or for the purpose of any dispute proceedings;
 - (c) that the information is disclosed on a strictly confidential basis by a person to its professional advisers, auditors or bankers;
 - (d) that the information is disclosed by the Seller on a strictly confidential and need to know basis to another Seller Related Party or any other department, office or agency of the Government or by the Purchaser on a strictly confidential and need to know basis to another member of the Purchaser's Group; or

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(e) that the information is in or comes into the public domain (other than as a result of a breach of this clause).

10.8 The provisions of this clause are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

11. NOTICES

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

(a) to the Seller at:

Director of Commercial and Contract Management
10th Floor (Red Zone)
102 Petty France
London SW1H 9AJ

marked for the attention of: Vincent Godfrey,

with a copy (which shall not constitute notice) to:

Floor 6.02,
102 Petty France
London SW1H 9AJ

marked for the attention of: Head of Commercial Law Team; and

(b) to the Purchaser at:

Sodexo Limited
One Southampton Row
London
WC1B 5HA

Fax: 0203 116 4559

marked for the attention of: Head of Contract Management (Probation Services),

with a copy (which shall not constitute notice) to:

Sodexo Limited
One Southampton Row
London
WC1B 5HA

Fax: 0203 116 4559

marked for the attention of: Company Secretary,

or at any such other address or facsimile number as it shall have notified to the other parties in accordance with this clause. Any notice or other communication sent by post shall be sent by

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prepaid first class recorded delivery post (if within the United Kingdom) or by prepaid airmail (if elsewhere).

- 11.2 Any notice or other communication shall be deemed to have been given:
- (a) if delivered, on the date of delivery; or
 - (b) if sent by post, on the second Business Day after it was put into the post; or
 - (c) if sent by fax, on the date of transmission, if transmitted before 3.00 p.m. (local time at the country of destination) on any Business Day, and in any other case on the Business Day following the date of transmission.
- 11.3 In proving the giving of a notice or other communication, it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted by prepaid first class recorded delivery post or by prepaid airmail or that the facsimile message was properly addressed and transmitted, as the case may be.
- 11.4 This clause shall not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this agreement.

12. ASSIGNMENTS

- 12.1 Subject to subclause 12.2 and 12.3 no party may assign, transfer or otherwise dispose of any of its rights or transfer (including by way of novation) or otherwise dispose of any of its obligations under this agreement or the Tax Deed without the prior written consent of the other party and any such purported assignment, transfer or disposal shall be void.
- 12.2 The restrictions in subclause 12.1 shall not prevent the Seller from assigning, transferring (including by way of novation) or otherwise disposing of (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) all (and not part only of) its rights and obligations under this agreement and the Tax Deed to:
- (a) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
 - (b) any local authority which has sufficient financial standing or financial resources to perform the obligations on the part of the Seller under this agreement and the Tax Deed; or
 - (c) any other public body whose obligations under this agreement and the Tax Deed are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Purchaser) by the Seller or a Minister of the Crown,

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

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

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12.3 The restrictions in subclause 12.1 shall not prevent the Purchaser from assigning all (and not part only of) its rights under this agreement and the Tax Deed for the purposes of obtaining financing and if it does so:

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

13. PAYMENTS

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

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

bank: Citi Bank
sort code: 08-33-00
account number: 12307588
account name: GBS RE NOMS AGENCY,

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

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

bank: HSBC Bank plc, Client Service, PO Box 70783, London SE1P 4HX
sort code: 40-02-50
account number: 01302701
account name: Sodexo Ltd Sodexo Justice Services,

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

13.2 If the Seller is required by law to make a deduction or withholding in respect of any sum payable under this agreement, the Seller shall, at the same time as the sum which is the subject of the deduction or withholding is payable, make a payment to the Purchaser as shall be required to ensure that the net amount received by the Purchaser will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.

14. GENERAL

14.1 The receipt by the Purchaser or the Purchaser's Solicitors (if applicable) of any document to be delivered at Completion to the Purchaser shall discharge the Seller's obligation to deliver it to the Purchaser.

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

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

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

15. WHOLE AGREEMENT

- 15.1 This agreement, the other Transaction Documents, the Guarantee, the Deed of Amendment and the Services Agreement contain the whole agreement between the parties relating to the transactions contemplated by the Transaction Documents, the Guarantee, the Deed of Amendment and the Services Agreement and supersede all previous agreements, whether oral or in writing, between the parties relating to these transactions except the confidentiality agreement dated 11 November 2013 between Sodexo Limited and the Seller. Except as required by statute, no terms shall be implied (whether by custom, usage or otherwise) into this agreement.
- 15.2 Each party:
- (a) acknowledges that in agreeing to enter into this agreement, the other Transaction Documents, the Guarantee, the Deed of Amendment and the Services Agreement it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those repeated in the Transaction Documents, the Guarantee, the Deed of Amendment or the Services Agreement) made by or on behalf of any other party before the entering into of this agreement;

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- (b) waives all rights and remedies which, but for this subclause 15.2, might otherwise be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance; and
- (c) acknowledges and agrees that no such express or implied representation, warranty, collateral contract or other assurance may form the basis of, or be pleaded in connection with, any claim made by it under or in connection with this agreement.

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

16. GOVERNING LAW AND JURISDICTION

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

16.2 The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this agreement) and the parties submit to the exclusive jurisdiction of the English courts.

17. LANGUAGE

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

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

SCHEDULE 1

THE COMPANY

Company name: The South Yorkshire Community Rehabilitation Company Limited

Registered number: 08802527

Registered office: 45 Division Street,
Sheffield,
England,
S1 4GE

Date and place of incorporation: 4 December 2013, England and Wales

Directors: Ms Janice Dianne Hannant
Mr Mervyn Kenneth Thomas
Mr Kenneth John Wyatt
Mrs Amanda Louise Cullen

Secretary: Mr David Leslie Cutting

VAT number: 185186773

Accounting reference date: 31 March

Auditors: The Comptroller and Auditor General, National Audit Office, 157-197 Buckingham Palace Road, Victoria, London, SW1 W9SP

Issued ordinary share capital: £1 (1 ordinary share of £1)

SCHEDULE 2

PROPERTIES

PART 1

LEASED PROPERTIES

<i>(1)</i> <i>Address of Property</i>	<i>(2)</i> <i>Term</i>	<i>(3)</i> <i>Rent (£)</i>
Yarborough Terrace, Bentley DONCASTER, DN5 9TH	From 1 June 2014 to 30 December 2015	66,675

PART 2

LICENSED PROPERTIES

<i>(1)</i> <i>Address of Property</i>	<i>(2)</i> <i>Licence Period</i>	<i>(3)</i> <i>Licence Fee (£)</i>
34 Bennetthorpe, DONCASTER, South Yorkshire, DN2 6AD	From 1 June 2014 to 30 December 2015	81,991
CS Store, Masborough Street, ROTHERHAM, Yorkshire, S60 1HW	From 1 June 2014 to 30 December 2015	64,072
Land between Pitsmoor Road, and Pinfold Lane In the City of Sheffield	From 1 June to 30 December 2015	49,751
Ground, First and Second Floors, West Bar, 1-3, West Bar, Snig Hill, Sheffield	From 1 June 2014 to 30 December 2015	140,076
45 Division Street, SHEFFIELD, South Yorkshire, S1 4GE	From 1 June 2014 to 30 December 2015	199,287
Ground Floor Premises at Acorn House, Mount Osbourne Business Park, Oakwell View, Barnsley	From 1 June 2014 to 30 December 2015	109,319
Ground and First Floors of Unit 2 And 3, Ashley Business Court, Rawmarsh Road, Rotherham South Yorkshire S60 1RU	From 1 June 2014 to 30 December 2015	86,639

PART 3

OTHER PROPERTIES

<i>Properties occupied by the Company under locally agreed arrangements</i>
South Yorkshire Probation Trust, 42 Sidney Street, Sheffield, S1 4RH
South Yorkshire Probation Trust, Court House, Churchfields, Barnsley, S70 2HW
South Yorkshire Probation Trust, Sheffield Crown Court, 50 West Bar, Sheffield

SCHEDULE 3

SELLER'S WARRANTIES

1. GENERAL

1.1 Incorporation and capacity of Seller

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

1.2 Valid obligations

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

1.3 Recitals and Schedules

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

1.4 Incorporation of the Company

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

1.5 Statutory books

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

1.6 Ownership of the ordinary share on the date of this agreement

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

1.7 Ownership of the Shares at Completion

- (a) The issued and allotted ordinary share capital of the Company is £10 (10 ordinary shares of £1 each). This constitutes the whole of the issued and allotted ordinary share capital of the Company and each of these ordinary shares is fully paid up.
- (b) There is no Encumbrance on, over or affecting the Shares.
- (c) The Seller is entitled to transfer or procure the transfer of the full legal and beneficial ownership in the Shares to the Purchaser on the terms set out in this agreement.

1.8 Special share at Completion

The issued and allotted special share capital of the Company is £1 (1 special share of £1). This constitutes the whole of the issued and allotted special share capital of the Company and the special share is fully paid up.

1.9 Subsidiaries and associates

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

1.10 Ownership of assets

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

1.11 Information

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

1.12 Management Accounts

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

1.13 Compliance with laws

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

1.14 Permits

The Company has all material permits required for the carrying on of the business now carried on by it in the places and in the manner in which that business is now carried on.

1.15 Properties

- (a) The Properties are the only real property owned, controlled, used or occupied by the Company.
- (b) The Company occupies each of the Licensed Properties under a Licence and together with the Seller is in non-exclusive occupation of each of them under the terms of the relevant Licence.
- (c) The Company holds each of the Leased Properties under a Lease and is in exclusive occupation of each of them under the terms of the relevant Lease.
- (d) Each of the Licences and the Leases grants the rights necessary for the current use and enjoyment of the applicable Licensed Property or Leased Property in accordance with its terms.
- (e) So far as the Seller is aware, none of the Licensed Properties or Leased Properties is subject to any rights in favour of any third party which materially interfere with its current use.

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- (f) No Outgoings are payable in respect of any of the Licensed Properties or Leased Properties by the Company except in the case of each Licensed Property the Licence Fee and in the case of each Leased Property the Rent.
- (g) So far as the Seller is aware, there is no covenant, restriction, burden or stipulation affecting any Licensed Property or Leased Property which conflicts with its current use.

1.16 Systems

For the purposes of this paragraph 1.16, **Systems** means the software, hardware, network and telecommunications equipment and internet-related information technology other than the Authority ICT Applications and the Authority ICT Networks (each as defined in the Services Agreement) that are material to the Company in connection with the operation of its business as currently conducted.

- (a) Brief details of the Systems are contained in the Data Room.
- (b) So far as the Seller is aware, there are no ongoing security breaches, breakdowns, malfunctions, data loss or failures in the Systems that would directly prevent the Company from delivering any of the service levels set out in schedule 7 of the Services Agreement (if the Services Agreement was in full force and effect as at the date of this agreement) on the date of this agreement.

1.17 Contracts

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

1.18 Litigation

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

1.19 Anti-bribery and corruption

- (a) So far as the Seller is aware, the Company is not in violation of any provision of the U.K. Bribery Act of 2010.

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- (b) So far as the Seller is aware, the Company has not been subject to any investigation by any government agency with regard to any payment, bribe, rebate, payoff, influence payment, facilitation payment, kickback or other unlawful payment or gift of money or anything of value prohibited under the U.K. Bribery Act of 2010.

1.20 Solvency

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

1.21 Employees

- (a) There is not in existence any written or unwritten contract of employment between the Company and a director or an employee of the Company which cannot be terminated by 12 months' notice or less.
- (b) Other than in relation to its chief executive officer, there is not outstanding any agreement or arrangement to which the Company is a party for profit-sharing or for payments to any of its directors or employees of bonuses or for incentive payments or other similar matters and there are no other material payments to employees which have not been disclosed.
- (c) None of the current directors or managing directors of the Company has given or been given notice to terminate his employment.
- (d) No dispute has arisen since the Relevant Date between the Company and a material number or category of its employees or with any trade union.

2. TAX

2.1 Taxation liabilities

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

2.2 Taxation returns

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

3. PENSIONS

For the purposes of this paragraph 3:

Retirement Benefits means benefits payable by reference to reaching, or expecting to reach, retirement or a particular age or payable by reason of serious ill-health, incapacity or death and any retirement benefit within the meaning of section 255 of the Pensions Act 2004; and

Scheme means each of the following pension schemes:

- (a) the Local Government Pension Scheme; and
- (b) the Principal Civil Service Pension Scheme.

3.1 Documentation

In relation to each Scheme, the Seller has disclosed:

- (a) all documents setting out the benefits of each Scheme applicable to the Company's employees where those documents are not already public information; and
- (b) all written discretionary arrangements operated by the Company in relation to the benefits payable under the Schemes.

3.2 No other schemes

Except pursuant to the Schemes the Company has not paid, provided or contributed towards, and the Company is not under any obligation or commitment (whether or not legally enforceable) to pay, provide or contribute towards, any Retirement Benefits for or in respect of any person or any other costs or expenses in respect of the provision of any such benefits.

3.3 All contributions paid

All due payments in respect of each Scheme (whether payable by the Company or the members) have been made to the person to whom they are due.

3.4 Compliance

- (a) So far as the Seller is aware, the Company has complied in all material respects with its obligations under the documentation and applicable law governing the Schemes.
- (b) Every person who is entitled to membership of each Scheme has been admitted to, or invited to join that Scheme as of the date on which he became so entitled.

3.5 Disputes

In relation to each Scheme, no material litigation has been instigated against the Company in relation to membership of the Scheme by its employees or former employees.

SCHEDULE 4

WARRANTY CLAIMS

1. Acknowledgement

Without prejudice to the Purchaser's rights under the Tax Deed, the Purchaser acknowledges and agrees that it is not aware of any matter or circumstance which is inconsistent with any of the Warranties or makes any of them untrue or inaccurate.

2. Notice

If the Purchaser or the Company becomes aware of a matter or circumstance which may give rise to a Warranty Claim, the Seller shall not be liable in respect of it unless the Purchaser gives notice to the Seller specifying that matter or circumstance in reasonable detail (including, without limitation, the Purchaser's estimate, on a without prejudice basis, of the amount of such claim) as soon as reasonably practicable (and in any event within 90 days) after it or the Company (as the case may be) becomes aware of that matter or circumstance. The Seller shall not be liable for any losses in respect of a Warranty Claim to the extent that they are increased, or are not reduced, as a result of any failure by the Purchaser to give notice as contemplated by this paragraph.

3. Exclusions

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

- (a) was taken into account in the Management Accounts or the Statement of Financial Position or is otherwise reflected in the Management Accounts or the Statement of Financial Position (including, without limitation, by way of a note or a statement in any report forming part of the Management Accounts or the Statement of Financial Position); or
- (b) is the subject of a claim under the Tax Deed and the Purchaser receives a payment in respect thereof under the Tax Deed; or
- (c) is or arises directly or indirectly from any matter or circumstance disclosed in the Data Room or, in respect of a Warranty Claim under paragraph 1.21(d) of Schedule 3 only, the Disclosure Letter; or
- (d) is a matter or circumstance of which the Purchaser has actual, imputed or constructive knowledge at the date of this agreement (and, without prejudice to the generality of the foregoing, the Purchaser shall be deemed to have actual knowledge of the contents of the Data Room); or
- (e) has been or is made good or is otherwise compensated for without cost to the Purchaser or the Company.

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

- (a) any change after Completion of the date to which the Company makes up its accounts or in the bases, methods, principles or policies of accounting of the Company other than a change which is reported by the auditors for the time being of the Company to be necessary in their opinion because such bases, methods, principles or policies of accounting as at the date of

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Completion are not in accordance with any published accounting practice or principle then current; or

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

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

4. Financial limits

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

- (a) the Seller shall not be liable in respect of, and there shall be disregarded for all purposes, any Warranty Claim or claim under the Tax Deed unless the amount of the damages to which the Purchaser would, but for this subparagraph, be entitled as a result of that Warranty Claim or claim under the Tax Deed exceeds £10,000;
- (b) the Seller shall not be liable in respect of any Warranty Claim unless the amount of damages resulting from any and all Warranty Claims (other than claims disregarded as contemplated by subparagraph (a) above) exceeds in aggregate the lower of:
 - (i) ten per cent. of the maximum aggregate liability of the Seller under paragraph (c) below; or
 - (ii) £100,000,

in which case the Purchaser shall be entitled to all amounts resulting from those claims (and not just the excess over that sum); and

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- (c) the maximum aggregate liability of the Seller in respect of the Employee Data Adjustment and any and all Warranty Claims and any and all claims under the Tax Deed shall not exceed the lower amount of either:
 - (i) £1,000,000; or
 - (ii) the higher of: (A) an amount equal to 50 per cent. of the Consideration; and (B) £100,000.

5. Time limits

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

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

except in respect of any Warranty Claim of which notice is given to the Seller as contemplated by paragraph 2 of this Schedule 4 before the relevant date. The liability of the Seller in respect of any Warranty Claim shall in any event terminate if proceedings in respect of it have not been commenced within six months after the giving of notice of that Warranty Claim as contemplated by paragraph 2 of this Schedule 4 (or, if the Warranty Claim is based on a liability which is contingent only, within three months after such contingent liability gives rise to an obligation to make a payment) unless that Warranty Claim arises as a result of, or in connection with, a Third Party Claim (as defined in paragraph 8 of this Schedule 4) and the Seller shall have assumed conduct of that Third Party Claim in accordance with paragraph 8 of this Schedule 4.

6. Assessment of damages

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

7. Payment of damages

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

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8. Third party claims

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

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

8.2 If a Warranty Claim other than a Tax Warranty Claim arises as a result of, or in connection with, a Third Party Claim, the Purchaser shall, until the earlier of such time as the Seller shall give any notice as contemplated by subparagraph 8.1 and such time as any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Claim or the Third Party Claim is otherwise finally disposed of:

- (a) procure that the Company consults with the Seller, and takes account of the requirements of the Seller, in relation to the conduct of any dispute, defence, compromise or appeal of the Third Party Claim;
- (b) keep, or procure that the Company keeps, the Seller promptly informed of the progress of the Third Party Claim and provide, or procure that the Company provides, the Seller with copies of all relevant documents and such other information in the Purchaser's or the Company's possession as may be requested by the Seller; and
- (c) procure that the Company shall not cease to defend the Third Party Claim or make any admission of liability, agreement or compromise in relation to the Third Party Claim without the prior written consent of the Seller.

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

- (a) that information shall only be used by the Recipient in connection with the Third Party Claim and clause 10 of this agreement shall in all other respects apply to that information; and

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- (b) to the extent that information is privileged:
 - (i) no privilege shall be waived by reason of or as a result of its being provided to the Recipient; and
 - (ii) if a third party requests disclosure by the Recipient in relation to that information, if the Recipient is the Seller or the Purchaser, the Recipient shall or, if the Recipient is the Company, the Purchaser shall procure that the Recipient shall promptly notify the Provider and, to the extent it can do so, itself assert privilege in opposition to that disclosure request.

8.4 The provisions of paragraph 2 (Conduct of Tax Claims) of Schedule 1 of the Tax Deed shall have effect as if expressly incorporated into this paragraph 8, so that those provisions shall apply to a Tax Warranty Claim.

9. Mitigation

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

10. Recovery from third parties

10.1 If:

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

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

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

- (a) the Purchaser or the Company shall give the Seller full details of the entitlement as soon as practicable and in any event within ten Business Days of the Purchaser or the Company becoming aware of those details;
- (b) the Purchaser shall at the request of the Seller and at the Seller's expense take all appropriate steps to recover or to procure the recovery of the sum, keeping the Seller fully informed of the progress of any action taken;

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- (c) the Purchaser shall as soon as practicable and in any event within ten Business Days of recovery of any sum, pay an amount equal to that sum to the Seller including any interest or repayment supplement received on or in respect of the amount payable to the Seller so far as it does not exceed any payments already made by the Seller in respect of the Warranty Claim and pay to the Seller any interest or repayment supplement received on or in respect of the amount payable to the Seller; and
- (d) so far as not paid to the Seller, the amount of the sum recovered (including any interest or repayment supplement) shall be carried forward and set against any future payment or payments which become due from the Seller under this agreement.

11. Insurance

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

12. Company

Without prejudice to the Purchaser's rights under the Tax Deed, the Purchaser shall refrain from doing, and shall procure that the Company shall refrain from doing, any act or thing (other than in the ordinary course of business of the Company) which may give rise to a Warranty Claim which would not otherwise arise.

13. Contingent liabilities

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

- (a) the fifth anniversary of the date of this agreement if the Warranty Claim is a Tax Warranty Claim; or
- (b) the third anniversary of the date of this agreement if the Warranty Claim is in respect of any other Warranty.

14. Waiver of set off rights

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

15. Remedy of breaches

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

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procure that the Company shall provide, all reasonable assistance to the Seller to remedy the relevant matter or circumstance.

16. On sales

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

17. Consequential loss

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

SCHEDULE 5

COMPLETION

PART 1

SELLER'S OBLIGATIONS

At Completion, the Seller shall procure:

- (a) the delivery to the Purchaser of:
 - (i) duly executed transfers in favour of the Purchaser or its nominee(s) of the Shares;
 - (ii) the share certificates representing the Shares (or an express indemnity in the case of if it is found to be missing);
 - (iii) such waivers or consents as may be necessary to enable the Purchaser or its nominee(s) to become the registered holder of the Shares;
 - (iv) the certificate of incorporation, common seal, minute books, statutory registers and share certificate books of the Company;
 - (v) an original Lease and Licence Agreement and a redacted copy of each Statutory Transfer Scheme (showing only those Leased Properties and Licensed Properties relating to the Company);
 - (vi) the Tax Deed duly executed by the Seller; and
 - (vii) the resignation of the auditors of the Company, in each case confirming that, in accordance with Section 519 of the Companies Act 2006, there are no circumstances connected with their resignation which should be brought to the attention of the members or creditors of the Company and that no fees are due to them, together with a statement prepared by the Company for the purposes of Section 523(2)(b)(i) of the Companies Act 2006 setting out the reasons for the auditors ceasing to hold office; and
- (b) that a board meeting of the Company is held at which it is resolved that:
 - (i) such persons as the Purchaser nominates are appointed as additional directors of the Company;
 - (ii) its registered office is changed to One Southampton Row, London WC1B 5HA;
 - (iii) the transfers referred to in subparagraph (a)(i) (subject only to their being duly stamped) are approved for registration;
 - (iv) KPMG LLP are appointed as auditors; and
 - (v) its bank mandates are revised in such manner as the Purchaser requires.

PART 2

PURCHASER'S OBLIGATIONS

At Completion, the Purchaser shall:

- (a) make a payment to the Seller of an amount equal to the Initial Consideration;
- (b) deliver to the Seller a list of persons that the Purchaser wishes to appoint as additional directors of the Company at Completion in order to ensure that, with effect from Completion, the majority of the directors of the Company have been nominated by the Purchaser;
- (c) deliver to the Seller a certified copy of the resolutions of the board of directors of the Purchaser authorising the execution of this agreement, the Tax Deed and each of the other Transaction Documents to which it is or is to be a party;
- (d) deliver to the Seller a counterpart of the Tax Deed, duly executed by the Purchaser; and
- (e) deliver to the Seller evidence in a form satisfactory to the Seller (acting reasonably) that the premiums payable under all Required Insurances have been paid and that the Required Insurances will be in full force and effect with effect from Completion in accordance with the requirements of clause 26 and schedule 16 (Insurance) of the Services Agreement. The supply to the Seller of any evidence of insurance cover in compliance with the requirements of this paragraph (e) shall not imply acceptance by the Seller that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of the Services Agreement.

SCHEDULE 6

STATEMENT OF FINANCIAL POSITION

PART 1

PREPARATION OF THE STATEMENT OF FINANCIAL POSITION

1. PREPARATION OF THE STATEMENT OF FINANCIAL POSITION

On Completion the Seller and the Purchaser shall carry out a stock take of the stock of the Company. To enable the Net Assets to be ascertained, as soon as reasonably practicable and by no later than 30 Business Days following Completion, the Seller shall deliver to the Purchaser a statement of financial position of the Company as at Completion (the **Statement of Financial Position**). The Statement of Financial Position shall be prepared in the form and include the items shown in Part 2 of this Schedule 6 and in accordance with the specific policies set out in Part 3 of this Schedule 6.

2. NOTIFICATION OF DISPUTED ITEMS

- (a) Within ten Business Days of delivery to the Purchaser of the Statement of Financial Position, the Purchaser shall give a notice to the Seller of any item or items it wishes to dispute together with the reasons for such dispute and a list of proposed adjustments.
- (b) If notice is given to the Seller as to any item or items in dispute in accordance with paragraph 2(a) of this Schedule 6:
 - (i) the Seller and the Purchaser shall attempt to agree in writing the item or items disputed by the Seller;
 - (ii) if any such item or items are not agreed in writing between the Seller and the Purchaser within 20 Business Days of the delivery to the Purchaser of the Statement of Financial Position, the Purchaser may refer the item or items in dispute to Independent Accountants for determination.
- (c) The Seller and the Purchaser shall agree terms of engagement with the Independent Accountants as soon as reasonably practicable after the Independent Accountants are nominated and shall not withhold or delay their consent to such terms if they are reasonable and consistent with the provisions of this agreement. The Seller and the Purchaser shall counter-sign the terms of appointment as soon as they are agreed.
- (d) The Independent Accountants shall act on the following basis:
 - (i) the Independent Accountants shall act as experts and not as arbitrators;
 - (ii) the item or items in dispute shall be notified to the Independent Accountants in writing by the Purchaser within five Business Days of the Independent Accountants' appointment;
 - (iii) the Independent Accountants shall decide the procedure to be followed in the determination;
 - (iv) the Purchaser shall procure that the Company shall provide the Independent Accountants promptly with all access to premises, information, assistance (including assistance from employees) and access to books and records of account, documents, files, working papers and information stored electronically which they reasonably require, and the Independent

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Accountants shall be entitled (to the extent they consider it appropriate) to base their determination on such information and on the accounting and other records of the Company;

- (v) the determination of the Independent Accountants shall (in the absence of manifest error) be final and binding on the parties; and
 - (vi) the costs of the determination, including fees and expenses of the Independent Accountants, shall in all circumstances be borne by the Purchaser.
- (e) The Statement of Financial Position, adjusted to take account of each item in dispute (of which notice is given in accordance with this Schedule) as agreed in writing between the Seller and the Purchaser or as determined by the Independent Accountants (as the case may be), shall constitute the final Statement of Financial Position for the purposes of this agreement.

3. PROVISION OF INFORMATION

The Purchaser shall, and shall procure that the Company shall, provide the Seller with all access to premises, information, assistance (including assistance from employees of the Purchaser and the Company) and access to (including the ability to take copies of) books and records of account, documents, files, working papers and information stored electronically which it may reasonably require for the purposes of this Schedule 6.

PART 2

PRO FORMA STATEMENT OF FINANCIAL POSITION

Non current assets:

Property Plant and equipment

land

buildings

information technology

plant and equipment

furniture, fixtures and fittings

Intangible assets

internally generated software

software

licences

Financial assets

Trade and other receivables

Total non-current assets

£

Current Assets:

Trade and other receivables

trade receivables

taxation

prepayments and accrued income

Cash and cash equivalents

Total current assets

£

Total Assets

£

Current Liabilities:

Trade and other payables

trade payables

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VAT

current part of finance lease

other taxes and social security

accruals

deferred income

other payables

Provisions

Total current liabilities £

Non-current assets plus/less net current assets/liabilities £

Non-current liabilities

Provisions

Trade and other payables

trade payables

finance leases

Total non-current liabilities £

Assets less liabilities £

PART 3

SPECIFIC POLICIES FOR PREPARATION OF THE STATEMENT OF FINANCIAL POSITION

The Statement of Financial Position will be prepared in accordance with the 2013-14 Government Financial Reporting Manual (the **FReM**) issued by Her Majesty's Treasury (other than in relation to any assets or liabilities in relation to the Company's participation in and liabilities under the Local Government Pension Scheme). The accounting policies contained in the FReM follow International Financial Reporting Standards as adopted or interpreted for the public sector context.

Where the FReM permits a choice of accounting policy, the policy which is judged the most appropriate for the purpose of giving a true and fair view will be selected.

1. CRITICAL ACCOUNTING ESTIMATES AND JUDGEMENTS

Estimates and judgements are evaluated continually and will be based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances.

2. SIGNIFICANT ACCOUNTING POLICIES AND VALUATION PRINCIPLES

The significant accounting policies and valuation principles will be as follows:

2.1 Measurement Basis

The Statement of Financial Position will be prepared on an accruals basis under the historical cost convention and will be modified to account for the revaluation of non-current assets, where material, at their value to the Company.

2.2 Functional and presentational currency

Transactions that are denominated in a foreign currency will be translated into British pounds sterling at the exchange rate specified in the contract. Transactions that are not covered by a related forward contract will be translated into British pounds sterling at the exchange rate ruling on the date of each transaction, except where rates do not fluctuate significantly, in which case an average rate for the period will be used. Monetary assets and liabilities denominated in a foreign currency at Completion will be translated into British pounds sterling at the exchange rate ruling on the date of Completion.

3. NON-CURRENT ASSETS

3.1 Property, plant and equipment

(a) Capitalisation threshold

The threshold for capitalising individual assets will be in a range of £5,000-£10,000 (the **Capitalisation Threshold**); property, plant and equipment with an initial value less than the Capitalisation Threshold will be expensed as incurred. Expenditure will be capitalised where it is directly attributable to bringing an asset into working condition, such as relevant employee costs and an appropriate portion of relevant overheads.

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(b) Valuation basis

Property, plant and equipment will be stated at fair value as determined by the application of modified historic cost accounting.

(c) Valuation method

All property, plant and equipment is assessed annually for indications of impairment at the reporting date. Where indications of impairment exist, the asset value is tested for impairment by comparing the book value to the recoverable amount. In accordance with International Accounting Standard 36, the recoverable amount is determined as the higher of the 'fair value less costs to sell' and the 'value in use'.

(d) Depreciation

Depreciation will be charged on a straight-line basis at rates calculated to write off the value of assets less estimated residual value evenly over their estimated useful lives or, for leased assets, over the life of the lease or the period implicit in the repayment schedule.

3.2 Intangible assets

(a) General

Intangible assets will only be recognised in so far as it is probable that future service potential will flow to the Company and the cost of the asset can be measured reliably.

Expenditure will be capitalised where it is directly attributable to bringing an intangible asset into working condition and the carrying value will be assessed at cost less any accumulated amortisation and accumulated impairment losses.

Intangible assets with an initial value less than the Capitalisation Threshold will be expensed as incurred.

Expenditure will be capitalised where it is directly attributable to bringing an intangible asset into working condition, such as relevant employee costs and an appropriate portion of relevant overheads.

(b) Amortisation

Intangible assets will be amortised on a straight line basis calculated to write off the value of the asset over their estimated useful lives.

(c) Impairment

All intangible assets will be assessed for indications of impairment. Where the recoverable amount of the intangible asset is less than its carrying value, the carrying value will be reduced to its recoverable amount.

3.3 Financial assets

Shares in affiliated undertakings will be valued at their historical acquisition cost.

3.4 Employee benefits

(a) Pensions – Principal Civil Service Pension Scheme

The provisions of the Principal Civil Service Pension Scheme cover certain past and present employees. While this is an unfunded defined benefit scheme, in accordance with FReM 12.2.5, the Company accounts for it as a defined contribution scheme. The Seller recognises the expected cost of the Principal Civil Service Pension Scheme on a systematic and rational basis over the period during which it benefits from the employees' services by payment of charges calculated on an accruing basis. Liability for payment of future benefits is a charge on the Principal Civil Service Pension Scheme.

(b) Pensions – Defined contribution schemes

Under any defined contribution schemes (or sections of schemes) the Company's legal or constructive obligation is limited to the amount that it agrees to contribute to the scheme. The Company recognises contributions payable as an expense in the year in which it is incurred.

4. FINANCIAL INSTRUMENTS

4.1 Trade and other receivables

Trade and other receivables will comprise trade receivables, other receivables and accrued income that have fixed or determinable payments that are not quoted in an active market. Trade and other receivables are initially recognised at fair value and subsequently measured at fair value with an allowance for any indications of an estimated impairment.

At Completion, judgement will be exercised when their reimbursement is wholly or partially in doubt and an adjustment will be made in order to reflect that loss. Trade and other receivables will be included as current assets, except for maturities greater than 12 months after the date of Completion, which will be classified as non-current assets.

Trade and other payables will comprise trade payables, finance lease liabilities, taxation, other payables and accruals. All financial liabilities are initially measured at fair value, net of transaction costs and subsequently measured at amortised cost using the effective interest method, where they are significant and long term.

4.2 Leases

A distinction will be made between finance leases and operating leases. Finance leases are leases where substantially all of the risks and rewards incidental to ownership of leased non-current assets are transferred from the lessor to the lessee when assessed against the qualitative and quantitative criteria in International Accounting Standard 17. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

4.3 Finance Leases

Finance lease rights and obligations are initially recognised at the commencement of the lease term as assets and liabilities equal in amount to the fair value of the leased item or, if lower, the present value of the minimum lease payments determined at the inception of the lease. Finance lease liabilities will be allocated between current and non-current components. The principal component of lease payments due on or before the end of the succeeding year will be disclosed as a current liability, the remainder will be disclosed as a non-current liability.

4.4 Operating Lease

Operating leases will be those leases that are not a finance lease. Rentals under operating leases will be charged to the statement of comprehensive net expenditure on a straight-line basis.

5. CASH AND CASH EQUIVALENTS

Cash and cash equivalents will include cash in hand, deposits held on call with banks and bank overdrafts that are readily convertible to a known amount of cash and are subject to insignificant risk of changes in value.

6. PROVISIONS AND ACCRUALS

The provisions for liabilities and charges will be intended to cover losses or debts the nature of which is clearly defined and which, at the date of Completion, are either likely to be incurred or certain to be incurred but uncertain as to their amount or as to the date on which they will arise.

The recognition and measurements of provisions for liabilities and charges will rely on the application of professional judgement and experience. Where the likelihood of a liability crystallising is deemed probable, and can be recognised with reasonable certainty, a provision will be recognised. The amount recognised as a provision will be the best estimate of the consideration required to settle the present obligation at the end of the reporting period, taking into account the risks and uncertainties surrounding the obligation.

When a provision is measured using the cash flows estimated to settle the present obligation, its carrying amount will be the present value of those cash flows (when the effect of the time value of money is material).

7. TAX

7.1 Value Added Tax

Most activities are within the scope of VAT and, in general, output tax is charged and input tax on purchases is recoverable. Capitalised purchase cost of non-current assets will be stated net of recoverable VAT. Where output tax is charged or input VAT is recoverable, the amounts will be stated net of VAT.

7.2 Corporation Tax

The Company is subject to corporation tax on its profits and 'profit' for this purpose means income and chargeable gains. The Statement of Financial Position will include estimates of corporation tax liabilities.

SCHEDULE 7

EMPLOYEE DATA ADJUSTMENT LIMITATIONS

1. Exclusions

- 1.1 The Seller shall not be liable in respect of any amount of the Employee Data Adjustment to the extent that the matter or circumstance giving rise to that amount of the Employee Data Adjustment:
- (a) was taken into account in the Management Accounts or the Statement of Financial Position or is otherwise reflected in the Management Accounts or the Statement of Financial Position (including, without limitation, by way of a note or a statement in any report forming part of the Management Accounts or the Statement of Financial Position); or
 - (b) is a matter or circumstance of which the Purchaser has actual, imputed or constructive knowledge at the date of this agreement (and, without prejudice to the generality of the foregoing, the Purchaser shall be deemed to have actual knowledge of the contents of the Data Room).
- 1.2 The Seller shall not be liable in respect of any amount of the Employee Data Adjustment related to a Taxation liability if any profits or amount to which the relevant Taxation is attributable were earned or received by or accrued to the Company but were not reflected in the Management Accounts or the Statement of Financial Position.

2. Financial limits

- 2.1 The Employee Data Adjustment shall be limited as follows:
- (a) subject to subparagraph (b), the Seller shall not be liable in respect of, and there shall be disregarded for all purposes, any amount of the Employee Data Adjustment relating to a single employee unless that amount exceeds £10,000;
 - (b) if the Employee Data Template is inaccurate in respect of more than one employee, and such inaccuracies arise from, or are caused by, the same matters or circumstances, and the amount of the Employee Data Adjustment to which the Purchaser would be entitled as a result of such inaccuracies exceeds £10,000 in aggregate, subparagraph (a) shall not apply to such amount of the Employee Data Adjustment;
 - (c) the Seller shall not be liable in respect of the Employee Data Adjustment unless the Employee Data Adjustment (other than amounts disregarded as contemplated by subparagraph (a) above) exceeds the lower of:
 - (i) ten per cent. of the maximum aggregate liability of the Seller under paragraph (d) below; or
 - (ii) £100,000,in which case the Purchaser shall be entitled to all the Employee Data Adjustment (and not just the excess over that sum); and
 - (d) the maximum aggregate liability of the Seller in respect of the Employee Data Adjustment and any and all Warranty Claims and any and all claims under the Tax Deed shall not exceed the lower amount of either:

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- (i) £1,000,000; or
- (ii) the higher of: (A) an amount equal to 50 per cent. of the Consideration; and (B) £100,000.

3. Assessment of Employee Data Adjustment

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

4. Payment of Employee Data Adjustment

Any payment made by the Seller in respect of the Employee Data Adjustment shall, to the maximum extent possible, be deemed to be a reduction in the Consideration.

5. Third party claims

5.1 If any amount of the Employee Data Adjustment arises as a result of, or in connection with, a liability or alleged liability of the Company to a third party (a **Third Party Claim**), then the Seller may, at any time before any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Claim or the Third Party Claim is otherwise disposed of, give notice to the Purchaser that it elects to assume the conduct of any dispute, compromise, defence or appeal of the Third Party Claim and of any incidental negotiations on the following terms:

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

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- 5.2 If any amount of the Employee Data Adjustment arises as a result of, or in connection with, a Third Party Claim, the Purchaser shall, until the earlier of such time as the Seller shall give any notice as contemplated by subparagraph 5.1 and such time as any final compromise, agreement, expert determination or non-appealable decision of a court or tribunal of competent jurisdiction is made in respect of the Third Party Claim or the Third Party Claim is otherwise finally disposed of:
- (a) procure that the Company consults with the Seller, and takes account of the requirements of the Seller, in relation to the conduct of any dispute, defence, compromise or appeal of the Third Party Claim;
 - (b) keep, or procure that the Company keeps, the Seller promptly informed of the progress of the Third Party Claim and provide, or procure that the Company provides, the Seller with copies of all relevant documents and such other information in the Purchaser's or the Company's possession as may be requested by the Seller; and
 - (c) procure that the Company shall not cease to defend the Third Party Claim or make any admission of liability, agreement or compromise in relation to the Third Party Claim without the prior written consent of the Seller.
- 5.3 Nothing in this paragraph 5 shall require the provision by any person of any information to the extent such provision would contravene any applicable law or regulation or would breach any duty of confidentiality owed to any third party. If any information is provided by any person (the **Provider**) to any other person (the **Recipient**) pursuant to this paragraph 5:
- (a) that information shall only be used by the Recipient in connection with the Third Party Claim and clause 10 of this agreement shall in all other respects apply to that information; and
 - (b) to the extent that information is privileged:
 - (i) no privilege shall be waived by reason of or as a result of its being provided to the Recipient; and
 - (ii) if a third party requests disclosure by the Recipient in relation to that information, if the Recipient is the Seller or the Purchaser, the Recipient shall or, if the Recipient is the Company, the Purchaser shall procure that the Recipient shall promptly notify the Provider and, to the extent it can do so, itself assert privilege in opposition to that disclosure request.

6. Mitigation

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

7. Recovery from third parties

7.1 If:

- (a) the Seller makes a payment in respect of the Employee Data Adjustment;
- (b) at any time after the making of such payment the Company or the Purchaser receives any sum which would not have been received but for the matter or circumstance giving rise to the payment of any amount of the Employee Data Adjustment (the **Third Party Sum**);

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- (c) the receipt of the Third Party Sum was not taken into account in calculating the relevant amount of the Employee Data Adjustment; and
- (d) the aggregate of the Third Party Sum and the relevant amount of the Employee Data Adjustment exceeds the amount required to compensate the Purchaser in full for the loss or liability which gave rise to the relevant amount of the Employee Data Adjustment (such excess being the **Excess Recovery**),

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

7.2 If the Purchaser or the Company is or may be entitled to recover from a person (including any Taxation Authority, but excluding the Seller) a sum in respect of any amount of the Employee Data Adjustment, then:

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

8. Company

Without prejudice to the Purchaser's rights under the Tax Deed, the Purchaser shall refrain from doing, and shall procure that the Company shall refrain from doing, any act or thing (other than in the ordinary course of business of the Company) which may give rise to any amount of the Employee Data Adjustment which would not otherwise arise.

9. Waiver of set off rights

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

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10. On sales

The Seller shall have no liability in respect of the Employee Data Adjustment arising out of a matter or circumstance affecting the Company if the Company has ceased to be a subsidiary of the Purchaser within 60 days of Completion.

11. Consequential loss

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

SCHEDULE 8

INTERPRETATION

1. In this agreement:

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

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

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

Completion Date means 1 February 2015;

Consideration means the consideration for the sale of the Shares set out in subclause 2.3 as adjusted in accordance with subclause 2.4;

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

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

Deed of Amendment means the deed of amendment and restatement dated on the date of this agreement between the Seller and the Company;

Determination has the meaning given in subclause 4.2;

Disclosure Letter means the letter of the same date as this agreement from the Seller to the Purchaser in respect of paragraph 1.21(d) of Schedule 3 only;

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

Employee Data Adjustment means the total aggregate amount of any Fixed Employee Data Adjustment and any Ongoing Employee Data Adjustments;

Employee Data Template means the document in the Data Room titled "South Yorkshire people data template" at Data Room reference F08.40.08, being a list of employees of the Company as at 1 June 2014 together with details relating to their employment as at 1 June 2014;

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

Fixed Employee Data Adjustment has the meaning given in paragraph (a) of subclause 5.3;

Guarantee has the meaning given in the Services Agreement;

Independent Accountants means such firm of chartered accountants;

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- (a) as the Seller and the Purchaser may agree in writing within five Business Days after the expiry of the period allowed by paragraph 2(b)(ii) of Schedule 6 for the Seller and the Purchaser to reach agreement over the relevant item in dispute; or
- (b) failing such agreement, as shall be nominated for this purpose on the application of the Purchaser by the President of the Institute of Chartered Accountants in England and Wales for the time being.

Initial Consideration has the meaning given in subclause 2.3;

Interim Services Agreement means the interim services agreement between the Seller and the Company dated 1 June 2014 relating to the management of offender services in the community;

Lease means, in relation to a Leased Property, the lease contained in the Property Document under which that Leased Property is held, short details of which (being the address of the Leased Property, the term and the Rent) are set out in Part 1 of Schedule 2;

Lease and Licence Agreement means the agreement dated 30 May 2014 between the Company and the Secretary of State for Communities and Local Government relating to (a) the lease of certain of the Leased Properties, and (b) the shared occupation under licence of, and the provision of facilities in certain of the Licensed Properties (including any applicable deed of variation);

Leased Properties means those Properties shortly described in Part 1 of Schedule 2 and **Leased Property** means any of them;

Legislation has the meaning given in the Services Agreement;

Licence means, in relation to a Licensed Property, the licence contained in the Property Document under which that Licensed Property is held, short details of which (being the address of the Licensed Property, the Licence period and the Licence Fee) are set out in Part 2 of Schedule 2;

Licence Fee means the amount in column (3) of the table in Part 2 of Schedule 2;

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

Local Government Pension Scheme means the Local Government Pension Scheme established pursuant to regulations made under Sections 7 and 12 of the Superannuation Act 1972 or made or deemed to be made under the Public Service Pensions Act 2013, as amended from time to time, and the Earlier Schemes within the meaning of regulation 1(6) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, as amended from time to time;

Long-stop Date means the date one year after the date of this agreement;

Management Accounts means the unaudited management accounting information prepared by the Company and provided to the Purchaser on a monthly basis (other than for the months of June and July 2014 which shall be provided as one set of accounts) for the period from and including 1 June 2014 up to and including the Management Accounts Date. The Management Accounts comprise a trading account, material balance sheet items, a forecast and a narrative on material movements;

Management Accounts Date means 31 October 2014;

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Net Assets means the assets less liabilities of the Company as at Completion as ascertained in accordance with the provisions of Schedule 6 and shown in the Statement of Financial Position;

Ongoing Employee Data Adjustments has the meaning given in paragraph (b) of subclause 5.3;

Other FFS Bands has the meaning given in subclause 5.4;

Outgoings include:

- (a) the cost of electricity, water, gas and fuel oil (where relevant); and
- (b) costs for the provision of services that a landlord on a letting of part of a building might be expected to provide including the tenant's contribution to: (i) the cost of insuring; (ii) the cost of maintenance; (iii) the service charge; and (iv) the local authority business rates payable, for the building as a whole,

but exclude:

- (A) the cost of any dilapidations or alterations;
- (B) the cost of other services at the properties including without limitation telephone, postal charges, franking machines or similar services; and
- (C) the cost of or any charges payable for any other services provided at the property including without limitation the cost of security, reception services and consumables (such as paper, photocopiers and printers);

Principal Civil Service Pension Scheme means the public service pension scheme for civil servants established under the Superannuation Act 1972 or made or deemed to be made under the Public Service Pensions Act 2013 (as applicable) and includes the classic, classic plus, premium, and nuvos sections; the partnership pension account arrangement, the partnership pension account ill-health benefits scheme and the partnership pension account death benefits scheme; and the civil service additional voluntary contribution scheme, the civil service compensation scheme and the civil service injury benefits scheme, all as amended from time to time;

Probation Trust means South Yorkshire Probation Trust;

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

Property Document means the Lease and Licence Agreement or a Statutory Transfer Scheme;

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

Purchaser's Solicitors means Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, Holborn Viaduct, London EC4M 7RF, Attention: David Hutton;

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

Rent means the amount in column (3) of the table in Part 1 of Schedule 2;

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Required Insurances has the meaning given in the Services Agreement;

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

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

Services Agreement means the services agreement between the Seller and the Company dated 1 June 2014, as amended and restated pursuant to the Deed of Amendment, relating to the management of offender services in the community;

Shares means ten issued ordinary shares in the capital of the Company legally and beneficially owned by the Seller, as set out in Schedule 1 and **Share** means any of them;

Statement of Financial Position means the statement of financial position to be prepared, and as finalised, in accordance with Schedule 6, excluding any amounts in relation to the Company's participation in and liabilities under the Local Government Pension Scheme;

Statutory Transfer Schemes means (a) The Offender Management Act 2007 (Lease and Licence) Property Transfer Scheme 2014 and (b) The Offender Management Act 2007 (1954 Act) Property Transfer Scheme 2014 (including, in respect of (a) or (b), any applicable re-allocation document) and **Statutory Transfer Scheme** means any of them;

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

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

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

Tax Deed means the tax deed in the Agreed Form;

Tax Warranty means a warranty set out in paragraph 2 (Tax) of Schedule 3;

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

Transaction means:

- (a) the transactions or any of them described or referred to in the Transaction Documents, the Services Agreement, the Guarantee or the Deed of Amendment; or
- (b) any decision made by the Seller as part of the process to implement any of the transactions referred to in subparagraph (a), including a decision to select the Purchaser as purchaser and a decision to enter into the Transaction Documents, the Services Agreement, the Guarantee or the Deed of Amendment.

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

Updated Employee Data Template means a document in the same format as the Employee Data Template (including identical column headings), being a list of those employees of the Company as at 1 June 2014 together with details relating to their employment as at 1 June 2014, prepared by the Purchaser;

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Warranties means the statements set out in Schedule 3;

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

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

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

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

4. In this agreement:
 - (a) words denoting persons include bodies corporate and unincorporated associations of persons;
 - (b) references to an individual or a natural person include his estate and personal representatives; and
 - (c) subject to clause 12, references to a party to this agreement include the successors or assigns (immediate or otherwise) of that party.

SIGNATORIES

SIGNED by)
)
for and on behalf of)
THE SECRETARY OF STATE FOR JUSTICE)

EXECUTED by **SODEXO LIMITED**)
acting by , a director)
in the presence of:) Director

Witness's Signature

Name:

Address:

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