

Restructure Deed – Services Agreement (Compass)

The Secretary of the Department of Family and
Community Services

(FACS)

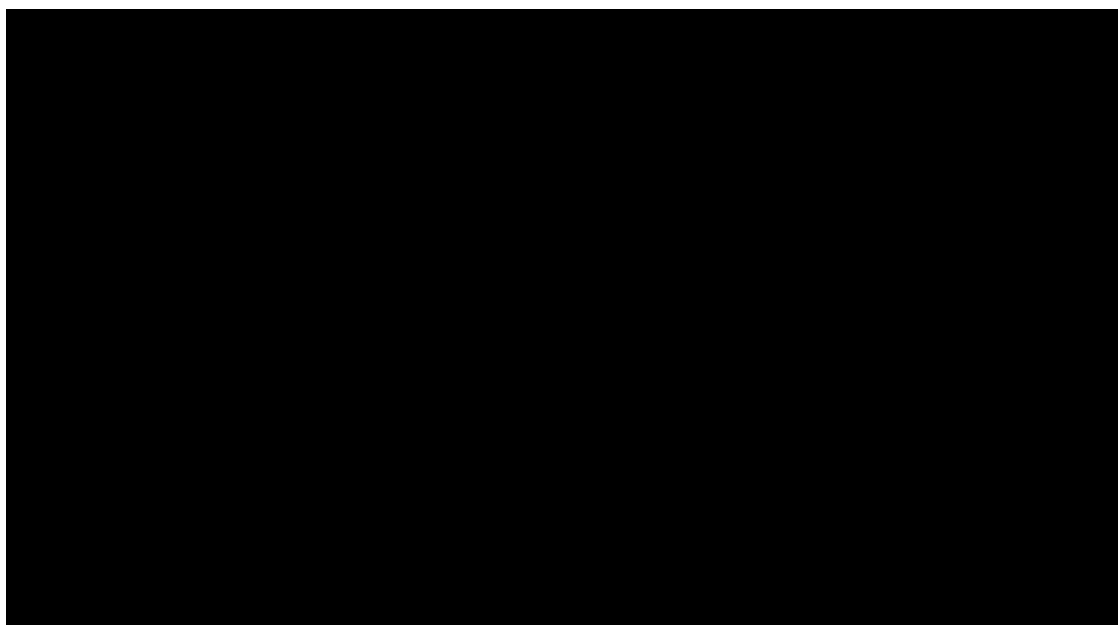
and

Compass Housing Services Co Ltd

(ServiceCo)

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Restructure Deed – Services Agreement (Compass)

Date ►

Between the parties

FACS The Secretary of the Department of Family and Community Services
as Housing Agency under section 16 of the *Community Housing
Providers (Adoption of National Law) Act 2012* (NSW)

ServiceCo Compass Housing Service Co Ltd (ACN 002 862 213)

Recitals 1 The parties entered into the deed entitled 'Social and Affordable
Housing Fund - Services Agreement' on 30 January 2017
(**Services Agreement**).

2 The parties wish to vary and restructure the arrangements in the
Services Agreement in the manner set out in this deed, including
by giving certain releases to each other.

This deed witnesses as follows:

1 Definitions, interpretation and deed components

1.1 Definitions

Capitalised terms used in this deed have the meaning given to them in the Services Agreement unless otherwise defined, and:

Compass Financial Model means Compass' audited financial model, as at the date of this Restructure Deed, a copy of which has been initialled by both parties and is annexed as Attachment 1.

Condition Precedent means each condition set out in clause 4.1.

Day 1 Restructure Documents means:

- (a) this deed;
- (b) [REDACTED]
- (c) the Cardiff Development Agreement;
- (d) the Cardiff Securities Transfer Agreement;
- (e) the Mayfield Development Agreement; and
- (f) the Mayfield Securities Transfer Agreement.

Effective Date means the date on which FACS confirms to ServiceCo that each Condition Precedent under clause 4.1 has been satisfied or waived.

FinCo means [REDACTED]

Head Lease Side Deeds means each of the head lease side deeds to be entered into [REDACTED]

Loss includes:

- (a) any cost, expense, loss, damage or liability (including legal fees, costs and disbursements on a solicitor / own client basis, determined without taxation, assessment or similar process, incurred by a party and any liability arising under a costs order) whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty.

New Service Package Documents means:

- (a) this deed;
- (b) [REDACTED]
- (c) the Head Lease Side Deeds; and
- (d) [REDACTED]

Restructure Adjustment Protocol means the protocol to:

- (a) update the Compass Financial Model; and
- (b) amend the Services Agreement,

to be applied at the Review Date, in accordance with clause 5.1 and clause 5.2 and set out in Attachment 2.

Restructure Financial Model means the Compass Financial Model as updated and audited in accordance with the Restructure Adjustment Protocol.

Restructure Model Output Schedule means the work sheets in the Restructure Financial Model identified as the 'Post Restructure Model Output Schedule'.

_____ means the financiers' tripartite deed to be entered into on or about the date of this deed between FACS, ServiceCo, FinCo and P.T Limited.

_____ means the documents listed in Schedule 2.

1.2 Interpretation

The parties agree that clause 2.1 (*Interpretation*), clauses 2.3 (*Plans, reports and procedures*) to 2.16 (*Final and binding*), clauses 2.20 (*ServiceCo and its Associates*) to 2.23 (*Severance*), and clauses 2.25 (*Moratorium legislation*) to 2.26 (*Community housing agreement*) of the Services Agreement are incorporated into this deed, as if set out in their entirety in this section 1.2, except that for the purposes of this deed references in those clauses to 'this Agreement' shall be read as references to 'this deed'.

1.3 Deed components

This deed includes any schedule and attachment.

1.4 Designation as a Service Package Document

The parties agree, with effect on and from the Effective Date, that each New Service Package Document is a Service Package Document for the purposes of the Services Agreement.

2 Amendment to Services Agreement

- (a) With effect on and from the Effective Date, the Services Agreement is amended and varied by:
 - (1) deleting the words which are struck out and inserting the words which are underlined; and
 - (2) replacing:
 - (A) Schedule 24 – Delivery Phase Milestones Schedule;
 - (B) the Initial Delivery Phase Plans and Initial Delivery Phase Program which form part of Annexure A; and
 - (C) the financial model which forms Annexure C;as shown in the form set out in Schedule 1.
- (b) Any reference to the Services Agreement (however defined) in any Service Package Document (except for this deed) is to be read as referring to the Services Agreement as amended and varied by this deed.
- (c) To the extent a Schedule or Annexure to the Services Agreement is not set out in Schedule 1, that Schedule or Annexure should not be taken to have been amended or varied.

3 Confirmation

- (a) On and with effect from the Effective Date, each party is bound by the Services Agreement as amended and varied by this deed.
- (b) Each party acknowledges that this deed is issued in accordance with the Services Agreement.

4 Conditions precedent

4.1 Conditions precedent

The Effective Date does not occur until FACS has received the following in form and of substance satisfactory to it:

- (a) **Day 1 Restructure Documents to which FACS is a party:** an original of each Day 1 Restructure Document to which FACS is a party executed by each party to it other than FACS;
- (b) **Other Day 1 Restructure Documents:** the valid execution, delivery and provision to FACS of a certified copy of each Day 1 Restructure Document to which FACS is not a party.
- (c) **Legal opinions:** legal opinions given for the benefit of FACS as to:
 - (1) the legal capacity and corporate power of ServiceCo, FinCo and P.T Limited to enter into and perform its obligations under each Day 1 Restructure Document to which it is a party;
 - (2) the enforceability against ServiceCo, FinCo and P.T Limited of each Day 1 Restructure Document to which it is a party; and
 - (3) due execution by ServiceCo, FinCo and P.T Limited of each Day 1 Restructure Document to which it is a party.
- (d) ServiceCo delivering to FACS any other opinion, certificate or document that FACS reasonably requests.

4.2 Satisfaction of Conditions Precedent

ServiceCo must satisfy each Condition Precedent (or procure its waiver in accordance with clause 4.3) within 10 Business Days of the signing of this deed and must notify FACS promptly as each Condition Precedent is satisfied.

4.3 Waiver of Conditions Precedent

A Condition Precedent is only waived if FACS gives notice of the waiver of the Condition Precedent to ServiceCo.

4.4 Failure to satisfy

If any Condition Precedent is not satisfied (or waived in accordance with clause 4.3) within 10 Business Days of the signing of this deed, then:

- (a) **(Option to terminate):** FACS may terminate this deed upon giving not less than 5 Business Days' notice to ServiceCo; and
- (b) **(Restructure Deed terminated):** if FACS terminates this deed in accordance with clause 4.4(a), the Services Agreement will remain in full force and effect in accordance with its terms.

4.5 Notice to ServiceCo

When the last Condition Precedent to be satisfied has been satisfied or waived, FACS must confirm by notice to ServiceCo that every Condition Precedent has been satisfied or waived, and the date upon which the last of the Conditions Precedent was satisfied or waived, such date being the Effective Date.

5 Financial Models

5.1 Updating the Compass Financial Model

- (a) The parties agree that the Compass Financial Model is the Financial Model as at the date of this deed and must be updated at the Review Date in accordance with the Restructure Adjustment Protocol.
- (b) The Compass Financial Model will be:
 - (1) updated by FACS in accordance with the Restructure Adjustment Protocol; and
 - (2) initialled by the parties,at the Review Date and will then become the Restructure Financial Model.
- (c) On the Review Date, Compass must provide to FACS:
 - (1) an electronic copy of the Restructure Financial Model and the Restructure Model Output Schedule;
 - (2) a letter confirming that the Restructure Financial Model is identical to the Compass Financial Model except as updated in accordance with the Restructure Adjustment Protocol or as otherwise set out in the letter; and
 - (3) an audit report on the Restructure Financial Model from an auditor acceptable to FACS.

5.2 Restructure Model Output Schedule

- (a) The parties acknowledge that the Restructure Financial Model will contain the Restructure Model Output Schedule.
- (b) As soon as practicable after the Review Date, the parties will prepare conformed copies of the Services Agreement incorporating relevant data derived from the Restructure Model Output Schedule.

6 Condition subsequent

Notwithstanding anything in the Services Agreement, ServiceCo must:

- (a) update the Delivery Plan and Delivery Phase Program to reflect the amendments to the Services Agreement effected by this deed and to otherwise satisfy the requirements of clauses 14.1(b) and 14.2(b) of the Services Agreement; and
- (b) submit those updated plans to FACS for review in accordance with the Review Procedures,

no later than 20 Business Days after the Effective Date.

7 Release

7.1 Compass release

- (a) Subject to clause 7.4, on and from the Effective Date, ServiceCo releases and discharges the Indemnified Parties from:

- (1) all Claims that ServiceCo now has, at any time had, may now or in the future have, or but for this release might have had, against the Indemnified Parties (including any of which ServiceCo is not aware, or could not have been aware, at the Effective Date) relating to or connected with any act or omission by FACS prior to the Effective Date relating to or in any way in connection with clauses 14.2(a), 14.2(b), 15.1, 15.2 and 19 of the Services Agreement (**Relevant Provisions**) including any delays in responding to notices in connection with those provisions); and
 - (2) without being limited by clause 7.1(a)(1), liability in respect of all Loss which Compass or any Related Body Corporate of Compass:
 - (A) has incurred or sustained, by virtue of or in connection with the Relevant Provisions (including any delays in responding to notices in connection with those provisions) prior to the Effective Date; or
 - (B) may incur or sustain after the Effective Date relating to or connected with any act or omission by FACS prior to the Effective Date relating to or in any way in connection with the Relevant Provisions (including any delays in responding to notices in connection with those provisions).
- (a) FACS holds the benefit of the releases under this deed on its own behalf and on trust for the Indemnified Parties.

7.2 FACS release

- (a) Subject to clause 7.4, on and from the Effective Date, FACS releases and discharges ServiceCo, their officers, employees and agents and their Related Bodies Corporate from:
- (1) all Claims that FACS now has, at any time had, may now or in the future have, or but for this release might have had, against ServiceCo (including any of which FACS is not aware, or could not have been aware, at the Effective Date) relating to or connected with any act or omission by ServiceCo prior to the Effective Date relating to or in any way in connection with the Relevant Provisions; and
 - (2) without being limited by clause 7.2(a)(1), liability in respect of all Loss which FACS:
 - (A) has incurred or sustained, by virtue of or in connection with the Relevant Provisions prior to the Effective Date; or
 - (B) may incur or sustain after the Effective Date relating to or connected with any act or omission by ServiceCo prior to the Effective Date relating to or in any way in connection with the Relevant Provisions.

7.3 Bar to proceedings

FACS and Compass may plead the releases in clauses 7.1 and 7.2 respectively as a complete defence to any action, suit or proceedings arising from or in connection with the matters the subject of the respective releases in clause 7.1 and 7.2.

7.4 No release of obligations under this deed

Clauses 7.1, 7.2 and 7.3 will not apply to any Claim that one party may have against another arising out of or relating to the performance of obligations contained within this deed.

7.5 Releases not conditional

Notwithstanding clause 7.4, the settlement and releases effected under this clause 7 are absolute, enforceable and in no way conditional or contingent upon the performance of the other obligations under this deed.

8 General

8.1 No release

Nothing in this deed shall release the parties from their obligations and liabilities under the Services Agreement except to the extent expressly provided by this deed.

8.2 Further acts

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

8.3 Amendments not to affect validity, rights, obligations

- (a) The parties agree that each provision of the Services Agreement remains in full force and effect in accordance with its terms, except to the extent expressly varied by this deed.
- (b) This deed is intended only to vary the Services Agreement and not to terminate, discharge, rescind or, replace or restate it.
- (c) Nothing in this deed:
 - (1) affects the validity or enforceability of any Service Package Document except to the extent expressly provided by this deed;
 - (2) except as expressly provided in clause 7, prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Service Package Documents before the Effective Date; or
 - (3) except as expressly provided in clause 7, discharges, releases or otherwise affects any liability or obligation arising under any Service Package Document before the Effective Date.

8.4 Amendments

This deed may only be amended by a deed signed by or on behalf of each party.

8.5 Assignment, novation or transfer

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed other than in accordance with the Services Agreement.

8.6 Governing law and jurisdiction

This deed is governed by the law governing the Services Agreement and all disputes relating to or any way connected to this deed must be resolved in accordance with the dispute resolution procedures of the Services Agreement.

8.7 Confidentiality

This deed is subject to the confidentiality provisions of the Services Agreement.

8.8 Counterparts

This deed may be executed in any number of counterparts, which, taken together, will be deemed to constitute one and the same instrument.

8.9 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

8.10 Entire agreement

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.



Social and Affordable Housing Fund - Services Agreement

Department of Family and Community Services (FACS)

and

Compass Housing Services Co Ltd (ServiceCo)

ACN 002 862 213

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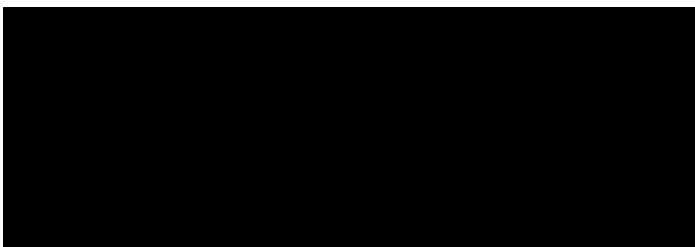
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Schedule 13 – [Not used]

Schedule 14 – Ownership Schedule

Schedule 15 – Programming Requirements

Schedule 16 – Delivery Phase Plans and Reports Schedule

Schedule 17 – Service Delivery Phase Plans Schedule

Schedule 18 – Services Specification

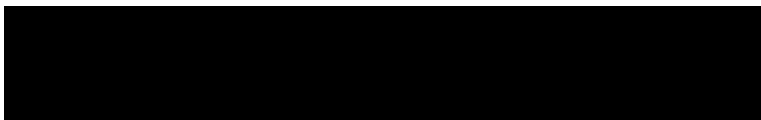
Schedule 19 – Expert Determination Agreement

Schedule 20 – Option to Lease

Schedule 21 – Subcontract Side Deed

Schedule 22 – Site Selection Strategy

Schedule 23 – Dispute Avoidance Board Agreement



Schedule 26 – Head Lease Side Deed

Schedule 27 – Asset Lease Side Deed

Schedule 28 – Termination Bond

Schedule 29 – Financiers' Tripartite Deed

Schedule 30 – Permitted Conditions

ANNEXURES

Annexure A – Bid Design Deliverables



Annexure B – Bid Services Deliverables



Annexure C – Compass Financial Model

Annexure D – [Not used]

Social and Affordable Housing Fund - Services Agreement

Date

Parties **The Secretary of the Department of Family and Community Services** as Housing Agency under section 16 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) (**FACS**)

Compass Housing Services Co Ltd (ACN 002 862 213) (**ServiceCo**)

Background

- A. FACS has conducted a public tender process and selected ServiceCo as a preferred tenderer for the Service Package.
- B. This Agreement sets out the terms on which:
 - (a) ServiceCo agrees to deliver the Services;
 - (b) FACS agrees to pay the Monthly Service Payment to ServiceCo; and
 - (c) the risks associated with the Service Package are allocated as between FACS and ServiceCo.
- C. FACS intends for the Service Package to be delivered within the National Regulatory System.

Operative provisions

Part A - Interpretation and project parameters

1. Definitions

In this deed, unless the context otherwise requires:

Abatement means an amount in dollars deducted in accordance with the Payment Schedule from a Monthly Service Payment, in respect of a Service Failure.

Accommodation Services means the services described in section 2 of the Services Specification as varied or supplemented in accordance with any Modification.

Accommodation Services Provider means, as at the date of this Agreement, any party listed as such in the Contract Particulars and any person who in addition or substitution is engaged by ServiceCo to carry out any of the Accommodation Services.

Accommodation Services Provider Subcontract means any Subcontract between ServiceCo and any Accommodation Services Provider with respect to the Accommodation Services.

Accounts and Records has the meaning given in clause 45.1.

Adjustment Note has the meaning given in the GST Law.

Adverse Rights means all (if any) interests, rights, affectations, encumbrances, Easements, covenants (including any rights, Easements and other affectations or encumbrances in respect of conduits) and other restrictions on use (excluding rights of light and air):

- (a) affecting or impacting the Site as set out in the Information Documents; or
- (b) of which ServiceCo has actual knowledge, as at the Restructure Effective Date.

Affordable Housing means the Dwellings which are made available to Affordable Housing Tenants.

Affordable Housing Tenant means a household which meets the affordable housing eligibility criteria outlined in the NSW Affordable Housing Guidelines, and has a right to occupy a Dwelling under a Residential Tenancy Agreement, and where the context requires, any such household which has been allocated a Dwelling in accordance with the Services Specification.

Agreement has the meaning given in clause 2.2(a).

Agreement for Lease means any agreement for lease entered into by ServiceCo in connection with the Service Package.

Aggregate Dwelling Number means the number of Dwellings specified in section 1 of the Dwellings Schedule as Social and Affordable Housing that ServiceCo is required to make available for use as Social and Affordable Housing in accordance with section 2.7 of the Services Specification.

Allocation Zone means each area of Social Housing described as an 'allocation zone' for the purposes of allocating Social Housing from the NSW Housing Register (or any replacement term used by FACS to denote an area for this purpose).

Applicant means an individual who:

- (a) applied to FACS for Social Housing;
- (b) was assessed by FACS or a Registered CHP as eligible for Social Housing; and
- (c) is on the NSW Housing Register.

Appropriate Applicant means an Applicant that is on the NSW Housing Register to whom a 'Reasonable Offer' could be made by ServiceCo in accordance with the Housing Pathways Policies. For the purposes of this definition, 'Reasonable Offer' has the meaning given to it in the document entitled 'Matching and Offering a Property to a Client Policy' dated February 2016 issued by FACS, as amended or replaced from time to time, and at the date of this Agreement means an offer of Tenancy in a Dwelling that is consistent with:

- (a) the number of bedrooms the household requires;
- (b) the Allocation Zone requested by the Applicant; and

any other features of a property required after an assessment of the Applicant.

Approval means:

- (a) each Key Planning Approval; and

- (b) any other licence, permit, authorisation, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission, exemptions, notification, application, filing, lodgement, deed, direction or declaration or the like which must be obtained or satisfied (as the case may be) in connection with the Service Package.

APRA means Australian Prudential Regulation Authority.

Artefacts means any places, fossils, bones, artefacts, coins, articles of value or antiquity, structures, natural features or remains or things of scientific, geological, historical, aesthetic, social, spiritual, cultural or aboriginal heritage or archaeological interest.

Asset Lease Side Deed means any document so entitled dated on or about the date of this Agreement between FACS, ServiceCo and a Lessor substantially in the form set out in Schedule 27.

Asset Management Services means the services described in section 3 of the Services Specification, as varied or supplemented in accordance with any Modification.

Asset Management Services Provider means, as at the date of this Agreement, any party listed as such in the Contract Particulars and any person who in addition or substitution is engaged by ServiceCo to carry out any of the Asset Management Services.

Asset Management Services Provider Subcontract means any Subcontract between ServiceCo and an Asset Management Services Provider with respect to the Asset Management Services.

Associate or **Associates** means, in relation to a person, any Related Body Corporate of that person, and any officer, agent, adviser, consultant, contractor or employee of that person or that Related Body Corporate and:

- (a) in the case of ServiceCo, includes:
- (i) the ServiceCo Representative;
 - (ii) any Consortium Member (other than ServiceCo) and their respective officers, agents, advisers, consultants, contractors, employees, nominees and licensees, each acting in connection with the Service Package;
 - (iii) the Equity Investors, any Subcontractors (that are not covered by paragraph (a)(ii)) and their respective officers, agents, advisers, consultants, contractors, employees, nominees or licensees each acting in connection with the Service Package; and
 - (iv) any person on or at a Site at the express or implied invitation of ServiceCo or a Subcontractor in connection with the performance of the Service Package Activities,

but does not include FACS, any of its Associates or any Tenants; and

- (b) in the case of FACS, includes:

- (i) officers, agents, advisers, consultants, contractors, authorised officers and employees of FACS each acting in connection with the Service Package;
- (ii) the FACS Representative and any other person responsible for the administration or management or implementation of the Service Package, or any aspect of the Service Package, for and on behalf of FACS; and
- (iii) any other person to whom FACS delegates a right, power, function or duty under this Agreement,

but does not include ServiceCo, or any of its Associates, the Registrar, LAHC, Aboriginal Housing Office, UrbanGrowth NSW, the NSW Department of Planning and Environment or any Tenants.

Authority means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; and
- (b) any other person having jurisdiction over, or ownership of, any Utilities or Utility Infrastructure.

Bank Bill means a bill of exchange (as defined in the *Bills of Exchange Act 1909* (Cth)) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business.

Bank Bill Rate, for a period, means:

- (a) the rate, expressed as a yield per cent per annum (rounded up (if necessary) to four decimal places) that is quoted as the average bid rate on the Reuters monitor system page 'BBSY' (or any page that replaces that page) at about 10.10am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in Months which is closest to that period; or
- (b) if there is a manifest error in the calculation of that average bid rate, or if no average bid rate is published for Bank Bills of that tenor by about 10:30am, then the Bank Bill Rate will be the rate reasonably determined by FACS, having regard to the rates otherwise bid for Bank Bills having a tenor as described above, at or around that time, to be the appropriate equivalent rate.

Best Services Practices means the practices required for the provision of services similar to the Services, which are performed:

- (a) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional suitably qualified in the provision of services similar to the Services;
- (b) in a manner that is client focused and safe to all people and the Environment;
- (c) with the intent of ensuring reliable, long term and safe operation of the Relevant Infrastructure;

- (d) by trained and experienced personnel using high quality, safe and proper equipment, tools, procedures and industry standards;
- (e) with adequate levels of resources, including personnel, materials and supplies;
- (f) using suitable, high quality finishes and materials which are free from defects; and
- (g) with a commitment to continually providing innovation and meeting advancements in improving the standards and quality of the Services,

provided that this requirement in and of itself does not require ServiceCo to upgrade any Dwelling after the Date of Service Readiness unless ServiceCo is expressly required to do so.

Bid Design Deliverables means Annexure A.

Bid Services Deliverables means Annexure B.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney, New South Wales.

Business Hours means between 9:00 am and 5:00 pm on a Business Day.

CCU has the meaning given in clause 12.2(b).

Change Compensation Event has the meaning given in the Change Compensation Principles.

Change Compensation Principles means Schedule 5.

Change in Control means:

- (a) where, at any time, any person or Entity alone or together with any Associate or Associates, ceases to or commences to, directly or indirectly have Control of an Entity;
- (b) a change in the manager, trustee or Responsible Entity of any Group Member that is a trust; or
- (c) a change in a member of a company limited by guarantee, where that member ceases to or commences to, directly or indirectly, have Control of that company.

For the purposes of this definition, Associate or Associates has the meaning given in the Corporations Act and includes a person deemed to be an Associate of a designated body (within the meaning of section 12 of the Corporations Act).

Change in Law means:

- (a) the coming into effect of, or a change to, or the repeal of, Legislation; or
- (b) any judgement or decision of a court of law which changes the way a Law is applied or interpreted,

after the date of this Agreement, but does not include:

- (c) a change in the way a Law is applied or interpreted due to:

- (i) the failure of ServiceCo or any of its Associates to comply with a Law, Standard or Approval; or
- (ii) a ServiceCo Act or Omission;
- (d) any new Law or change in existing Law relating to Taxes including the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the GST Law or the *Payroll Tax Act 2007* (NSW);
- (e) any new local government Law or change in any local government existing Law; or
- (f) any new Law or change in or repeal of any existing Law which was not in force at the date of this Agreement but which:
 - (i) had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to prior to the date of this Agreement;
 - (ii) is listed or referred to in the Services Specification, the Proposal, Information Documents or any Service Package Document;
 - (iii) a party exercising Best Services Practices would have reasonably foreseen or anticipated prior to the date of this Agreement;
 - (iv) is substantially the same as a Law in force prior to the date of this Agreement; or
 - (v) is substantially the same as any other requirement with which ServiceCo was required to comply under any FACS Service Package Document as at the date of this Agreement.

Change in Management means a change in:

- (a) any Entity which provides management functions to ServiceCo;
- (b) the senior employees of any Entity which provides management functions to ServiceCo; or
- (c) the senior management of ServiceCo,

as applicable.

Change in Mandatory Requirements means a Project-Specific Change in Law or a Change in Policy that occurs after the date of this Agreement and that will have an effect on the cost of carrying out the Service Package Activities.

Change in Policy means any one or more of the following that occurs after the date of this Agreement:

- (a) the introduction of a new Standard; or
- (b) a change in a Standard;

but does not include the introduction of a new Standard or a change in Standard:

- (c) of which FACS has expressly notified ServiceCo prior to the date of this Agreement;
- (d) which is contained or referred to in the Services Specification, the Proposal, any Service Package Document or Information Documents or any other material provided by FACS to ServiceCo or any of its Associates in connection with the Service Package prior to the date of this Agreement;
- (e) which a party that provides services similar to the Service Package Activities in accordance with Best Services Practices would have reasonably foreseen or anticipated prior to the date of this Agreement;
- (f) which is substantially the same as a Standard in force prior to the date of this Agreement;
- (g) which is substantially the same as any other requirement with which ServiceCo was required to comply with under the Service Package Documents prior to the date of this Agreement;
- (h) that results from or is in response to any ServiceCo Act or Omission;
- (i) where the Standard is an Approval (including any conditions or requirements under it); or
- (j) where the Standard is a standard, code, specification, policy or requirement of any Authority other than FACS.

Change Notice has the meaning given in the Change Compensation Principles.

Change Response has the meaning given in the Change Compensation Principles.

CHIMES means the Community Housing Information Management System maintained by FACS.

Claim means any claim, action, demand, suit, proceeding, penalty or fine (including by way of contribution or indemnity) made:

- (a) in connection with the Service Package Documents, any Relevant Infrastructure, any Site or the Service Package; or
- (b) at Law or for specific performance, restitution or payment of money (including damages).

Commercial Close means the date on which the last Condition Precedent to be satisfied, was satisfied (or waived in accordance with clause 3.3) as set out in a notice given by FACS to ServiceCo in accordance with clause 3.2(c). The parties confirm that Commercial Close took place on 9 February 2017.

Commercially Sensitive Information means the information referred to in the Commercially Sensitive Information Schedule.

Commercially Sensitive Information Schedule means Schedule 11. **Commonwealth** means the Commonwealth of Australia.

Community Housing Act means the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW).

Compass Restructure Deed means the deed so entitled between ServiceCo and FACS dated on or about 18 February 2019.

Compensable Extension Event means any of the following events occurring during the Delivery Phase:

- (a) **(FACS breach)**: a breach by FACS of any FACS Service Package Document; and
- (b) **(fraudulent act or omission)**: a fraudulent, reckless, unlawful or malicious act or omission of FACS or any of its Associates in connection with the Service Package.

Compensable Intervening Event means any of the following events occurring during the Service Delivery Phase:

- (a) **(FACS breach)**: a breach by FACS of any FACS Service Package Document; and
- (b) **(fraudulent act or omission)**: a fraudulent, reckless, unlawful or malicious act or omission of FACS or any of its Associates in connection with the Service Package.

Compensation Date has the meaning given in the Termination Payment Schedule.

Condition Precedent means each condition precedent in the Conditions Precedent Schedule.

Condition Precedent Deadline means the date so specified in the Contract Particulars.

Conditions Precedent Schedule means Schedule 2.

Confidential Information means:

- (a) the Service Package Documents;
- (b) the Information Documents;
- (c) any Commercially Sensitive Information;
- (d) information provided by:
 - (i) FACS or any of its Associates to ServiceCo or any of its Associates; or
 - (ii) ServiceCo or any of its Associates to FACS or any of its Associates,in connection with this Agreement or the Service Package, whether provided prior to or after the date of this Agreement;
- (e) ServiceCo Material; and
- (f) Personal Information,

but does not include any report prepared by or on behalf of FACS in relation to the performance or non-performance of ServiceCo or its Associates of its obligations pursuant to this Agreement.

Consequential or Indirect Loss means any:

- (a) loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings; or
- (b) to the extent not prohibited by Law, any penalties payable under agreements other than FACS Service Package Documents or Key Subcontracts.

Consortium means all of the parties identified as such in the Contract Particulars and **Consortium Member** means any of them.

Construction Project has the meaning given in the WHS Regulation.

Consumer Price Index or **CPI** has the meaning given in the Indexes Schedule.

Contract Particulars means Schedule 1.

Control means:

- (a) 'Control' as defined in the Corporations Act;
- (b) the ability to control, directly or indirectly, the composition of the board or partnership committee (or if the Entity is a trust, the appointment of a trustee of that trust);
- (c) being in a position to cast, or control the casting of, more than 25% of the maximum number of votes that may be cast at a general meeting or similar (or if the Entity is a trust, a meeting of unit holders); or
- (d) having a relevant interest (as defined in section 608 of the Corporations Act but as if a reference in that section to 'securities' were a reference to Securities as defined in this Agreement) in more than 25% of the Securities,

of an Entity (whether alone or together with any Associates). For the purposes of this definition, Associate has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act).

Controlling Entity means, in relation to a Change in Control of a Consortium Member, the person or Entity to whom Control will pass.

Corporations Act means the *Corporations Act 2001* (Cth).

Counterparty Details means, in connection with each person (other than FACS) who is a party to a FACS Service Package Document:

- (a) a certified copy of its constitution (or other constituent documents);
- (b) in the case of a trustee who enters into the FACS Service Package Documents on behalf of a trust, a certified copy of the relevant trust agreement;
- (c) a certified copy of any powers of attorney under which the person executed each FACS Service Package Document; and
- (d) a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations in accordance with each FACS Service Package Document to which it is a party.

DAB or Dispute Avoidance Board means the board constituted under the DAB Agreement.

DAB Agreement means the document entitled 'Dispute Avoidance Agreement' dated on or about the date of this Agreement between FACS, ServiceCo and the members of the DAB, substantially in the form set out in Schedule 23.

Date for Service Readiness means, in respect of each Stage and subject to clause 16(b), the date specified as such in the Delivery Phase Milestone Schedule, as adjusted (if at all) in accordance with this Agreement.

Date of Service Readiness means, in respect of each Stage and subject to clause 16(b), the date specified in the certificate issued by FACS under clause 15.6(a)(i) as the date on which ServiceCo achieved Service Readiness.

Debt means the principal amounts properly drawn down by ServiceCo under the Finance Documents to finance the Service Package Activities, including accrued interest and fees payable in respect of those principal amounts, and any net amounts payable under any hedging arrangements relevant to those principal amounts deducting all credit balances on all debt reserve and debt service accounts (however named) held by or on behalf of ServiceCo or any Financier and related to the Service Package but does not include default interest, equity shareholder loans, or amounts in the nature of Equity.

Default Termination Event means the occurrence of any of the following events:

- (a) **(abandonment)**: ServiceCo wholly or substantially abandons the Service Package or any material part of the Service Package Activities or a Stage;
- (b) **(Group Member Insolvency Event)**: an Insolvency Event occurs in relation to a Group Member;
- (c) **(ServiceCo fraud)**: ServiceCo engages in fraud, collusion or dishonest conduct in performing its obligations under any Service Package Document;
- (d) **(assignment, transfer or disposal)**: ServiceCo assigns, transfers or otherwise disposes of any of its rights, title and interest in or under any Service Package Document, the whole or any part of a Site or the Relevant Infrastructure in breach of clause 42;
- (e) **(Change in Control)**: a Change in Control (which is not a Permitted Change in Control) occurs in respect of ServiceCo other than in accordance with clause 43;
- (f) **(unremedied Major Default)**: a Major Default is capable, or is deemed to be capable of remedy and ServiceCo fails to remedy the Major Default within the period set out in the Major Default Notice (as extended, if at all, in accordance with clause 31.4(b));
- (g) **(unremedied Major Default by Sunset Date)**: ServiceCo fails to achieve Service Readiness in respect of a Stage by the applicable Sunset Date for that Stage;
- (h) **(Major Default not capable of remedy)**: a Major Default is not capable of remedy and ServiceCo fails to diligently comply with any reasonable requirements of FACS to overcome the consequences of the Major Default within the time stated in the Major Default Notice (as extended, if at all, under clause 31.4(b));
- (i) **(Illegality Event)**: an Illegality Event occurs;

- (j) **(Probity Event)**: ServiceCo fails to comply with clause 48.1(d), in relation to a Probity Event;
- (k) **(loss of registration)**: ServiceCo's registration as a Registered CHP is cancelled or ServiceCo otherwise ceases to be a Registered CHP;
- (l) **(delay – Look Forward)**: it is determined after the Date for Service Readiness by the Independent Expert in accordance with clause 23.12(g) that ServiceCo will not be able to achieve Service Readiness in respect of a Stage by the applicable Sunset Date;
- (m) **(deemed Default Termination Event)**: any other event which is deemed to be a Default Termination Event under clause 31.2(e) or clause 31.6(c); or
- (n) **(Liability Cap exceeded)**: the aggregate Liability of ServiceCo to Indemnified Persons arising under, out of or in connection with the Service Package Documents is at any time equal to or exceeds 80% of the Liability Cap and ServiceCo does not elect to increase the Liability Cap in accordance with clause 29A.3(b).

Default Termination Payment means the payment calculated in accordance with section 4.5 of the Termination Payment Schedule.

Defect means:

- (a) any defect, shrinkage, expansion fault or omission in any Relevant Infrastructure (excluding any normal shrinkage or expansion of materials accommodated in accordance with Best Services Practices); or
- (b) any other aspect of any Relevant Infrastructure which is not in accordance with the requirements of this Agreement.

Delivery Phase means, in respect of each Stage, the period beginning on the date of this Agreement and ending on and including the Date of Service Readiness for that Stage.

Delivery Phase Activities means:

- (a) all things which ServiceCo is, or may be, required to carry out or do in connection with the Relevant Infrastructure during the Delivery Phase;
- (b) all other things which ServiceCo is, or may be, required to carry out or do in accordance with the FACS Service Package Documents during the Delivery Phase; and
- (c) Tenancy Management Services required to identify and execute Residential Tenancy Agreements with Tenants in respect of Dwellings,

but otherwise excludes the Services.

Delivery Phase Milestones means each of the milestones set out in Schedule 24.

Delivery Phase Milestones Schedule means Schedule 24.

Delivery Phase Plans means each of the plans described in the Delivery Phase Plans and Reports Schedule.

Delivery Phase Plans and Reports Schedule means Schedule 16.

Delivery Phase Program means the Initial Delivery Phase Program, as updated in accordance with clause 14.2.

Delivery Phase Reports means each of the reports described in the Delivery Phase Plans and Reports Schedule.

Design Requirements means requirements for the design of the Relevant Infrastructure as set out in section 2.2 of the Services Specification.

Developer means any person who enters into a Development Document with ServiceCo other than a Developer Lessor.

Developer Lessor means a Lessor who has entered into an agreement with ServiceCo to construct or otherwise develop Dwellings, as part of a broader development, for the purposes of the Service Package.

Development Consent means:

- (a) each consent or approval granted or required to be granted by the authority with jurisdiction to assess and/or determine the relevant development application in accordance with the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the Service Package or a Stage; and
- (b) any modification of it.

Development Document means any agreement entered into by ServiceCo which relates to the acquisition, development, construction or supply of Dwellings during the Delivery Phase (other than a Service Package Document or a Development Consent).

Dispute has the meaning given in clause 34.1(a).

Dwelling means a room or suite of rooms occupied, used, constructed or adapted so as to be capable of being occupied or used as a separate, self-contained and lockable domicile that:

- (a) may be occupied by one or more households; and
- (b) must have its own cooking, bathing and toilet facilities and be accessible without passing through another Dwelling.

Dwellings Schedule means Schedule 25.

Early Warning has the meaning given in clause 23.1.

Easements means all easements, restrictions on use, covenants, agreements, or other similar arrangements together with any leases, sub-leases, licences, rights or privileges, in each case as are granted on or prior to the date of this Agreement.

Employee Checks means the checks of employees and volunteers set out in the Contract Particulars.

Employee Requirements means the employee requirements set out in the Contract Particulars.

Entity has the meaning given in section 64A of the Corporations Act, but is also deemed to include a joint venture within the meaning of Australian Accounting Standard 131 (AASB 131).

Environment means the physical factors of the surroundings of humans and other life forms, including the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social factor of aesthetics.

Equity means the equity capital in, or subordinated debt which is in substance equivalent to ordinary equity in, ServiceCo, or the amount contributed by ServiceCo to pay upfront costs in respect of this Deed and the Service Package Activities, in each case as set out in the Financial Model.

Equity Investor means:

- (a) a person identified as such in the Ownership Schedule (until that person is replaced in accordance with clause 43);
- (b) each person who has provided or has agreed to provide:
 - (i) Equity at the times and in the amounts set out in the Financial Model (whether by way of subscription for units or shares or provision of unitholder or shareholder loans); or
 - (ii) any other equity, financial arrangement, security or option issued by or provided to a Group Member; and
- (c) any person who replaces or is added, in accordance with clause 43, to the persons referred to in paragraphs (a) or (b).

Excluded Contract means each Development Document.

Excluded Material means any Material which is owned by a Developer as at the date of this Agreement or developed and owned by a Developer after the date of this Agreement and used by it to design, construct, deliver or supply Dwellings.

Excluded Subcontractor means a Developer or any other party who enters into an Excluded Contract with ServiceCo.

Executive Representatives has the meaning given in clause 35(a).

Expert Determination Agreement means an expert determination agreement to be entered into between ServiceCo, FACS and an independent expert substantially in the form set out in Schedule 19.

Expiry Date has the meaning given in clause 4.2.

Extension Event means any of the following events occurring during the Delivery Phase:

- (a) **(Compensable Extension Event)**: a Compensable Extension Event;
- (b) **(FACS Act or Omission)**: any act or omission of:
 - (i) FACS; or
 - (ii) any Associate of FACS,

in connection with the Service Package, other than any act or omission which is authorised or permitted under a FACS Service Package Document, Standard or Law;

- (c) **(Force Majeure Event)**: a Force Majeure Event;
- (d) **(Change in Mandatory Requirements)**: a Change in Mandatory Requirements which occurs in respect of the Relevant Infrastructure, for which FACS has issued a Modification Order in accordance with clause 26.10;
- (e) **(Modification)**: a Modification for which FACS has issued a Modification Order; and
- (f) **(Key Planning Approval)**: a legal challenge brought about by way of commencement of court proceedings (other than by ServiceCo or its Associates) in relation to a Key Planning Approval except to the extent the legal challenge was in connection with ServiceCo's failure to comply with a Service Package Document or due to a deficiency in the documentation prepared by ServiceCo in connection with obtaining the Key Planning Approval or any failure by ServiceCo to comply with the *Environmental Planning and Assessment Act 1979* (NSW).

FACS Representative means the person identified as such in the Contract Particulars, subject to replacement or delegation in accordance with clause 8.2.

FACS Service Package Documents means those Service Package Documents to which FACS is a party.

Federal Rent Assistance Legislation means legislation of the Commonwealth pursuant to which the Commonwealth provides rent assistance to persons who are also Tenants or Household Members.

Final Expiry Date means, in respect of a Stage, the date which is the 25th anniversary of the earlier of the:

- (a) Date for Service Readiness in respect of the Stage; and
- (b) Date of Service Readiness in respect of the Stage.

Finance Documents means:

- (a) each document entered into in connection with financing of the Service Package Activities;
- (b) any document entered into in relation to a refinancing of the Debt or a financing or refinancing of ServiceCo's senior financial indebtedness to finance activities other than the Service Package Activities, including any security trust deed;
- (c) any other document which the parties agree is a Finance Document for the purposes of this Agreement; and
- (d) any document which effects an amendment to, or restatement or replacement of, or waiver or consent under, any other Finance Document.

Financial Model means:

- (a) for the period from the Restructure Effective Date until the Review Date, the Compass Financial Model (as defined in the Restructure Deed); and
- (b) on and from the Review Date, the Restructure Financial Model as updated from time to time in accordance with clause 44.

Financial Performance Report means the report entitled 'Financial Performance Report' that ServiceCo is required to provide to the Registrar (or any replacement financial report(s) required by the Registrar from time to time).

Financial Year means each 12 Month period commencing on 1 July and ending on 30 June.

Financiers means the providers of any financing facilities, financial arrangements or accommodation to a Group Member under the Finance Documents from time to time and may, where the context permits, include any agent or trustee of such Financiers (other than Finance Documents solely between Group Members).

Financiers' Tripartite Deed means Schedule 28 or a deed substantially in the form of Schedule 28, as the context permits or requires.

Fit For Purpose means the Relevant Infrastructure:

- (a) is fit for its intended purposes, functions and uses specified in, or which can reasonably be ascertained from clauses 1 to 49, the Services Requirements and the Payment Schedule;
- (b) otherwise meets the requirements for the Dwellings set out in or which can be reasonably ascertained from:
 - (i) the Design Requirements and the Services Requirements; and
 - (ii) all other requirements of this Agreement; and
- (c) is fit for the performance of the Services in accordance with the Services Requirements and so as to facilitate and not impair the achievement of the Service Package Objectives.

Force Majeure Event means, in respect of a Stage, any of the following events occurring:

- (a) war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities;
- (b) nuclear or biological contamination;
- (c) ionising radiation or contamination by radioactivity;
- (d) any act of terrorism occurring at the Site for that Stage, except to the extent coverage is provided for a declared terrorist incident under the *Terrorism Insurance Act 2003* (Cth);
- (e) bushfire, lightning, cyclone, hurricane, tempest, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation;

- (f) a flood which might at the date of this Agreement be expected to occur no more frequently than once in 100 years;
- (g) fire or explosion caused by events referred to in paragraphs (a) or (f); and
- (h) during the Service Delivery Phase only, for a Stage, Utility Interruption due to an interruption that occurs upstream from the point at which that Utility provider's Utility Infrastructure connects specifically to the Site for that Stage or the Relevant Infrastructure;

and which:

- (i) in relation to paragraphs (a) to (d), except to the extent the event is caused or contributed to by a ServiceCo Act or Omission or a failure by ServiceCo or its Associates to perform the Services in accordance with this Agreement;
- (j) save in relation to paragraph (h), occurs at or directly in the vicinity of the Site for that Stage;
- (k) in:
 - (i) respect of a claim for an extension of time pursuant to clause 23 only, prevents or delays ServiceCo from carrying out all or substantially all of the Service Package Activities in respect of the Stage; or
 - (ii) all other circumstances in respect of a Site for a Stage, prevents ServiceCo from carrying out all or substantially all of the Accommodation Services at the Site for the Stage;
- (l) was not caused by ServiceCo or its Associates, or FACS or its Associates;
- (m) was beyond the reasonable control of ServiceCo or its Associates; and
- (n) could not have been prevented, avoided, remedied or overcome by taking those steps which a prudent, experienced and competent designer, constructor, or operator of facilities similar to the Relevant Infrastructure and providing services similar to the Services would have taken using Best Services Practices (including the expenditure of reasonable sums of money).

Force Majeure Termination Event for a Stage means:

- (a) either party has been prevented from carrying out all or substantially all of the Service Package Activities for that Stage for a continuous period exceeding 180 days as a result of a Force Majeure Event; and
- (b) at least 180 days has elapsed since ServiceCo gave notice to FACS in accordance with clause 23.3 or 24.1(d) (as the case may be) of the Force Majeure Event,

or any other event expressly deemed to be a Force Majeure Termination Event in this Agreement.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Group means ServiceCo, each Holding Entity and any wholly owned subsidiary of any of them.

Group Member means any of ServiceCo, each Holding Entity or any wholly owned subsidiary of any of them.

GST means:

- (a) the same as in the GST Act; and
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Amount has the meaning given in clause 21.8(c)(ii).

GST Law has the meaning given in the GST Act.

Head Lease Side Deed means any document so entitled dated on or about the date of this Agreement between FACS, ServiceCo and a Lessor substantially in the form set out in Schedule 26.

Health and Safety Management Plan means the Delivery Phase Plan of that name.

Holding Entity means each company or trust which, directly or indirectly, holds all of the issued shares or units in, or otherwise Controls:

- (a) ServiceCo, and which is not itself wholly owned by any other Entity; and
- (b) any company that holds Securities in ServiceCo.

Household Member means an individual:

- (a) listed as an additional person to be housed at the time of application to the NSW Housing Register;
- (b) approved to be housed at the beginning of a Tenancy; or
- (c) who is otherwise an approved additional occupant of the Dwelling.

Housing Pathways means the common Social Housing application and assessment system, maintained under a partnership between FACS and community housing providers.

Housing Pathways Policies means the policies identified as such in Appendix A of the Services Specification.

Illegality Event means ServiceCo or a Key Subcontractor:

- (a) ceases to hold an Approval; or
- (b) breaches applicable Legislation,

and FACS forms the view (acting reasonably) that such failure or breach is material to the performance of ServiceCo's obligations under this Agreement and such failure or breach is not remedied within 30 days after the earlier of:

- (c) the date on which FACS notifies ServiceCo of the failure or breach; or

(d) the date on which ServiceCo becomes aware of the failure or breach.

Indemnified Person has the meaning in clause 29.1.

Independent Expert means an independent expert appointed under clause 23.12A to review progress of the Delivery Phase Activities for the purposes of clause 23.12(a).

Index means each index set out in the Indexes Schedule.

Indexed means the relevant amount as indexed in accordance with the Indexes Schedule.

Indexes Schedule means Schedule 4.

Information Documents means all Material provided or made available by or on behalf of FACS or its Associates to ServiceCo or its Associates in connection with the Service Package (which is not incorporated into this Agreement).

Initial Delivery Phase Plans means the version of the Delivery Phase Plans current at the Restructure Effective Date attached as Annexure A1.

Initial Delivery Phase Program means the version of the Delivery Phase Program current at the Restructure Effective Date attached as Annexure A2.

Initial Offer has the meaning given in clause 20.3(b).

Initial Service Delivery Phase Plans means the version of the Service Delivery Phase Plans current at the date of this Agreement attached as Annexure B1.

Insolvency Event means, in relation to a party, the occurrence of any of the following events:

- (a) an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a party and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, the application is not dismissed or withdrawn within 30 Business Days;
- (b) an order is made for the winding up of a party, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by FACS before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) a party passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by FACS before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) a receiver, receiver and manager, liquidator, provisional liquidator, compulsory manager, trustee for creditors or in bankruptcy or analogous person is appointed to take possession of, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of a party or otherwise enforces its Security Interest;
- (e) a party or any other person appoints an administrator to the party, or takes any step to do so;

- (f) a party:
 - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iii) is or states that it is unable to pay its debts; or
 - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F of the Corporations Act;
- (g) a party enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of FACS, except for the purposes of a solvent reconstruction or amalgamation permitted by this Agreement; or
- (h) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (g).

Insurance Schedule means Schedule 10.

Insurances means the insurances required to be effected and maintained in accordance with this Agreement and as set out in the Insurance Schedule.

Intellectual Property Rights includes:

- (a) all copyright and analogous rights;
- (b) all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs (whether or not registrable), confidential information (including trade secrets and knowhow), circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific or artistic fields; and
- (c) all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of the foregoing, whether created or in existence before, on or after the date of this Agreement and whether existing in Australia or otherwise.

Intervening Event means any of the following occurring during the Service Delivery Phase:

- (a) **(Compensable Intervening Event)**: a Compensable Intervening Event;
- (b) **(FACS Act or Omission)**: any act or omission of:
 - (i) FACS; or
 - (ii) any Associate of FACS,

in connection with the Service Package other than any such act or omission which is authorised or permitted under a FACS Service Package Document, Standard or Law; or

(c) **(Force Majeure Event)**: a Force Majeure Event.

Key Planning Approval means each of those approvals identified as such in the Contract Particulars.

Key Subcontract means:

- (a) each Accommodation Services Provider Subcontract;
- (b) each Asset Management Services Provider Subcontract;
- (c) each Performance and Data Reporting Provider Subcontract;
- (d) each Tailored Support Coordination Services Provider Subcontract;
- (e) each Tenancy Management Services Provider Subcontract;
- (f) each Lease and Agreement for Lease; and
- (g) any other Subcontract in respect of the Service Package Activities identified in the Contract Particulars as a 'Key Subcontract',

except for each Excluded Contract, as replaced in accordance with clauses 10.2 and 10.3.

Key Subcontractors means each:

- (a) Accommodation Services Provider;
- (b) Asset Management Services Provider;
- (c) Performance and Data Reporting Provider;
- (d) Tailored Support Coordination Services Provider;
- (e) Tenancy Management Services Provider;
- (f) Lessor; and
- (g) other Subcontractor who is engaged to perform the Service Package Activities and is referred to in the Contract Particulars as a 'Key Subcontractor',

except for any Excluded Subcontractor, as replaced in accordance with clauses 10.2 and 10.3.

LAHC means the New South Wales Land and Housing Corporation.

Land Tax means land tax payable in accordance with the provisions of the *Land Tax Act 1956* (NSW) and the *Land Tax Management Act 1956* (NSW).

Law means:

- (a) those principles of common law and equity established by decisions of courts; and
- (b) Legislation.

Lease means a lease agreement between ServiceCo and a Lessor.

Legislation means all legislation, statutes, rules, regulations, by-laws, ordinances and subordinated legislation of the Commonwealth, the State of NSW or an Authority.

Lessor means a person who enters into a Lease or Agreement for Lease with ServiceCo.

Liability means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

and whether under or arising out of or in any way in connection with this Agreement, any other Service Package Documents or arising at Law.

Liability Cap has the meaning given in clause 29A.1.

Liable Persons means:

- (a) employees and officers of ServiceCo, and Related Body Corporates of ServiceCo and any officer, agent, adviser, consultant, contractor or employee of the Related Body Corporate;
- (b) Key Subcontractors (other than Lessors) and their officers, agents, advisers, consultants, contractors, employees, nominees or licensees;
- (c) agents, contractors, consultants and advisers of ServiceCo who have access to confidential information in relation to Tenants to the extent the criminal act, fraudulent act or omission or wilful misconduct concerns that confidential information; and
- (d) officers, agents, advisers, consultants, contractors, employees, nominees or licensees of Subcontractors (to the extent that Subcontractors are not covered by paragraph (b)) acting in connection with the Service Package who have access to confidential information in relation to Tenants to the extent the criminal act, fraudulent act or omission or wilful misconduct concerns that confidential information.

MAE Change in Law means a Change in Law by reason of:

- (a) a change in Federal Rent Assistance Legislation existing at the date of this Agreement;
- (b) the enactment or making of new Federal Rent Assistance Legislation after the date of this Agreement; or
- (c) a change in the way Federal Rent Assistance Legislation is applied, or in the interpretation of a Federal Rent Assistance Legislation, after the date of this Agreement,

which results in:

- (d) rent assistance no longer being payable by the Commonwealth to a material proportion of persons who receive such assistance at the date of this Agreement;

- (e) a material decrease in the average amount of rent assistance payable by the Commonwealth to a person; or
- (f) a material proportion of persons receiving rent assistance at the date of this Agreement being otherwise unable to receive rent assistance from the Commonwealth,

after taking into account any other NSW Government or Commonwealth assistance, support or transitional arrangements with respect to the Social Housing.

Major Australian Bank means Australia and New Zealand Banking Group Limited, Westpac Banking Corporation, National Australia Bank Limited and Commonwealth Bank of Australia.

Major Default means any of the following events:

- (a) **(late Service Readiness)**: ServiceCo fails to achieve Service Readiness in respect of a Stage by the relevant Date for Service Readiness;
- (b) **(Finance Documents)**: any event that would restrict or cancel ServiceCo's ability to obtain or to have available finance in accordance with the Finance Documents, except to the extent that immediately after that restriction or cancellation, the funding available to ServiceCo is greater than that required to enable ServiceCo to fully undertake the Service Package;
- (c) **(fraud)**: an Associate of ServiceCo engages in fraud, collusion or dishonest conduct in performing their obligations under the Service Package Documents;
- (d) **(representations and warranties)**: a representation or warranty given by ServiceCo under a FACS Service Package Document is found to be materially incorrect or misleading or a financial audit report discloses fraudulent, false, misleading or negligent reporting by ServiceCo in respect of any financial statements or invoices or other books or records of ServiceCo;
- (e) **(subcontracting)**: ServiceCo breaches an obligation in clauses 10.2 or 10.3;
- (f) **(breach of FACS Service Package Document)**: any breach of a FACS Service Package Document by ServiceCo (other than any Service Failure, any other Major Default or Default Termination Event) which is not cured within [REDACTED] (or such longer period as FACS (acting reasonably) determines) of ServiceCo receiving a notice of that breach from FACS;
- (g) **(Change in Management)**: as a result of a Change in Management, ServiceCo no longer has the same or better management skills available to it as it had prior to the Change in Management;
- (h) **(Change in Control)**: a Change in Control (which is not a Permitted Change in Control) occurs in respect of any Consortium Member other than ServiceCo without the consent of FACS in accordance with clause 43.3;
- (i) **(Probity Event)**: ServiceCo fails to remedy a Probity Event in accordance with clause 48;
- (j) **(loss of registration)**: an Asset Management Services Provider's or a Tenancy Management Services Provider's registration as a Registered CHP is cancelled or such a service provider otherwise ceases to be a Registered CHP;

- (k) **(breach of other Service Package Document)**: ServiceCo:
 - (i) breaches any of its obligations under a Service Package Document other than a FACS Service Package Document (other than where such breach is any other Major Default, a Default Termination Event or a Service Failure);
 - (ii) the breach has or will have a material adverse effect on ServiceCo's ability to deliver the Service Package; and
 - (iii) is not diligently pursuing the remedy of the breach;
- (l) **(Major Default Service Failure)**: a Major Default Service Failure occurs;
- (m) **(Insolvency Event of Consortium Member)**: an Insolvency Event occurs in relation to a Consortium Member (excluding a Group Member);
- (n) **(Insurances)**: a breach by ServiceCo of any of its obligations under section 2 (*Notification and Making of Claims*) of the Insurance Schedule;
- (o) **(Service Readiness Outstanding Item)**: ServiceCo fails to complete or remedy a Service Readiness Outstanding Item within the timeframe prescribed under clause 15.7(a);
- (p) **(Registrar enforcement powers)**: a Registrar exercises any power under sections 20 or 21 of the National Law in respect of ServiceCo;
- (q) **(failure to comply with National Regulatory Code)**: ServiceCo fails to comply with any condition of its registration as a Registered CHP or any other performance requirement under the National Regulatory Code and receives a notice to that effect; or
- (r) any other event which is deemed to be a Major Default under clause 15.7(e) or clause 19(d).

Major Default Notice has the meaning given in clause 31.2(b).

Major Default Service Failure has the meaning given in the Payment Schedule.

Material means tangible and intangible information, documents (including any document within the meaning of the *Evidence Act 1995* (NSW)), reports, software (including source and object code), inventions, discoveries, designs, innovations, technology, processes, methods, techniques, know-how, data and other materials in any media whatsoever.

Material Adverse Effect means that the net present value of the equity cashflows projected to be generated from the Service Package for the remainder of the Term are reduced such that, either:

- (a) they are less than or equal to zero; or
- (b) the Registrar issues a notice of intent to cancel registration to ServiceCo under section 20 of the National Law.

For the purposes of this definition, the net present value of the equity cashflows will be calculated by taking the equity cashflows projected by the Financial Model to be generated

from the Service Package from the date the MAE Change in Law comes into effect until the end of the Term, adjusting these to account for the impact of the MAE Change in Law and discounting these by a discount rate equal to the NSW Treasury Corporation (TCorp) long term 90 day reversion rate.

Milestone Dates means the target dates for the Delivery Phase Milestones identified in the Delivery Phase Milestones Schedule, as updated in accordance with this Agreement. For the avoidance of doubt, these dates do not include the Date for Service Readiness or the Sunset Date.

Modification means:

- (a) in respect of a Stage, in the period prior to the Service Commencement Date, any change to the Relevant Infrastructure or the Design Requirements including any addition, decrease, omission, deletion, demolition or removal to or from the Relevant Infrastructure or the Design Requirements; and
- (b) after the date of this Agreement, in respect of the Services, a change to the Services Requirements or the Services including any addition, increase, decrease, omission, deletion, or removal of any part of the Services,

but excluding:

- (c) any change of the type referred to in paragraphs (a) to (b) which is required to ensure that the Relevant Infrastructure or the Services are otherwise in accordance with this Agreement;
- (d) the updating of the Dwellings Schedule in accordance with clause 15.9;
- (e) substitution of a Dwelling identified in the Dwellings Schedule with a new Dwelling in accordance with clause 19;
- (f) the coming into effect of, or a change to or repeal of, a Standard; and
- (g) the removal of Sites in accordance with clause 34A or 34B.

Modification Order means a Change Response entitled 'Modification Order' issued in accordance with clause 26.5 and the Change Compensation Principles, requiring ServiceCo to proceed with the relevant Modification or comply with the Change in Mandatory Requirements (as applicable).

Modification Request has the meaning given in clause 26.1.

Month means a calendar month.

Monthly Service Payment means a monthly service payment payable to ServiceCo calculated in accordance with the Payment Schedule.

National Law means the Appendix to the Community Housing Act.

National Regulatory Code means Schedule 1 to the National Law.

National Regulatory System means the National Regulatory System for Community Housing.

NAV means the total assets of ServiceCo less the total liabilities of ServiceCo, determined in accordance with 'Australian Equivalents to International Financial Reporting Standards' ('A-IFRS') as amended or replaced from time to time.

Negotiated Offer has the meaning given in clause 20.3(d).

Non-Compliant Ratios means the ratios referred to in clause 13.1(b)(ii).

NSW Affordable Housing Guidelines means the document entitled 'NSW Affordable Housing Ministerial Guidelines' dated June 2015 issued by FACS, as amended or replaced from time to time.

NSW Code has the meaning given in clause 12.2(a).

NSW Government means the Crown in right of the State of New South Wales and its agencies, other than FACS.

NSW Guidelines has the meaning given in clause 12.1.

NSW Housing Register means the single list of Applicants waiting for Social Housing that is operated and maintained by FACS in partnership with community housing providers.

Omitted Service Package Activities has the meaning given in clause 26.1(b).

Operating Month means:

- (a) for the first Operating Month, the period commencing on the Service Commencement Date in respect of the first Stage to achieve Service Readiness and ending on the final day of that Month;
- (b) each subsequent Month during the Service Delivery Phase; and
- (c) for the final Operating Month, the period from the end of the last full Operating Month (as defined in paragraph (b)) to the Expiry Date for the last Stage to achieve Service Readiness.

Operating Year means:

- (a) for the first Operating Year, the period commencing on the Service Commencement Date in respect of the first Stage to achieve Service Readiness and ending on the next 30 June;
- (b) subject to paragraph (c), each subsequent 12 Month period during the Service Delivery Phase commencing on 1 July and ending on 30 June; and
- (c) for the final Operating Year, the period from the end of the last full Operating Year (as defined in paragraph (b)) to the Expiry Date.

Option Condition has the meaning given in Schedule 20.

Option Notice Service Date has the meaning given in Schedule 20.

Option Period has the meaning given in Schedule 20 or the meaning given in an Asset Lease Side Deed, as the context permits or requires.

Option to Lease has the meaning given in Schedule 20 or the meaning given in an Asset Lease Side Deed, as the context permits or requires.

Original Reviewable Services Schedule means the component so named in the Restructure Model Output Schedule, which contains the information required under clause 20.1(b).

Outcomes Based Contracting means the linking of a component of the Monthly Service Payment to the achievement of outcomes focused requirements pursuant to clause 20.

Overdue Rate means ■■■ per annum above the Bank Bill Rate.

Ownership Schedule means Schedule 14.

Partial Termination has the meaning given in clause 33.1(a).

Payment Schedule means Schedule 3.

Performance and Data Reporting means the services described in section 6 of the Services Specification as varied or supplemented in accordance with any Modification.

Performance and Data Reporting Provider means, as at the date of this Agreement, any party listed as such in the Contract Particulars and any person who in addition or substitution is engaged by ServiceCo to carry out any of the Performance and Data Reporting.

Performance and Data Reporting Provider Subcontract means any Subcontract between ServiceCo and a Performance and Data Reporting Provider with respect to the Performance and Data Reporting.

Performance Regime means the regime for Abatement described in the Payment Schedule and Appendix C of the Services Specification.

Permitted Change in Control means:

- (a) in respect of a Change in Control of ServiceCo:
 - (i) any sale, transfer or other disposal by an Initial Equity Investor (or a Related Body Corporate of an Initial Equity Investor) after the date of this Agreement of its interest (whether held directly or indirectly) in:
 - A. ServiceCo; or
 - B. any company that holds Securities in ServiceCo,to:
 - C. a Related Body Corporate of that Initial Equity Investor; or
 - D. any fund, scheme, Entity or trust which has other property or infrastructure investments managed by an Initial Equity Investor.

Personal Information means any personal information, within the meaning given in the *Privacy Act 1988* (Cth), about any Tenant.

Permitted Conditions means the conditions described in Schedule 30.

Principal Contractor has the meaning given in the WHS Regulation.

Privacy Legislation means the *Privacy Act 1988* (Cth) as amended by the *Privacy Amendment (Private Sector) Act 2000* (Cth), and any other applicable Commonwealth or NSW Government Legislation or guidelines relating to privacy.

Private Housing means those dwellings on a Site that are not Social Housing or Affordable Housing, including those dwellings that are indicated as such in the Dwellings Schedule.

Private Market Lessor means a Lessor offering leased rental accommodation to the general private rental market (but excludes Developer Lessor).

Probity Event includes any event or thing which occurs before or after the date of this Agreement which:

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Group Member, a Consortium Member or a Relevant Person;
- (b) relates to a Group Member, a Consortium Member or a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Service Package; or
- (c) involves a material failure of a Group Member, Relevant Person or Consortium Member or any Subcontractor (who is not a Consortium Member) to achieve or maintain:
 - (i) reasonable standards of ethical behaviour;
 - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Group Member, Relevant Person or Consortium Member or Subcontractor (as applicable) to carry out and observe its obligations in connection with the Service Package; or
 - (iii) other standards of conduct that would otherwise be expected of a party involved in a FACS or NSW Government project.

Probity Investigation means any probity, criminal or security investigation to report on or check the character, integrity, experience or honesty of a person or Entity, including:

- (a) investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and
- (b) interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation.

Programming Requirements means the requirements set out in Schedule 15.

Project Control Group means the group referred to in clause 8A.1(a).

Project-Specific Change in Law means a Change in Law which, by express reference, applies to:

- (a) the Service Package;

(b) ServiceCo; or

(c) a Site,

and not to other projects, Entities or sites.

Prolongation Costs has the meaning given in the Change Compensation Principles.

Proposal means the proposal submitted by ServiceCo in response to the Request for Proposal.

Proposed Early Service Readiness Date has the meaning given in clause 16(a).

Quarter means each three Month period commencing on a Quarterly Date, save that:

- (a) the first Quarter of the Delivery Phase will be the period from Commercial Close until the day before the first Quarterly Date during the Delivery Phase;
- (b) the last Quarter of the Delivery Phase will be the period from the last Quarterly Date during the Delivery Phase to the Date of Service Readiness;
- (c) the first Quarter of the Service Delivery Phase will be the period from the Date of Service Readiness in respect of the first Stage to achieve Service Readiness until the day before the first Quarterly Date during the Service Delivery Phase; and
- (d) the last Quarter of the Service Delivery Phase will be the period from the last Quarterly Date during the Service Delivery Phase to the Expiry Date.

Quarterly Date means every 1 January, 1 April, 1 July and 1 October.

Quarterly Performance Report has the meaning given in the Services Specification.

Quarterly Report means the 'Quarterly Delivery Phase Report' prepared in accordance with the Delivery Phase Plans and Reports Schedule.

Rates means all municipal rates, water rates, sewerage rates, drainage rates and other rates payable to any Authority in connection with the Site or the Relevant Infrastructure.

Ratios Statement has the meaning given in clause 13.1(a)(ii).

RCTI has the meaning given to "recipient created tax invoice" in the GST Law.

Recipient has the meaning given in clause 21.8(c)(ii).

Recipient Supply has the meaning given in clause 21.8(e)(i).

Recovery Plan means a plan that complies with the requirements of clause 23.13.

Rectification Costs means an amount equal to the aggregate of the reasonable and proper costs incurred by FACS in:

- (a) curing, rectifying or remedying ServiceCo's defaults (including amounts paid by FACS to a Subcontractor under a Side Deed); and

- (b) procuring alternative performance of the Service Package (including any lease payment obligations under a lease entered into by FACS or its nominee pursuant to the Option to Lease) but only to the extent such costs exceed the cost components of the Monthly Service Payment relating to the performance of the Service Package Activities and the insurance, deducted as part of the Transition Services Payment.

Rectification Plan means the plan referred to in clause 13.1(b)(iii).

Registered CHP means an Entity registered under the Community Housing Act as a community housing provider.

Registrar means the person appointed as 'Registrar' under section 10 of the Community Housing Act or the Registrar for a jurisdiction other than New South Wales that is participating in the National Regulatory System.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Infrastructure, in respect of a Site, means the whole of the area inside the boundaries of the Site, the physical works, infrastructure and grounds contained within those boundaries, and all equipment owned, leased, licensed or controlled by ServiceCo, which it uses to provide the Services in accordance with this Agreement, including any Supporting Infrastructure, any Modifications and any rectification of Defects.

Relevant Person means:

- (a) a director or secretary of a Consortium Member;
- (b) a director or secretary of a Group Member; or
- (c) an officer, agent, employee or consultant of a Consortium Member or Subcontractor who:
 - (i) has the ability to exercise influence or control over the decisions or actions of the Consortium Member or Subcontractor in relation to the Service Package other than solely through the exercise of voting rights at a meeting of shareholders or directors of the Consortium Member or Subcontractor;
 - (ii) works on, or at, a Site during the Service Delivery Phase; or
 - (iii) has access to Personal Information and any other Confidential Information which compromises the security of the Relevant Infrastructure.

Relevant Secured Property means the interest of any Group Member in the Service Package Documents, the Sites, the Dwellings and any other assets required to perform the Service Package Activities.

Relief Event means any Extension Event, Intervening Event, Change Compensation Event or other event which entitles ServiceCo to:

- (a) relief or suspension from performance of its obligations, or to an extension of time, under a FACS Service Package Document;
- (b) compensation from FACS; or

(c) bring any other Claim against FACS,
in connection with the Service Package.

Removal Date has the meaning given in clause 22.4(b).

Removed Dwellings has the meaning given in clause 22.4(b).

Request for Proposal means the Request for Proposal for the Service Package issued by FACS on 6 May 2016.

Required Rating means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc. (or such other credit rating as FACS may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc., an equivalent rating with another reputable rating agency (as FACS may approve in writing).

Residential Tenancy Agreement has the meaning given in section 13 of the *Residential Tenancies Act 2010* (NSW).

Responsible Entity has the meaning given in the Corporations Act.

Restructure Effective Date has the meaning given to 'Effective Date' in the Compass Restructure Deed.

Restructure Financial Model has the meaning given to that term in the Compass Restructure Deed.

Restructure Model Output Schedule has the meaning given to that term in the Restructure Deed.

Restructure Requirement means ServiceCo has, in respect of each Site:

- (a) done one of the following:
 - (i) acquired, or entered into a contract to acquire, that Site and a contract to obtain finance for that acquisition which are each unconditional save for any Permitted Conditions;
 - (ii) entered into an Agreement for Lease in respect of that Site which is unconditional save for any Permitted Conditions, provided that Agreement for Lease is in connection with a Site referred to in Stages '3', '5', '9', '13' and '19'; or
 - (iii) entered into a development agreement and Securities Transfer Agreement that is the same or similar to that entered into in respect of Stages '2' and '14' for each of Stages '2', '13', '14' and '19' which is unconditional save for any Permitted Conditions; and
- (b) provided evidence reasonably satisfactory to FACS of the arrangements described in paragraphs (a)(i), (ii) and (iii) above, including executed copies of the relevant contracts,

on or before the Review Date.

Retained Social Housing Tenant means a Social Housing Tenant who has subsequently been assessed as ineligible for Social Housing rent subsidy in accordance with section 4.7 of the Services Specification and has been classified as such in accordance with that section.

Review Date means 1 April 2019 (or such other date agreed in writing by the parties).

Review Period has the meaning given in the Review Procedures.

Review Procedures means Schedule 9.

Reviewable Services means:

- (a) Tailored Support Coordination Services; and
- (b) Performance and Data Reporting,

and **Reviewable Service** means one of them.

Reviewable Services Date means:

- (a) the third anniversary of the Service Commencement Date with respect to the final Stage; and
- (b) thereafter every 3 years or part thereof until the Final Expiry Date.

Reviewable Services Schedule means the Original Reviewable Services Schedule updated under clause 20.1(c).

Reviewable Services Tender Expiry Date means 1 Month after the expiry of the then current Reviewable Services Term.

Reviewable Services Term means each of the following periods:

- (a) the period commencing on the Service Commencement Date of the final Stage and ending on the day prior to the third anniversary of that date; and
- (b) the period or part thereof which occurs every 3 years thereafter until the Final Expiry Date,

unless otherwise changed by agreement between the parties and in each case subject to Partial Termination of a Stage.

Savings has the meaning given in the Change Compensation Principles.

Secured Finance Document means a Finance Document in respect of which the obligations of the relevant Group Members are secured by a Security Interest over the Relevant Secured Property.

Securities means shares, units, interests in a partnership, and any other interests, which would constitute 'securities' as defined under the Corporations Act.

Security Interest means any mortgage, pledge, lien, encumbrance, assignment, charge or any security or preferential interest or arrangement of any kind and includes:

- (a) a 'security interest' as defined in section 12 of the *Personal Property Securities Act 2009* (Cth);
- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

Service Commencement Date means, subject to clauses 15.8 and 16, the day after the Date of Service Readiness.

Service Delivery Phase means, in respect of each Stage, the period beginning on the relevant Service Commencement Date and ending on the date which is the Final Expiry Date for that Stage.

Service Delivery Phase Plans means each of the plans described in the Service Delivery Phase Plans Schedule.

Service Delivery Phase Plans Schedule means Schedule 17.

Service Failure has the meaning given in the Payment Schedule.

Service Package means:

- (a) the performance of the Service Package Activities including:
 - (i) financing the Service Package Activities; and
 - (ii) performing the Services; and
- (b) the performance of all other obligations,

in accordance with, or as contemplated by, any Service Package Document, or incidental to any Service Package Document.

Service Package Activities means all works, things and tasks that ServiceCo is, or may be, required to do to comply with its obligations in connection with the FACS Service Package Documents, including the Delivery Phase Activities and the Services.

Service Package Documents means:

- (a) this Agreement;
- (b) any Financiers' Tripartite Deed;
- (c) each Lease;
- (d) each Key Subcontract;
- (e) each Side Deed;
- (f) the DAB Agreement;
- (g) the Equity Documents;

- (h) the New Service Package Documents (as defined in the Restructure Deed); and
- (i) any other document the parties agree is a Service Package Document.

Service Package Objectives means the objectives of the Service Package included in the Contract Particulars.

Service Provision Performance Incident has the meaning given in the Payment Schedule.

Service Readiness means, in respect of a Stage, when all the Service Readiness Criteria for that Stage have been met to the satisfaction of FACS (acting reasonably).

Service Readiness Criteria means the criteria for service readiness described in Schedule 8.

Service Readiness Outstanding Item means any act, matter, state of affairs or thing that is required in accordance with this Agreement to have been performed, achieved, undertaken, provided or completed by ServiceCo as at Service Readiness which has not been so performed, achieved, undertaken, provided or completed by ServiceCo, unless FACS has determined (acting reasonably), that such act, matter, state of affairs or thing (or the cumulative impact of multiple acts, matters, state of affairs or things) is likely to prevent:

- (a) ServiceCo from delivering the Services in accordance with the Services Specification;
- (b) ServiceCo being a Registered CHP; or
- (c) compliance with the National Regulatory System.

Service Readiness Schedule means Schedule 8.

ServiceCo Act or Omission means:

- (a) a breach of this Agreement by ServiceCo; or
- (b) any other act or omission of ServiceCo or its Associates other than an act or omission undertaken in accordance with the Service Package Documents and not undertaken fraudulently, recklessly, unlawfully, negligently or maliciously.

ServiceCo Material means:

- (a) the Delivery Phase Plans and the Delivery Phase Reports;
- (b) the Service Delivery Phase Plans; and
- (c) all other Material which ServiceCo or any of its Associates (other than any Lessors) prepares, uses and provides to FACS or any of its Associates in connection with the Service Package whether before or after the date of this Agreement.

ServiceCo Representative means the person identified in the Contract Particulars subject to replacement, termination or delegation in accordance with clause 8.3.

Services means:

- (a) the services referred to in the Services Specification to be undertaken by ServiceCo during the Service Delivery Phase including:

- (i) Accommodation Services;
 - (ii) Asset Management Services;
 - (iii) Performance and Data Reporting;
 - (iv) Tailored Support Coordination Services; and
 - (v) Tenancy Management Services; and
- (b) all other things ServiceCo is required to provide or undertake during the Service Delivery Phase as set out in the Services Specifications or FACS Service Package Documents,

in each case as modified in accordance with this Agreement.

Services Requirements means the requirements for the provision of the Services as set out in:

- (a) the Services Specification;
- (b) the Bid Services Deliverables; and
- (c) the remainder of this Agreement.

Services Specification means Schedule 18, as may be amended from time to time in accordance with this Agreement.

Side Deed means:

- (a) each Head Lease Side Deed;
- (b) each Asset Lease Side Deed; and
- (c) where the context permits, any other Subcontract Side Deed executed in accordance with clause 10.2(c).

Silver Level Requirement means, in respect of a Stage or the Service Package (as applicable), the proportion of Dwellings required to meet the 'silver level' of the Liveable Housing Design Guidelines (as that term is defined in the Services Specification).

Site means the land on which the Relevant Infrastructure is or is to be located and in respect of which the Services are undertaken, as identified in the Dwellings Schedule and varied from time to time in accordance with clauses 15.9 and 19.

Site Conditions means any physical conditions on, under, or over the surface, or in the vicinity of a Site, including:

- (a) **(water and gas)**: ground gases, ground water, ground water hydrology, surface water, water quality, salinity, the existence of any wells and the effects of any de-watering;
- (b) **(physical structures)**: physical and structural conditions above, upon and below the ground including any infrastructure, partially completed structures, Artefacts or in ground works;

- (c) **(vegetation)**: pastures, grasses or other vegetation on the Site;
- (d) **(topography)**: topography, ground surface and sub-surface conditions and geology including rock or other materials;
- (e) **(climate)**: climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand, seasons, mud and other effects of climatic and weather conditions;
- (f) **(contamination)**: any contamination;
- (g) **(pollution)**: any pollution;
- (h) **(physical conditions)**: all other physical conditions and characteristics of, or in the vicinity of the Site, on or below the surface which may affect ServiceCo's ability to carry out its obligations in accordance with this Agreement; and
- (i) **(Adverse Rights)**: all Adverse Rights over or in connection with the Site.

Site Selection Strategy means Schedule 22.

Social Housing means those Dwellings which are made available to Social Housing Tenants.

Social Housing Tenant means a household which meets the social housing eligibility criteria outlined in the FACS Eligibility for Social Housing Policy or a Retained Social Housing Tenant, and has the right to occupy a Dwelling under a Residential Tenancy Agreement and where the context requires, any such household which has been allocated a Dwelling in accordance with the Services Specification.

Solvent has the meaning given in the Corporations Act.

Stage means each stage set out in the Dwellings Schedule.

Standards means all standards, codes, specifications, policies and requirements to be complied with in accordance with, and subject to, the terms of this Agreement including:

- (a) the standards, codes, specifications, policies and requirements set out in, or otherwise expressly referred to in, the Services Specification;
- (b) all Approvals (including any conditions or requirements under them);
- (c) all requirements and standards of Authorities; and
- (d) any other policy, guideline, standard, procedure or requirement, which applies in connection with the Service Package:
 - (i) which is notified to ServiceCo;
 - (ii) which is publicly available or otherwise available to ServiceCo; or
 - (iii) with which ServiceCo is expressly required by the terms of this Agreement, by Law or by direction of FACS to comply,

unless FACS gives notice to ServiceCo that any Approval, standard, code, specification, policy or requirement does not constitute a Standard for the purposes of this Agreement.

Subcontract means an agreement which:

- (a) ServiceCo enters into with a Subcontractor; or
- (b) a Subcontractor enters into with another Subcontractor,

in connection with the Service Package Activities, including each Lease.

Subcontract Side Deed means a direct deed substantially in the form set out in Schedule 21.

Subcontractor means:

- (a) any person who enters into a contract in connection with the Service Package Activities with ServiceCo or any Key Subcontractor; or
- (b) for the purposes of the definition of Relevant Person and Probity Event and clauses 10.1(d), 10.3(a) and 10.3(b) only, any person whose Subcontract is in connection with the Service Package Activities and is in a chain of contracts where the ultimate contract is with ServiceCo or any Key Subcontractor.

Suitable Substitution Accommodation means alternative permanent accommodation that, subject to clause 19(d):

- (a) has the same number of bedrooms as the Dwelling it is replacing;
- (b) complies with:
 - (i) the Services Specification;
 - (ii) the Design Requirements;
 - (iii) the Site Selection Strategy;
 - (iv) this Agreement; and
 - (v) paragraphs 2 and 3 of item 4 of the Service Readiness Criteria, with respect to any accommodation used in substitution of any Dwellings during the Service Delivery Phase in accordance with clause 19; and
- (c) is not currently used for the provision of social or affordable housing.

Sunset Date means, in respect of a Stage, the date specified as such in the Delivery Phase Milestone Schedule, as adjusted (if at all) in accordance with this Agreement.

Supplier has the meaning given in clause 21.8(c).

Supporting Infrastructure means, in respect of a Stage, the amenities and supporting infrastructure that:

- (a) ServiceCo owns or controls or will own or control and will make available to Tenants in connection with the Service Package; and

- (b) is external but is to be provided to a Site by ServiceCo or its Associates and which is used in common with other users, including roads, footpaths, transport facilities and any Utility Infrastructure external to a Site,

including as specified in the Dwellings Schedule.

Tailored Support Coordination Services means the services described in section 5 of the Services Specification, as varied or supplemented in accordance with any Modification.

Tailored Support Coordination Services Provider means, as at the date of this Agreement, any party listed as such in the Contract Particulars and any person who in addition or substitution is engaged by ServiceCo to carry out any of the Tailored Support Coordination Services.

Tailored Support Coordination Services Provider Subcontract means the Subcontract between ServiceCo and a Tailored Support Coordination Services Provider with respect to the Tailored Support Coordination Services.

Target Dwellings means the 550 Dwellings as outlined in the Service Package Objectives as at the date of the Compass Restructure Deed.

Tax or Taxes means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by an Authority, the NSW Government or the Commonwealth, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing, but excluding any Rates.

Tax Invoice has the meaning given in the GST Law.

Taxable Supply has the meaning given in the GST Law, excluding section 84-5 of the GST Act.

Tenancy means the occupation of a Dwelling under a Residential Tenancy Agreement.

Tenancy Management Services means the services described in section 4 of the Services Specification, as varied or supplemented in accordance with any Modification.

Tenancy Management Services Provider means, as at the date of this Agreement, any party listed as such in the Contract Particulars and any person who in addition or substitution is engaged by ServiceCo to carry out any of the Tenancy Management Services.

Tenancy Management Services Provider Subcontract means the Subcontract between ServiceCo and a Tenancy Management Services Provider with respect to the Tenancy Management Services.

Tenant means any:

- (a) Social Housing Tenant; and
(b) Affordable Housing Tenant.

Term means the term of this Agreement:

- (a) commencing in accordance with clause 4.1; and
(b) ending on the Expiry Date.

Termination Bond means a bond or bank guarantee which:

- (a) is unconditional, irrevocable and payable on demand;
- (b) is issued by a financial institution that is the holder of a current licence issued by APRA and has the Required Rating;
- (c) specifies a location in Sydney (or any other place that FACS approves) where demand is to be given and payment made, without further confirmation from the issuer, on any Business Day;
- (d) is governed by and to be construed according to the Laws applying in New South Wales;
- (e) is, where required, duly stamped; and
- (f) is otherwise on terms and in a form acceptable to FACS, acting reasonably.

Termination Payment means a termination payment calculated in accordance with the Termination Payment Schedule.

Termination Payment Date means the date determined in accordance with section 3.1 of the Termination Payment Schedule.

Termination Payment Schedule means Schedule 6.

Tetris Property Documents has the meaning given in the Compass Restructure Deed.

Tetris Sites means the Sites as set out in the Dwellings Schedule in respect of Stages '2', '13', '14' and '19' and any Site or Sites which replace those Sites pursuant to clause 19.

Transition Services Payment means, in respect of a Dwelling, for the whole or any part of an Operating Month or Operating Months during the period set out in clause 32.4(d), an amount equal to the Monthly Service Payment which would have been payable but for the operation of 32.3(d)(iii), less an amount equal to the aggregate of (without double counting):

- (a) all cost components of the Monthly Service Payment relating to the performance of the Service Package Activities that are not being provided; and
- (b) any Rectification Costs incurred by FACS during the Operating Month (or part thereof) to which the Transition Service Payment relates.

Updated Dwellings Schedule has the meaning given in clause 15.9.

Utility means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater, communications and data services (including telephone, facsimile and internet access).

Utility Infrastructure means any part of the supply, distribution or reticulation network owned, operated or controlled by a Utility provider, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueduct, electrical installation, telecommunications plant, water channel, and railway and electronic communications systems, but not including any part of the Relevant Infrastructure.

Utility Interruption means any one or more Utilities not being available for use at a Site (at all or in the necessary quantity).

Voluntary Termination means the termination of this Agreement pursuant to clause 32.2.

Voluntary Termination Payment means the payment calculated in accordance with section 5 of the Termination Payment Schedule.

WCR Ratio means the working capital ratio which ServiceCo must continue to satisfy as a condition of its registration as a Registered CHP at the tier applicable at the time of reporting as set by the Registrar under the National Regulatory System.

WHS Act means the *Work Health and Safety Act 2011* (NSW).

WHS Legislation means Legislation relating to health and safety at work including:

- (a) the WHS Act; and
- (b) the WHS Regulation.

WHS Regulation means the *Work Health and Safety Regulation 2011* (NSW).

2. General rules of interpretation

2.1 Interpretation

In this deed:

- (a) **(headings)**: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

- (b) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (c) **(Agreement and Schedule references)**: a reference to:
 - (i) a party, clause, Schedule, Exhibit or Annexure is a reference to a party, clause, Schedule, Exhibit or Annexure of or to this Agreement; and
 - (ii) a section is a reference to a section of a Schedule;
- (d) **(document as amended)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (g) **(legislation)**: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
- (h) **(Standards)**: a reference to a Standard includes that Standard as amended or updated from time to time;
- (i) **(definitions)**:
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - (ii) unless the context otherwise requires, terms which are defined in a Schedule of this Agreement have the same meaning throughout this Agreement (including the Schedules and Annexures to it);
- (j) **('includes')**: 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (k) **('or')**: the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;
- (l) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (m) **('\$')**: a reference to '\$', AUD or dollar is to Australian currency;
- (n) **(Business Day)**: if the day on or by which anything is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day;
- (o) **(day)**: except as otherwise provided in this Agreement or where a reference is made to 'Business Days', day means a calendar day;
- (p) **(time)**: a reference to time is a reference to time in Sydney, Australia;
- (q) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;
- (r) **(function)**: a function includes a power, authority or duty;
- (s) **(obligations and Liabilities)**: a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (t) **('may')**: except to the extent that FACS is expressly required under this Agreement to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by FACS, means that FACS can exercise that power, right or remedy in its absolute and unfettered discretion (without regard to ServiceCo) and FACS has no obligation to do so;

- (u) **(construction)**: where there is a reference to an Authority, institute or association or other body referred to in this Agreement which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another Entity, this Agreement is deemed to refer to that other Entity; or
 - (ii) ceases to exist, this Agreement is deemed to refer to that new Entity which serves substantially the same purpose or object as the former Entity;
- (v) **(asset)**: references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived, from the property or asset;
- (w) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision; and
- (x) **(Delivery Phase Program)**: a reference to the Delivery Phase Program is a reference to the most recent Delivery Phase Program that has been reviewed and not rejected in accordance with the Review Procedures.

2.2 Composition of this Agreement and order of precedence

- (a) **(Agreement composition)**: This deed comprises:
 - (i) clauses 1 to 49;
 - (ii) Schedule 1 to Schedule 30; and
 - (iii) Annexures A to D,
 (the **Agreement**).
- (b) **(Annexures)**: ServiceCo agrees that to the extent that an Annexure seeks to impose any obligations on FACS, ServiceCo will not be entitled to make any Claim against FACS in respect of that obligation (unless that same obligation is expressly imposed on FACS in a clause or Schedule).
- (c) **(Notification of ambiguity)**: If either party identifies an inconsistency, ambiguity or discrepancy within this Agreement, then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and, in any case not later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.
- (d) **(Resolution of ambiguity)**: Within the Review Period, FACS will direct ServiceCo as to how to resolve the inconsistency, ambiguity or discrepancy which is the subject of the notice given under clause 2.2(c) as follows:
 - (i) **(order of precedence)**: if the relevant inconsistency, ambiguity or discrepancy is within a document forming part of this Agreement, and there is a process for resolving such inconsistencies, ambiguities and

discrepancies contained in the relevant document then in accordance with that process; or

- (ii) **(higher standard)**: if the inconsistency, ambiguity or discrepancy is between documents forming part of this Agreement or is within a document that forms part of this Agreement but does not have a process for resolving the inconsistency, ambiguity or discrepancy then FACS will direct ServiceCo to adopt the option FACS requires ServiceCo to proceed with, which may be the greater, more onerous to ServiceCo or higher requirement, standard, quality, level of service, staffing level, quantum or scope as determined by FACS.
- (e) **(Inconsistency between FACS Service Package Documents)**: If there is an ambiguity, discrepancy or inconsistency between this Agreement and any other FACS Service Package Document, then the following order of precedence will apply:
 - (i) the Financiers' Tripartite Deed;
 - (ii) this Agreement; and
 - (iii) the remaining FACS Service Package Documents.

2.3 Plans, reports and procedures

A reference to any Delivery Phase Plan, Delivery Phase Report, Service Delivery Phase Plan or Service Delivery Phase Report is a reference to that Delivery Phase Plan, Delivery Phase Report, Service Delivery Phase Plan or Service Delivery Phase Report as amended or updated from time to time under this Agreement.

2.4 Version of documents with which ServiceCo must comply

Where ServiceCo is required to comply with a document, and that document or any update of that document is required to be submitted for review in accordance with the Review Procedures, ServiceCo must comply with the version of the document that has been submitted, reviewed and amended (if applicable) in accordance with the Review Procedures.

2.5 Approvals, directions and notices in writing

Unless otherwise expressly provided in this Agreement or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing.

2.6 Prior approval or consent

Where ServiceCo is required by this Agreement to obtain FACS' or the FACS Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the action, document or thing occurring or coming into effect.

2.7 Action without delay

Unless there is a provision in this Agreement, which specifies a period of time in which the parties must do something, all things must be done without undue delay.

2.8 Provisions limiting or excluding Liability, rights or obligations

- (a) **(Other rights not excluded)**: A right or obligation of FACS or ServiceCo under this Agreement will not limit or exclude any other right or obligation of FACS or ServiceCo under this Agreement unless expressly stated.
- (b) **(Liability only excluded to the extent permitted by Law)**: Any provision of this Agreement which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

2.9 Relationship of the parties

Nothing in this Agreement or any other Service Package Document:

- (a) **(no additional relationship)**: creates a partnership, joint venture or fiduciary, employment or agency relationship between FACS and:
 - (i) ServiceCo; or
 - (ii) any of ServiceCo's Associates; or
- (b) **(no good faith)**: imposes any duty of good faith on FACS (unless otherwise expressly provided).

2.10 FACS' executive rights, duties and functions

- (a) **(FACS' own interests)**: Unless otherwise expressly provided in the FACS Service Package Documents, nothing in the FACS Service Package Documents gives rise to any duty on the part of FACS to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with the FACS Service Package Documents.
- (b) **(FACS' rights)**: Notwithstanding anything expressly provided or implied in the FACS Service Package Documents to the contrary, the parties acknowledge and agree that:
 - (i) FACS and its Associates are not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - (ii) nothing expressly provided or implied in the FACS Service Package Documents has the effect of constraining FACS or any of its Associates or placing any fetter on FACS' or any of its Associates' discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (c) **(No Claim)**: Subject to clause 2.10(d), ServiceCo will not be entitled to make any Claim against FACS for any Liability relating to any exercise or failure of FACS or any of its Associates to exercise any of its executive or statutory rights or duties.
- (d) **(Liability for breach)**: Clauses 2.10(a) to 2.10(c) (inclusive) do not limit any Liability which FACS would have had to ServiceCo under any FACS Service

Package Document as a result of a breach by FACS of a term of any FACS Service Package Document but for those clauses.

2.11 Reasonable endeavours and obligations to act in good faith

Any statement in a FACS Service Package Document providing that FACS (or any officer or agent of FACS) will use or exercise 'reasonable endeavours', 'act reasonably' or 'act in good faith' in relation to an outcome, means that FACS (or any officer or agent of FACS):

- (a) **(relevant steps)**: will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) **(no guarantee)**: does not guarantee the relevant outcome will be brought about; and
- (c) **(no obligation)**: is not required to:
 - (i) exercise a right of any government party, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (ii) exercise a power or discretion or otherwise act in a manner that FACS (or the officer or agent of FACS) regards as not in the public interest;
 - (iii) develop or implement new policy or a change in policy;
 - (iv) procure any new Legislation or a change in Legislation; or
 - (v) act in any way that FACS (or the officer or agent of FACS) regards as not in the public interest.

The parties agree that clause 2.11(a) does not apply to any statement in a FACS Service Package Document providing that FACS will 'act in good faith' in relation to an outcome.

2.12 No FACS Liability for review

- (a) **(No obligation)**: FACS does not owe any duty of care to ServiceCo (or any duty of care to ServiceCo to procure that any of the Associates of FACS) to:
 - (i) review ServiceCo Material submitted by ServiceCo (including where submitted in accordance with the Review Procedures); or
 - (ii) inspect or review the Service Package Activities or the Relevant Infrastructure,for Defects, other errors or omissions or for compliance with the FACS Service Package Documents or any Laws or Standards.
- (b) **(No relief)**: No:
 - (i) review of, comments upon, acceptance, approval or certification of any ServiceCo Material by FACS or its Associates;
 - (ii) inspection or review of the Service Package Activities or Relevant Infrastructure by FACS; or

- (iii) failure by (or on behalf of) FACS or its Associates, to detect any non-compliance by ServiceCo with its obligations in accordance with the FACS Service Package Documents or any Laws or Standards;

will:

- (iv) relieve ServiceCo from, or alter or affect, its Liabilities, obligations or responsibilities whether in accordance with the FACS Service Package Documents or otherwise according to Law;
- (v) evidence or constitute the grant of an extension of time, or a request or direction to accelerate, disrupt, prolong or vary any or all of the Service Package Activities;
- (vi) prejudice FACS' rights against ServiceCo whether under the FACS Service Package Documents or otherwise according to Law; or
- (vii) constitute an approval by FACS of ServiceCo's performance of its obligations in accordance with the FACS Service Package Documents.

2.13 Indexation

- (a) **(Indexed amounts):** All amounts required to be adjusted under this Agreement by an Index will be Indexed in accordance with the Indexes Schedule.
- (b) **(Changes to indexes):** Any changes to Indexes will be calculated in accordance with the Indexes Schedule.

2.14 Cost of carrying out obligations

Each party must carry out its obligations under this Agreement at its own cost, unless expressly provided otherwise.

2.15 Exclusion of Civil Liability Act 2002 (NSW)

- (a) **(Excluded operation of Civil Liability Act):** To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and Liabilities arising under or in relation to this Agreement, howsoever those rights, obligations or Liabilities are sought to be enforced.
- (b) **(Subcontracts must exclude operation of Civil Liability Act):** ServiceCo must procure that each Subcontract includes provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or Liabilities arising under or in relation to that Key Subcontract howsoever such rights, obligations or Liabilities are sought to be enforced.

2.16 Final and binding

Where a determination, decision, opinion or direction is said in this Agreement on any basis to be 'final and binding', neither party is entitled to challenge that decision, opinion or direction.

2.17 Governing Law

This Agreement is governed by, and must be construed according to, the Laws of New South Wales, Australia.

2.18 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this Agreement and the other FACS Service Package Documents:

- (a) **(entire understanding)**: embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the parties.

2.19 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this Agreement.

2.20 ServiceCo and its Associates

Any obligation of ServiceCo under a FACS Service Package Document is deemed to include an obligation on ServiceCo to ensure that each of its Associates assumes and complies with the corresponding obligation to the extent that the obligation is applicable to that Associate of ServiceCo under any Law or a Service Package Document to which that Associate is a party.

2.21 Survival of certain provisions

- (a) **(Surviving clauses)**: All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with:
 - (i) FACS' rights to set-off and recover money;
 - (ii) confidentiality or privacy;
 - (iii) any obligation to make any Accounts and Records available to FACS;
 - (iv) any indemnity or financial security given in accordance with this Agreement;
 - (v) any limitation or exclusion of Liability; and
 - (vi) any right or obligation arising on termination of this Agreement, including an Option to Lease.
- (b) **(Interpretation)**: No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.

- (c) **(Survival of rights and obligations):** No right or obligation of any party will merge on completion of any transaction under this Agreement. All rights and obligations under this Agreement survive the execution and delivery of any transfer or other document, which implements any transaction under this Agreement.

2.22 Waiver

- (a) **(Writing):** A waiver given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver):** A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Agreement.
- (c) **(No waiver of another breach):** No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

2.23 Severance

If, at any time, a provision of this Agreement or any other FACS Service Package Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) any other provision of this Agreement or any other relevant FACS Service Package Document; or
- (b) that provision under the Law of any other jurisdiction.

2.24 Counterparts

This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Agreement.

2.25 Moratorium legislation

A provision of any Law which comes into effect after the date of this Agreement and operates to:

- (a) increase or improve any of ServiceCo's rights, powers or remedies under this Agreement or otherwise; or
- (b) prejudicially affect the exercise by FACS of any right, power or remedy under this Agreement or otherwise,

(each matter referred to in (a) and (b), a **Specified Effect**) is, to the extent only that the Law has the Specified Effect, expressly waived by ServiceCo to the extent it is legally able to do so. If a waiver is ineffective the parties will consult in good faith to determine how the parties can be restored to their original positions under this Agreement.

2.26 Community housing agreement

- (a) The parties agree that this Agreement is a 'community housing agreement' under and for the purposes of section 16 of the Community Housing Act.
- (b) The parties agree that under and for the purposes of section 18(1)(c) of the Community Housing Act, that section 18 of the Community Housing Act does not apply to any Site.

Part B – Service Package commencement

3. Conditions Precedent

3.1 Commencement

This Agreement will only come into force and effect (but will do so automatically on the date) when the last of the Conditions Precedent to be satisfied, has been satisfied, (or waived in accordance with clause 3.3) except for the provisions contained in:

- (a) clause 1 (Definitions);
- (b) clause 2.1 (Interpretation);
- (c) clause 2.9 (Relationship of the parties);
- (d) clause 2.10 (FACS' executive rights, duties and functions);
- (e) clause 2.11 (Reasonable endeavours of FACS and obligations to act in good faith);
- (f) clause 2.12 (No FACS Liability for review);
- (g) this clause 3 (Conditions Precedent);
- (h) clause 4 (Term);
- (i) clause 5.3 (All risks);
- (j) clause 7.1 (No representations from FACS);
- (k) clauses 8.2 and 8.3 (Parties' Representatives);
- (l) clause 25 (Reduction in FACS Liability for Relief Events);
- (m) clause 29 (Indemnities and Consequential or Indirect Loss);
- (n) clauses 34 to 38 (Dispute resolution);
- (o) clause 39 (Representations and warranties);
- (p) clause 42 (Assignment and amendments);
- (q) clause 43 (Change in Control);

- (r) not used;
- (s) clause 46 (Intellectual Property Rights);
- (t) clause 47 (Confidential Information and disclosure);
- (u) clause 48 (Probity Events and Probity Investigations); and
- (v) clause 49 (Notices and bar to Claims),

which will commence on the date of this Agreement.

3.2 Satisfaction of Conditions Precedent

- (a) **(Conditions Precedent Schedule)** The Conditions Precedent Schedule sets out each Condition Precedent that ServiceCo must satisfy.
- (b) **(ServiceCo to satisfy):** ServiceCo must satisfy each Condition Precedent in the Conditions Precedent Schedule (or procure its waiver in accordance with clause 3.3) by the Condition Precedent Deadline and must notify FACS promptly as each Condition Precedent is satisfied.
- (c) **(Notice at Commercial Close):** When the last Condition Precedent to be satisfied has been satisfied or waived, FACS must confirm by notice to ServiceCo that every Condition Precedent has been satisfied or waived, and the date upon which the last of the Conditions Precedent was satisfied or waived.

3.3 Waiver of Conditions Precedent

A Condition Precedent is only waived if FACS gives notice of the waiver of the Condition Precedent to ServiceCo.

3.4 Failure to satisfy by the Condition Precedent Deadline

If any Condition Precedent is not satisfied (or waived in accordance with clause 3.3) by the Condition Precedent Deadline, then:

- (a) **(Option to terminate):** FACS may terminate this Agreement upon giving not less than 5 Business Days' notice to ServiceCo;
- (b) **(Service Package Documents terminated):** if FACS terminates this Agreement in accordance with clause 3.4(a), each of the Service Package Documents will be taken to have been terminated at the time this Agreement is terminated and will be of no further force or effect; and
- (c) **(No claim):** neither party will have any Claim against the other party arising out of or in connection with the Service Package or the Service Package Documents, including due to the failure to satisfy (or procure the waiver of) a Condition Precedent, except in respect of antecedent breaches of the clauses listed in clause 3.1.

3.5 Not used

4. Term

4.1 Commencement date

Subject to clause 3.1, this Agreement commences on the date of this Agreement.

4.2 Expiry Date

This Agreement will terminate, in respect of each Stage, on the Final Expiry Date for that Stage unless terminated earlier, in which case this Agreement will expire in respect of that Stage on the date of such earlier termination (in each case an **Expiry Date**).

Part C – General obligations

5. Overarching obligations

5.1 ServiceCo's primary obligations

- (a) **(Deliver the Service Package):** ServiceCo must:
 - (i) carry out the Service Package Activities in accordance with:
 - A. the Service Package Documents;
 - B. all applicable Laws and Standards;
 - C. the Delivery Phase Plans and the Service Delivery Phase Plans (as applicable);
 - D. Best Services Practices; and
 - E. all Development Consents; and
 - (ii) ensure that neither ServiceCo nor any of its Associates cause FACS or any Associates of FACS to breach any Law.
- (b) **(Comply with directions):** ServiceCo must comply with:
 - (i) all directions given by FACS or the FACS Representative to comply with the terms of the FACS Service Package Documents;
 - (ii) all agreements made by the parties in accordance with this Agreement;
 - (iii) all Modification Orders and Change Responses issued by FACS in accordance with this Agreement; and
 - (iv) all directions or determinations given by FACS or the FACS Representative in accordance with the FACS Service Package Documents,

whether or not ServiceCo disputes that such direction is a direction or asserts that the direction is or determination is a Modification under this clause, except as required by Law.

- (c) **(ServiceCo not to act)**: Except as otherwise required by Law, ServiceCo must not accept or act upon directions in connection with the Service Package Activities from an employee or agent of FACS other than the FACS Representative or a FACS delegate appointed in accordance with clause 8.2.

5.2 Disputed Directions

- (a) **(Comply with direction)**: Subject to clause 26, where ServiceCo disputes that any direction given or determination made has been given or made in accordance with clause 5.1(b) or 5.1(c), ServiceCo must, save where the direction would cause it to breach any Legislation, comply with the direction or determination, but at the same time may refer the Dispute for determination in accordance with clause 34.
- (b) **(Determination of Dispute)**: An expert, arbitrator, court or tribunal with power to determine a Dispute under this Agreement will have the power to open up and review the direction purported to be given or determination purported to be made under this Agreement.

5.3 All risks

- (a) **(All risks and no claim)**: Except as otherwise expressly provided in the FACS Service Package Documents, as between FACS and ServiceCo:
 - (i) ServiceCo accepts all risks (and the cost of such risks) in connection with the Service Package; and
 - (ii) ServiceCo is not entitled to make any Claim against FACS or any of its Associates in connection with any Site or Site Conditions, the Relevant Infrastructure, the Service Package or the Service Package Documents, including any Claim for breach of contract, misrepresentation or negligence (other than a Claim for breach of contract where FACS fails to make any payment properly due to ServiceCo under this Agreement).
- (b) **(ServiceCo assumes risk)**: Except as otherwise provided in the FACS Service Package Documents, ServiceCo assumes the risk (and the cost of such risks) in connection with:
 - (i) the existence, location, condition and availability of Utility Infrastructure in connection with the Service Package Activities;
 - (ii) the Site Conditions, title to any Site or adequacy of or access to any Site and its surroundings for the Service Package; and
 - (iii) loss or damage to Relevant Infrastructure during the Term.
- (c) **(Liability exceptions)**: Clause 5.3(a) does not:
 - (i) limit ServiceCo's right to raise any defence in relation to a Claim made by FACS against ServiceCo;

- (ii) exclude or limit any Liability FACS or any of its Associates may have to ServiceCo or any of its Associates under this Agreement or at Law in respect of ServiceCo's Liability to a third party in respect of death, personal injury or damage to property to the extent that the Liability of ServiceCo or its Associates is a consequence of:
 - A. a breach by FACS of a FACS Service Package Document; or
 - B. a fraudulent, reckless, unlawful, negligent or malicious act or omission of FACS or a FACS Associate; or
- (iii) subject to and without limiting clause 5.3(d), exclude or limit any Liability FACS may have to ServiceCo under the Service Package Documents or at Law in respect of Liability incurred by ServiceCo as a result of a breach by FACS of any Service Package Document.
- (d) **(ServiceCo acknowledgement):** ServiceCo acknowledges and agrees that its sole financial entitlement and FACS' sole financial Liability:
 - (i) for delay, disruption or disturbance to the progress of any part of the Service Package or a Stage, including by reason of a Compensable Extension Event, a Change in Mandatory Requirements or a Modification, is limited to the amount payable by FACS to ServiceCo in accordance with clauses 23.7, 23.10 and 26.10 (as applicable) and the Change Compensation Principles; and
 - (ii) for prevention, hindrance or disruption to the performance of the Services arising out of or in connection with an Intervening Event, including any Compensable Intervening Event, is limited to the amount payable by FACS to ServiceCo in accordance with clause 24.5 and the Change Compensation Principles.

5.4 Minimum requirements not sufficient

ServiceCo acknowledges and agrees that to the extent that the Design Requirements or Services Requirements specify or prescribe a minimum requirement, compliance with those minimum requirements may not of itself be sufficient for ServiceCo to discharge its obligations pursuant to this Agreement.

6. Approvals and consents

- (a) ServiceCo must, and must ensure that its Key Subcontractors (where applicable):
 - (i) obtain, maintain and comply with;
 - (ii) ensure that the Relevant Infrastructure satisfies and complies with; and
 - (iii) pay all fees and contributions in relation to,

all Approvals (including Key Planning Approvals and any modifications to any Approvals) necessary for the Service Package or a Stage, including all conditions and requirements of those Approvals.
- (b) Without limiting clause 5.3(b), ServiceCo acknowledges that:

- (i) FACS is not responsible for identifying or procuring any Sites;
- (ii) securing access to land is required to deliver the Service Package and is at the sole risk of ServiceCo; and
- (iii) FACS will not be liable upon any Claim (insofar as it is permitted by Law) by ServiceCo or any other party arising out of or in any way in connection with:
 - A. identifying and obtaining access to a Site;
 - B. any Site Conditions; or
 - C. any delay, additional costs or other effects on the Service Package Activities related to the ability of ServiceCo or any Subcontractors to obtain access to a Site.

7. Information Documents

7.1 No representations from FACS

ServiceCo acknowledges and agrees that FACS, its Associates and the author of any report provided in the Information Documents have not made and make no representations (express or implied), and give no warranties or guarantees (express or implied), and owe no duty of care (express or implied), in respect of:

- (a) **(Information Documents)**: the accuracy, suitability, adequacy or completeness of, or any omissions from, the Information Documents; or
- (b) **(Proposal)**: the feasibility or fitness for purpose of the Proposal (or any part of it).

7.2 Information Documents representations and warranties by ServiceCo

Without limiting clause 7.1, ServiceCo acknowledges and agrees that:

- (a) **(entry into Agreement)**: it enters into this Agreement based on its own investigations, interpretations, deductions, information and determination;
- (b) **(Information Documents)**: the Information Documents were provided by FACS and its Associates for the information only of ServiceCo;
- (c) **(adequacy of Services Specification etc)**: it has satisfied itself that there is nothing in the Design Requirements or the Services Requirements which would prevent:
 - (i) the Relevant Infrastructure from being Fit For Purpose; or
 - (ii) the Services being carried out in accordance with this Agreement;
- (d) **(no reliance)**: it did not rely upon any Information Documents or the accuracy, adequacy, suitability or completeness of the Information Documents for the purposes of entering into this Agreement or delivering the Service Package; and

- (e) **(FACS entry into Agreement):** FACS has entered into this Agreement relying upon the warranties, acknowledgements, representations and agreements of ServiceCo as set out in this Agreement.

8. Parties, personnel and community

8.1 Authorities

ServiceCo acknowledges and agrees that:

- (a) **(jurisdiction):** there are Authorities with jurisdiction over aspects of the Service Package Activities and the Site;
- (b) **(Authorities):** those Authorities may, from time to time and at any time, exercise their statutory functions and powers in a way which disrupts, interferes with or otherwise affects the Service Package Activities; and
- (c) **(co-operation):** it will co-operate with and co-ordinate its Service Package Activities with those Authorities as is required by them.

8.2 FACS Representative

- (a) **(Natural person):** FACS will ensure that at all times throughout the Term there is a natural person appointed by it as the FACS Representative for the Service Package.
- (b) **(Identity):** As at the Restructure Effective Date, the FACS Representative is the party nominated as such in the Contract Particulars.
- (c) **(Agent of FACS):** The FACS Representative will administer this Agreement on behalf of FACS and will exercise all rights, powers, authority and functions of FACS under this Agreement as FACS' agent.
- (d) **(Oral directions):** The FACS Representative may give a direction orally but will as soon as practicable confirm that direction in writing.
- (e) **(Replacement):** FACS may at any time replace the FACS Representative, in which event FACS will appoint another person as the FACS Representative and notify ServiceCo of that appointment.
- (f) **(Delegation):** FACS may at any time delegate the exercise of any power or authority of the FACS Representative to a person other than the then appointed FACS Representative and may terminate or vary that delegation.
- (g) **(Notification of delegation):** FACS will promptly notify ServiceCo of the identity of each delegate, and the powers and authority delegated (including any conditions applying to the delegated power).
- (h) **(Vary or terminate delegation):** FACS may vary or terminate any delegated power or authority of the FACS Representative but must promptly notify ServiceCo of any such variation or termination.

8.3 ServiceCo Representative

- (a) **(Natural person):** ServiceCo must ensure that at all times throughout the Term there is a natural person appointed by it as the ServiceCo Representative in respect of the Service Package.
- (b) **(Identity):** As at the date of this Agreement, the ServiceCo Representative is the party nominated as such in the Contract Particulars.
- (c) **(Employee):** The ServiceCo Representative must be an officer or employee of ServiceCo or a Related Body Corporate of ServiceCo and must be employed full time on the Service Package.
- (d) **(Replacement):** The ServiceCo Representative can only be replaced in accordance with clause 8.4.
- (e) **(Contact):** The ServiceCo Representative must act as the principal point of contact between ServiceCo and FACS in respect of the administration of this Agreement, and be available to FACS as and when required.
- (f) **(Directions):** A direction is given to ServiceCo if it is given to the ServiceCo Representative.
- (g) **(Authority and skills):** ServiceCo must ensure that at all times during his or her appointment, the ServiceCo Representative has:
 - (i) the authority to perform its role (i) and duties and discharge its obligations under this Agreement; and
 - (ii) a detailed knowledge of the Service Package and sufficient experience and skills to undertake the role of ServiceCo Representative.
- (h) **(Duties during the Term):** The ServiceCo Representative must perform the duties of the ServiceCo Representative under this Agreement, including to:
 - (i) **(spokesperson):** act as the spokesperson for ServiceCo;
 - (ii) **(partnership):** ensure the ongoing implementation of a partnership with FACS;
 - (iii) **(liaison):** liaise and generally deal with stakeholders;
 - (iv) **(manage):** represent the views of ServiceCo and manage and co-ordinate issues with any ServiceCo Associate prior to presentation to FACS;
 - (v) **(presence):** ensure a strong presence and consistent project management role for ServiceCo in the implementation of the Service Package;
 - (vi) **(appoint temporary replacement):** appoint a person with the equivalent qualification, experience, ability and expertise to temporarily act as the ServiceCo Representative before taking any annual or other leave;

- (vii) **(co-ordinate Subcontractors)**: co-ordinate and liaise with the Subcontractors and oversee the performance by the Key Subcontractors of their Key Subcontracts (other than any Lessors in relation to any Leases) during the term;
- (viii) **(meetings with FACS)**: convene and attend co-ordination meetings with FACS when requested by FACS; and
- (ix) **(co-ordinate transition)**: co-ordinate the delivery of the Services including execution of the Delivery Phase Activities in order to facilitate achievement of Service Readiness by the relevant Date for Service Readiness.

8.4 Replacement of ServiceCo Representative

ServiceCo must, if the ServiceCo Representative dies, becomes seriously ill or resigns from the employment of ServiceCo or any of its Associates or receives a promotion, replace the ServiceCo Representative with a person approved by FACS (such approval not to be unreasonably withheld) of at least equivalent qualification, experience, ability and expertise.

8.5 Communications and community relations

ServiceCo must manage and participate in all community relations programs and activities as reasonably requested by FACS from time to time and must not, and procure that its Associates do not, communicate with the media or communicate any information publicly with regard to the Service Package without the prior written consent of the FACS Representative.

8A Meetings

8A.1 Project Control Group

- (a) **(Establishment)**: The parties will establish a group consisting of the following members (together the **Project Control Group**):
 - (i) the FACS Representative;
 - (ii) the ServiceCo Representative;
 - (iii) two other representatives that FACS nominates from time to time; and
 - (iv) two other representatives that ServiceCo nominates from time to time who are employees or contractors of ServiceCo.
- (b) **(Chairperson)**: The FACS Representative will be the chairperson of the Project Control Group.
- (c) **(Functions)**: The functions of the Project Control Group will be to:
 - (i) monitor the overall progress of the Service Package Activities and compliance with this Agreement;
 - (ii) up until the final Date of Service Readiness, consider the most recent Quarterly Report and, without limiting clause 8A.1(c)(i) monitor the

- overall progress of the Delivery Phase Activities including progress against the Delivery Phase Milestones;
- (iii) assist in the resolution of any matters referred to the Project Control Group by a party, including Disputes in accordance with clause 34;
 - (iv) review all reports and plans provided by ServiceCo during the Term;
 - (v) discuss stakeholder and community engagement; and
 - (vi) discuss and address such other matters as the members of the Project Control Group may agree from time to time in connection with the Service Package.
- (d) **(Meetings):** The Project Control Group must:
- (i) meet:
 - A. monthly (and not later than 15 Business Days after the end of each Month) from the Restructure Effective Date until the first anniversary of the last Services Commencement Date;
 - B. quarterly (not later than 15 Business Days after the end of each Quarter) following the first anniversary of the last Services Commencement Date; and
 - C. when otherwise called to meet on 10 Business Days' notice by FACS or ServiceCo. Without limiting this clause 8A.1(d)(i)C, ServiceCo acknowledges and agrees that FACS may call a meeting if FACS is dissatisfied with ServiceCo's performance,

unless otherwise agreed by FACS and ServiceCo; and
 - (ii) conduct its meetings in the manner agreed from time to time between FACS and ServiceCo.
- (e) **(Reports):** ServiceCo must, no later than 5 Business Days before each meeting of the Project Control Group convened in accordance with clause 8A.1(d), give each member of the Project Control Group:
- (i) up until the last Service Commencement Date, the Quarterly Report for the previous Month (which will be the report provided under clause 14.1A to the extent a monthly update was required in the previous Month) and the latest Delivery Phase Program; and
 - (ii) thereafter, the Quarterly Performance Report.
- (f) **(Subcontractors):** FACS may direct ServiceCo to procure the attendance of senior representatives of any of the Subcontractors (not forming part of the Project Control Group) or any of their respective Associates at any meeting of the Project Control Group.

8A.2 General requirements for meetings

- (a) **(Meeting agendas):** FACS will determine the agenda for each meeting of the Project Control Group, and in determining each agenda:
 - (i) will seek input from ServiceCo; and
 - (ii) include any items notified to it by any other member received no later than 5 Business Days prior to the date of the meeting.
- (b) **(Minutes):** FACS will take minutes of each Project Control Group meeting and distribute such minutes prior to the next relevant meeting.
- (c) **(Continuity of membership):** The parties acknowledge the importance of the Project Control Group having a continuity of membership in order to successfully carry out its functions.
- (d) **(Changes to membership):** The people who are required to attend the Project Control Group meetings under this Agreement may, where strictly necessary, be changed by the party they are representing, from time to time on notice to the other parties, together with details of the reason for the change.
- (e) **(Liability of Project Control Group):** The Project Control Group:
 - (i) is advisory only and its decisions or recommendations are not binding on the parties; and
 - (ii) does not have any legal responsibilities, Liability or right to require any of the parties to act or refrain from acting in any way.
- (f) **(No limitation):** The parties' involvement in the Project Control Group does not affect their respective rights and obligations under this Agreement.
- (g) **(Further information):** FACS may require ServiceCo to provide information on matters discussed at any Project Control Group meeting and ServiceCo must provide that information in a timely manner.
- (h) **(No reliance or Claim):** Neither FACS nor ServiceCo will be entitled to:
 - (i) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of any member of the Project Control Group (in its capacity as a member); or
 - (ii) make any Claim against any such group or committee or any member of the Project Control Group (in its capacity as a member),

arising in connection with anything, which any such member does or fails to do in its capacity as a member of the Project Control Group.
- (i) **(Conduct at meetings):** The parties must to the greatest extent possible, freely and openly discuss the Service Package Activities at all meetings (including the meetings of the Project Control Group), and ServiceCo must procure that its Associates fully respond to any questions which FACS may ask ServiceCo at any meetings conducted under this Agreement within 5 Business Days.

9. Quality assurance

9.1 Audits for compliance with the FACS Service Package Documents

- (a) **(FACS may procure Associates):** FACS may undertake or procure an Associate to undertake at any time up to 6 Months after the last day of the Term, an audit to verify ServiceCo's compliance with the FACS Service Package Documents.
- (b) **(Notice of audit):** Where it is reasonably able to do so, FACS will provide ServiceCo with no less than 10 Business Days' notice of any audit under this clause 9.
- (c) **(Minimisation of disruption):** Where FACS carries out or procures the carrying out of an audit under this clause 9, FACS will use reasonable endeavours to minimise any disruption caused to the Service Package Activities.
- (d) **(Audit obligations):** ServiceCo must:
 - (i) provide all ServiceCo Material requested by FACS or any Associates of FACS undertaking the audit that is relevant to the conduct of the audit; and
 - (ii) arrange for those undertaking the audit on behalf of FACS to:
 - A. subject to those undertaking the audit complying with ServiceCo's reasonable access requirements (including any site access and interface protocols), have access to any Site and any Relevant Infrastructure; and
 - B. meet with any of ServiceCo's Associates (other than Lessors) and have access to users of the Site and the Relevant Infrastructure.
- (e) **(Audit scope):** An audit may include examination of:
 - (i) any part of the Relevant Infrastructure;
 - (ii) the carrying out of any Service Package Activities;
 - (iii) the Accounts and Records;
 - (iv) ServiceCo Material; and
 - (v) ServiceCo's and its Associates' (other than the Lessors') processes and methodologies.
- (f) **(FACS may provide report and request meeting):** FACS may provide a copy of any report prepared as a consequence of the audit to ServiceCo and its Associates and may require ServiceCo and its Associates (other than any Lessors) to attend a meeting to discuss the audit report.
- (g) **(Discussion of audit):** ServiceCo or the Project Control Group must discuss the contents of any audit when required by FACS and seek to agree:

- (i) any action ServiceCo must undertake to ensure that it addresses any failure by ServiceCo to comply with the requirements of the FACS Service Package Documents; and
 - (ii) the time in which any such action must be undertaken.
- (h) **(Implementation of actions):** To the extent that:
- (i) the parties reach agreement in accordance with clause 9.1(g) ServiceCo must, at its own cost, implement the actions as agreed between the parties; or
 - (ii) the parties are unable to reach an agreement in accordance with clause 9.1(g) FACS may (acting reasonably but without limiting FACS' rights under this Agreement) direct ServiceCo as to:
 - A. any action ServiceCo must undertake to meet the requirements referred to in clause 9.1(g)(i); and
 - B. the time in which any such action must be undertaken by ServiceCo,

and ServiceCo must, at its own cost, implement such actions.
- (i) **(Liability for cost of audit):** ServiceCo will not be liable for any costs incurred by FACS in performing audits under this clause 9.1, unless an audit establishes that ServiceCo is in material breach of a FACS Service Package Document, or has acted negligently or fraudulently in the carrying out of the works or the performance of any of the Services, in which case FACS' reasonable costs of performing the audit are to be paid by ServiceCo as a debt due and payable by ServiceCo to FACS.
- (j) **(Expert determination of Dispute):** Any Dispute by ServiceCo as to the accuracy of any audit report may be referred by either party for expert determination in accordance with clause 37.
- (k) **(Auditor-General not limited):** Without limiting this clause 9.1, the parties acknowledge and agree that, notwithstanding any provision of this Agreement to the contrary:
- (i) the powers and responsibilities of the Auditor-General for the State of New South Wales under the *Public Finance and Audit Act 1983* (NSW) (or any substituted legislation) are not limited or affected by the terms of this Agreement and each party submits to those powers and responsibilities;
 - (ii) FACS or ServiceCo may be the subject of an audit by the Auditor-General pursuant to the *Public Finance and Audit Act 1983* (NSW); and
 - (iii) without limiting clause 9.1(k)(ii), ServiceCo undertakes to FACS that it will, at its own cost, cooperate and fully comply with the directions of the Auditor-General and FACS in relation to any audit referred to in clause 9.1(k)(ii).

9.2 Call-in

- (a) If:
- (i) FACS is dissatisfied with ServiceCo's performance of the Service Package Activities (acting reasonably); and
 - (ii) ServiceCo is in breach of an obligation under this Agreement or, in FACS' reasonable view, ServiceCo will be in breach of an obligation if its current performance continues unchanged,
- FACS may issue a notice to ServiceCo outlining the nature of FACS' dissatisfaction.
- (b) If required by FACS in the notice under clause 9.2(a), or under clause 9.3(c), ServiceCo must:
- (i) provide information in relation to the areas of concern identified by FACS;
 - (ii) attend meetings with FACS;
 - (iii) prepare and implement remedial plans to improve performance in the areas identified by FACS in order to comply with the Service Package Documents; and
 - (iv) allow FACS access to any Site on which the Service Package Activities are being undertaken, and ServiceCo agrees to provide full and unrestricted access to any such Sites provided that FACS agrees to comply with any reasonable Site safety and security requirements of ServiceCo and coordinate with any Key Subcontractors to minimise any disruption to the Services or Tenants.

9.3 Quarterly review

- (a) During the Delivery Phase, ServiceCo must submit each Quarterly Report to FACS in accordance with the Delivery Phase Plans and Report Schedule.
- (b) In addition to the rights of FACS under clause 9.2, and without limiting any other right of FACS under this Agreement, the FACS Representative and the ServiceCo Representative must meet within one Month of the submission of each Quarterly Report by ServiceCo to:
- (i) consider the most recent Quarterly Report;
 - (ii) monitor the overall progress of the Delivery Phase Activities and ServiceCo's compliance with this Agreement, including (where applicable):
 - A. progress on Site selection;
 - B. progress of each Stage;
 - C. allocation of Dwellings to Social Housing or Affordable Housing; and

- D. the Delivery Phase Milestones; and
- (iii) discuss and address such other matters as those persons may agree from time to time in connection with the Service Package.
- (c) Following the meeting under clause 9.3(b), if FACS wishes to investigate any aspect of ServiceCo's performance further it may require ServiceCo to undertake any of the actions in clause 9.2(b).

10. Subcontracting and third party arrangements

10.1 Subcontracting

ServiceCo:

- (a) (**notification**): must notify FACS of all Subcontractors it intends to engage to undertake the Service Package Activities;
- (b) (**Service Package Activities**): must not subcontract the performance of the Service Package Activities or any part of them except in accordance with this clause 10;
- (c) (**FACS Service Package Documents**): is not relieved from any or all of its obligations or Liabilities under the FACS Service Package Documents as a result of subcontracting any of those obligations or Liabilities;
- (d) (**responsible for subcontractors**): will be responsible for the acts and omissions of any Subcontractor and their respective Associates in carrying out the Service Package Activities as if such acts or omissions were ServiceCo Acts or Omissions;
- (e) (**provide copies of subcontracts**): must, on request from FACS, promptly provide to FACS a copy of:
 - (i) each Key Subcontract; and
 - (ii) any other Subcontract,

entered into or proposed to be entered into involving any of the Service Package Activities (regardless of whether ServiceCo is a party to that contract) and, where requested, all plans, specifications and drawings related to those Subcontracts; and
- (f) without limiting clause 10.1(e), must provide to FACS a certified copy of all Tetris Property Documents and Head Lease Side Deeds, each in form and substance satisfactory to FACS (acting reasonably), together with:
 - (i) evidence that all conditions precedent to such documents have been satisfied or waived (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to Compass Restructure Deed); and
 - (ii) in respect of each such document, legal opinions given for the benefit of FACS as to:

- A. the legal capacity and corporate power of ServiceCo, Tetris Finco #1 Pty Limited and P.T Limited to enter into and perform its obligations under each document to which it is a party;
- B. the enforceability against ServiceCo, Tetris Finco #1 Pty Limited and P.T Limited of each document to which it is a party; and
- C. due execution by ServiceCo, Tetris Finco #1 Pty Limited and P.T Limited of each document to which it is a party.

promptly following execution of each such document and in any event within 5 Business Days of execution.

10.2 Key Subcontracts

- (a) **(Engagement):** ServiceCo must:
 - (i) engage the Key Subcontractors as specified in the Contract Particulars in the relevant roles specified in the Contract Particulars; and
 - (ii) not engage a Key Subcontractor (other than a Private Market Lessor) that is not specified in the Contract Particulars without the prior written consent of FACS (which will not be unreasonably withheld). It will be reasonable for FACS to withhold its consent if FACS is not satisfied that the Key Subcontractor complies with clause 10.3(a)(ii).
- (b) **(Restrictions):** ServiceCo must not, and in respect of Key Subcontracts must ensure none of its Associates:
 - (i) amend or agree to amend, grant an indulgence, waive or accept any waiver, release or adjustment of any rights to or under any Key Subcontract or Tetris Property Document in a way that would:
 - A. have a material adverse effect on the ability of ServiceCo to perform and observe its obligations under any Service Package Document; or
 - B. have a material adverse effect on the rights, or increase the Liabilities or obligations of, FACS under any Service Package Document or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document; or
 - (ii) terminate, rescind, novate or assign, or agree to any termination, rescission, novation or assignment of any of the Key Subcontracts or Tetris Property Documents,

without the prior consent of FACS (which will not be unreasonably withheld).
- (c) **(Side Deed):** ServiceCo must procure from each Key Subcontractor an executed deed substantially in the form of the Side Deed applicable to that Key Subcontractor. Where the Key Subcontractor is a Lessor, the appropriate form of

Side Deed will be the Head Lease Side Deed and will be executed on or about the time the relevant Agreement for Lease is executed with that Lessor.

10.3 Requirements for subcontracting

- (a) **(Engagement of Subcontractors)**: Without limiting clause 10.2, ServiceCo must not engage any Subcontractor, or allow any Subcontractor to be engaged, in connection with the Service Package, unless:
- (i) if FACS requires Probity Investigations to be carried out in respect of that Subcontractor, FACS' probity requirements as described in clause 48 are satisfied;
 - (ii) the proposed Subcontractor has the financial capacity, applicable registrations and certifications, experience and capability to perform the subcontracted obligations to at least the standards required by this Agreement, unless that Subcontractor is a Private Market Lessor, in which case this requirement does not apply; and
 - (iii) in respect of a Key Subcontract, the Key Subcontract contains further provisions expressly recognising and permitting the exercise by FACS of its rights under and contains all relevant provisions prescribed by (if applicable) clauses 10, 28, 31, 42, 43, 45.1, 47 and 48.
- (b) **(Occurrence of Probity Event)**: If, following a Probity Investigation in respect of a proposed Subcontractor, FACS:
- (i) determines that a Probity Event has occurred in respect of a Subcontractor or a Relevant Person engaged by that Subcontractor; and
 - (ii) is of the opinion that it is consequently not desirable for that Relevant Person to take part in the management or performance of the Subcontract, or for the Subcontractor to be engaged in connection with the Service Package,
- FACS may (as the case may be):
- (iii) direct ServiceCo that the Subcontractor must not be engaged in connection with the Service Package; or
 - (iv) approve the Subcontract on the condition that the Relevant Person:
 - A. not take part in the management or performance of the Subcontract; or
 - B. on such other conditions as FACS considers necessary to quarantine that Relevant Person from the Service Package,
- and on conditions that the Subcontractor provides its written undertaking to the FACS Representative to comply with such conditions.
- (c) **(Compliance with Subcontractor obligations)**: ServiceCo must, and must procure that all Key Subcontractors, comply with their respective obligations under each Subcontract they enter into.

10.4 Monitoring of Key Subcontracts

ServiceCo must notify FACS of:

- (a) any material breach of a Key Subcontract; and
- (b) any dispute which is notified as such under a Key Subcontract,

immediately upon becoming aware of such breach or dispute.

10.5 Industrial issues

ServiceCo:

- (a) **(solely responsible)**: has sole responsibility for, and must manage, all aspects of industrial relations in connection with the Service Package; and
- (b) **(to inform FACS)**: must keep FACS fully and immediately informed of industrial relations issues or action which affect or are likely to affect the carrying out of the Service Package Activities and what action or measures (including settlements) ServiceCo has taken or proposes to take to overcome the effects of such industrial relations issues or action.

11. Employee Requirements

- (a) **(Requirements and checks)**: ServiceCo must ensure that each employee of ServiceCo and each Subcontractor engaged to provide any Service Package Activities:
 - (i) meets the Employee Requirements for those particular types of employee; and
 - (ii) prior to being engaged to provide the Service Package Activities, and at the frequencies specified in the Contract Particulars, passes the relevant Employee Checks.
- (b) **(Availability of results)**: ServiceCo must promptly, on request, make the results of:
 - (i) any Employee Checks; or
 - (ii) any Probity Investigation that ServiceCo is required to undertake in accordance with clause 48.2,available to FACS.
- (c) **(Denial of employment)**: Without prejudice to clause 48.2(d), FACS may require ServiceCo to deny or procure that the Subcontractors deny employment to a prospective employee and refuse to engage any person or discontinue the employment or engagement of any person involved in the Service Package Activities if:
 - (i) the Probity Investigation reveals information indicating that that person does not comply with the requirements of this Agreement;

- (ii) the Employee Requirements are not met at all times by that person;
- (iii) the employee fails an Employee Check; or
- (iv) FACS considers that that person is unsuitable or unqualified to provide the Service Package Activities assigned to that person.

12. NSW Code and Guidelines

12.1 Reference

In addition to terms defined in this Agreement, terms used in this clause 12 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) (as published by the NSW Treasury in July 2013 and as amended or updated from time to time). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

12.2 Primary obligation

- (a) (**NSW Code**): In carrying out the Service Package Activities, ServiceCo must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement (**NSW Code**) and the NSW Guidelines.
- (b) (**Notification of Construction Compliance Unit**): ServiceCo must notify the Construction Compliance Unit (**CCU**) and FACS of any possible non-compliance with the NSW Code and the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) (**Subcontractors bound by NSW Code**): Where ServiceCo engages a subcontractor or consultant, ServiceCo must ensure that subcontract or consultancy contract imposes on the subcontractor or consultant equivalent obligations to those in this clause 12 (under the heading 'NSW Code and NSW Guidelines'), including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) (**Engagement of other parties**): ServiceCo must not appoint or engage another party in relation to the Service Package where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or the NSW Guidelines.

12.3 Access and information

- (a) (**Maintenance of records**): ServiceCo must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors, consultants and related Entities.
- (b) (**Facilitation of authorised personnel**): ServiceCo must allow, and take reasonable steps to facilitate, authorised personnel (including authorised personnel of the CCU) to:

- (i) enter and have access to sites and premises (or part thereof) controlled by ServiceCo, including but not limited to a Site and the Relevant Infrastructure;
- (ii) inspect any work, material, machinery, appliance, article or facility;
- (iii) access information and documents;
- (iv) inspect and copy any record relevant to the project;
- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and the NSW Guidelines, by ServiceCo, its subcontractors, consultants, and related Entities.

- (c) **(Production of documents):** ServiceCo, and its related Entities, must agree to, and comply with, a request from authorised personnel (including authorised personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

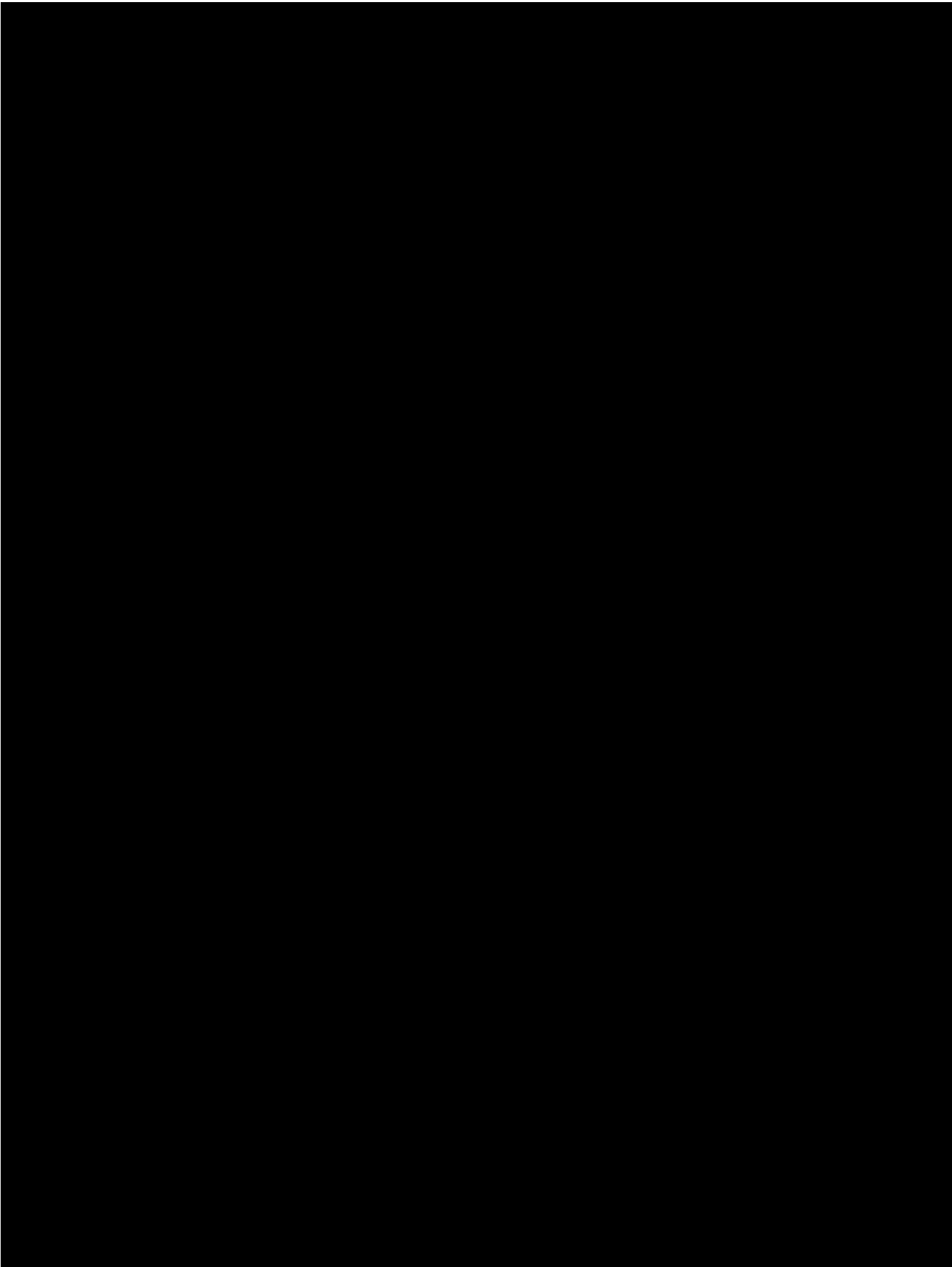
12.4 Sanctions

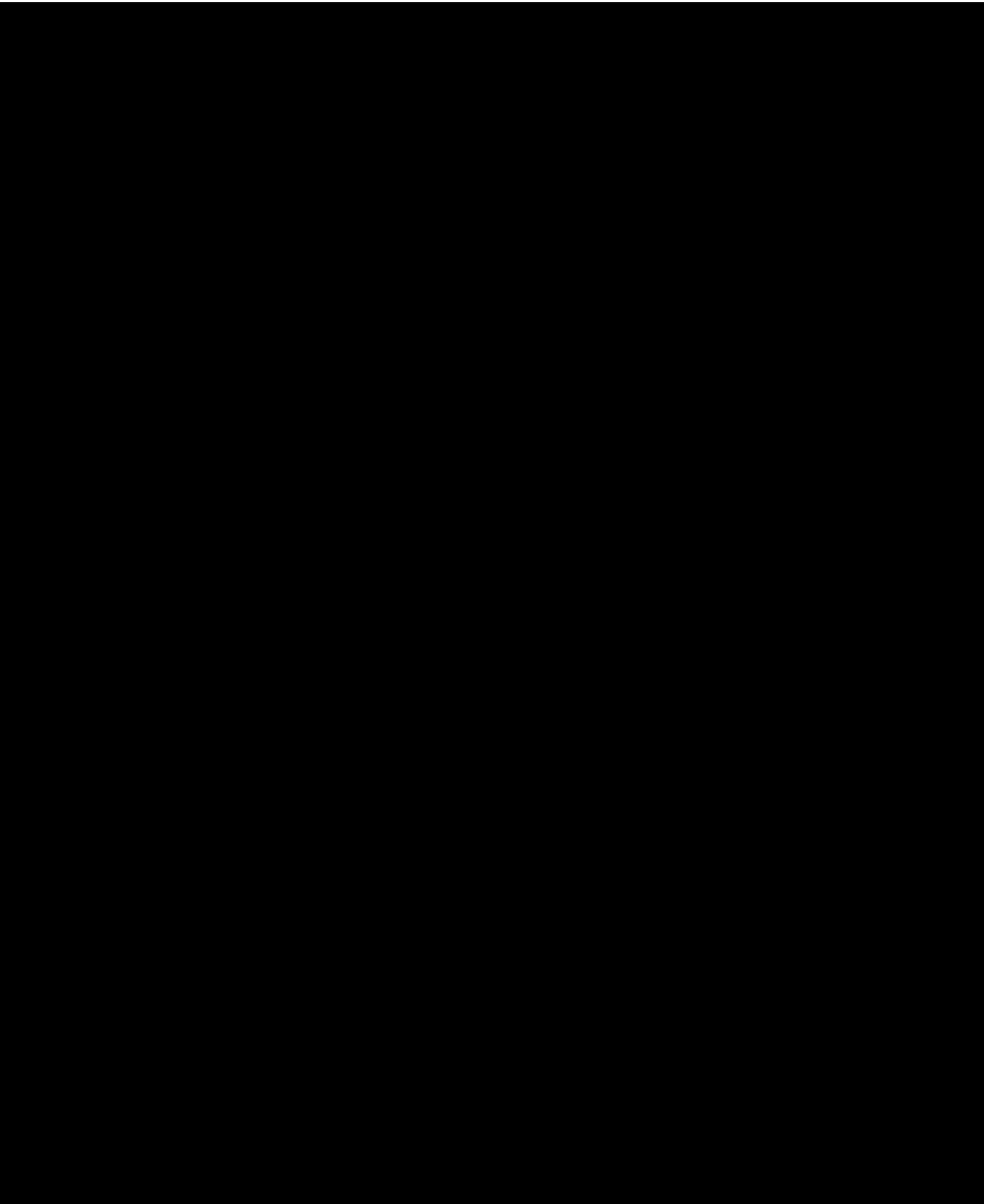
- (a) **(ServiceCo not subject to a sanction):** ServiceCo warrants that at the time of entering into this Agreement, neither it, nor any of its related Entities, are subject to a sanction in connection with the NSW Code or the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and the NSW Guidelines apply.
- (b) **(Sanctions may be imposed):** If ServiceCo does not comply with, or fails to meet any obligation imposed by, the NSW Code or the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or the NSW Guidelines.
- (c) **(Disclosure of sanctions):** Where a sanction is imposed on ServiceCo or its Associates:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the NSW Government (through its agencies, ministers and the CCU) is entitled to:
 - A. record and disclose details of non-compliance with the NSW Code or the NSW Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by ServiceCo, or its related entities, in respect of work to which the NSW Code and the NSW Guidelines apply.

12.5 Compliance

- (a) **(Cost of compliance):** ServiceCo bears the cost of ensuring its compliance with the NSW Code and the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and the NSW Guidelines. ServiceCo is not entitled to make any Claim against FACS or the NSW Government for such costs.
- (b) **(Responsibility to perform):** Compliance with the NSW Code and the NSW Guidelines does not relieve ServiceCo from responsibility to perform the Service Package Activities and any other obligation under this Agreement, or from Liability for any Defect in the Services or from any other legal Liability, whether or not arising from its compliance with the NSW Code and the NSW Guidelines.
- (c) **(Proposed Modification):** Where a Modification is proposed, and that Modification may, or may be likely to, affect compliance with the NSW Code or the NSW Guidelines, ServiceCo must immediately notify FACS of the Modification:
 - (i) the extent to which compliance with the NSW Code or the NSW Guidelines will be, or is likely to be, affected by the Modification; and
 - (ii) what steps ServiceCo proposes to take to mitigate any adverse impact of the Modification (including any amendments it proposes to the Health and Safety Management Plan),

and FACS will direct ServiceCo as to the course it must adopt within 10 Business Days of receiving notice.







Part D - Delivery Phase obligations

14. Delivery Phase

14.1 Delivery Phase Plans and Reports

- (a) **(Initial Delivery Phase Plans):** The parties acknowledge that the Initial Delivery Phase Plans are included as Annexure A1.
- (b) **(Preparation):** ServiceCo must prepare (where there are no relevant Initial Delivery Phase Plans), and otherwise update each Delivery Phase Plan:
 - (i) in accordance with the Delivery Phase Plans and Reports Schedule and the other requirements of this Agreement relevant to that Delivery Phase Plan; and
 - (ii) to ensure each Delivery Phase Plan contains complete and accurate information in respect of the relevant aspects of the Service Package.
- (c) **(Submission):** ServiceCo must submit each Delivery Phase Plan to FACS for review in accordance with the Review Procedures.
- (d) **(Authority Approval):** If a Delivery Phase Plan is required to be approved by an Authority, ServiceCo must ensure that it has obtained that Approval prior to submitting the relevant Delivery Phase Plan to FACS for review.
- (e) **(Delivery Phase Reports):** ServiceCo must prepare and submit the Delivery Phase Reports to FACS in accordance with the Delivery Phase Plans and Reports Schedule.
- (f) **(Additional information):** ServiceCo must promptly provide to FACS any additional information in connection with the Delivery Phase Plans and the Delivery Phase Reports reasonably requested by FACS.
- (g) **(Complete):** ServiceCo warrants that each Delivery Phase Plan and each Delivery Phase Report is complete and correct, and not false or misleading in any material respect, at the time it is provided to FACS.

14.1A Monthly update

Without limiting section 3.1 of the Programming Requirements, to the extent that in any Month during the Delivery Phase:

- (a) ServiceCo becomes aware that there is or likely to be a change to any anticipated Date of Service Readiness by more than two Months;
- (b) ServiceCo has in that Month provided FACS with a notice under clause 15.2(a);
- (c) any event occurs that will have a material impact on the ability of ServiceCo to perform the Delivery Phase Activities or would make the Quarterly Report incorrect in a material respect; or
- (d) ServiceCo updated the Delivery Phase Program pursuant to section 3.1(d) of the Programming Requirements,

ServiceCo must provide FACS and the Project Control Group with a copy of the latest Quarterly Report:

- (e) updated (in mark-up) on an exceptions basis to reflect the impact of the relevant changes or events; and
- (f) inclusive of the latest Delivery Phase Program (updated in accordance with clause 3.1 of the Programming Requirements),

at least 5 Business Days prior to the next meeting of the Project Control Group.

14.2 Delivery Phase Milestones and Delivery Phase Program

- (a) **(Delivery Phase Milestones):** Notwithstanding anything else in this clause 14:
 - (i) ServiceCo must achieve each Delivery Phase Milestone by the relevant Milestone Date;
 - (ii) If ServiceCo considers that a Delivery Phase Milestone has been, or is reasonably likely to be, delayed, ServiceCo must immediately give FACS notice of the delay, including details of the nature, cause and the likely extent of the delay; and
 - (iii) in addition to any updates under clause 19(f)(iii), ServiceCo may update a Milestone Date in respect of a Stage, provided that the new proposed date is not after the Date for Service Readiness for the relevant Stage:
 - A. if an extension of time to that Milestone Date is granted under clause 23.5(a); or
 - B. otherwise with the prior written consent of FACS (which will not be unreasonably withheld). It will only be reasonable for FACS to withhold its consent if FACS considers that the proposed new Milestone Date will, or is likely to, cause ServiceCo to fail to achieve Service Readiness for a Stage by the relevant Sunset Date,

and the Delivery Phase Milestones Schedule will be deemed to be updated accordingly.

- (b) **(Program update):** ServiceCo must update the Delivery Phase Program:
 - (i) within 20 Business Days after the parties execute the Compass Restructure Deed to reflect the Restructure Effective Date;
 - (ii) at least each Quarter (and with the Quarterly Report) to accurately reflect:
 - A. the actual status and progress of the Delivery Phase Activities; and
 - B. any other changes to information contained in the Delivery Phase Program, including any changes to Milestone Dates under clause 14.2(a)(iii) or clause 19(f)(iii); and
 - (iii) within 10 Business Days of ServiceCo being granted an extension to any Date for Service Readiness in accordance with this Agreement,

and the updates must comply with the Programming Requirements and must not adjust any Date for Service Readiness or any Delivery Phase Milestone (unless an extension of time has been granted in accordance with this Agreement).

14.3 Development Consent

- (a) ServiceCo must:
 - (i) procure Development Consents on terms that are not inconsistent with this Agreement;
 - (ii) not include any information provided by FACS to ServiceCo in an application for Development Consent without the prior consent of FACS (which FACS will not unreasonably withhold); and
 - (iii) provide to FACS (whether by post or electronic means):
 - A. a copy of each application for Development Consent within 5 Business Days of lodging that application with the relevant Authority;
 - B. any information that FACS reasonably requests in relation to an application, in the form required by FACS; and
 - C. a copy of each Development Consent obtained and any amendments to, or notices relating to, those consents within 5 Business Days of receipt.
- (b) ServiceCo is solely responsible for ensuring that each Development Consent is obtained in accordance with this Agreement. No action or inaction of FACS or any FACS Associate will be taken to be an acknowledgement that:
 - (i) the Development Consent complies with the requirements of this Agreement; or

- (ii) ServiceCo, by complying with the Development Consent, is acting in accordance with this Agreement.
- (c) ServiceCo must comply with all conditions of each Development Consent.

15. Service Readiness

15.1 Requirement

ServiceCo must achieve Service Readiness for a Stage by the relevant Date for Service Readiness for that Stage.

15.2 Notice before Service Readiness

- (a) **(Notice timeline):** In respect of each Stage, ServiceCo must give the FACS Representative separate notices in respect of each Stage 3 Months prior to the date upon which it reasonably expects to achieve Service Readiness in respect of that Stage.
- (b) **(Notice of revised date):** If, after ServiceCo gives FACS a notice in accordance with clause 15.2(a), the expected Date of Service Readiness changes, ServiceCo must notify FACS promptly of the revised date.

15.3 Satisfaction of Service Readiness Criteria

ServiceCo must satisfy all Service Readiness Criteria in accordance with the Service Readiness Schedule before ServiceCo achieves Service Readiness for a Stage.

15.4 Failure to satisfy Service Readiness Criteria

If ServiceCo fails to satisfy any Service Readiness Criteria for a Stage (which must be satisfied prior to Service Readiness), FACS may refuse to issue the certificate of Service Readiness for that Stage in accordance with clause 15.6.

15.5 Notice of Service Readiness

When ServiceCo is of the reasonable opinion that it has achieved Service Readiness for a Stage, ServiceCo must provide:

- (a) notice to this effect; and
- (b) all the information required under the Service Readiness Schedule, to FACS.

15.6 Determination of Service Readiness

- (a) **(Issue of notice or certificate):** If, in the opinion of FACS (acting reasonably):
 - (i) Service Readiness has been achieved, FACS must issue a certificate of Service Readiness to ServiceCo within 10 Business Days after receipt of the notice under clause 15.5; or

- (ii) Service Readiness has not been achieved, FACS must, by not later than 5 Business Days after receipt of the notice issued in accordance with clause 15.5, issue to ServiceCo a notice containing details of the outstanding Service Readiness Criteria that must be satisfied by ServiceCo as a condition precedent to achieving Service Readiness.
- (b) **(Consequences of notice):** If FACS issues a notice under clause 15.6(a)(ii), the process in clauses 15.2 to 15.5 will commence again in respect of those outstanding Service Readiness Criteria set out in FACS' notice.
- (c) **(Consequences of certificate):** The issue of a certificate of Service Readiness in accordance with this clause 15.6 does not constitute:
 - (i) an approval by FACS of the completion of the Relevant Infrastructure under this Agreement; or
 - (ii) evidence that all or any other obligations under this Agreement have been satisfied.

15.7 Service Readiness Outstanding Items

- (a) **(Outstanding Items):** FACS may issue a certificate of Service Readiness with a list of Service Readiness Outstanding Items and the time within which they must be rectified.
- (b) **(Time period):** FACS must act reasonably in determining the time within which a Service Readiness Outstanding Item will be rectified.
- (c) **(Program for completion to be submitted):** Within 5 Business Days after the issue of a certificate of Service Readiness, ServiceCo must submit to FACS (for review in accordance with the Review Procedures) a program for the completion of the Service Readiness Outstanding Items, which complies with clause 15.7(b).
- (d) **(Complete within timeframe):** ServiceCo must complete or remedy each Service Readiness Outstanding Item in the relevant timeframe determined in accordance with clause 15.7(a) to the satisfaction of FACS (acting reasonably).
- (e) **(Failure to complete):** A Major Default will occur if a Service Readiness Outstanding Item is not completed or remedied within the timeframe determined in accordance with clause 15.7(a).

15.8 Prior Occupancy

ServiceCo must not enter into any Residential Tenancy Agreements or otherwise permit Tenants to occupy any Social Housing or Affordable Housing for a Stage prior to the Service Commencement Date for that Stage.

15.9 Updated Dwellings Schedule

To the extent that ServiceCo provides a proposed updated Dwellings Schedule in connection with satisfying the Service Readiness Criteria and FACS approves that Dwellings Schedule (**Updated Dwellings Schedule**), the Dwellings Schedule will be deemed to be deleted and replaced with the Updated Dwellings Schedule on and from that time.

16. Early Service Readiness

- (a) Without limiting clause 15.8, ServiceCo may only achieve Service Readiness in respect of a Stage before the Date for Service Readiness for that Stage if ServiceCo has provided FACS with at least 3 Months' written notice (or another period as agreed by the parties) that ServiceCo anticipates it will achieve Service Readiness in respect of a Stage on a specified date that is earlier than the relevant Date for Service Readiness (**Proposed Early Service Readiness Date**).
- (b) If ServiceCo achieves Service Readiness for a Stage on or before a Proposed Early Service Readiness Date, then the Date for Service Readiness and Date of Service Readiness for that Stage are each deemed to be the Proposed Early Service Readiness Date.

Part E – Service Delivery Phase obligations

17. Service Delivery Phase Plans

- (a) (**Initial Service Delivery Phase Plans**): The parties acknowledge that the Initial Service Delivery Phase Plans are included as Annexure B1.
- (b) (**Submission and update**): ServiceCo must:
 - (i) prepare and update the Service Delivery Phase Plans:
 - A. in accordance with the relevant requirements of the Service Delivery Phase Plans Schedule; and
 - B. to ensure they contain complete and accurate information in respect of the relevant aspects of the Service Package;
 - (ii) update all Service Delivery Phase Plans as necessary to reflect any changes to the nature, understanding or status of the Services; and
 - (iii) submit to FACS all Service Delivery Phase Plans, when prepared and updated, for review in accordance with the Review Procedures.
- (c) (**Performance**): Unless otherwise agreed by FACS, ServiceCo must perform the Services in accordance with the Service Delivery Phase Plans.
- (d) (**Authority Approval**): If a Service Delivery Phase Plan is required to be approved by an Authority, ServiceCo must ensure that it has obtained that Approval prior to submitting the relevant Service Delivery Phase Plan to FACS for review.
- (e) (**Additional information**): ServiceCo must promptly provide to FACS any additional information that FACS requests in connection with the Service Delivery Phase Plans.
- (f) (**Warranty**): ServiceCo warrants that each Service Delivery Phase Plan and Service Delivery Phase Report is complete and correct, and not false or misleading in any material respect, at the time it is provided to FACS.

18. Obligation to perform the Services

18.1 Performance of the Services

In addition to the obligations set out in clause 5, during the Service Delivery Phase, ServiceCo must continuously perform the Services in accordance with the Services Requirements.

18.2 Work health and safety

- (a) ServiceCo must:
 - (i) in carrying out the Services:
 - A. ensure that it complies with the WHS Legislation and all requirements of this Agreement in respect of work health and safety; and
 - B. require that all Subcontractors comply with the WHS Legislation and their obligations referred to in this Agreement in respect of work health and safety;
 - (ii) notify FACS immediately of all work health and safety matters in connection with the performance of the Services that are required to be notified under the WHS Legislation;
 - (iii) provide FACS with all information and documents requested by FACS in relation to any work health and safety issues arising from or in connection with the Services;
 - (iv) consult, cooperate and coordinate with FACS and any other person with obligations under the WHS Legislation in relation to the same matters as ServiceCo (if any); and
 - (v) refrain from doing anything that may impede FACS in discharging its obligations.
- (b) ServiceCo acknowledges the need for, and will procure, a valid appointment of a Principal Contractor for each Construction Project undertaken as part of the Services or in connection with this Agreement.
- (c) The parties agree that for the purposes of the WHS Regulation, FACS is not and will not be a person who commissions any Construction Project undertaken as part of the Services or in connection with this Agreement.
- (d) In the event that FACS is determined by an Authority to be a person who commissions any Construction Project undertaken in connection with this Agreement or forming part of the Services, ServiceCo agrees:
 - (i) to immediately procure that a nominated Subcontractor is duly appointed as Principal Contractor in respect of that Construction Project;
 - (ii) to ensure that the nominated Subcontractor accepts the appointment as, and in any event complies with the obligations of, a Principal Contractor under WHS Legislation; and

- (iii) in the event that a valid Principal Contractor appointment is not affected under paragraph (i) above, to discharge and perform the responsibilities and functions of a Principal Contractor for that Construction Project.

18.3 Registration

- (a) ServiceCo must ensure that, at all times during the Service Delivery Phase, ServiceCo, each Tenancy Management Services Provider and each Asset Management Services Provider:
 - (i) is a Registered CHP;
 - (ii) maintains or improves the tier of registration set out in the Contract Particulars;
 - (iii) complies with all terms and conditions attaching to or contained in the CHP registration conditions, including (without limitation) the conditions of registration set out in section 15 of the National Law; and
 - (iv) on request, provides to FACS full and certified copies of proof of registration as a Registered CHP.
- (b) If ServiceCo subcontracts the performance of the facilities maintenance services, the facilities maintenance provider is not required to be a Registered CHP with respect to the facilities maintenance services.
- (c) Without limiting any provisions of this Agreement, the parties acknowledge and agree that the Registrar has various enforcement powers under the National Law and that the Registrar may take such action if the Registrar reasonably believes that the provider is not complying with the community housing legislation of a participating jurisdiction.

18.4 Supporting Infrastructure

On and from completion of the Supporting Infrastructure, ServiceCo must make the Supporting Infrastructure in relation to a Stage or Site available to the Social Housing Tenants and Affordable Housing Tenants in respect of that Stage or Site.

19. Substitution of Dwellings

- (a) Without limiting ServiceCo's obligations:
 - (i) at Law; or
 - (ii) under any Residential Tenancy Agreement which ServiceCo or a Tenancy Management Services Provider has entered into with a Tenant,
- if ServiceCo wishes to provide Accommodation Services using Dwellings that are not identified as such in section 2 of the Dwellings Schedule (including any Dwellings in relation to Sites that are described as 'unidentified' in the Dwellings Schedule), ServiceCo must request FACS' consent in accordance with clause 19(b).

- (b) Any notice given by ServiceCo pursuant to clause 34 seeking the consent of FACS to the use of new Dwellings must:
- (i) identify:
 - A. the proposed new Dwellings and the Sites on which they are (or will be) located; and
 - B. the Dwellings that will not be, or no longer be, used to provide the Accommodation Services;
 - (ii) demonstrate that the Dwellings are (or will be) Suitable Substitution Accommodation;
 - (iii) confirm whether the proposed new Dwellings will be owned or leased by ServiceCo, and if leased, specify the duration and terms of any such Lease; and
 - (iv) provide FACS with:
 - A. a proposed new Dwellings Schedule in which it has:
 - 1) removed from section 2 of the schedule the Dwellings and Sites which it no longer proposes to use and replaced them with the Sites and Dwellings described in clause 19(b)(i) above; and
 - 2) if applicable, updated section 2 of the schedule to reflect any changes to bedroom configurations or the Silver Level Requirement to the extent permitted under clause 19(d).
 - B. during the Delivery Phase only, an updated Delivery Phase Milestones Schedule in which it has updated the affected Delivery Phase Milestones and Milestone Dates (if any).
- (c) Where ServiceCo is replacing Dwellings that were previously owned, or to be owned by ServiceCo or a Group Member with Dwellings which are to be leased by ServiceCo or a Group Member, FACS may request additional information from ServiceCo demonstrating that ServiceCo is able to manage delivery of the Service Package through leasehold arrangements for the duration of the Term.
- (d) Subject to the remainder of this clause 19, ServiceCo can substitute a Dwelling with a proposed new Dwelling:
- (i) which has a different bedroom configuration to the Dwelling which is the subject of the substitution, provided that on the last Date for Service Readiness the total number of Dwellings with 1 bedroom, 2 bedroom and 3 bedroom configurations is that shown in section 1 of the Dwellings Schedule;
 - (ii) which is in a different LGA to the Dwellings which is the subject of the substitution, provided that on the last Date for Service Readiness the requirements in section 2.2 of the Site Selection Strategy are met; or

- (iii) that would result in ServiceCo being unable to meet the Silver Level Requirements for the relevant Stage, provided that on the last Date for Service Readiness the Silver Level Requirement in respect of the Service Package, as set out in section 1 of the Dwellings Schedule, is met (or exceeded).

A failure to comply with a proviso in clauses 19(d)(i) to 19(d)(iii) will be a Major Default.

- (e) In determining its consent under clause 19(a), FACS will consider (acting reasonably) whether:
 - (i) ServiceCo provided all of the information required under clause 19(b);
 - (ii) the information provided demonstrates to the satisfaction of FACS that the Dwellings are Suitable Substitution Accommodation;
 - (iii) during the Delivery Phase, any proposed changes to the Delivery Phase Milestones and Milestone Dates will not, or are not likely to, cause ServiceCo to fail to achieve Service Readiness by the relevant Date for Service Readiness (or where the relevant Date for Service Readiness has passed, whether the proposed changes will, or are likely to, cause ServiceCo to fail to achieve Service Readiness by the relevant Sunset Date); and
 - (iv) if clause 19(c) applies, the information provided demonstrates to the satisfaction of FACS that ServiceCo is able to manage delivery of the Service Package through leasehold properties for the duration of the Term.

It will be unreasonable for FACS to withhold its consent if ServiceCo provided all of the information required under clause 19(b) and FACS is satisfied of the matters in clauses 19(e)(ii) to 19(e)(iv) (as applicable).

- (f) If FACS consents to the new Dwellings pursuant to clause 19(c):
 - (i) the Dwellings Schedule will be deemed to be replaced with the proposed new Dwellings Schedule provided to FACS under clause 19(b)(iv)A;
 - (ii) the new Dwellings will be deemed to form part of the same Stage as the Dwellings that have been replaced; and
 - (iii) if a proposed new Delivery Phase Milestones Schedule has been provided to FACS under clause 19(b)(iv)B, the Delivery Phase Milestone Schedule will be deemed to be replaced with that new schedule.

20. Reviewable Services

20.1 Reviewable Services Schedule

- (a) **(Original Reviewable Services Schedule):** For the purposes of the Proposal and to assist in the repricing of the Reviewable Services, ServiceCo has prepared the Original Reviewable Services Schedule.

- (b) **(Status and content of Original Reviewable Services Schedule):** The Original Reviewable Services Schedule sets out the basis on which ServiceCo has priced the Reviewable Services for the first Reviewable Services Term, including:
- (i) details of relevant margins;
 - (ii) details in respect of the allocation of responsibilities and risks between ServiceCo and any Subcontractors in respect of the performance of the Reviewable Services; and
 - (iii) the staffing profiles and shift patterns in respect of the performance of the Reviewable Services, including details of the number of full time equivalent positions involved in performing the Services, including those involved in 'Management and Administration', consistent with the Financial Model.
- (c) **(Reviewable Services Schedule updated):** The Original Reviewable Services Schedule (in the case of the second Reviewable Services Term), and then, in the case of each subsequent Reviewable Services Term, the then current Reviewable Services Schedule:
- (i) will be updated at the commencement of the subsequent Reviewable Services Term to reflect:
 - A. the terms and prices agreed or determined under this clause 20 for that subsequent Reviewable Services Term; and
 - B. the information required under clause 20.1(b) for that subsequent Reviewable Services Term; and
 - (ii) as updated in accordance with clause 20.1(c)(i), will be used for the purposes of pricing the Reviewable Services for the following Reviewable Services Term.
- (d) **(Overarching principles for repricing Reviewable Services):** Unless otherwise agreed in writing by FACS, ServiceCo must price the provision of each Reviewable Service for the next Reviewable Services Term in accordance with the following pricing principles and otherwise in accordance with this clause 20:
- (i) ServiceCo must include all efficiencies, innovations and continuing improvements so as to reduce, or minimise the increase in, the cost of delivering the Reviewable Services for the next Reviewable Services Term in its offer under clause 20.3;
 - (ii) there must be no new margins and no increase to any margins, from those margins identified in the Original Reviewable Services Schedule;
 - (iii) there must be no net increase to the Monthly Service Payment from the previous Reviewable Services Term as a result of any reallocation of poor performance risk as between ServiceCo and any Subcontractors following the pricing of each Reviewable Service for an ensuing Reviewable Services Term; and
 - (iv) unless otherwise agreed by FACS (acting reasonably), there must be no increase in the aggregate number of full time equivalent positions

involved in performing the relevant Reviewable Services, from the Original Reviewable Services Schedule including those involved in 'Management and Administration' other than where necessary due to:

- A. any changes under clause 20.2(a);
- B. any Modification implemented under this Agreement; or
- C. where ServiceCo can demonstrate to the satisfaction of FACS (acting reasonably) that such changes in the aggregate number of full time equivalent positions are required to meet the requirements of this Agreement for the next Reviewable Services Term.

20.2 Preparation for repricing

Not later than 12 Months before each Reviewable Services Date, FACS will consult with and notify ServiceCo of:

- (a) changes to be made to the Services or Services Requirements and any terms of this Agreement for the Reviewable Services for the purposes of the next Reviewable Services Term which may include a change to the Services or the Services Requirements to support Outcomes Based Contracting principles;
- (b) a timetable for the repricing of the Reviewable Services; and
- (c) any bundling of the Reviewable Services for repricing.

20.3 Request for offer to reprice

- (a) **(Request for offer)**: FACS may request ServiceCo to submit an offer for the provision of each Reviewable Service or a bundle of the Reviewable Services (as notified by FACS under clause 20.2) for the next Reviewable Services Term.
- (b) **(ServiceCo offer)**: Whether or not FACS has made a request in accordance with clause 20.3(a), not later than 10 Months before the Reviewable Services Date, ServiceCo may (and if FACS has made a request in accordance with clause 20.3(a), ServiceCo must) submit an offer for the provision of the Reviewable Services for the next Reviewable Services Term on the terms notified by FACS under clause 20.2 **(Initial Offer)**.
- (c) **(Offer detail)**: ServiceCo's Initial Offer must:
 - (i) contain an overarching explanation and details of any proposed changes to the price of the Reviewable Services;
 - (ii) be priced in accordance with the pricing principles set out in clause 20.1(d);
 - (iii) break down the price for each of the Reviewable Services for the next Reviewable Services Term;
 - (iv) include the staffing profiles and shift patterns in respect of the performance of the Reviewable Services for the next Reviewable Services Term, including the number of full time equivalent positions

- involved in 'Management and Administration' compared with the then current Reviewable Services Schedule;
- (v) detail all of the relevant factors and inputs into the proposed price including proposals in connection with labour and materials required to perform the Services;
 - (vi) clearly identify the allocation of responsibility for the performance of obligations where such obligations may be provided pursuant to two or more Services (including Services which do not constitute Reviewable Services); and
 - (vii) provide details of any changes that may have been made to its subcontracting arrangements for the Reviewable Services during the previous Reviewable Services Term.
- (d) **(Offer submitted):** If ServiceCo submits an Initial Offer, then:
- (i) for a period of 4 Months after the Initial Offer is submitted (or such longer period agreed between the parties), FACS agrees to negotiate exclusively with ServiceCo for the provision of the relevant Reviewable Services during the next Reviewable Services Term; and
 - (ii) ServiceCo acknowledges that after ServiceCo submits its Initial Offer, FACS may:
 - A. benchmark the pricing for the Reviewable Services against other Social Housing and Affordable Housing in New South Wales for any purpose, including to inform its decision whether to accept ServiceCo's Initial Offer or Negotiated Offer;
 - B. provide ServiceCo with information obtained by FACS arising out of the benchmarking of the Reviewable Services undertaken by FACS; and
 - C. request that ServiceCo:
 - 1) meet with FACS to discuss the outcome of any benchmarking undertaken by FACS and ServiceCo must attend such meetings; and
 - 2) procure the attendance of a representative of any Subcontractor at such meetings.
 - (iii) FACS will, by a date not later than 1 Month after the expiration of that 4 Month period, advise ServiceCo whether:
 - A. ServiceCo's Initial Offer or ServiceCo's final negotiated offer (**Negotiated Offer**) is acceptable to FACS for the provision of each Reviewable Service;
 - B. FACS intends to conduct a competitive tender process in respect of that Reviewable Service, in which case ServiceCo must:

- 1) cooperate with FACS in respect of that competitive tender process;
- 2) comply with all reasonable requests of FACS to assist with that competitive tender process; and
- 3) refrain from doing anything that may impede FACS in conducting that competitive tender process; or

C. FACS requires ServiceCo to conduct a competitive tender under clauses 20.5 to 20.7 (inclusive) in respect of that Reviewable Service.

- (e) **(Offer remains open):** Notwithstanding that FACS may require ServiceCo to conduct a competitive tender, ServiceCo's Initial Offer and Negotiated Offer (if any) must remain open for subsequent acceptance by FACS until 10 Business Days after the Reviewable Services Tender Expiry Date.

20.4 No offer made

If ServiceCo does not submit an offer under clause 20.3(b), then FACS may:

- (a) conduct a competitive tender process in respect of that Reviewable Service, in which case ServiceCo must:
 - (i) cooperate with FACS in respect of that competitive tender process;
 - (ii) comply with all reasonable requests of FACS to assist with that competitive tender process; and
 - (iii) refrain from doing anything that may impede FACS in conducting that competitive tender process;
- (b) require ServiceCo to continue to provide those Reviewable Services on the then current terms and pricing for the next Reviewable Services Term; or
- (c) require ServiceCo to conduct a competitive tender to be conducted in accordance with clauses 20.5 to 20.7 (inclusive).

20.5 Competitive tender

- (a) **(ServiceCo to conduct tender process):** If FACS requires ServiceCo to conduct a competitive tender pursuant to clause 20.3(d)(ii)C or 20.4(c), ServiceCo must conduct a competitive tender in accordance with this clause 20.5.
- (b) **(No delegation):** ServiceCo may not subcontract or otherwise delegate any aspect of a competitive tender conducted under this clause 20.5 without the prior consent of FACS.
- (c) **(Initial meeting):** Within 1 Month of FACS' request under clauses 20.3(d)(ii) or 20.4(c) for a competitive tender to be conducted under this clause 20.5, ServiceCo must commence the competitive tender process by convening an initial meeting with FACS and the probity officer (if applicable).

- (d) **(Consultation)**: At the initial meeting convened under clause 20.5(c) (and any subsequent meetings agreed between them), ServiceCo, FACS and the probity officer (if applicable) will seek to agree on:
- (i) the appropriate timetable for conducting the tender by ServiceCo for the relevant Reviewable Services, including the proposed date for releasing the tender to the market;
 - (ii) the appropriate manner of advertising the tender for the relevant Reviewable Services and the means of identifying prospective tenderers;
 - (iii) evaluation criteria, which will include those set out in clause 20.5(g); and
 - (iv) the draft tender documentation which must:
 - A. provide such information concerning the Service Package, the relevant Reviewable Services and the Service Package Documents as FACS reasonably requires to ensure the tenderers are fully informed of the opportunity tendered (including details of the evaluation criteria set out in clause 20.5(d)(iii));
 - B. impose a duty of confidentiality on tenderers;
 - C. require tenders to be conforming, and irrevocable until one Month after the relevant current Reviewable Services Term;
 - D. require tenderers to comply with the subcontracting requirements set out in clause 10.3 including providing consents to the conduct of any Probity Investigations which may be required by FACS;
 - E. attach a draft Subcontract:
 - 1) substantially on the same terms (other than price and term and any amendments required in accordance with clause 20.2) as the current Subcontract for the provision of those tendered Reviewable Services; and
 - 2) which provides for the review of those Reviewable Services in accordance with the terms of this clause 20;
 - F. require tenderers to accept the terms of the draft Subcontract; and
 - G. enable ServiceCo to prepare a proposed updated Reviewable Services Schedule in accordance with the pricing principles set out in clause 20.1(d).
- (e) **(Review of request for tender)**: Not later than 30 Business Days prior to the proposed date for releasing the tender to the market, ServiceCo must provide to FACS:

- (i) the final request for tender prepared by ServiceCo which is proposed to be issued to prospective tenderers; and
- (ii) the list of proposed tenderers,

for each of the Reviewable Services for review in accordance with the Review Procedures.

- (f) **(Offers):** ServiceCo must seek offers by competitive tender, on the basis of the tender approved by FACS in accordance with clause 20.5(e), from at least three experienced and capable service providers for the relevant component of the Reviewable Services which must not include (without the consent of FACS) offers from:
 - (i) ServiceCo or any Associate of ServiceCo;
 - (ii) any more than one Related Body Corporate of any Associate of ServiceCo; or
 - (iii) any service provider that has not received the prior approval of FACS (which must not be unreasonably withheld).
- (g) **(Content of offers):** ServiceCo must procure that each offer obtained under clause 20.5(f) addresses the following criteria:
 - (i) details of the contract price;
 - (ii) current capacity and capability to carry out the Reviewable Services over the Reviewable Services Term, including current workload and resources plans, key people, subcontractors and consultants;
 - (iii) previous performance of services similar to the relevant Reviewable Services together with referees;
 - (iv) financial capacity to provide the Reviewable Services;
 - (v) demonstration that ServiceCo will be able to continue to meet the performance standards in the Services Specification relevant to the Reviewable Services; and
 - (vi) value for money delivered to FACS.

20.6 Outcome of competitive tender process

- (a) **(Third party offers):** ServiceCo must, within 5 Months after the notice from FACS under clause 20.3(d)(iii)C or 20.4(c), provide to FACS:
 - (i) copies of all offers ServiceCo has procured which meet the requirements set out in clauses 20.5(f) and 20.5(g);
 - (ii) ServiceCo's evaluation report in connection with each offer;
 - (iii) ServiceCo's recommendation as to the preferred tenderer for each Reviewable Service; and

- (iv) any further details as FACS reasonably requires in relation to the tender and the offers.

20.7 Consultation

- (a) During the period of 1 Month following provision of the information under clause 20.6, ServiceCo must consult with FACS concerning those offers which comply with clauses 20.5(f) and 20.5(g), to attempt to reach agreement on the appointment of one of the tenderers to provide each of the Reviewable Services for the next Reviewable Services Term having regard to:
 - (i) the experience and capability of each tenderer;
 - (ii) the extent to which each offer provides value for money to FACS when compared with each of the other offers; and
 - (iii) the ability of ServiceCo to continue to meet the section of the Services Specification specified by FACS in its notice under clause 20.3(a), and otherwise comply with this Agreement on subcontracting the relevant Reviewable Service to any of the tenderers.
- (b) ServiceCo must not enter into any contract with any tenderer for the provision of the Reviewable Services without the prior agreement of FACS.
- (c) ServiceCo must ensure that each of the tenderers for the Reviewable Services, and any persons likely to be associated with the provision of the Reviewable Services, provide their consent to the carrying out of any Probity Investigations required by FACS.
- (d) If, despite ServiceCo's request, FACS does not allow a Subcontractor who submitted an offer as part of the Initial Offer submitted by ServiceCo to submit an offer as part of the competitive tender in accordance with clause 20.5(f), ServiceCo and FACS agree that the Initial Offer and the offers received as part of the competitive tender process will be evaluated in accordance with the same evaluation criteria.

20.8 Appointment and payment

- (a) If an offer made by a tenderer is acceptable to FACS (whether or not the tender process was conducted by FACS or ServiceCo), ServiceCo must, or where applicable, ensure that the Key Subcontractors (subject only to the conduct of Probity Investigations satisfactory to FACS) subcontract the provision of the relevant Reviewable Services for the next Reviewable Services Term to the successful tenderer, pursuant to a Subcontract which complies with clause 20.5(d)(iv)E.
- (b) A Subcontract entered into in accordance with this clause 20.8 will be deemed to be approved by FACS for the purposes of clause 10.2.
- (c) The parties must adjust the Monthly Service Payment (and the Financial Model) for the balance of the Service Delivery Phase to reflect:
 - (i) ServiceCo's offer accepted by FACS; or
 - (ii) the Subcontract entered into in accordance with clause 20.8(a),

(as applicable), unless clause 20.9(a) or 20.9(b) applies, in which case the parties must adjust the Monthly Service Payment (and the Financial Model) for the balance of the Service Delivery Phase to reflect the circumstances described in clause 20.9(a) or 20.9(b) (as applicable).

20.9 Failure to agree

If none of the offers made by the tenderers are acceptable to FACS (whether or not the tender process was conducted by FACS or ServiceCo), FACS may:

- (a) accept ServiceCo's Initial Offer or Negotiated Offer (if any);
- (b) require ServiceCo to proceed to provide the Reviewable Services under the current terms and pricing in accordance with clause 20.10; or
- (c) omit the Reviewable Services from the Services by way of a Modification and carry out the Reviewable Services itself or procure a third party to carry out the Reviewable Services (in which case the Monthly Service Payment will be adjusted and this Agreement amended as necessary in accordance with the Change Compensation Principles for the omission of those Reviewable Services).

20.10 Continued provision of Reviewable Services

- (a) Subject to clause 20.10(b), without limiting FACS' rights under this Agreement, if a Subcontractor is intended by FACS to be appointed to carry out the Reviewable Services in the next Reviewable Services Term but has not yet been appointed under clause 20.8 by the date of commencement of the next Reviewable Services Term, ServiceCo must continue to provide the relevant Reviewable Services on the terms and pricing for the immediately prior Reviewable Services Term and in accordance with the Services Specification, until such time as a Subcontractor is appointed under clause 20.8 and commences provision of those Reviewable Services.
- (b) If the period for provision of the Reviewable Services by ServiceCo under clause 20.10(a) extends beyond the Reviewable Services Tender Expiry Date, FACS will pay the price offered by ServiceCo (if any) in ServiceCo's Initial Offer for the continued provision of the Reviewable Services backdated to the Reviewable Services Tender Expiry Date.

20.11 Probity of process

FACS may, at any time, appoint a probity officer to, or have the FACS Representative, oversee the whole or any part of the process referred to in this clause 20 and ServiceCo must:

- (a) provide all assistance and information required by; and
- (b) comply with all directions of,

the probity officer or the FACS Representative, in connection with that process.

Part F - Payment provisions

21. Payments, adjustments & Taxes

21.1 FACS' payment obligations

- (a) **(Payment obligations):** In consideration of ServiceCo providing the Services, FACS will pay ServiceCo the Monthly Service Payment:
- (i) calculated in accordance with the Payment Schedule; and
 - (ii) in arrears,
- during the Service Delivery Phase from the end of the first Month of the Service Delivery Phase.
- (b) **(Other payments):** Other than the Monthly Service Payment FACS will pay any payment that is due and payable to ServiceCo, and ServiceCo must pay any payment that is due and payable to FACS:
- (i) at the time specified in this Agreement or the relevant FACS Service Package Document for the particular payment; or
 - (ii) if no time is specified for the payment of the relevant amount, the payment will be made:
 - A. by FACS, in the case of a payment to ServiceCo during the Service Delivery Phase, at the same time as the next Monthly Service Payment is made by FACS to ServiceCo after the relevant amount becomes due and payable and a written demand is made for payment of the amount; and
 - B. by ServiceCo in the case of a payment to FACS, within 20 Business Days after a written demand being made by FACS for payment of the relevant amount.

21.2 Monthly Service Payments

- (a) **(Updated information):** Within 5 Business Days after the end of each Month during the Service Delivery Phase, ServiceCo must ensure that it has updated the information in CHIMES relating to:
- (i) Dwelling delivery details including Delivery Phase Milestones for those Stages that have not yet achieved Service Readiness; and
 - (ii) Dwelling details (including any changes to the details of Dwellings that have been substituted pursuant to clause 19) and first occupation dates.
- (b) **(Timing of Payment and RCTI):** After the end of each Month during the Service Delivery Phase, FACS will:
- (i) on the 6th Business Day, calculate the Monthly Service Payment for that Month; and

- (ii) by the 9th Business Day, make the Monthly Service Payment and issue the RCTI.
- (c) **(Registered)**: Each of FACS and ServiceCo acknowledges that it (or in the case of FACS, an Entity on behalf of FACS) is registered for GST when it enters into this Agreement and that each party will notify the other party if it (or the relevant Entity) ceases to be registered.
- (d) **(Payment not evidence of proper performance)**: Neither payment of Monthly Service Payments by FACS to ServiceCo nor the issuing of any RCTI is:
 - (i) evidence that the Service Package Activities have been carried out by ServiceCo in accordance with the FACS Service Package Documents; or
 - (ii) an admission of Liability,
 and is only to be taken as payment on account.
- (e) **(Correction of previous RCTI)**: FACS may, in any RCTI, correct any error in any previous RCTI issued by FACS.
- (f) **(Adjustment Notice)**: By the 23rd day of the Month, ServiceCo may notify FACS that it believes the RCTI issued in that Month is incorrect and submit to FACS a request for adjustment of the Monthly Service Payment in respect of that RCTI **(Adjustment Notice)** including the basis on which the adjustment has been requested.
- (g) **(Additional information)**: FACS must consider the Adjustment Notice and may require ServiceCo to provide additional information.
- (h) **(Adjustment Notice payment)**: To the extent FACS agrees that an adjustment is required to the RCTI, FACS will adjust the Monthly Service Payment for the next Month in the Service Delivery Phase accordingly.

21.3 Payment adjustments under the Performance Regime and Payment Schedule

- (a) **(Performance Regime applies)**: The Monthly Service Payments will be adjusted to the extent and in the manner described in the Performance Regime and the Payment Schedule to reflect the agreed principle that FACS will only pay for the quantum and quality of the Services actually provided.
- (b) **(Payments)**: To the extent that ServiceCo must pay FACS for any Liabilities contemplated by the exclusions in clause 21.3(e) and those Liabilities are in excess of the Monthly Service Payments, then in addition to any other remedies of FACS or its Associates under this Agreement or at Law, the future Monthly Service Payments will be reduced to the extent necessary for FACS or its Associates to be compensated for those Liabilities in full. To the extent that FACS and its Associates are unable to recover such compensation by the reduction of future Monthly Service Payments, any shortfall in such compensation will be a debt due and payable by ServiceCo to FACS.
- (c) **(ServiceCo acknowledgements)**: ServiceCo acknowledges and agrees that if clause 21.3(a), or any adjustment under the Performance Regime or Payment

Schedule pursuant to that clause, is held to be void or unenforceable other than a challenge to the Performance Regime or Payment Schedule initiated by FACS or its Associates, clause 21.3(a) and the Performance Regime and the Payment Schedule will not limit ServiceCo's Liability to FACS under this Agreement or otherwise at Law for any Liability suffered by FACS up to an amount equal to the amount that would have been applied as a consequence of the Service Failure had it not been held to be void or unenforceable.

- (d) **(Sole remedy):** Subject to clauses 21.3(b) and 21.3(e), adjustment of the Monthly Service Payments by application of the Performance Regime or Payment Schedule under clause 21.3(a), will be the only monetary consequence for ServiceCo for any Service Failure to which the Performance Regime or Payment Schedule applies.
- (e) **(Exclusions to sole remedy):** Clause 21.3(d) does not limit or affect:
 - (i) any other right or remedy under this Agreement or at Law (other than, subject to this clause 21.3(e), for monetary compensation for a Service Failure to which the Performance Regime or Payment Schedule applies);
 - (ii) FACS' rights under this Agreement or any other FACS Service Package Document in respect of the event that caused or contributed to the Service Failure under clause 29 (other than clause 29.1) to the extent that FACS has not been fully compensated for that loss or damage;
 - (iii) any payment on termination of this Agreement (including a Termination Payment); or
 - (iv) any Liability of ServiceCo to FACS or an Associate of FACS suffered or incurred by FACS or any Associate of FACS as a result of any:
 - A. fraudulent, unlawful or criminal act or omission; or
 - B. any wilful breach of a Service Package Document,by ServiceCo or any of its Associates where FACS has not been completely compensated for that Liability by the adjustment in accordance with clause 21.3.

21.4 Refund

If:

- (a) **(payment):** FACS pays ServiceCo, or ServiceCo pays FACS any amount under clause 21.1 or otherwise; and
- (b) **(entitlement):** it is subsequently agreed or otherwise determined under this Agreement for any reason that the recipient was not entitled to that payment under this Agreement,

the recipient will immediately refund to the party which made the payment, that payment plus interest at the Overdue Rate from the day the payment was paid to (and including) the date of repayment under this clause 21.4.

21.5 Interest

- (a) **(Interest):** Subject to clause 21.6, and other than where section 3.2 of the Termination Payment Schedule applies in relation to a Termination Payment, if a party fails to pay any amount due and payable by that party to the other party within the time required under this Agreement, then it must pay interest on that amount:
 - (i) from the date on which payment was due and payable until the date on which payment is made;
 - (ii) calculated on daily balances at the Overdue Rate; and
 - (iii) capitalised monthly.
- (b) **(Sole entitlement):** The amount specified in this clause 21.5 will be a party's sole entitlement to interest including damages for loss of, use of, or the cost of borrowing, money.

21.6 Set-off

- (a) **(FACS' payments):** Without limiting FACS' rights at Law, FACS may deduct from any moneys due and payable to ServiceCo under the FACS Service Package Documents or otherwise at Law:
 - (i) any moneys due and payable by any Group Member to FACS in respect of the Service Package Documents;
 - (ii) any Liabilities contemplated by the exclusions in clause 21.3(e); and
 - (iii) the amount of any Claim that FACS may make in good faith against any Group Member in respect of the Service Package Documents.
- (b) **(Details of set-off):** FACS must provide ServiceCo with reasonable details of the basis on which it is setting off any amount pursuant to clause 21.6(a).
- (c) **(ServiceCo's payments):** ServiceCo must make all payments to FACS free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless ServiceCo is compelled by Law to make such a deduction or withholding.
- (d) **(Deduction or withholding):** If a party is compelled by Law to make a deduction or withholding for the benefit of an Authority, it must:
 - (i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
 - (ii) provide to the other party all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

21.7 Liability for Taxes

- (a) **(ServiceCo to indemnify):** Subject to clause 21.8, ServiceCo must indemnify FACS against, and must pay FACS on demand the amount of, all Taxes (excluding

Rates or Land Tax, and any penalty, fine, charge or interest in respect of any Rates or Land Tax) incurred in connection with:

- (i) the negotiation, preparation, execution and registration of this Agreement or any other Service Package Document;
 - (ii) the transactions that this Agreement or any other Service Package Document contemplates; and
 - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Agreement or any other Service Package Document.
- (b) **(Rates and Land Tax):** ServiceCo:
- (i) bears the cost of all Rates and Land Tax, if any, in respect of; and
 - (ii) must indemnify FACS against, and must pay FACS on demand, the amount of, all Rates and Land Tax and any penalty, fine, charge or interest in respect of any Rates or Land Tax incurred in connection with, each Site until the end of the Term.
- (c) **(GST):** ServiceCo must indemnify FACS against, and must pay FACS on demand, the amount of any GST liability or denied input tax credits of FACS that arise directly or indirectly from any change to ServiceCo's GST registration status or any change to the GST treatment of supplies or acquisitions made by ServiceCo (where the GST treatment arises from any action or inaction of ServiceCo), where that change differs from that set out in the Financial Model.

21.8 GST

- (a) **(Interpretation):**
- (i) Except where the context suggests otherwise, terms used in this clause 21.8 have the meanings given to those terms by the GST Act (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 21.8.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Agreement is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 21.8.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount

of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

- (c) **(Additional amount of GST payable):** Subject to clause 21.8(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Agreement:
- (i) any amount payable or consideration to be provided under any provision of this Agreement (other than this clause 21.8), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply or, in the case of a supply in relation to which an RCTI is to be issued, the Recipient must provide an RCTI to the Supplier for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 21.8(c)(ii).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 21.8(c) and clause 21.8(e)), varies from the additional amount paid by the Recipient under clause 21.8(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 21.8(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 21.8(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 21.8(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the parties agree to set off their GST liabilities in respect of the supplies and consideration referred to in clause 21.8(c)(ii). For the avoidance of doubt, clause 21.8(c) also applies to the Recipient in its capacity as the supplier of the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 21.8(c).
- (f) **(No merger):** This clause 21.8 will not merge on completion or termination of this Agreement.

Part G - Expiry obligations

22. Expiry obligations

22.1 Transition arrangements

The parties must:

- (a) no later than 5 years prior to the Final Expiry Date in respect of a Stage; and
- (b) where ServiceCo is given less than or equal to 36 Months' notice of an Expiry Date in respect of a Stage, as soon as reasonably practicable after the relevant notice period commences,

commence meetings regularly to discuss:

- (c) the assistance that ServiceCo must provide under clause 22.2;
- (d) any arrangements (subject to the agreement of both parties) for delivery of the service after the Expiry Date, including:
 - (i) where and the terms on which ServiceCo would continue to provide one or more services comprising the Services; or
 - (ii) any arrangement of alternative housing for Tenants on the expiry of their Residential Tenancy Agreements which FACS in its absolute discretion may effect,

(or any combination).

22.2 Assistance in relation to transition

Unless otherwise agreed between the parties in respect of each Stage:

- (a) subject to clause 22.2(b), ServiceCo must:
 - (i) in respect of the obligations set out in clauses 22.2(a)(iii) and 22.2(a)(iv), in the period commencing 5 years prior to the Final Expiry Date; and
 - (ii) otherwise, not less than:
 - A. 6 Months before the Final Expiry Date; or
 - B. where ServiceCo is given less than or equal to 36 Months' notice of an Expiry Date, the relevant notice period,

do all things reasonably required by FACS to ensure the smooth and orderly transfer of responsibility for delivering the Service Package to FACS or its nominee including:

- (iii) meeting with FACS and such other persons notified by FACS to discuss the orderly transfer of Tenants to alternative accommodation on the expiry of their Residential Tenancy Agreements on reasonable notice by FACS;

- (iv) if required, preparing a draft plan in cooperation with FACS for the transfer of Tenants to alternative accommodation on the expiry of their Residential Tenancy Agreements (**Transfer Plan**);
 - (v) providing sufficient resources, including personnel, for the time required to facilitate the transfer of Tenants to alternative accommodation on expiry of their Residential Tenancy Agreements;
 - (vi) procuring the novation or, if such novation cannot be procured, the assignment to FACS or its nominee of:
 - A. such Subcontracts as FACS may nominate;
 - B. any leases, subleases and licences required by FACS; and
 - C. any warranties (provided in respect of the Service Package that are capable of assignment); and
 - (vii) facilitating communications with the Tenants;
- (b) where the Expiry Date is prior to the Final Expiry Date, ServiceCo must meet the requirements under clause 22.2(a) unless FACS, acting reasonably, determines such requirements cannot be met within the required time due to the limited notice period ServiceCo has received of the Expiry Date, in which case, ServiceCo must meet such requirements as soon as practicable after the Expiry Date; and
 - (c) without limiting clause 22.2(a)(vii), ServiceCo acknowledges the right of FACS to enter the Site to assist Tenants to move to alternative accommodation.

22.3 Vacant possession

Where:

- (a) transition arrangements are required pursuant to clause 22.1(a); or
- (b) FACS has served a notice of Voluntary Termination under clause 32.2(a); or
- (c) ServiceCo has served a notice of termination following an unresolved Material Adverse Effect under 27.3; and
- (d) ServiceCo has not otherwise provided written notice to FACS promptly after the occurrence of any of the events in this clause 22.3 that ServiceCo wishes to continue to house Tenants in any Dwellings after the Expiry Date,

the parties will work together in good faith to ensure that all relevant Dwellings are vacated by the Expiry Date and otherwise agree to comply with their respective obligations under this clause 22.

22.4 Removal of Dwellings

- (a) Where:
 - (i) transition arrangements have been implemented pursuant to clause 22.1(a), then for the period of two years prior to the Expiry Date;

- (ii) FACS has served a notice of Voluntary Termination under clause 32.2(a), then for the period between receipt of that notice and the Expiry Date; or
- (iii) either party has served a notice of termination for a Force Majeure Termination Event under clause 32.3(a), then for the period between receipt of that notice and the Expiry Date,

ServiceCo may remove vacant Dwellings from the Service Package in accordance with this clause 22.4, unless the parties have agreed otherwise pursuant to clause 22.1(d).

- (b) Where a Tenant's Residential Tenancy Agreement will expire or a Tenant proposes to vacate a Dwelling (for whatever reason) within the relevant period referred to in clause 22.4(a)(i) to 22.4(a)(iii), ServiceCo may omit that Dwelling from the Service Package (**Removed Dwelling**) on and from the date the Dwelling becomes vacant (**Removal Date**) without having to submit a Change Notice pursuant to clause 26.8(a).
- (c) The parties acknowledge and agree that on and from the Removal Date:
 - (i) for the purposes of section 4.2 (*Service Provision Abatement*) of the Payment Schedule, a Removed Dwelling will be deemed to be vacant;
 - (ii) for the purpose of section 2 (*Tenant Mix Abatement*) of the Payment Schedule, the Removed Dwellings will be deemed to be:
 - A. occupied by a Social Housing Tenant, where the immediate previous Tenant was a Social Housing Tenant; or
 - B. occupied by an Affordable Housing Tenant, where the immediate previous Tenant was an Affordable Housing Tenant;
 - (iii) ServiceCo's inability to perform any Services in respect of that Removed Dwelling will not be a breach of this Agreement by ServiceCo, a ServiceCo Act or Omission, a Service Failure, a Major Default or a Default Termination Event; and
 - (iv) the parties deem that a Removed Dwelling is not a Dwelling for the purposes of any Option to Lease.

22.5 ServiceCo transition representative

Without limiting its obligations under clause 22 in respect of a Stage for:

- (a) (**expiry of Service Package**): not less than 24 Months before the expiry of the Stage; or
- (b) (**Notice period**): where the Expiry Date for the Stage is prior to the Final Expiry Date and ServiceCo is given less than or equal to 36 Months' notice of the Expiry Date, the relevant notice period,

ServiceCo must, if reasonably necessary, provide a dedicated person with appropriate expertise and experience to manage the transition out and handover of the Service Package.

Part H - Change in circumstances

23. Delivery Phase - delay

23.1 Delay to Service Readiness

- (a) **(Early Warning)**: If ServiceCo becomes aware of an Extension Event or any other matter which will, or is likely to, give rise to a delay in achieving Service Readiness in respect of a Stage, it must promptly give FACS notice of the matter and the delay it is likely to cause (**Early Warning**); and
- (b) **(Prevent)**: In this clause 23, 'prevent' or 'prevented' does not mean that ServiceCo is permanently prevented from performing its obligations.

23.2 Delays entitling Claim

Subject to this clause 23 and clause 25, if ServiceCo has been or will be delayed in achieving Service Readiness in respect of a Stage by an Extension Event, ServiceCo will be entitled to claim:

- (a) an extension of time to the relevant Date for Service Readiness and the relevant Milestone Dates for the period of the delay; and
- (b) relief from any of its other Delivery Phase Activities,

in accordance with this clause 23.

23.3 Change Notice

- (a) **(Claiming relief)**: Subject to clause 23.3(b), to claim relief or an extension of time to the relevant Date for Service Readiness, ServiceCo must submit a Change Notice (with reference to the Early Warning, if relevant), which includes the estimated period of time of the delay, within 20 Business Days after the date on which it first became aware of the occurrence of the relevant Extension Event.
- (b) **(Extended delay)**: Where the delay extends beyond the period set out in the Change Notice submitted in accordance with clause 23.3(a) and ServiceCo wants to claim relief or an extension of time in respect of the further delay, ServiceCo must notify FACS and, once the consequences of the Extension Event have ceased, promptly (and in any event within 10 Business Days) submit an updated Change Notice.
- (c) **(Modifications)**: In order to claim relief or an extension of time to the relevant Date for Service Readiness under clause 23.2 for an Extension Event which is a Modification or a Change in Mandatory Requirements, ServiceCo must submit its initial Change Notice under the Change Compensation Principles and clause 26.

23.4 Conditions precedent to extension of time or relief

Subject to clause 23.6, it is a condition precedent to ServiceCo's entitlement to an extension of time or relief from its other Delivery Phase Activities that:

- (a) **(Change Notices)**: ServiceCo submits to FACS for the extension of time claimed, Change Notices in accordance with clause 23.3;

- (b) **(extension of time)**: with respect to a claim for an extension of time, ServiceCo can demonstrate that:
 - (i) it has actually been or will be delayed by the relevant Extension Event in a manner which will delay the achievement of Service Readiness in respect of that Stage; and
 - (ii) the Extension Event has caused or will cause activities on the critical path for that Stage contained and shown in the then current Delivery Phase Program to be delayed; and
- (c) **(relief)**: with respect to a claim for relief from its other Delivery Phase Activities, ServiceCo's performance of all or any part of the Delivery Phase Activities is actually prevented by the relevant Extension Event; and
- (d) **(Delivery Phase Program)**: ServiceCo is, at the time it submits the relevant Change Notice and any updated Change Notice, complying with its obligations in connection with the Delivery Phase Program.

23.5 Extension of time and relief determined by FACS

- (a) **(FACS determination)**: If the conditions precedent in clause 23.4 have been satisfied, FACS will:
 - (i) extend the relevant Date for Service Readiness and any relevant Milestone Dates by a reasonable period of time determined by FACS; or
 - (ii) grant ServiceCo such other reasonable relief from the Delivery Phase Activities determined by FACS,taking into account all relevant evidence presented by ServiceCo.
- (b) **(Notice of determination)**: FACS must provide notice of its determination under clause 23.5(a) to ServiceCo within 20 Business Days after the later of:
 - (i) the date on which ServiceCo submits the relevant Change Notice; and
 - (ii) where any updated Change Notice is submitted in accordance with clause 23.3(b), the date on which that updated Change Notice is submitted.
- (c) **(Interim determinations)**: In the circumstances contemplated by clause 23.5(b)(ii), FACS may, in its absolute discretion, give interim determinations of ServiceCo's entitlement to an extension of time notwithstanding that the effects of the relevant Extension Event are continuing.

23.6 Unilateral extensions

- (a) **(Unilateral extensions)**: Whether or not ServiceCo has made, or is entitled to make, a claim for, or is entitled to, an extension of time under this clause 23, FACS may, in its absolute discretion at any time and from time to time prior to the Date of Service Readiness in respect of a Stage, by notice to ServiceCo, unilaterally extend the Date for Service Readiness for that Stage following the occurrence of an Extension Event.

- (b) **(Acknowledgements):** The parties acknowledge that:
 - (i) FACS is not required to exercise FACS' discretion under clause 23.6(a) for the benefit of ServiceCo; and
 - (ii) the exercise or failure to exercise FACS' discretion under this clause 23.6 is not capable of being the subject of a Dispute for the purposes of clause 34 or otherwise subject to review.
- (c) In circumstances where FACS exercises its power under this clause 23.6 as a consequence of a delay to Service Readiness caused by a Compensable Extension Event for which ServiceCo is entitled to an extension of time in accordance with this Agreement, FACS must pay compensation to ServiceCo in accordance with clause 23.7.

23.7 Entitlement to costs

- (a) **(Compensable Extension Event):** Subject to clause 23.7(b), to the extent that ServiceCo is granted an extension of time to the Date for Service Readiness under clause 23.5(a)(i) for a Compensable Extension Event, FACS will pay ServiceCo the amount calculated in accordance with the Change Compensation Principles, provided that ServiceCo has complied with and continues to comply with the requirements under clause 23.4.
- (b) **(Relief from obligations):** If the relevant Date for Service Readiness is not extended under clause 23.5, ServiceCo will not be entitled to any compensation, including any Prolongation Costs.

23.8 Sole remedy

Subject to clause 5.3(b) and 5.3(c)(ii) and without limiting clause 26.11:

- (a) **(Delay during the Delivery Phase):** ServiceCo's sole remedy for a delay or disruption during the Delivery Phase is as set out in this clause 23; and
- (b) **(FACS Liability):** ServiceCo will not be entitled to make, and FACS will have no Liability for, any Claim made by ServiceCo (including for damages for breach), for any delay during the Delivery Phase (including any delay to Service Readiness) other than:
 - (i) a Claim for an extension of time;
 - (ii) a Claim for relief from ServiceCo's other Delivery Phase Activities; or
 - (iii) a Claim for costs under the Change Compensation Principles,each of which is determined in accordance with this clause 23.

23.9 Concurrent delays

ServiceCo is not entitled to an extension of time under clause 23.5 or compensation under clause 23.7 in respect of a delay to Service Readiness caused by an Extension Event to the extent that an event which is not an Extension Event causes a delay to Service Readiness contemporaneous, concurrent or overlapping with the delay to Service Readiness caused by the relevant Extension Event.

23.10 Force Majeure during Delivery Phase

- (a) **(ServiceCo's obligations):** If:
- (i) an Extension Event is a Force Majeure Event;
 - (ii) the Force Majeure Event prevents ServiceCo from performing the Delivery Phase Activities; and
 - (iii) ServiceCo has been granted relief from its obligation to perform the relevant Delivery Phase Activities under clause 23.5,

then, the obligations of ServiceCo under this Agreement which are affected by the Force Majeure Event and which are the subject of the relief granted under clause 23.5 will be suspended, but only to the extent that, and for so long as ServiceCo has been granted relief from its obligation to perform the relevant Delivery Phase Activities under clause 23.5.

- (b) **(FACS' obligations):** The obligations of FACS under this Agreement which are affected by the Force Majeure Event will be suspended, but only to the extent that, and for so long as, the Force Majeure Event prevents that party from meeting its obligations under this Agreement.
- (c) **(Party not in breach):** A party's failure to perform its obligations under this Agreement which are suspended under clause 23.10(a) will not be a breach of this Agreement, a Major Default or a Default Termination Event during that period of suspension.

23.11 Time not at large

None of:

- (a) **(breach):** a breach of this Agreement or any other FACS Service Package Document by FACS or any of its Associates;
- (b) **(Modification):** a Modification directed, or Modification Order issued, by FACS or the FACS Representative;
- (c) **(failure to grant extension):** a failure by FACS to grant an extension of time under clause 23.5 or to do so within the time required by that clause;
- (d) **(FACS discretion):** a failure by FACS to exercise its discretion pursuant to clause 23.6;
- (e) **(time bar):** operation of any time bar, including clause 23.4(a); or
- (f) **(other default):** any other default, act or omission of FACS or any of FACS' Associates,

sets the Date for Service Readiness, or any other time, at large.

23.12 The Date for Service Readiness before the Sunset Date

- (a) If, at any time after the Date for Service Readiness in respect of a Stage, the FACS Representative considers ServiceCo will not, or it is reasonably likely that

ServiceCo will not, achieve Service Readiness for that Stage by the Sunset Date, the FACS Representative may require that the Independent Expert appointed under clause 23.12A formally reviews the progress of the Delivery Phase Activities for the purposes of determining if ServiceCo will achieve Service Readiness for that Stage by the Sunset Date.

- (b) The Independent Expert must prepare a preliminary report within 30 Business Days (or any longer period agreed by the FACS Representative in writing) of their appointment giving a preliminary opinion (acting reasonably) of whether ServiceCo will be able to achieve Service Readiness for that Stage by the relevant Sunset Date.
- (c) ServiceCo must:
 - (i) provide all reasonable cooperation to the Independent Expert in the preparation of their report; and
 - (ii) promptly on request by the Independent Expert (and in any case, no later than 10 Business Days after a request by the Independent Expert), provide the Independent Expert any information reasonably requested to enable the Independent Expert to prepare the preliminary report referred to in clause 23.12(b).
- (d) Within 10 Business Days of receipt of the Independent Expert's report, ServiceCo must:
 - (i) notify FACS and the Independent Expert of any matters with which it disagrees with the Independent Expert's opinion together with reasons; and
 - (ii) to the extent it agrees, provide a Recovery Plan which demonstrates that Service Readiness for that Stage can be achieved by the Sunset Date.
- (e) Within a further 10 Business Days of provision of a Recovery Plan (and any notice) under clause 23.12(d), the Independent Expert must give notice to FACS and ServiceCo of their final opinion, taking into account the Recovery Plan and any comments from FACS, as to whether or not ServiceCo has satisfactorily addressed all matters which could delay its ability to achieve Service Readiness for that Stage by the Sunset Date.
- (f) If the Independent Expert determines in its final report that ServiceCo will be able to achieve Service Readiness for that Stage by the Sunset Date then ServiceCo must implement and comply with its Recovery Plan.
- (g) A Default Termination Event will occur if the Independent Expert determines in its final report that ServiceCo will not be able to achieve Service Readiness for a Stage by the Sunset Date.

23.12A Appointment of Independent Expert

- (a) **(Preliminary appointment):** Notwithstanding clause 23.12(a), at any time after the date of this Agreement, FACS may notify ServiceCo that it wishes for the parties to appoint the Independent Expert. The parties acknowledge that whilst the Independent Expert may be appointed under this clause 23.12(a) prior to the Date for Service Readiness, FACS may only require a review by that Independent Expert

in accordance with clause 23.12(a) once the relevant requirements in that clause are satisfied.

- (b) **(Exchange of lists of three preferred experts):** Within 10 Business Days after the date on which a FACS provides notice to ServiceCo under clause 23.12A(a), if FACS and ServiceCo are unable to agree on the expert, FACS and ServiceCo must exchange lists of three persons (in order of preference) who, if appointed, would satisfy the requirements of clause 23.12A(e), from whom the expert is to be chosen.
- (c) **(Appointment of person who appears on both lists):** Any person that appears on both lists under clause 23.12A(b) will be appointed as the Independent Expert for the purposes of clause 23.12 and if more than one person appears on both lists the person given the highest order of priority by FACS will be appointed.
- (d) **(Appointment if no person appears on both lists):** If no person appears on both lists, FACS must procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the Independent Expert, having regard to, but not being bound by, those persons proposed by the parties under clause 23.12A(b) within 10 Business Days of the exchange of lists under clause 23.12A(b).
- (e) **(Appropriate skills):** It is the intention of the parties that the Independent Expert appointed for the purposes of clause 23.12 will be an independent person with appropriate skills having regard to the nature of the matters to be determined.
- (f) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of the Independent Expert under this clause 23.12A on the basis that the Independent Expert does not satisfy the requirements of clause 23.12A(e).
- (g) **(Agreement):** If required by FACS, within 10 Business Days of the Independent Expert being agreed, deemed or nominated, FACS and ServiceCo must enter into an agreement with the Independent Expert on terms reasonably required by FACS or such other reasonable terms as the Independent Expert may require.

23.13 Recovery Plan

- (a) Each Recovery Plan will be reviewed in accordance with the Review Procedures and must:
 - (i) describe the actions and measures which ServiceCo will diligently pursue to remedy or mitigate all delay to the Delivery Phase Activities and to ensure Service Readiness for the Stage is achieved by the Sunset Date and to avoid, mitigate or minimise the consequences of the delay consistent with its obligations under clause 15.1; and
 - (ii) contain a proposed updated Delivery Phase Program.
- (b) The parties acknowledge and agree that:
 - (i) the Review Procedures will apply to the Recovery Plan as if a reference to "FACS" is a reference to the Independent Expert; and

- (ii) the Review Period under the Review Procedures for a Recovery Plan will be deemed to be 10 Business Days.
- (c) ServiceCo must implement and comply with its Recovery Plan subject to any comments on that plan provided by the Independent Expert on review in accordance with the Review Procedures.
- (d) ServiceCo will not be relieved of any Liability or responsibility under this Agreement, any remedy program or otherwise at Law arising out of or in connection with:
 - (i) any comments given by the Independent Expert on review of the Recovery Plan in accordance with the Review Procedures; or
 - (ii) the implementation of any Recovery Plan in respect of which the Independent Expert has or has not given comments on review in accordance with the Review Procedures.
- (e) ServiceCo will not be entitled to make any Claim against FACS arising out of or in connection with any comments by the Independent Expert on review of the Recovery Plan in accordance with the Review Procedures or any Loss suffered or incurred by ServiceCo in preparing, or complying with, a Recovery Plan.

23.14 Sole remedy

- (a) **(Monthly Service Payment):** Except if FACS elects to terminate or partially terminate this Agreement, FACS acknowledges and agrees that FACS' sole financial remedy, and ServiceCo's sole financial Liability, for failure to achieve Service Readiness for a Stage by the Date for Service Readiness for that Stage is limited to the amount of the Monthly Service Payment not required to be paid by FACS in those circumstances.
- (b) **(Acknowledgement):** ServiceCo acknowledges and agrees that nothing in clause 23.14(a) limits FACS' right with respect to an event giving rise to delay or the consequences of such event.

24. Service Delivery Phase – Intervening Events

24.1 Intervening Events entitling Claim

- (a) **(Notification):** If ServiceCo becomes aware of an Intervening Event or any other matter which has prevented or will prevent ServiceCo from performing any of the Services in accordance with this Agreement, ServiceCo must promptly notify FACS of that Intervening Event, its then current effect, and any likely further effect.
- (b) **(Prevent):** In this clause 24, 'prevent' or 'prevented' does not mean that ServiceCo is permanently prevented from performing its obligations.
- (c) **(Relief):** If, during the Service Delivery Phase, an Intervening Event prevents ServiceCo from meeting any of the Services Requirements in accordance with this Agreement, ServiceCo will be entitled to claim relief from performance in accordance with this clause 24.

(d) **(Claim for relief)**: In order to claim relief from performance under this clause, ServiceCo must submit an initial Change Notice to FACS for that Intervening Event within 20 Business Days after the date upon which it became aware of the first occurrence of the Intervening Event.

(e) **(Updates)**: Where:

(i) the period for which ServiceCo is prevented from performing any of the Services in accordance with this Agreement extends beyond the period of time specified in the Change Notice submitted in accordance with clause 24.1(d); and

(ii) ServiceCo wants to claim relief from performance in respect of that further period,

ServiceCo must notify FACS and, once the consequences of the Intervening Event have ceased, promptly (and in any event, within 10 Business Days), submit an updated Change Notice.

24.2 Conditions precedent to relief

It is a condition precedent to FACS granting any relief or ServiceCo having any entitlement in connection with an Intervening Event that:

(a) **(Change Notice)**: ServiceCo submits to FACS:

(i) its initial Change Notice in accordance with clause 24.1(d); and

(ii) any updated Change Notice in accordance with clause 24.1(e); and

(b) **(actual prevention)**: ServiceCo's performance of all or any part of the Services under this Agreement is actually prevented by the relevant Intervening Event.

24.3 Services suspended and no breach

To the extent that:

(a) an Intervening Event prevents ServiceCo from meeting any of the Services Requirements in accordance with this Agreement; and

(b) the conditions precedent in clause 24.2 have been satisfied,

then:

(c) the relevant obligation of ServiceCo will be suspended;

(d) the failure to perform the affected Services will not be a breach of this Agreement by ServiceCo, a ServiceCo Act or Omission, a Service Failure, a Major Default or a Default Termination Event,

but only until the earlier of:

(e) the date the Intervening Event and its consequences cease to prevent performance of the relevant Services; and

- (f) the date on which the Intervening Event and its consequences would have ceased to prevent performance, had ServiceCo or any of its Associates not failed to do any of the things contemplated by clause 25(b)(ii).

24.4 Continue to provide Services

- (a) If an Intervening Event prevents ServiceCo from meeting any of the Services Requirements in accordance with this Agreement, then ServiceCo:
 - (i) **(perform obligations)**: must, subject to clause 24.3 and unless it is actually or practically impossible to do so with respect to the Relevant Infrastructure given the nature of the Intervening Event, continue to provide the Services and otherwise perform its obligations under this Agreement; and
 - (ii) **(Replacement Services)**: to the extent it is actually or practically impossible to provide any of the Services with respect to the Relevant Infrastructure and otherwise perform its obligations under this Agreement given the nature of the Intervening Event:
 - A. FACS may direct ServiceCo to deliver replacement Services by an alternative method or 'work around' from that contemplated in the then current Service Delivery Phase Plans and the Services Specification to the reasonable satisfaction of FACS (including by providing alternative accommodation whilst the Intervening Event subsists) to the extent that it is reasonably possible for ServiceCo to do so **(Replacement Services)**; and
 - B. ServiceCo must comply with any such directions.
- (b) ServiceCo must use reasonable endeavours to procure Replacement Services by way of temporary accommodation if directed by FACS under clause 24.4(a)(i), that is suitable for the affected Tenants having regard to all of the circumstances, including availability of accommodation, time and cost.
- (c) FACS acknowledges and agrees that provided ServiceCo used reasonable endeavours under clauses 24.4(a)(i) and 24.4(b), any accommodation provided as part of the Replacement Services does not have to strictly meet all the requirements for Accommodation Services and the Services Requirements under this Agreement.

24.5 Payment

- (a) **(Payment of Monthly Service Payment)**: FACS must continue to pay the Monthly Service Payment in respect of the Relevant Infrastructure affected by the Intervening Event to the extent that ServiceCo performs the Services or Replacement Services (or both, as applicable) in respect of that Relevant Infrastructure in accordance with clauses 24.4(a) to 24.4(c).
- (b) **(Compensation for costs)**: If:
 - (i) ServiceCo's obligation to perform the Services is suspended in accordance with clause 24.3 because of a Compensable Intervening Event or an event described in paragraph (b) of the definition of

Intervening Event (which will be deemed to be a Compensable Intervening Event for the purposes of this clause only), then FACS will to the extent clause 24.5(a) applies, in addition to the amounts referred to in clause 24.5(a) pay ServiceCo an amount calculated in accordance with the Change Compensation Principles; or

- (ii) if:
 - A. the Intervening Event is a Force Majeure Event; and
 - B. FACS exercises its right of suspension under clause 32.3(d),

(which will be deemed to be a Compensable Intervening Event from the date of suspension for the purposes of this clause), then FACS will from the date of the relevant suspension notice, to the extent clause 24.5(a) applies, in addition to the amounts referred to in clause 24.5(a) pay ServiceCo an amount calculated in accordance with the Change Compensation Principles.

24.6 Alternative arrangements

- (a) If ServiceCo:
 - (i) is not able to provide any of the Services as a result of an Intervening Event; and
 - (ii) does not provide Replacement Services in accordance with clauses 24.4(a)(i) to 24.4(c) within a reasonable period of time after FACS directs it to do so under clause 24.4(a)(i),

then:
 - (iii) FACS may make alternative arrangements for the performance of those Services;
 - (iv) subject to clause 24.6(b) and 24.6(d), to the extent that the costs incurred by FACS in making those alternative arrangements exceed the Monthly Service Payments that would otherwise be payable to ServiceCo for the period of the Replacement Services had the Intervening Event not occurred, ServiceCo must reimburse FACS the amount of the excess; and
 - (v) FACS has no obligation to continue paying the Monthly Service Payment to ServiceCo under clause 24.5(a) in respect of the relevant Services that are not being provided.
- (b) If the Intervening Event is a Compensable Intervening Event, or an event described in paragraph (b) of the definition of Intervening Event, ServiceCo will not be required to reimburse FACS under clause 24.6(a)(iv).
- (c) If:
 - (i) the Intervening Event is a Force Majeure Event;
 - (ii) FACS makes alternative arrangements under clause 24.6(a)(iii); and

(iii) FACS exercises its right of suspension under clause 32.3(d),

ServiceCo will not be required to reimburse FACS under clause 24.6(a)(iv) for any costs incurred after the date of the relevant suspension notice.

(d) FACS shall not incur any Liability to ServiceCo in respect of alternative arrangements it makes under this clause 24.6.

24.7 Cessation of Intervening Event

ServiceCo must:

- (a) **(notification)**: notify FACS; and
- (b) **(performance of Services)**: recommence performing all Services suspended as a result of the Intervening Event,

immediately after it ceases to be prevented from performing those Services as a result of the relevant Intervening Event or its consequences.

24.8 Sole remedy

Subject to clause 5.3(b) and 5.3(c)(ii):

- (a) **(Intervening Event)**: if ServiceCo is prevented from performing the Services in accordance with this Agreement as a consequence of an Intervening Event, ServiceCo's sole remedy during the Service Delivery Phase is as set out in this clause 24; and
- (b) **(Relief and compensation)**: ServiceCo will not be entitled to make any Claim, and FACS will have no Liability for, any Claim made by ServiceCo (including for damages for breach) for ServiceCo being prevented from providing the Services in accordance with this Agreement other than for the relief and compensation in accordance with this clause 24.

25. Reduction in FACS' Liability for Relief Events

FACS' Liability and ServiceCo's entitlements in connection with any Relief Event will be reduced:

- (a) **(caused by ServiceCo)**: to the extent that the Relief Event is:
 - (i) within the reasonable control of ServiceCo and its Associates;
 - (ii) caused or contributed to by any breach of another Service Package Document by ServiceCo or any of its Associates who is a counterparty to the Service Package Document; or
 - (iii) caused or contributed to by a ServiceCo Act or Omission;
- (b) **(failure to mitigate)**: to the extent ServiceCo, or any of its Associates, fails to:

- (i) use all reasonable endeavours to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event (including by putting in place temporary measures reasonably required by FACS); or
 - (ii) take all reasonable steps which a prudent, competent and experienced contractor in the circumstances of ServiceCo or the relevant Associate of ServiceCo would have taken to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event; and
- (c) **(insurance proceeds):** by any insurance proceeds:
- (i) payable to ServiceCo, or any of its Associates, in respect of any Insurances; or
 - (ii) which would have been payable to ServiceCo or any of its Associates in accordance with any Insurances but for a failure by ServiceCo to comply with this Agreement or a failure by ServiceCo or any of its Associates to comply with any Service Package Documents, or with the terms of those Insurances.

26. Modifications

26.1 Modification Request by FACS

- (a) FACS may at any time issue to ServiceCo a notice entitled 'Modification Request' which must include details of:
- (i) **(proposed Modification):** the proposed Modification which FACS is considering;
 - (ii) **(preferred financing):** FACS' preferred financing for the proposed Modification in accordance with the Change Compensation Principles (where the Modification will result in an increase to the cost of the Relevant Infrastructure or the Services); and
 - (iii) **(specific information):** any specific information that FACS requires ServiceCo to include in its Change Notice or that may be relevant to the preparation of the Change Notice,
- (Modification Request).**
- (b) **(Omitted Service Package Activities):** Subject to clause 26.1(c), FACS may only decrease, omit, delete or remove any part of the Service Package Activities through a Modification Request where those Services Package Activities do not relate to the Dwellings or any Services impacting on the development, maintenance, upkeep or repair of those Dwellings **(Omitted Service Package Activities).**
- (c) **(No Applicants):** FACS may issue a Modification Request to omit a Dwelling (and all Service Package Activities in connection with that Dwelling) from the Service Package Activities if a Dwelling is vacant because there are no Appropriate Applicants for that Dwelling.

26.2 Estimate of cost of Change Notice

If ServiceCo needs to engage a third party other than any Consortium Member to provide services to assist in the preparation of the Change Notice for a proposed Modification requested under clause 26.1, ServiceCo must provide FACS with a capped price for those costs within 10 Business Days after receiving the Modification Request.

26.3 Modification Proposal

Unless FACS withdraws the Modification Request, ServiceCo must submit a Change Notice entitled 'Modification Proposal' in accordance with the Change Compensation Principles:

- (a) within 20 Business Days after the receipt of the Modification Request; or
- (b) at such later time as agreed by FACS (acting reasonably, taking into account the size and complexity of the proposed Modification and the information to be included in a Modification Proposal).

26.4 Payment for Change Notice prepared by ServiceCo

If:

- (a) ServiceCo prepares a Modification Proposal in accordance with clause 26.3; and
- (b) FACS does not issue a Modification Order in respect of the proposed Modification,

then FACS must reimburse the reasonable third party costs of the type described in clause 26.2 incurred by ServiceCo in preparing the Modification Proposal, capped at the price provided by ServiceCo for the Modification Proposal under clause 26.2.

26.5 Change Response

- (a) FACS must issue a Change Response to a Modification Proposal in accordance with the Change Compensation Principles and the Change Compensation Principles will apply.
- (b) Subject to clauses 26.4 and 26.10(c)(iii), ServiceCo must not begin any work or incur any cost, and will not have any entitlement to make any Claim in respect of a Modification unless a Change Response entitled 'Modification Order' requiring ServiceCo to proceed with the Modification has been issued by FACS.
- (c) Subject to clause 26.10, FACS may withdraw a Modification Request at any time prior to issuing a Modification Order, in which case ServiceCo must not proceed with the Modification.

26.6 Omission by FACS

- (a) **(Omitted Service Package Activities):** The parties acknowledge and agree that if FACS has issued a Change Response entitled "Modification Order" in accordance with the Change Compensation Principles in respect of Omitted Service Package Activities, FACS may itself or may engage an Associate of FACS to undertake any Omitted Service Package Activities.
- (b) **(Coordination with Service Package Activities):** ServiceCo must:

- (i) permit FACS or any of FACS' Associates to carry out any Omitted Service Package Activities;
- (ii) co-operate with FACS and any of FACS' Associates in carrying out any Omitted Service Package Activities (as applicable); and
- (iii) co-ordinate the Service Package Activities with the work carried out or to be carried out by FACS or any of FACS' Associates in connection with any Omitted Service Package Activities (as applicable).

26.7 Instruction to proceed

(a) **(Instruction):** Whether or not:

- (i) FACS has issued a Modification Request under clause 26.1; or
- (ii) ServiceCo has issued a Modification Proposal under clause 26.3,

FACS may at any time instruct ServiceCo to implement a Modification by issuing a Change Response entitled 'Modification Order' in accordance with the Change Compensation Principles.

(b) **(Implementation):** If FACS issues a Change Response entitled 'Modification Order' under clause 26.7(a), ServiceCo must implement the Modification on the terms set out in that Modification Order.

26.9 Directions

- (a) **(FACS direction):** If ServiceCo considers that a direction by FACS constitutes or involves a Modification and FACS has not given that direction expressly by way of a Modification Order, and ServiceCo intends to make a Claim that the direction is a Modification, ServiceCo must:
 - (i) within 10 Business Days after receiving the direction and before commencing any work the subject matter of the direction, give written notice to FACS that it considers the direction constitutes or involves a Modification; and
 - (ii) within 10 Business Days after giving the notice under clause 26.9(a)(i) and before commencing any work the subject matter of the direction, give FACS a Change Notice in respect of the alleged Modification.
- (b) **(Confirmation):** Within 20 Business Days of FACS receiving a Change Notice under clause 26.9(a) FACS must issue a Change Response:
 - (i) confirming that the direction is in fact a Modification, in which case FACS will issue a Modification Request in respect of the relevant direction in accordance with this clause 26 and the Change Compensation Principles;
 - (ii) withdrawing the direction, in which case ServiceCo must not comply with the direction; or
 - (iii) informing ServiceCo that, in FACS' view, the direction does not constitute or involve a Modification in which case ServiceCo must, subject to clause 5.2(a), comply with the direction but may refer the matter to dispute resolution in accordance with clause 34.
- (c) **(Conditions for ServiceCo Claim):** ServiceCo is not entitled to make any Claim in respect of a direction that gives rise to a Modification of the type described in clause 26.9(a) unless it has given a notice under clause 26.9(a).

26.10 Change in Mandatory Requirements

- (a) **(Change in Mandatory Requirements):** ServiceCo must provide to FACS a notice within 10 Business Days after becoming aware of any Change in Mandatory Requirements.
- (b) **(ServiceCo action):** If a Change in Mandatory Requirements occurs, ServiceCo must provide to FACS:
 - (i) within 10 Business Days after becoming aware of such Change in Mandatory Requirements, where necessary, an estimate of third party costs of the type described in clause 26.2 to be incurred for preparing a Change Notice in response to a Change in Mandatory Requirements; and
 - (ii) within 20 Business Days after becoming aware of that Change in Mandatory Requirements, or at such later time as agreed by FACS (acting reasonably), a Change Notice in respect of the relevant Change

in Mandatory Requirements in accordance with the Change Compensation Principles.

- (c) **(FACS action):** FACS must:
- (i) direct ServiceCo as to whether or not it requires ServiceCo to comply with the relevant Change in Mandatory Requirements, provided that FACS must direct ServiceCo to comply with the relevant Change in Mandatory Requirements if a failure to comply with that Change in Mandatory Requirements would result in ServiceCo being in breach of Legislation or any Approval;
 - (ii) if FACS directs that it requires ServiceCo to comply with the relevant Change in Mandatory Requirement under clause 26.10(c)(i), issue a Change Response entitled 'Modification Order' in accordance with the Change Compensation Principles; and
 - (iii) if FACS directs ServiceCo not to comply with the relevant Change in Mandatory Requirement under clause 26.10(c)(i), reimburse ServiceCo the reasonable third party costs of the type described in clause 26.2 incurred by ServiceCo in preparing the Change Notice, capped at the amount of any estimate provided by ServiceCo for the Change Notice under clause 26.2 (or such higher amount as FACS may approve).
- (d) **(Conditions for ServiceCo claim):** ServiceCo is not entitled to make any Claim in respect of a Change in Mandatory Requirements unless it has given a notice in accordance with clause 26.10(a) and 26.10(b)(ii).

26.11 Extension of time

- (a) **(Claim for extension of time):** Where ServiceCo considers that it has been delayed in achieving Service Readiness in respect of a Stage or has otherwise been prevented in performing the Delivery Phase Activities as a consequence of a Modification or a Change in Mandatory Requirements then ServiceCo must include in its Change Notice provided under this clause 26 its claim for an extension of time or other relief and clause 23 will apply in respect of the relevant relief or extension of time claim (unless FACS and ServiceCo can agree on an extension of time or other form of relief in accordance with clause 26.11(b)).
- (b) **(FACS may agree):** FACS and ServiceCo may agree:
- (i) that ServiceCo is entitled to an extension of time or other form of relief; and
 - (ii) the period of any such extension of time or other form of relief,
- within 10 Business Days after FACS receives ServiceCo's Change Notice, in which case the agreed extension of time or other form of relief will apply and be included in the Change Response.
- (c) **(Failure to agree on extension of time):** Where ServiceCo has claimed an extension of time in accordance with clause 26.11(a) and FACS and ServiceCo cannot agree that ServiceCo is entitled to an extension of time or the period for the extension of time FACS may issue separate Change Responses for:

- (i) the non-time related aspects of the relevant Modification or a Change in Mandatory Requirements (as applicable); and
 - (ii) the extension of time (if any) which will be determined by FACS in accordance with clause 23.5(a).
- (d) (**Dispute**): ServiceCo may refer any Dispute in relation to a FACS determination under clause 26.11(c) for dispute resolution in accordance with clause 34.

26.12 Implementation

If FACS issues a Modification Order in accordance with this clause 26 ServiceCo must implement the Modification in accordance with the terms of the Modification Order.

27. Material Adverse Effect

27.1 Notice of Material Adverse Effect

- (a) If a MAE Change in Law occurs which ServiceCo reasonably believes has had or has started to have a Material Adverse Effect, ServiceCo must:
 - (i) notify FACS of the Material Adverse Effect and provide evidence to support its assertion that a Material Adverse Effect has occurred (including the calculation set out in the definition of 'Material Adverse Effect'); and
 - (ii) use all reasonable endeavours to mitigate the adverse consequences of the event it believes is a Material Adverse Effect.
- (b) FACS will determine, acting reasonably, whether it is satisfied a Material Adverse Effect has occurred and notify ServiceCo within 10 Business Days of its determination.
- (c) A notice given under clause 27.1(a) will only be valid if it is given within 60 Business Days after the MAE Change in Law had or has started to have a Material Adverse Effect.

27.2 Good faith negotiations

- (a) As soon as practicable but no later than 20 Business Days after notice is given under clause 27.1(b), the parties must enter into negotiations and negotiate in good faith in an endeavour to agree variations to the FACS Service Package Documents that will enable ServiceCo to continue to provide the Service Package on a reasonable basis (**MAE Variations**).
- (b) The parties acknowledge that in any negotiations they will take a flexible approach, including giving consideration to:
 - (i) varying the Term;
 - (ii) re-specifying the Services, including reducing the proportion of Tenants required to be Social Housing Tenants pursuant to the Services Specification;
 - (iii) varying the financial or other contributions of the parties; and

- (iv) other variations as may be appropriate.
- (c) The parties acknowledge and agree that notwithstanding any other provision in this Agreement, negotiations conducted in accordance with this clause 27.2 (or any disputes arising in connection with those negotiations) cannot be referred to dispute resolution under any of clauses 34 to 38.

27.3 Termination as a last resort

If the parties cannot agree the MAE Variations within 3 Months of the commencement of negotiations, ServiceCo may terminate this Agreement upon 12 Months' notice to the other party, in which case:

- (a) no Termination Payment will be payable by either party; and
- (b) clause 22.3 will apply.

28. Step-in by appointment of statutory manager

The parties acknowledge and agree that, in respect of the Social Housing provided by ServiceCo under this Agreement:

- (a) the Registrar is entitled to appoint a statutory manager to conduct the affairs and activities of ServiceCo as they relate to the community housing assets of ServiceCo under the Community Housing Act (clause 21 of the National Law);
- (b) the statutory manager's functions will include the right to pay monies (including rent) under any Subcontract or Lease and enforce any rights under any such Subcontract or Lease; and
- (c) if a statutory manager is appointed to exercise functions of ServiceCo, the governing body of ServiceCo may not exercise any of those functions without the consent of the statutory manager.

Part I - Risk, indemnity and Insurance

29. Indemnities and Consequential or Indirect Loss

29.1 Indemnity for ServiceCo breach

Subject to clause 21.3(d), ServiceCo indemnifies FACS, FACS' employees and officers and the NSW Government (each an **Indemnified Person**) from and against any Claim or Liability suffered or incurred by any Indemnified Person in connection with:

- (a) (**breach of Deed**): any breach by ServiceCo of this Agreement; or
- (b) (**breach of FACS Service Package Document**): any breach by ServiceCo or any of its Associates of any FACS Service Package Document.

29.2 General indemnity

ServiceCo indemnifies the Indemnified Persons from and against any Claim or Liability suffered or incurred by any Indemnified Person in connection with:

- (a) **(loss or damage)**: any loss of, or damage or destruction to, property;
- (b) **(injury or death)**: any injury to, illness or death of, any person; or
- (c) **(third parties)**: to the extent not covered under clauses 29.2(a) or 29.2(b), any third party actions brought against the Indemnified Persons,

to the extent caused or contributed to by ServiceCo or any of its Associates in connection with the Service Package or the Service Package Activities.

29.3 Information Documents

ServiceCo:

- (a) **(indemnity)**: indemnifies FACS and any of its Associates against any Claim or Liability suffered or incurred by FACS or any of its Associates, and releases and must procure that its Associates or any other person to whom an Information Document is disclosed by ServiceCo, an Associate of ServiceCo or any person on ServiceCo's or its Associate's behalf, release FACS and any of FACS's Associates from any Claim, arising in connection with the provision of, or the purported reliance upon, or use of, the Information Documents by ServiceCo, an Associate of ServiceCo or any other person to whom an Information Document is disclosed by ServiceCo, an Associate of ServiceCo or any person on ServiceCo's or its Associate's behalf to the extent only that a Claim is made against FACS or any of its Associates by ServiceCo, an Associate of ServiceCo or any other person to whom an Information Document is disclosed by ServiceCo, an Associate of ServiceCo or any person on ServiceCo or its Associate's behalf; and
- (b) **(release)**: releases and must procure that its Associates release FACS and any of FACS' Associates from any Claim in respect of any failure by FACS to make available to ServiceCo any information, data or material relating to the Service Package.

29.4 Privacy indemnity

ServiceCo must release, indemnify and must keep indemnified on demand, FACS and its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which FACS or any of its Associates suffer or incur resulting from any act done or practice engaged in by ServiceCo or any Associate of ServiceCo in connection with the Service Package, which would, had that act or practice been done or engaged in by FACS, have contravened any of the Privacy Legislation.

29.5 Release

ServiceCo releases, and must procure that each of its Associates releases, each of the Indemnified Persons from any Claim or Liability for damage, destruction, loss, death, illness or injury to the extent caused by ServiceCo or any of its Associates in connection with the Service Package or the Service Package Activities.

29.6 Limits on ServiceCo Liability to indemnify and release

ServiceCo's Liability to indemnify and release the Indemnified Persons or any Associate of FACS in accordance with this Agreement will be reduced to the extent that any such Claim or Liability is caused or contributed to by:

- (a) **(breach)**: any breach by FACS of any FACS Service Package Document;
- (b) **(fraud)**: any fraudulent, negligent, reckless, unlawful or malicious act or omission of the Indemnified Persons or the Associate of FACS (as the case may be); or
- (c) **(events)**: a Relief Event, but only to the extent that the reduction in ServiceCo's Liability to indemnify or release is agreed by the parties in accordance with the Change Compensation Principles (if at all),

other than to the extent that ServiceCo is entitled to recover under any of the Insurances (or would have been entitled to recover but for this clause 29.6 or any breach by ServiceCo or any of its Associates of this Agreement or the relevant insurance policy).

29.7 Third party claim under indemnity

- (a) **(Management of Claims)**: Subject to clause 29.7(b) and 29.7(c), if a Claim is made against an Indemnified Person, in respect of which ServiceCo is required to indemnify the relevant Indemnified Person in accordance with this Agreement, to the extent that FACS' insurers in connection with such a Claim agree, FACS must:
 - (i) as soon as is reasonably practicable after it becomes aware of the Claim:
 - A. notify ServiceCo of the alleged Claim;
 - B. give ServiceCo the option to defend the Claim; and
 - C. provide ServiceCo (at ServiceCo's expense) with reasonable assistance in negotiating, defending or otherwise taking action or proceedings in respect of that Claim; and
 - (ii) not settle or compromise the Claim without the prior written consent of ServiceCo (which cannot be unreasonably withheld or delayed), and ServiceCo will be deemed to be acting reasonably if ServiceCo refuses to provide its consent as a result of restrictions or obligations under any Insurance policy to which that Claim relates.
- (b) **(Urgent proceedings)**: If interlocutory proceedings are commenced against FACS on an urgent basis, FACS may initially defend such proceedings, but as soon as practicable after commencement of the proceedings, FACS must give ServiceCo the option to conduct the defence of such proceedings.
- (c) **(Other matters)**: Clauses 29.7(a)(i)B and 29.7(a)(i)C do not apply to any Claim which:
 - (i) FACS (acting reasonably) considers should be conducted by FACS for public policy reasons; or
 - (ii) would prevent the continued development or operation of the Service Package or continued conduct of the Service Package Activities,

and FACS, to the extent reasonably practicable, must consult in good faith with ServiceCo with respect to such Claim.

- (d) **(Management of Claims by FACS):** If FACS is managing a Claim for which ServiceCo is required to indemnify an Indemnified Person, FACS must:
 - (i) give ServiceCo prior notice before agreeing to any compromise or settlement of that Claim; and
 - (ii) use reasonable endeavours to consult in good faith with ServiceCo prior to agreeing to any such compromise or settlement.
- (e) **(Management of Claims by ServiceCo):** If ServiceCo is managing a Claim in accordance with clause 29.7(a)(i)B, ServiceCo must:
 - (i) give FACS prior notice before agreeing to any compromise or settlement of that Claim; and
 - (ii) use reasonable endeavours to consult in good faith with FACS prior to agreeing to any such compromise or settlement.

29.8 Continuing obligation

- (a) **(Indemnities):** Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties.
- (b) **(Enforcement):** It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Agreement.
- (c) **(Payment):** A party must pay on demand any amount it must pay under an indemnity in this Agreement.

29.9 Exclusion of Consequential or Indirect Loss – ServiceCo

- (a) **(No Liability of ServiceCo):** Subject to clause 29.9(b), neither ServiceCo nor any of its Associates has any Liability to FACS or any of its Associates for any Consequential or Indirect Loss incurred or sustained by FACS or any of its Associates:
 - (i) as a result of any act or omission of ServiceCo or any of its Associates; or
 - (ii) due to any breach of a FACS Service Package Document by ServiceCo or any of its Associates.
- (b) **(Exceptions to no ServiceCo Liability):** The exclusion of Liability of ServiceCo and its Associates under clause 29.9(a) does not apply to Liability:
 - (i) for which ServiceCo or its Associates are insured under any Insurances that have been effected and maintained as required by this Agreement or Liability for which ServiceCo or its Associates would have been insured under such Insurances if:
 - A. this clause 29.9 did not exist; and
 - B. ServiceCo and its Associates had:

- 1) effected and maintained the relevant Insurances as required by this Agreement;
 - 2) complied with the relevant Insurances;
 - 3) submitted a claim under the relevant Insurances where there was a legitimate entitlement to do so; and
 - 4) taken reasonable steps to pursue the claim;
- (ii) for which ServiceCo recovers pursuant to an indemnity under any Service Package Documents;
- (iii) arising from any criminal act or fraud on the part of ServiceCo or any of its Associates;
- (iv) arising from any wilful misconduct on the part of ServiceCo or any of its Associates;
- (v) arising from any loss of or damage to property or injury to, illness or death of any person;
- (vi) in respect of a deductible or excess under any Insurance;
- (vii) in respect of any reduction of any Monthly Service Payment as a consequence of the application of the Performance Regime or the Payment Schedule in accordance with this Agreement;
- (viii) expressly imposed on ServiceCo or any of its Associates under any of the Service Package Documents to pay FACS any of the following amounts:
- A. any interest under clause 21.5;
 - B. any amounts payable under clause 21.4 or clause 43.9;
 - C. any amounts expressly stated to be payable as a debt due and payable under the FACS Service Package Documents;
 - D. without limiting clause 29.9(b)(v), any amounts payable by ServiceCo to FACS or an Indemnified Person under clause 29.2(c);
 - E. any amounts payable under and calculated in accordance with the Performance Regime or the Payment Schedule;
 - F. any amounts payable under and calculated in accordance with the Change Compensation Principles; or
 - G. any amounts payable under and calculated in accordance with the Termination Payment Schedule;
- (ix) imposed on ServiceCo under clause 26.8(d) to pay or allow to FACS any share of Savings;

- (x) in respect of any statutory fine or civil penalty arising from any breach of Law by ServiceCo or any of its Associates; and
- (xi) arising from abandonment of the whole or a substantial part of the Delivery Phase Activities or the Services by ServiceCo or any of its Associates.

29.10 Exclusion of Consequential or Indirect Loss – FACS

- (a) **(No Liability of FACS):** Subject to clause 29.10(b), neither FACS nor any of its Associates has any Liability to ServiceCo or any of its Associates or any Group Member (whether in contract, tort or otherwise), in respect of Consequential or Indirect Loss incurred or sustained by ServiceCo, its Associates or any Group Member:
 - (i) as a result of any act or omission of FACS or any of its Associates; or
 - (ii) due to any breach of a FACS Service Package Document by FACS or any of its Associates.
- (b) **(Exceptions to the no FACS Liability):** The exclusion of Liability of FACS and its Associates in clause 29.10(a) does not apply to:
 - (i) Liability arising from any criminal act or fraud on the part of FACS or its Associates;
 - (ii) Liability arising from any wilful misconduct under any FACS Service Package Document on the part of FACS or its Associates;
 - (iii) Liability arising from any loss of or damage to property or any injury to, illness or death of, any person caused or contributed to by FACS or its Associates;
 - (iv) Liability expressly imposed on FACS under any of the FACS Service Package Documents to pay to ServiceCo any of the following amounts:
 - A. any Monthly Service Payment;
 - B. any interest under clause 21.5;
 - C. any amounts payable under and calculated in accordance with the Change Compensation Principles (including any Prolongation Costs); or
 - D. any amounts payable in accordance with the Termination Payment Schedule;
 - (v) Liability imposed on FACS under clause 26.8(d) to pay or allow ServiceCo any share of Savings; or
 - (vi) payment of any excess or deductible payable by FACS under the Insurance Schedule.

29A Limitation of liability

29A.1 Limitation of liability

- (a) Subject to this clause 29A, but notwithstanding any other provision of the Service Package Documents, ServiceCo's total aggregate Liability to Indemnified Persons in connection with the Service Package Documents whether arising in contract, indemnity, in tort (including negligence), in equity, by operation of Law or otherwise, is limited in aggregate to an amount equal to \$36 million (Indexed), but is subject to any adjustment pursuant to clauses 29A.1(b) and 29A.3 (**Liability Cap**).
- (b) To the extent that the actual number of Dwellings in the Service Package on and from the Review Date is less than the Target Dwellings arising out of clauses 34A or 34B a pro rata reduction is to apply to the amount in 29A.1(a).

29A.2 Exceptions

The Liability Cap does not apply to the extent that the Liability of ServiceCo to the Indemnified Persons:

- (a) (**insured Liability**): is an insured liability in accordance with any Insurances, in respect of an amount equal to any insurance proceeds paid;
- (b) (**Insurance proceeds which would have been payable**): is a Liability for which ServiceCo or its Associates are insured under any Insurances that have been effected and maintained as required by this Agreement or Liability for which ServiceCo or its Associates would have been insured under such Insurances if ServiceCo and its Associates had:
 - (i) effected and maintained the relevant Insurances as required by this Agreement;
 - (ii) complied with the relevant Insurances;
 - (iii) submitted a claim under the relevant Insurances where there was a legitimate entitlement to do so; and
 - (iv) taken reasonable steps to pursue the claim;
- (c) (**Liability arising from ServiceCo malfeasance**): arises from:
 - (i) a criminal act or fraudulent act or omission on the part of ServiceCo or any of the Liable Persons;
 - (ii) wilful misconduct on the part of ServiceCo or any of the Liable Persons; or
 - (iii) [*not used*]
 - (iv) a Liability that cannot be limited at Law;
- (d) (**abandonment**): arises out of ServiceCo's abandonment of the Service Package;

- (e) **(death)**: arises from property damage within clause 29A.2(f) or injury to, illness or death of any person, except for Liability that is described in paragraph (a) of the definition of Consequential or Indirect Loss;
- (f) **(third party property)**: arises out of loss of or damage to property including any real or personal property except for Liability that is described in paragraph (a) of the definition of Consequential or Indirect Loss;
- (g) **(Intellectual Property Rights)**: arises out of a breach of clause 46;
- (h) **(Abatements)**: in respect of any reduction of any Monthly Service Payment as a consequence of the application of the Performance Regime or the Payment Schedule in accordance with this Agreement; and
- (i) **(recovery from other party)**: is recovered from any other party is with respect to the Service Package.

29A.3 Increase in Liability Cap

- (a) FACS may notify ServiceCo if at any time FACS is of the opinion that the aggregate Liability incurred by ServiceCo under or in connection with the Service Package Documents is equal to or greater than 80% of the Liability Cap.
- (b) ServiceCo must notify FACS if at any time the aggregate Liability incurred by ServiceCo under or in connection with the Service Package Documents is equal to or greater than 80% of the Liability Cap.
- (c) If FACS gives a notice to ServiceCo under clause 29A.3(a) or ServiceCo gives FACS a notice under clause 29A.3(b), ServiceCo may within 10 Business Days of receipt or issue of that notice (whichever applicable), elect in its absolute discretion to increase the Liability Cap by providing written notice to FACS specifying the increase to the Liability Cap.

30. Insurance

ServiceCo agrees to comply with its obligations set out in the Insurance Schedule with respect to insurance.

Part J - Default, Termination and Disputes

31. Major Default

31.1 Meaning of remedy or cure

- (a) **(Meaning of remedy or cure)**: Where the word 'remedy' or 'cure' or any other grammatical form of those words is used in this clause 31, it means to cure or redress the relevant breach or Major Default or overcome its consequences so that:
 - (i) there ceases to be any continuing detrimental effect of that breach or Major Default;
 - (ii) any prior detrimental effect is rectified; and

- (iii) FACS and its Associates are in the position they would have been in had the relevant breach or Major Default not taken place.
- (b) **(Major Default deemed to be capable of remedy or cure):** The parties acknowledge and agree that the events identified in paragraph (a) of the definition of Major Default will, for the purposes of this clause 31, be deemed to be capable of cure, notwithstanding that the relevant Major Default may not, as a matter of fact, be capable of cure.

31.2 Notice of Major Default

- (a) **(ServiceCo's obligations):** ServiceCo must:
 - (i) promptly notify FACS upon the occurrence of a Major Default; and
 - (ii) immediately take steps to mitigate, minimise or avoid the effects, consequences or duration of the Major Default.
- (b) **(Major Default Notice):** If:
 - (i) ServiceCo notifies FACS of a Major Default under clause 31.2(a); or
 - (ii) FACS considers that a Major Default has occurred,
FACS may give ServiceCo a notice in writing **(Major Default Notice):**
 - (iii) stating that a Major Default has occurred;
 - (iv) identifying and providing details of the Major Default; and
 - (v) if the Major Default:
 - A. is capable of remedy, stating a date by which ServiceCo must remedy the Major Default (which must allow for a reasonable period of time to remedy the Major Default in the circumstances);
 - B. is not capable of remedy, stating any reasonable requirements of FACS in connection with that Major Default and a date by which ServiceCo must comply with those requirements (which must allow for a reasonable period of time to comply with FACS' requirements in the circumstances); or
 - C. is not capable of remedy and FACS has formed the view (acting reasonably) that there are no reasonable requirements that can be met by ServiceCo to overcome the consequences of, or compensate FACS for, the Major Default, a statement to that effect along with its reasons for forming that view.
- (c) **(Unreasonable requirements):** If ServiceCo (acting in good faith) does not agree with a Major Default Notice, or any part of it, it must:
 - (i) promptly notify FACS, including the reasons why; and

- (ii) if ServiceCo does not agree with the period of time stated in the Major Default Notice, specify the period of time which it believes is reasonable.
- (d) **(FACS to act in good faith):** FACS must in good faith consider ServiceCo's notice under clause 31.2(c) and (acting reasonably):
 - (i) make any changes to the Major Default Notice that it considers reasonable as a consequence of ServiceCo's notice; and
 - (ii) notify ServiceCo of those changes (if any).
- (e) **(Major Default not capable of remedy or cure):** If after considering ServiceCo's notice under clause 31.2(c), FACS maintains the view (acting reasonably) that there are no reasonable requirements that can be met by ServiceCo to overcome the consequences of, or compensate FACS for, the Major Default, FACS must notify ServiceCo of this determination and the Major Default will be deemed to be a Default Termination Event.
- (f) **(ServiceCo not satisfied):** If ServiceCo is not satisfied with:
 - (i) the changes (if any) made by FACS under clause 31.2(d); or
 - (ii) FACS' determination under clause 31.2(e),
 then:
 - (iii) ServiceCo may refer the matter to expert determination in accordance with clause 37; and
 - (iv) if clause 31.2(e) applies, the Major Default will not be deemed to be a Default Termination Event unless and until determined by expert determination in accordance with clause 37,
 and ServiceCo must act in accordance with the Major Default Notice while the matter is being determined in accordance with clause 37.

31.3 ServiceCo to provide remedy program and comply with Major Default Notice

- (a) **(Remedy program):** If FACS gives a Major Default Notice to ServiceCo, then notwithstanding its rights under clause 31.2(c) to 31.2(f), ServiceCo must within 10 Business Days:
 - (i) where the Major Default is capable of remedy, unless the relevant Major Default is a failure to pay money which must be remedied immediately, give FACS a program to remedy the Major Default in accordance with the terms of the Major Default Notice (which may include a plan to replace the Subcontractor causing the Major Default); and
 - (ii) where the Major Default is not capable of remedy, give FACS a program to prevent the Major Default from recurring and comply with any reasonable requirements of FACS set out in the Major Default Notice (which may include a plan to replace the Subcontractor causing the Major Default),

for review by FACS in accordance with the Review Procedures.

- (b) **(Content of remedy program):** Any program provided to FACS under clause 31.3(a) must include:
 - (i) each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied in respect of clause 31.3(a)(i), to remedy or cure the Major Default or in respect of 31.3(a)(ii), prevent the Major Default from recurring; and
 - (ii) any temporary measures that will be undertaken while the Major Default is being cured in order to ameliorate the impact of the Major Default.
- (c) **(Comply):** Notwithstanding the fact that it may have exercised its rights under clause 31.2(c) to 31.2(f), ServiceCo must comply with any program provided under clause 31.3(a) in the form approved by FACS in accordance with the Review Procedures.

31.4 Extension of remedy program

- (a) **(Impact of Relief Event):** If ServiceCo is prevented from carrying out its obligations in accordance with clause 31.3(c) as a direct result of a Relief Event for which ServiceCo is entitled to an extension of time or relief (as applicable) in accordance with this Agreement, then the program to remedy or comply (including the time to remedy the Major Default or comply with FACS' requirements), and the time set out in the Major Default Notice, must be extended:
 - (i) to reflect the period ServiceCo is prevented from carrying out its obligations in accordance with the remedy program by that Relief Event; or
 - (ii) without limiting clause 29, in respect of loss or damage caused by that Relief Event, for the period from the commencement of that loss or damage until the earlier of the date that the necessary repairs or rebuilding have been completed, or ought reasonably to have been completed,provided that:
 - (iii) the period of extension granted under this clause 31.4(a) must not exceed:
 - A. during the Delivery Phase, the period of extension of time granted in accordance with clause 23.5 or 23.6; or
 - B. during the Service Delivery Phase, the period of relief granted under clause 24.3 or the Change Compensation Principles,(as applicable) for that Relief Event; and
 - (iv) ServiceCo demonstrates to FACS' satisfaction (acting reasonably) that ServiceCo has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the program agreed or determined under clause 31.3.

- (b) **(Extension of Major Default Notice):** Subject to clause 31.4(d), if ServiceCo:
- (i) is not able to, where the Major Default is capable of remedy, remedy the Major Default or, where the Major Default is not capable of remedy, comply with the reasonable requirements of FACS in respect of the Major Default within the timeframe stated in the Major Default Notice; and
 - (ii) ServiceCo has been diligently pursuing the remedy of that Major Default or compliance with any reasonable requirements of FACS (as the case may be),

ServiceCo may request that FACS extend the time stated in the Major Default Notice and FACS will grant an extension for such period as FACS determines is required (acting reasonably) to either enable ServiceCo to remedy the Major Default or comply with any reasonable requirements of FACS.

- (c) **(Request for further information)** FACS may request, and ServiceCo must provide, any further information reasonably required by FACS to enable FACS to determine an extension under clause 31.4(b).
- (d) **(Limitation):** ServiceCo is only entitled to one extension in accordance with clause 31.4(b) in connection with the same Major Default.

31.5 Effect of curing

If a Major Default occurs and is cured by any person, any rights in respect of that Major Default which have not been exercised prior to it being cured, may not thereafter be exercised.

31.6 Major Default regarding a Reviewable Service

- (a) Without limiting the terms of this clause 31 (including the provision of any remedy program under clause 31.3), if an event identified in paragraph (f) of the definition of Major Default occurs in connection with a Reviewable Service:
- (i) to the extent:
 - A. the Reviewable Service is delivered by a Subcontractor, FACS may direct ServiceCo to terminate or procure the termination of the Subcontract with the relevant Subcontractor causing the Major Default and retender that Subcontract; and
 - B. ServiceCo is delivering the Reviewable Service, FACS may direct ServiceCo to tender the performance of the Reviewable Service to a suitably qualified person and engage that person or entity as a Key Subcontractor,

within 90 days (or such longer period agreed between the parties) after receipt of a notice from FACS directing ServiceCo to do so; and
 - (ii) ServiceCo will bear the risk of the price of the retendered services being higher (if any).
- (b) If, following the conduct of a tender process directed by FACS under clause 31.6(a)(i), FACS is not reasonably satisfied with the tenders received, it may:

- (i) direct ServiceCo:
 - A. not to accept; or
 - B. if applicable, to procure that the relevant Key Subcontractor does not accept,

any tender offer, and:

- (ii) omit the Reviewable Service from the Services and carry out the Reviewable Service itself or procure a third party to carry out the Reviewable Service (in which case the Monthly Service Payment will be adjusted and this Agreement amended as necessary in accordance with the Change Compensation Principles for the omission of that Reviewable Service).
- (c) If ServiceCo fails to comply with its obligations under clause 31.6(a) within the timeframe determined in accordance with that clause, this will be deemed to be a Default Termination Event.


32. Termination

32.1 Sole basis

- (a) **(Sole basis):** Clause 3.4, this clause 32 and clause 33 set out the sole basis at Law or otherwise upon which FACS is entitled to terminate, rescind or accept a repudiation of this Agreement.
- (b) **(No limitation):** Subject only to clause 32.1(a):
 - (i) nothing in clause 3.4 or this clause 32 in any way prejudices or limits any other rights or remedies of FACS, whether under this Agreement or any other FACS Service Package Document or otherwise at Law, and whether against ServiceCo or otherwise, in relation to any Default Termination Event, Major Default or breach of any FACS Service Package Document; and
 - (ii) the termination of this Agreement on any basis, and any payment of the relevant Termination Payment, will not in any way prejudice or limit either party's Liability to the other in respect of the events giving rise to the termination.
- (c) **(No right to terminate):** Subject to clause 32.3 but notwithstanding any other provision of this Agreement or any rights ServiceCo has at Law or otherwise but for this clause 32.1(c), ServiceCo acknowledges that it has no right under this Agreement, at Law, or otherwise, to terminate this Agreement.

32.2 Voluntary Termination

- (a) **(Voluntary Termination notice):** FACS may at any time and in its sole and absolute discretion, terminate this Agreement in full by giving ServiceCo not less than 36 Months' notice during which ServiceCo must continue to provide the Services in accordance with this Agreement except with respect to clauses 32.2(b) and 32.2(c).

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- (c) **(No breach):** To the extent that the requirement in clause 32.2(b) prevents ServiceCo from meeting any of the Services Requirements under this Agreement, the failure to perform the affected Services will not be a Service Provision Performance Incident.
 - (d) **(Date of termination):** Termination of this Agreement under clause 32.2(a) will take effect upon the date specified in the notice given under clause 32.2(a).

32.3 Termination for Force Majeure

- (a) **(Force Majeure Termination Event notice):** Subject to clauses 32.3(c), 32.3(d) and 33, if a Force Majeure Termination Event occurs (or is deemed to occur), then either party may terminate this Agreement in full or in respect of the affected Stages by giving notice to the other party.
- (b) **(Date of termination):** Termination of this Agreement for a Force Majeure Termination Event will take effect upon the date specified in the notice given under clause 32.3(a).
- (c) **(Restriction on termination):** ServiceCo is not entitled to terminate this Agreement under clause 32.3(a) during the period ServiceCo is able to recover (or, but for any breach by ServiceCo or any of its Associates of a FACS Service Package Document or the relevant Insurances, would have been able to recover) under the advance loss of profits Insurance (applicable to the Relevant Infrastructure) or the consequential loss cover section of the industrial special risks Insurance or other business interruption Insurance (in respect of the Service Delivery Phase) for the relevant Force Majeure Termination Event.
- (d) **(Suspension of ServiceCo's right to terminate):**
 - (i) If ServiceCo gives a termination notice in accordance with clause 32.3(a) during the Service Delivery Phase, FACS may, subject to clause 32.3(d)(ii), suspend ServiceCo's right to terminate by giving a suspension notice within 20 Business Days after receipt of ServiceCo's termination notice.
 - (ii) FACS may suspend ServiceCo's right to terminate in accordance with clause 32.3(d)(i) for up to a maximum period of 12 Months.
 - (iii) If FACS gives ServiceCo a suspension notice under clause 32.3(d)(i):
 - A. clause 24.4 and 24.5 will continue to apply; and
 - B. this Agreement will not terminate until expiry of written notice (of at least 30 Business Days) from FACS to ServiceCo that it is ending the suspension of ServiceCo's right to terminate.
 - (iv) If ServiceCo becomes able to recommence performing the relevant obligations after FACS gives ServiceCo a suspension notice:

- A. ServiceCo must promptly recommence performance of those obligations; and
- B. ServiceCo's termination notice under clause 32.3(a) will cease to have any effect.

32.4 Default Termination Event

- (a) **(Rights):** Subject to clause 33 and any Financiers' Tripartite Deed, if a Default Termination Event occurs, FACS may, without limiting any rights or remedies it has under this Agreement or at Law (other than rights of termination), elect to terminate this Agreement in full or in part by giving notice to ServiceCo that it is terminating this Agreement in accordance with this clause 32.4 and 33.2 (if applicable).
 - (b) **(Option to Lease and novation rights):** ServiceCo acknowledges that if a Default Termination Event occurs with respect to a Stage on or after the Date of Service Readiness for that Stage and:
 - (i) ServiceCo owns any of the relevant Sites, Schedule 20 applies; or
 - (ii) ServiceCo leases any of the relevant Sites, FACS may exercise the Option to Lease or its right to procure a novation (as applicable) under the relevant Side Deed.
 - (c) **(Date of termination):** Termination of this Agreement or a part thereof for a Default Termination Event will take effect on:
 - (i) where FACS does not wish to exercise the Option to Lease during the Option Period, the date nominated by FACS in a notice to ServiceCo provided at any time during the Option Period (such date of termination being no longer than 120 days from the date of such notice);
 - (ii) where FACS wishes to exercise the Option to Lease during the Option Period, the date the relevant lease commences in accordance with its terms; and
 - (iii) at all other times, the expiry of the Option Period.
 - (d) **(Transition):** From the date a notice under clause 32.4(a) is served until the date of termination, ServiceCo must continue to provide the Services subject to the following provisions:
 - (i) ServiceCo:
 - A. must comply with any reasonable direction from FACS, including any direction to cease providing some or all of the Services; and
 - B. must not:
 - i) place new Tenants into any Dwellings; or
 - ii) communicate with Tenants,
- without the consent of FACS (which will not be unreasonably withheld);

- (ii) to the extent that the requirement in clause 32.4(d)(i) prevents ServiceCo from meeting any of the Services Requirements under this Agreement, the failure to perform the affected Services will not be a Service Provision Performance Incident; and
- (iii) FACS:
 - A. will cease to pay the Monthly Service Payment to ServiceCo; and
 - B. must pay the Transition Services Payment to ServiceCo.

32.5 Assistance

ServiceCo will use its best endeavours to assist FACS in the exercise of FACS' rights in accordance with this clause 32.

32.6 Payment on termination

- (a) **(Payment):** Subject to clause 32.6(c), if FACS has terminated this Agreement in full or in part in accordance with:
 - (i) clause 32.2 for Voluntary Termination, FACS must pay the Voluntary Termination Payment to ServiceCo; and
 - (ii) clauses 32.4 and 33.1 for termination for a Default Termination Event:
 - A. to the extent the Default Termination Payment is positive, ServiceCo must pay it to FACS; and
 - B. to the extent the Default Termination Payment is negative, FACS must pay it to ServiceCo,

no later than the Termination Payment Date, as a debt due and payable, in accordance with the Termination Payment Schedule.
- (b) **(Force Majeure Termination Event or Material Adverse Effect):** In the event there is a Force Majeure Termination Event or termination following an unresolved Material Adverse Effect under clause 27.3, no Termination Payment will be payable by either party but any amounts owing by one party to the other party must be paid within 20 Business Days of the date on which this Agreement is terminated by reason of that Force Majeure Termination Event or unresolved Material Adverse Effect (as applicable).
- (c) **(FACS' rights):** If FACS is not satisfied that ServiceCo has satisfied its obligations in clause 22, ServiceCo will be liable to FACS for the amount that is reasonably necessary to cover the expected costs of performing those obligations (including reasonable contingencies) in addition to any Termination Payment payable by ServiceCo in accordance with this clause 32.6 and the Termination Payment Schedule.
- (d) **(Payment obligations cease):** Upon termination under this clause 32, FACS' future obligations under the FACS Service Package Documents to pay the Monthly Service Payment will cease.

32.7 Waiver

If this Agreement or, in the event of a Partial Termination, part of this Agreement is terminated in accordance with this Agreement, then:

- (a) **(Liability):** subject to clause 32.7(b):
 - (i) ServiceCo waives any right it might otherwise have to make any Claim against FACS or any of its Associates; and
 - (ii) FACS and each of its Associates will have no further Liability to ServiceCo or any of its Associates,

by reason, or as a result, of the termination or the circumstances relating to the termination, or otherwise arising out of or in connection with the FACS Service Package Documents, the Sites, the Service Package Activities or the Service Package more generally;
- (b) **(exclusive entitlement):** ServiceCo's sole and exclusive entitlement to make a Claim against FACS following termination of this Agreement will be in connection with its rights to a Termination Payment; and
- (c) **(wrongful termination):** If FACS terminates this Agreement for a Default Termination Event and it is subsequently determined that such termination was wrongful (including if FACS has terminated this Agreement for a deemed Default Termination Event under clause 31.2(e) and it is subsequently determined that FACS had no right to terminate this Agreement on that basis), then, unless the parties agree otherwise, such exercise shall be deemed to have been a Voluntary Termination in accordance with clause 32.2 and ServiceCo's sole rights in such circumstances will be those set out in this clause 32.6(a)(i).

32.8 Additional rights and obligations on termination

The additional rights and obligations of the parties on a termination of this Agreement are set out in clauses 22 and 33.

33. Partial Termination

33.1 Partial Termination

- (a) Where a Default Termination Event or a Force Majeure Termination Event affects one or more but not all of the Stages, FACS (or in respect of a Force Majeure Termination Event, ServiceCo) will have the sole and unfettered right to elect whether to terminate:
 - (i) subject to clause 33.1(b), this Agreement in full; or
 - (ii) subject to clause 33.1(c), only in relation to particular Stages (**Partial Termination**),

in each case pursuant to clause 32.3(a) or clause 32.4(a) (as applicable).
- (b) Where:

- (i) a Force Majeure Termination Event occurs; or
- (ii) a Default Termination Event occurs:
 - A. within paragraph (I) of that definition; or
 - B. due to a failure by ServiceCo to achieve Service Readiness in respect of a Stage by the applicable Sunset Date,

then provided at least ■■■ Dwellings are unaffected by these events within the Service Package, FACS (or in respect of a Force Majeure Termination Event, ServiceCo) may only effect a Partial Termination in respect of the Stages affected by the relevant event and may not terminate this Agreement in full.

- (c) FACS may only effect a Partial Termination in relation to (up to and including) 10 Stages.
- (d) A reference to Partial Termination in this Agreement means that the requirement for any Services or any other requirements of this Agreement relating to the Stages that are the subject of the Partial Termination are terminated, including, subject to clause 33.2, FACS' obligation to make any payment to ServiceCo in respect of the relevant Stage(s).
- (e) Following a Partial Termination, all references in this Agreement and any Service Package Document to the relevant Service Package Activities will be read by reference to the remaining Stages for the purposes of the continued performance of this Agreement by both parties in relation to those remaining Stages.

33.2 Consequences of Partial Termination

Where FACS effects a Partial Termination pursuant to clause 33.1(a):

- (a) FACS' notice of Partial Termination is a Modification Order and the provisions of clause 26 will be followed accordingly except that:
 - (i) FACS will, acting reasonably, determine the effect (if any) of the Partial Termination on:
 - A. this Agreement;
 - B. the Service Readiness Criteria;
 - C. the requirements under this Agreement for Service Readiness;
 - D. the Service Requirements; and
 - E. the Monthly Service Payments; and
 - (ii) ServiceCo must, within 10 Business Days of the date of FACS' notice of Partial Termination and any subsequent notice requesting such information, provide the FACS Representative with any information in respect of the impact of the Partial Termination reasonably requested by the FACS Representative in that notice;

- (b) ServiceCo is not entitled to any compensation and will have no Claim against FACS by virtue of or arising from the Partial Termination;
- (c) FACS is entitled to the compensation (if any) and other rights and remedies set out in the Termination Payment Schedule but only with respect to the Stages or the Service Package Activities that are the subject of the Partial Termination;
- (d) FACS may have recourse to and apply any Termination Bond or other security provided by ServiceCo under or in connection with this Agreement in respect of any Liability it may suffer or Claim which FACS may have against ServiceCo whether for amounts due, or damages arising out of or in relation to the relevant Stages arising from the Partial Termination or otherwise;
- (e) the rights and obligations of the parties in relation to the Stages that are the subject of the Partial Termination will otherwise cease except for:
 - (i) any accrued rights and obligations under this Agreement in respect of the relevant Stages, including those arising out of the Partial Termination; and
 - (ii) any rights and obligations which are expressed to continue after termination, including those referred to in clause 2.21; and
- (f) subject to clause 2.21, each of the Service Package Documents to which ServiceCo is a party will be deemed not to apply to the Stages affected by the Partial Termination and those documents will be of no further force or effect in relation to the relevant Stages.

33.3 Waiver and no Claim

On Partial Termination, in respect of the relevant Stage:

- (a) ServiceCo waives any right it might otherwise have to pursue a Claim of restitution of any kind, including a Claim of unjust enrichment or quantum meruit; and
- (b) ServiceCo will not be entitled to make a Claim against FACS or FACS' Associates for any amount other than for payment of the relevant Termination Payment.

33.4 Facilitation

ServiceCo must:

- (a) to the extent directed by the FACS Representative, comply with its obligations, and permit FACS to exercise all its rights, under clause 22 in relation to the Stages that are the subject of the Partial Termination; and
- (b) do all other things reasonably requested by FACS to minimise any disruption to the remaining Stages and to facilitate the effective transfer of the relevant Services and licence of the ServiceCo Materials (other than Excluded Materials).

33.5 Continuity following Partial Termination

On Partial Termination, ServiceCo must continue to comply with its remaining obligations under the Service Package Documents, and must ensure that its Subcontractors continue to comply with their obligations under the Service Package Documents and all relevant

Subcontracts in respect of the Service Package Activities to the extent they are not the subject of the Partial Termination.

34A Modification to Aggregate Dwelling Numbers

- (a) Subject to clause 34A(b), to the extent that any Sites that have not met the Restructure Requirement, notwithstanding any other provision of this Agreement:
 - (i) those Sites and the corresponding Stages and Dwellings situated on those Sites will be removed from the Service Package and the Aggregate Dwellings Number will be reduced accordingly; and
 - (ii) clauses 33.1(d), 33.1(e), 33.2(a), 33.2(b), 33.2(e) and 33.2(f) will apply as if the removal of those Sites from the Service Package was a Partial Termination,on and from the day after the Review Date.
- (b) The parties agree that, clause 34A(a) will not operate to reduce the Aggregate Dwelling Number below 330.
- (c) ServiceCo must provide to FACS, within 5 Business Days of the Review Date, an updated Dwellings Schedule which shows the Sites it proposes to utilise for the Service Package to deliver the 330 Dwellings. In circumstances where the Aggregate Dwelling Number would reduce below 330 but for the operation of clause 34A(b), the Dwellings Schedule must include all of the Sites which meet the Restructure Requirement.
- (d) Provided FACS accepts the Dwelling Schedule provided to it by ServiceCo pursuant to clause 34A(c), it will be deemed to replace the Dwellings Schedule set out in Schedule 25.

34B Termination of Tetris Property Documents

- (a) If one or more of the Tetris Property Documents in relation to a Tetris Site is terminated:
 - (i) ServiceCo must notify FACS in writing within 2 Business Days after such termination;
 - (ii) ServiceCo will have 60 days from the date of the termination of the Tetris Property Documents to provide a proposal to FACS to deliver Accommodation Services using Dwellings that are not identified as such in section 2 of the Dwellings Schedule;
 - (iii) subject to clause 34B(b) but notwithstanding any other provision of this Agreement:
 - A. on or after the date that is 60 days after the termination of the Tetris Property Documents FACS, in its absolute discretion, may by written notice to ServiceCo remove the relevant Tetris Site and the corresponding Stages and Dwellings situated on that Site from the Service Package; and

- B. clauses 33.1(d), 33.1(e), 33.2(a), 33.2(b), 33.2(e) and 33.2(f) will apply as if the removal of that Tetris Site from the Service Package was a Partial Termination; and
- (iv) ServiceCo must provide to FACS, within 5 Business Days of receiving notice under clause 34B(a)(ii)(A), an updated Dwellings Schedule.
- (b) The parties agree that clause 34B(a) will not operate to reduce the Aggregate Dwelling Number below 190.
- (c) Provided FACS accepts the Dwelling Schedule provided to it by ServiceCo pursuant to clause 34A(c), it will be deemed to replace the Dwellings Schedule set out in Schedule 25.

34. Dispute resolution procedure

34.1 Procedure

- (a) **(Resolution procedure):** Unless a FACS Service Package Document provides otherwise, any Dispute between FACS and ServiceCo arising in connection with any FACS Service Package Document or the Service Package Activities (including questions concerning this Agreement's existence, meaning, validity or termination) (a **Dispute**) must be resolved in accordance with this clause 34 and clauses 35 to 38.
- (b) **(Dispute Avoidance Board):** Without limiting the process set out in this clause 34 to clause 38, the parties acknowledge that the Dispute Avoidance Board will assist the parties to prevent and resolve Disputes as described in Schedule 1 of the DAB Agreement.
- (c) **(Procedure):** Subject to clause 34.2, the procedure that is to be followed to resolve a Dispute is as follows:
 - (i) first, the Dispute must be the subject of negotiation as required by clause 35;
 - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 35(c)(i), within 10 Business Days (or such longer period as the Executive Representatives have agreed in writing) after the expiration of that period:
 - A. the parties may agree that the Dispute will be referred to an expert for determination under clause 37;
 - B. where the Dispute is expressed in this Agreement to be a Dispute which may be referred to an expert under clause 37, either party may refer the Dispute to an expert for determination under clause 37; or
 - C. otherwise either party may refer the Dispute to arbitration under clause 38; and
 - (iii) thirdly, if:

- A. the Dispute has been referred to expert determination in accordance with clause 37 and a determination is not made by the expert within 20 Business Days after the expert's acceptance of appointment (or such longer period as the parties and the expert may agree in the relevant Expert Determination Agreement); or
- B. the Dispute is referred to expert determination and a notice of dissatisfaction is given under clause 37.4(a),

then the Dispute must be referred to arbitration under clause 38.

34.2 Selection of resolution process

Where this Agreement provides that either party 'may' refer a Dispute to expert determination in accordance with clause 37:

- (a) **(negotiations)**: the parties must first follow the process set out in clause 35 before either party refers the matter for expert determination in accordance with clause 37;
- (b) **(expert determination)**: the use of the term 'may' means that if the parties have failed to resolve the Dispute in accordance with clause 35 or determined the way in which the Dispute will be resolved and a party elects to further pursue the resolution of the Dispute, it must do so in accordance with clause 37; and
- (c) **(arbitration)**: subject to clause 37.4, if a party has referred a Dispute for expert determination in accordance with clause 37, neither party may refer the Dispute to arbitration (other than in accordance with clause 37.4) or take any steps to enjoin or otherwise restrain the referral of the Dispute to an expert.

35. Senior Negotiations

- (a) **(Notification)**: If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officer (or equivalent) of ServiceCo and the 'Executive Director, Service System Commissioning' of FACS (or the equivalent position following any reorganisation from time to time) (**Executive Representatives**) with a copy to the Dispute Avoidance Board.
- (b) **(Contents of Notice)**: A notice under clause 35(a) must:
 - (i) state that it is a notice under clause 35(a); and
 - (ii) include or be accompanied by particulars of the matters the subject of the Dispute.
- (c) **(Attempt to resolve Dispute)**: If a Dispute is referred for resolution by negotiation under clause 35(a), then:
 - (i) the Executive Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 35(a) is received (or such later date as the parties may agree); and

- (ii) any agreement reached between the Executive Representatives will be reduced to writing, signed by or on behalf of each party and will be contractually binding on the parties.
 - (d) **(Involve Dispute Avoidance Board):** The Executive Representatives may, by agreement:
 - (i) have the chairperson of the Dispute Avoidance Board facilitate the meetings under clause 35(c)(i), in which case the chairperson will act independently and facilitate negotiations;
 - (ii) meet, at any time, together with the Dispute Avoidance Board; and
 - (iii) in writing, refer the Dispute to the Dispute Avoidance Board for its opinion by providing a written notice to the chairperson of the Dispute Avoidance Board (**Notice of Referral**) stating that the Notice of Referral is a notice under this clause 35(d)(iii).
-

36. Dispute Avoidance Board

36.1 Obtaining Dispute Avoidance Board's assistance

- (a) If the Executive Representatives request any meeting with the Dispute Avoidance Board under clause 35(d)(ii), the Dispute Avoidance Board will act independently in assisting the parties and in doing so may:
 - (i) attend any meeting as agreed by the parties;
 - (ii) facilitate the attendance at any meeting by such other persons as agreed between the Executive Representatives; and
 - (iii) facilitate negotiations between the parties.
- (b) Any assistance provided on a Dispute by the Dispute Avoidance Board under this clause 36.1 will:
 - (i) be on a 'without prejudice' basis; and
 - (ii) continue until either party notifies the Dispute Avoidance Board in writing that its assistance is no longer required.

36.2 Obtaining Dispute Avoidance Board's opinion

- (a) If a Dispute is referred to the Dispute Avoidance Board under clause 35(d)(iii) the Dispute Avoidance Board will be deemed to have received such reference on the date when the Notice of Referral is received by the chairperson of the Dispute Avoidance Board.
- (b) The opinion provided on a Dispute by the Dispute Avoidance Board under this clause 36.2 must be given in accordance with the rules in Schedule 2 of the DAB Agreement or such rules as may otherwise be agreed between the parties.
- (c) Within 30 Business Days after receiving a Notice of Referral under clause 35(d)(iii), or within such other period as may be proposed by the Dispute Avoidance Board

and approved by both parties, the Dispute Avoidance Board must give its opinion in writing, which must be reasoned and must state that it is given under this clause 36.2.

- (d) Any opinion by the Dispute Avoidance Board under this clause 36 will be on a 'without prejudice' basis and will not be binding unless the parties agree in writing to be bound by it.
- (e) If a party (**Party A**) wishes to pursue the Dispute following the Dispute Avoidance Board providing an opinion in accordance with this clause 36.2, Party A may refer the Dispute to expert determination within 20 Business Days of receipt of the opinion.
- (f) If Party A fails to refer the Dispute to expert determination in accordance with clause 36.2(e):
 - (i) the other party will not be liable; and
 - (ii) Party A will be absolutely barred from issuing a referral to expert determination under clause 36.2(e), arising out of, or in any way in connection with, the fact, matter or thing (as the case may be) on which the Dispute is based.

36.3 Replacement of Dispute Avoidance Board member

- (a) If a member of the Dispute Avoidance Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment:
 - (i) if the member is the chairperson, the remaining two members will appoint a replacement person; and
 - (ii) if that member is not the chairperson:
 - A. if the parties have previously agreed upon one or more reserve members for the Dispute Avoidance Board, and one or more such members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be replaced will appoint one of the reserve members to the Dispute Avoidance Board; or
 - B. if no reserve members have been agreed between the parties or none of the reserve members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be replaced must nominate a replacement member satisfactory to the other party.
- (b) If, within 30 Business Days of a member declining to act or being unable to act on the Dispute Avoidance Board, the member has not been replaced by a person appointed in accordance with 36.3(a), either party may request the President of IAMA to nominate a replacement member. This appointment will be final and conclusive.
- (c) The parties, the remaining members and the new member must enter into a replacement Dispute Avoidance Board agreement on substantially the same terms as the DAB Agreement.

36.4 Termination of Dispute Avoidance Board

Unless otherwise agreed by both parties, the DAB Agreement will terminate upon the Expiry Date.

37. Expert determination

37.1 Expert determination

If:

- (a) **(Dispute unresolved by Executive Representatives)**: a Dispute which has been referred to the Executive Representatives for negotiation in accordance with clause 35(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 35(c)(i); and
- (b) **(referral to expert)**: within 10 Business Days after the expiration of the period for negotiation referred to in clause 35(c)(i) either:
 - (i) the parties agree that the Dispute be referred to an expert for determination in accordance with this clause 37; or
 - (ii) where the Dispute is expressed in this Agreement to be a Dispute which may be referred to an expert under clause 37, either party refers the Dispute to an expert for determination under clause 37,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under this clause 37.

37.2 Selection of expert

- (a) **(Exchange of lists of three preferred experts)**: Within 10 Business Days after the date on which a Dispute is referred to an expert for determination under clause 37.1, if FACS and ServiceCo are unable to agree on an expert to determine the Dispute, FACS and ServiceCo must exchange lists of three persons (in order of preference) who, if appointed, would satisfy the requirements of clause 37.2(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists)**: Any person that appears on both lists under clause 37.2(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 35(a) will be appointed.
- (c) **(Appointment if no person appears on both lists)**: If no person appears on both lists, the party which gave the notice under clause 35(a) must procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the parties under clause 37.2(a) within 10 Business Days of the exchange of lists under clause 37.2(a).
- (d) **(Appropriate skills)**: It is the intention of the parties that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.

- (e) **(No entitlement to challenge appointment):** Neither party will be entitled to challenge the appointment of an expert under this clause 37.2 on the basis that the expert does not satisfy the requirements of clause 37.2(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Agreement will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2010* (NSW).
- (g) **(Agreement):** Within 10 Business Days of the expert being agreed, deemed or nominated, FACS and ServiceCo must enter into an agreement with the expert on substantially the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

37.3 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, in accordance with the terms of the Expert Determination Agreement.

37.4 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on FACS and ServiceCo unless:
 - (i) the expert determination includes:
 - A. payment of compensation and the amount claimed, or subsequently determined by the expert, to be payable is equal to or greater than \$1,000,000 (Indexed); or
 - B. an extension of a Date for Service Readiness or rejection of an extension to a Date for Service Readiness and the period of the extension that was claimed in the notice under clause 35(a) is more than 5 Business Days; and
 - (ii) within 10 Business Days of receipt of the determination, a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 38.
- (b) **(Amendment to determination):** Upon submission by any party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

37.5 Liability of expert

- (a) **(Liability of expert):** The parties agree:

- (i) that the expert will have no Liability in connection with the expert determination, except in the case of fraud on the part of the expert; and
 - (ii) to indemnify the expert against any Claim or Liability in connection with the determination, (except in the case of fraud on the part of the expert) in which case a Claim may be made against the expert by any party to the Dispute.
- (b) **(Engagement):** FACS and ServiceCo will jointly engage the expert services in connection with the expert determination proceedings and each party will seek a separate Tax Invoice equal to its share of the costs of the expert.

37.6 Costs

FACS and ServiceCo must:

- (a) **(proceedings):** bear their own costs in connection with the expert determination proceedings; and
- (b) **(cost apportionment):** pay an equal portion of the costs of the expert.

37.7 Proportional liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 37.7, have applied to any Dispute referred to expert determination in accordance with this clause 37.

38. Arbitration

38.1 Reference to arbitration

- (a) **(Dispute):** If:
 - (i) a Dispute:
 - A. which has been referred to the parties' Executive Representatives for negotiation in accordance with clause 35 remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 35(c)(i); and
 - B. is not a Dispute which the parties have agreed to refer to or must be referred to an expert for determination in accordance with clause 37; or
 - (ii) in the case of a Dispute which is or must be referred to an expert for determination in accordance with clause 37:
 - A. a determination is not made within 30 Business Days after the expert's acceptance of the appointment; or
 - B. a notice of dissatisfaction is given in accordance with clause 37.4,

then FACS or ServiceCo may notify the other that it requires the Dispute to be referred to arbitration.

- (b) **(Referral)**: Upon receipt by the other party of a notice under clause 38.1(a), the Dispute will be referred to arbitration.

38.2 Arbitration

- (a) **(ACICA Rules)**: Arbitration in accordance with this clause 38 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) subject to this clause 38.
- (b) **(Seat)**: The seat of the arbitration will be Sydney, New South Wales.
- (c) **(Language)**: The language of the arbitration will be English.

38.3 Appointment of arbitrator

The parties will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 10 Business Days of the Dispute being referred to arbitration in accordance with clause 38.1(b), the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration upon the request of either party.

38.4 General principles for conduct of arbitration

- (a) **(Conduct of arbitration)**: The parties agree that:
 - (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted in accordance with this clause 38 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
 - (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 38.4(a)(i) and 38.4(a)(ii).
- (b) **(Evidence in writing)**: All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery)**: The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing)**: The oral hearing must be conducted as follows:
 - (i) any oral hearing must take place in Sydney, New South Wales and all outstanding issues must be addressed at the oral hearing;
 - (ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 38.4(a) when determining the duration of the oral hearing;

- (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
 - (v) not less than 28 days prior to the date fixed for the oral hearing each party must give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross-examination;
 - (vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set pursuant to clause 38.4(d)(ii);
 - (vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross-examination; and
 - (viii) each party is expected to put its case on significant issues in cross-examination of a relevant witness called by the opposing party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the written evidence of a witness.
- (e) **(Experts):** Unless otherwise ordered each party may only rely upon one expert witness in connection with any recognised area of specialisation.

38.5 Civil Liability Act 2002 (NSW)

- (a) **(Part 4):** The powers conferred, and restrictions imposed, on a court by Part 4 of the *Civil Liability Act 2002 (NSW)* are not conferred on an arbitrator appointed in accordance with this clause 38.
- (b) **(Determination):** The arbitrator tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002 (NSW)* (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitrator.

38.6 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 38.6, have applied to any Dispute referred to arbitration in accordance with this clause 38.

38.7 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations in accordance with the FACS Service Package Documents.

38.8 Governing law of arbitration agreement

The Law governing this arbitration agreement is the Law of New South Wales, Australia.

38.9 Interlocutory relief

This clause 38 does not prevent a party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

38.10 Jurisdiction of courts

Without limiting clauses 34 to 38, each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

Part K - Corporate obligations

39. Representations and warranties

39.1 FACS' representations and warranties

FACS represents and warrants for the benefit of ServiceCo that:

- (a) **(power to execute)**: it has the power to execute, deliver and carry out its obligations under the FACS Service Package Documents and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) **(validity)**: each FACS Service Package Document constitutes a valid and legally binding obligation on it in accordance with its terms;
- (c) **(legality)**: the execution, delivery and performance of each FACS Service Package Document does not violate any Law to which FACS is subject; and
- (d) **(amendment)**: it does not require the consent of any of its Associates to amend or waive any provision of any FACS Service Package Document.

39.2 ServiceCo's representations and warranties

ServiceCo represents and warrants for the benefit of FACS that:

- (a) **(incorporation)**: it is duly incorporated in Australia and is existing under Australian Law;
- (b) **(power to execute)**: it has the capacity and power to execute, deliver and perform its obligations under the Service Package Documents and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (c) **(legality)**: the execution, delivery and performance of each Service Package Document to which it is a party does not violate any Law, document or agreement to which it is a party or which is binding on it or any of its assets;

- (d) **(validity)**: each of the Service Package Documents to which it is a party constitutes a valid and legally binding obligation on it, enforceable in accordance with its terms;
- (e) **(no trust relationship)**: except as stated in this Agreement, it is not the trustee or Responsible Entity of any trust nor does it hold any property subject to or impressed by any trust;
- (f) **(no subsidiaries)**: its only subsidiaries are identified in the Ownership Schedule;
- (g) *[not used]*;
- (h) *[not used]*;
- (i) *[not used]*;
- (j) **(residency)**: it is a resident in Australia and has its head office in Australia;
- (k) **(transaction permitted)**: the execution, delivery and performance by it of the Service Package Documents will not breach, or result in a contravention of:
 - (i) any Law, regulation or Authorisation;
 - (ii) its constitution or other constituent documents; or
 - (iii) any Security Interest or agreement which is binding it,and will not result in the acceleration of the date for payment of any obligation under any agreement which is binding on it;
- (l) **(information true and correct)**: all information that has been provided to FACS in connection with the Service Package Documents is true, accurate and correct in all material respects and ServiceCo is not aware of any material facts or circumstances that have not been disclosed to FACS and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Agreement with ServiceCo;
- (m) **(no other security interests)**: none of its assets are subject to any Security Interest unless permitted under clause 42.1;
- (n) **(no immunity)**: it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (o) **(no default)**: it is not in default of its material obligations under any Service Package Document to which it is expressed to be a party;
- (p) **(no knowledge of other proposals)**: prior to the date of this Agreement, it had no knowledge of any part of the proposal by any other proponent for the Service Package and has not directly or indirectly communicated any part of its proposal for the Service Package to any other proponent;
- (q) **(no arrangement)**: prior to the date of this Agreement, it has not entered into any contract or arrangement or arrived at any understanding with any other proponent in relation to the Service Package to the effect that it will pay money to or confer

any benefit upon any other proponent as a result of entering into this Agreement or providing its proposal for the Service Package; and

- (r) **(Site)**: ServiceCo has full and proper rights to use and licence the Site and the Relevant Infrastructure for the purposes of the Service Package in accordance with this Agreement.

39.3 Repetition of representation and warranties

- (a) Each representation and warranty given by ServiceCo under this Agreement other than those set out in clause 39.2(r):
 - (i) **(date of Agreement)**: is made on the date of this Agreement; and
 - (ii) **(repetition)**: other than those set out in clauses 39.2(p) and 39.2(q), will be deemed to be repeated each day during the period from the date of this Agreement to the Expiry Date for the last Stage to terminate or expire,

with reference to the facts and circumstances then subsisting.

- (b) The representation and warranty set out in clause 39.2(r) is made in respect of a Site on the Date of Service Readiness for that Site, and will be deemed to be repeated each day during the period from the Date of Service Readiness to the Expiry Date for the relevant Stage.

40. Benefits held on trust for its Associates

- (a) **(Benefit of indemnities)**: FACS holds on trust for each of its Associates and the NSW Government and its Associates, each right in this Agreement to the extent that such right is expressly stated to be for the benefit of FACS' Associates, NSW Government or NSW Government Associates.
- (b) **(ServiceCo acknowledgement)**: ServiceCo acknowledges the existence of such trusts, and consents to:
 - (i) FACS exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of the relevant parties; and
 - (ii) the relevant parties exercising rights in relation to, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Agreement.

41. ServiceCo's general undertakings

- (a) ServiceCo must:
 - (i) **(dispute proceedings)**: immediately upon becoming aware that any litigation, arbitration, administration, adjudication or mediation proceedings, which may adversely affect the Service Package or ServiceCo's or a Key Subcontractor's ability to perform its obligations under the Service Package Documents, have been commenced or threatened, give FACS written notice of such litigation, arbitration, administrative, adjudication or mediation proceedings; and

- (ii) **(restrictions):** not:
- A. change or cease its business or start any other business other than that to be carried on by it under the Service Package Documents;
 - B. cease to be resident in Australia or transfer in whole or in part its undertaking, business or trade outside Australia;
 - C. acquire or hold any property or incur any Liability other than for the purposes of or in connection with the Service Package; or
 - D. enter into contracts with, or assume or permit to subsist any Liability in favour of, other Consortium Members, the Equity Investors or any of their respective Associates,
- without FACS' prior consent.

- (b) **(FACS consent):** FACS must not unreasonably withhold its consent under clause 41(a)(ii) if the relevant transaction is on arm's length commercial terms.

42. Assignment and amendments

42.1 Assignment, amendments and other dealings by ServiceCo

- (a) **(Restrictions on ServiceCo):** Except as expressly permitted by this Agreement or any Financiers' Tripartite Deed, ServiceCo must not:
- (i) enter into any financing agreements (including in respect of present or contingent indebtedness, deferred purchase or leasing arrangements or similar obligations, but excluding indebtedness incurred in the ordinary course of carrying out the Service Package) other than the Finance Documents;
 - (ii) assign, novate, mortgage, charge, create or allow to exist any Security Interest over, make or permit any material amendment to or, waive, terminate, surrender, rescind or accept repudiation of any Service Package Document or enter into any agreement or arrangement which affects the operation or interpretation of any Service Package Document; or
 - (iii) lease, license, transfer, sell, dispose of, part with possession of, mortgage, charge or otherwise deal with the whole or any part of the Site or the Relevant Infrastructure if that dealing would prejudice the ability of ServiceCo to perform its obligations under the Service Package Documents,
- without FACS' prior consent (each an **Amendment** for the purposes of this clause 42).
- (b) **(Exceptions):** Clause 42.1(a) does not apply in respect of:
- (i) a mortgage, charge or general security interest granted by ServiceCo over or in respect of Relevant Secured Property to secure its obligations

to any Financier (or the trustee or agent for any Financier) under the Finance Documents, if, and for so long only as, each Financier (or the trustee or agent for the Financiers) is a party to the Financiers' Tripartite Deed;

- (ii) a Change in Control, which is to be dealt with in accordance with clauses 43.2 to 43.7;
 - (iii) a Key Subcontract; or
 - (iv) a Dwelling which has been substituted in accordance with clause 19.
- (c) **(Entry into Finance Document):** ServiceCo must not enter into any Secured Finance Document until any Financier (or the trustee or agent for any Financier) under those Secured Finance Documents has executed a deed with FACS substantially in the form of the Financiers' Tripartite Deed or is or has become bound by the Financiers' Tripartite Deed.
- (d) **(Notice of intended Amendment):** If ServiceCo requires an Amendment, it must submit to FACS a written request seeking its consent. Such a request must set out:
- (i) the proposed Amendment and the reasons for it;
 - (ii) the response or anticipated response of any other party to the Service Package Documents regarding the proposed Amendment;
 - (iii) the response or anticipated response of any assignee or incoming party of the Service Package Documents to the proposed Amendment; and
 - (iv) copies of any documents relevant to ServiceCo's request.
- (e) **(FACS to advise):** Subject to clause 42.1(g), FACS must advise ServiceCo, within:
- (i) 15 Business Days of receiving its request under clause 42.1(c) if it requires further information from ServiceCo regarding the proposed Amendment, in which case ServiceCo must provide the additional information sought by FACS within a further period of 10 Business Days after receiving FACS' request for further information; and
 - (ii) 10 Business Days of receiving its request under clause 42.1(c) or the additional information requested by FACS under clause 42.1(e)(i), whether:
 - A. it consents to the proposed Amendment; or
 - B. the proposed Amendment is unacceptable to it and the reasons why the proposed Amendment is unacceptable.
- (f) **(Failure to respond):** If FACS fails to respond for any reason within the relevant period specified under clause 42.1(e) in relation to a proposed Amendment in respect of a Service Package Document, which is not a FACS Service Package Document, ServiceCo:
- (i) may send a reminder notice; and

- (ii) if FACS fails to respond to the reminder notice within 10 Business Days, FACS will be deemed to have not consented to the requested Amendment.
- (g) **(FACS consent):** FACS will not withhold its consent to a requested Amendment where the requested Amendment will not have a material adverse effect on:
 - (i) the ability of ServiceCo to perform, and observe its respective obligations under any Service Package Document to which it is a party; or
 - (ii) the rights or Liability of FACS under any FACS Service Package Document, or the ability or capacity of FACS to exercise its rights or perform its obligations under a FACS Service Package Document.

42.2 Amendment of FACS Service Package Document

Except as otherwise expressly provided in the FACS Service Package Documents, no amendment to any FACS Service Package Document is valid or binding on a party unless made in writing and executed by FACS and all other parties to the relevant FACS Service Package Document.

42.3 Assignment by FACS

- (a) **(ServiceCo consent required):** Subject to clause 42.3(b), FACS may not sell, transfer or assign or otherwise dispose of all or any part of its interest in the FACS Service Package Documents without the prior consent of ServiceCo.
- (b) **(No consent required):** FACS may sell, transfer or assign or otherwise dispose of all or any part of its interest in the FACS Service Package Documents without ServiceCo's consent, if the proposed transferee is the NSW Government or an Entity described in paragraph (a) of the definition of 'Authority' which is an agent of the NSW Government (**FACS Nominee**).
- (c) **(FACS sale, transfer, assignment or disposal):** If FACS elects to sell, transfer or assign or otherwise dispose of all or any part of its interest in the FACS Service Package Documents in a manner permitted under clause 42.3(a) and ServiceCo consents to that sale, transfer, assignment or disposal:
 - (i) ServiceCo must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to FACS and the FACS Nominee) to give effect to that sale, transfer, assignment or disposal, and FACS will reimburse the reasonable costs incurred by ServiceCo in undertaking such acts; and
 - (ii) from the date of such sale, transfer, assignment or disposal, all references to 'FACS' in this Agreement will be deemed to include reference to the FACS Nominee in place of FACS.

42.4 Copies of Finance Documents

ServiceCo must deliver to FACS, a certified complete copy of each Finance Document entered into by ServiceCo and each amendment to, or waiver, variation or change of any provision of, the Finance Documents, in each case within 5 Business Days after its execution.

43. Change in Control

43.1 Initial status of ownership

ServiceCo represents and warrants that, as at the date of this Agreement, ServiceCo will be indirectly and beneficially owned and Controlled as set out in the Ownership Schedule.

43.2 [Not used]

43.3 Restrictions on Changes in Control

Subject to clause 43.7, ServiceCo must not and must ensure that each Group Member does not at any time, permit or suffer any Change in Control of a Consortium Member or a Key Subcontractor (other than a Private Market Lessor) without FACS' prior consent which must be requested by notice from ServiceCo to FACS (unless such Change in Control is a Permitted Change in Control).

43.4 Notice to FACS

Any notice under clause 43.3 seeking the consent of FACS to a Change in Control must include:

- (a) **(Notice of Proposed Changes)**: the extent and nature of the proposed Change in Control, including the identity and address of each person proposed to acquire Control; and
- (b) **(Necessary information)**: all other information necessary for FACS to determine:
 - (i) whether to consent to the Change in Control; or
 - (ii) the probity or other investigations (if any) FACS wants to undertake in respect of the persons to whom clause 43.4(a) refers.

43.5 FACS' right to withhold consent

Subject to clauses 43.2 and 43.8, FACS may only refuse to consent to a proposed Change in Control that is not a Permitted Change in Control if FACS is of the opinion (acting reasonably) that:

- (a) **(grounds for FACS refusal)**: the proposed Change in Control:
 - (i) is against the public interest;
 - (ii) would adversely affect the ability or capability of ServiceCo to carry out its obligations in accordance with any Service Package Document;
 - (iii) would result in a Probity Event;
 - (iv) would result in a Consortium Member being Controlled by an Entity that:
 - A. is not a reputable Entity or person to properly carry out the obligations of the relevant Key Subcontractor under the relevant Service Package Documents;

- B. is an unsuitable Entity or person, having regard to the activities or business of that Entity or person, and their compatibility with the obligations of the relevant Key Subcontractor under the Service Package Documents;
 - C. has an interest or duty which conflicts or may conflict in a material way with the interests of FACS;
 - D. does not have a sufficient level of financial, managerial or technical expertise or capacity to deliver the Service Package; or
 - E. would have a material adverse effect on the Service Package;
- (v) without limiting clause 43.5(a)(iv), would result in a Key Subcontractor no longer:
- A. having sufficient expertise and ability; or
 - B. being of sufficiently high financial and commercial standing, to properly carry out the obligations of the relevant Key Subcontractor under the relevant Service Package Documents;
- (vi) would increase the Liability of, or risks accepted by FACS under the FACS Service Package Documents or in any other way in connection with the Service Package; or
- (vii) would result in a new Controlling Entity that is not Solvent and reputable; or
- (b) **(trust)**: in respect of a change in the manager, trustee or Responsible Entity of any Group Member that is a trust, is such that the proposed manager, trustee or Responsible Entity no longer:
- (i) has sufficient expertise or ability; or
 - (ii) is of sufficiently high financial and commercial standing, to properly carry out the obligations of the relevant manager, trustee or Responsible Entity under the relevant Service Package Documents.

43.6 Consent to a Change in Control

FACS must advise ServiceCo, within 15 Business Days (or such longer period as FACS reasonably requests given the nature of the proposed Change in Control) of receiving ServiceCo's request for consent in accordance with clause 43.3 or clause 43.8, whether:

- (a) **(consent)**: it consents to the Change in Control;
- (b) **(unacceptable)**: it does not consent to the Change in Control in which case it must provide reasons for doing so in accordance with clause 43.5; or
- (c) **(further information)**: it requires further information from ServiceCo regarding the Change in Control, in which case ServiceCo must provide the additional information

sought by FACS within a further period of 10 Business Days, after which FACS must respond in terms of clause 43.5 or clause 43.6 within 10 Business Days after FACS receives that additional information.

43.7 Permitted Changes in Control

ServiceCo may effect, permit, suffer or allow a Permitted Change in Control at any time without FACS' prior consent, provided that ServiceCo provides notice to FACS of the proposed Permitted Change in Control:

- (a) **(Notice)**: subject to clause 43.7(b), as soon as reasonably practicable and, in any event, not less than 5 Business Days prior to the Permitted Change in Control; or
- (b) **(Shares)**: in relation to a Permitted Change in Control which relates to a transfer of shares or other interests which are listed on a recognised stock exchange, as soon as reasonably practicable.

43.8 On-market acquisitions

If:

- (a) **(Change in Control)**: a Change in Control occurs due to the transfers of shares or other interests which are listed on a recognised stock exchange; and
- (b) **(Prior consent not possible)**: the consent of FACS is required under this Agreement but could not have been obtained prior to the Change in Control,

that consent must be sought immediately after the Change in Control, and ServiceCo must procure that the Controlling Entity ceases to have the Control which resulted in the Change in Control within 60 Business Days after receiving any notice under clause 43.5 that FACS withholds its consent to the Change in Control.

43.9 Costs relating to a Change in Control

ServiceCo must pay FACS its costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a proposed Change in Control.

44. Financial Model

44.1 Varying the Financial Model on the Review Date

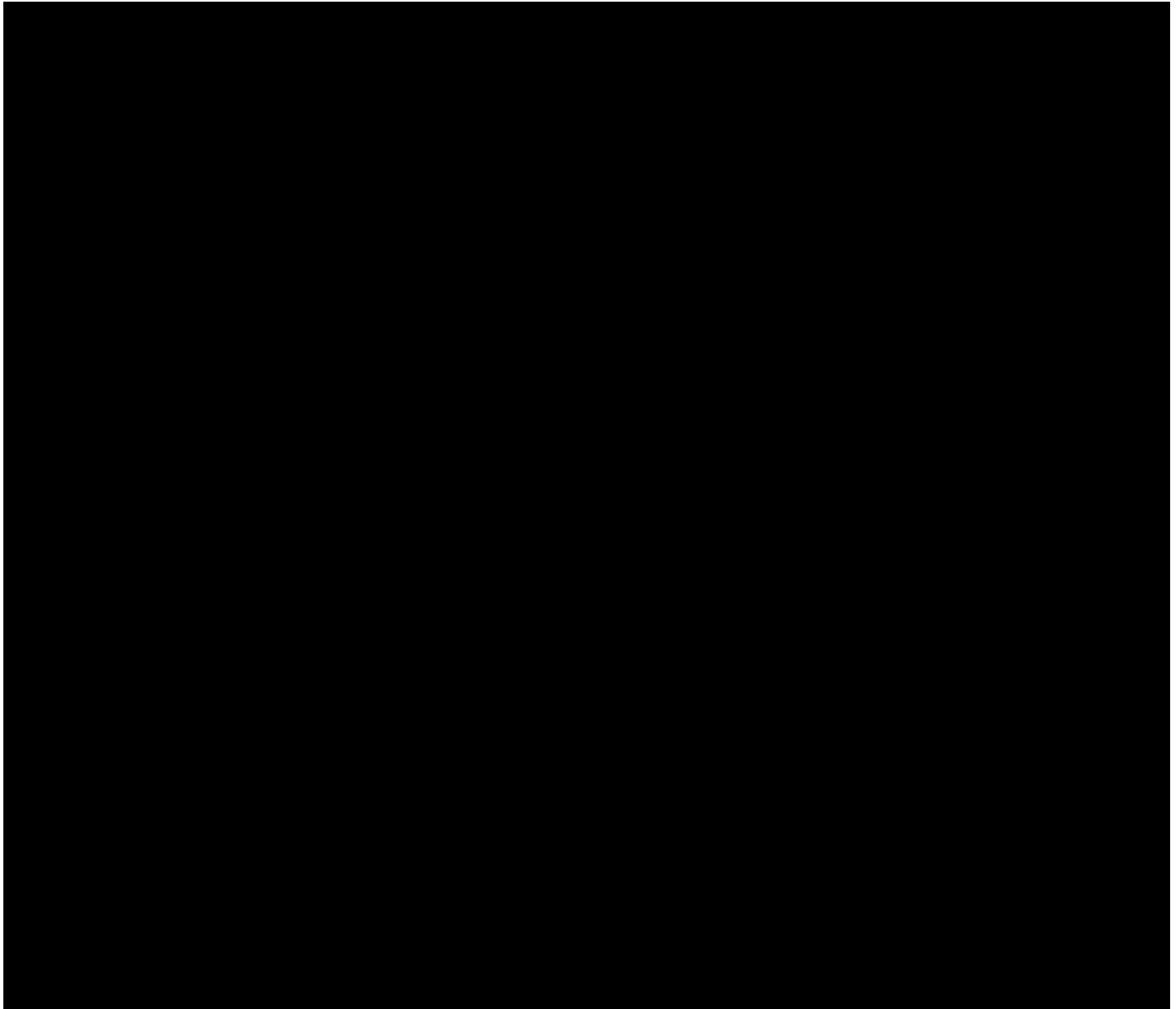
The parties acknowledge that the Compass Financial Model (as defined in the Compass Restructure Deed) will be updated on the Review Date in accordance with clause 5 of the Compass Restructure Deed.

44.2 Status of the Financial Model

The parties acknowledge and agree that:

- (a) **(not actual performance)**: the Financial Model:
 - (i) may not reflect the actual financial performance or the projected performance or budgets of the Service Package or ServiceCo; and

- (ii) is purely a model to be used in order to process Model Variation Events and Termination Payments; and
- (b) **(errors or omissions)**: FACS must not be adversely affected by any ambiguities, discrepancies, inconsistencies, conflicts, errors or omissions in the Financial Model.



44.4 Principles for variations to the Financial Model

- (a) When a Model Variation Event occurs, the parties must vary the Financial Model, as necessary, by taking into account only the amounts:
 - (i) **(Agreement)**: determined in accordance with this Agreement;
 - (ii) **(otherwise agreed)**: agreed between FACS and ServiceCo; or
 - (iii) **(Dispute resolution)**: determined in accordance with clause 34.

44.5 Procedures for variations to the Financial Model

Any variations to the Financial Model to take account of a Model Variation Event must be made as follows:

- (a) **(ServiceCo proposal)**: ServiceCo must propose the variation by notice to FACS within 15 Business Days of the Model Variation Event occurring, giving:
 - (i) a varied Financial Model incorporating all adjustments relevant to the Model Variation Event and full details of the assumptions and calculations used;
 - (ii) an instruction manual outlining how to use the varied Financial Model, which is acceptable to FACS, acting reasonably;
 - (iii) a proposed financial close protocol (if applicable) outlining the interest rate setting procedures and model solving procedures for adjusting the varied Financial Model to incorporate updated interest rates; and
 - (iv) a revised Restructure Model Output Schedule;
- (b) **(review)**: the review of the varied Financial Model and the proposed financial close protocol (if applicable) must be undertaken in accordance with the Review Procedures;
- (c) **(amendment)**: once the variations to the Financial Model or the financial close protocol, as applicable, are agreed or are determined in accordance with clause 34, ServiceCo must promptly amend the Financial Model accordingly and the proposed financial close protocol (if applicable) accordingly and resubmit this to FACS;
- (d) **(Varied Financial Model)**: once agreed, the varied Financial Model (as adjusted in accordance with the proposed financial close protocol, if applicable) will be the Financial Model for the purposes of this Agreement; and
- (e) **(Updated Restructure Model Output Schedule)**: whenever the Financial Model is updated, the Restructure Model Output Schedule must be updated to reflect the updated Financial Model.

44.6 Access to information

Without limiting clause 44.5(a), ServiceCo must provide FACS and any other authorised representatives of FACS with:

- (a) **(electronic copies)**: full access to electronic copies of the varied Financial Model;
- (b) **(log of changes)**: a log of all changes that have been made to the Financial Model;
- (c) **(calculations)**: all supporting calculations; and
- (d) **(other information)**: any other information reasonably requested by FACS, including any information required explaining how to operate the Financial Model,

for a Model Variation Event, including reasonable access to any financial modeller (including ServiceCo's financial modeller) with ability to access that information, and relevant passwords or other access information.

44.7 Auditing the Financial Model

- (a) **(Model auditors):** FACS may at any time appoint a model auditor to audit the Financial Model and:
 - (i) ServiceCo must provide all reasonable assistance to the model auditor;
 - (ii) the results of the audit must be disclosed to both FACS and ServiceCo; and
 - (iii) to the extent any inconsistency, ambiguity, discrepancy, conflict, error or omission is revealed in the audit by FACS, ServiceCo must promptly correct the Financial Model accordingly.
- (b) **(Costs):** If an audit by FACS results in a correction to the Financial Model, ServiceCo must pay the reasonable costs of FACS in conducting the audit, but, if no correction is required, FACS must bear the costs of the audit.

44.8 Custody of Financial Model

The Financial Model must be held from Commercial Close for the Term by FACS on the basis that it must be released to ServiceCo for the purposes of:

- (a) varying the Financial Model and the Restructure Model Output Schedule on the occurrence of Model Variation Events; and
- (b) the determination of any Dispute in accordance with clauses 34 to 38.

45. Records and Accounts

45.1 Accounting records

- (a) **(Proper books of account):** ServiceCo must keep proper books of account, records and documents, financial and all other accounts and records it has relating to the Service Package (**Accounts and Records**) at its offices, and must ensure that each other Group Member and each Key Subcontractor (during the Service Delivery Phase) does likewise.
- (b) **(Annual audit):** ServiceCo must have its accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that ServiceCo is part of a consolidated Entity, within the meaning of the Corporations Act) and must ensure that each other Group Member, and each Key Subcontractor other than any Lessor (during the Service Delivery Phase) does likewise.

45.2 Financial statements

- (a) **(Audited financial statements):** As soon as practicable (and in any event not later than 180 days) after the close of each Financial Year, ServiceCo must give to FACS certified copies of the consolidated (if applicable) and unconsolidated audited financial statements for the previous Financial Year for ServiceCo and each Group Member and, if requested by FACS, each Key Subcontractor other than any Lessor (during the Service Delivery Phase).

- (b) **(Cashflow and profit and loss statements)**: Not later than 30 days after the end of each Quarter, ServiceCo must give to FACS copies of cashflow and profit and loss statements and must ensure that each Group Member does likewise.

45.3 Other information

ServiceCo must give to FACS the following information:

- (a) **(copies)**: copies of all documents or information given or received by any Group Member to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited, promptly after the information is first given or received;
- (b) **(counterparty changes)**: details of any changes to the Counterparty Details within 20 Business Days after the change;
- (c) **(material changes)**: details of any material change in the financial condition of ServiceCo (since its incorporation or establishment) or any other Group Member, the Equity Investors, or a Key Subcontractor other than any Lessor (since the date of their last audited accounts) which would prejudice the ability of ServiceCo to perform its obligations under the Service Package Documents; and
- (d) **(other information)**:
 - (i) reports or documents relating to the Service Package, including those prepared by Subcontractors; and
 - (ii) such other information relating to the Service Package as FACS may reasonably require from time to time, including any information reasonably requested by FACS to enable FACS to comply with applicable Legislation (including the *State Records Act 1998* (NSW)).

45.4 ServiceCo Material

ServiceCo must maintain a document management system for all ServiceCo Material and Information Documents that:

- (a) **(safe and secure)**: is safe and secure and compatible with FACS' document management systems as advised by FACS;
- (b) **(access)**: enables FACS and its Associates (including any nominee) to quickly and easily retrieve, review and utilise ServiceCo Material; and
- (c) **(distribution)**: tracks the distribution of all ServiceCo Material.

46. Intellectual Property Rights

- (a) Any Intellectual Property Rights and title to, or in relation to, the ServiceCo Materials will vest, upon creation, in ServiceCo.
- (b) ServiceCo grants, and will ensure third parties grant, to FACS a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, copy, modify and exploit the ServiceCo Materials (other than any Excluded Material).

47. Confidential Information and disclosure

47.1 Confidential Information and disclosure by FACS

- (a) **(Disclosure):** Subject to clause 47.1(b), FACS and any Authority may disclose any information in connection with the Service Package, including Information Documents.
- (b) **(Requirements):** FACS may only disclose the Commercially Sensitive Information:
 - (i) in accordance with Laws or for the enforcement of any criminal law;
 - (ii) in accordance with clause 47.6;
 - (iii) where disclosure is in the course of the official duties of a minister, the Treasurer, the Premier or the Attorney General;
 - (iv) to satisfy the disclosure requirements of the NSW Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (v) to satisfy the requirements of Parliamentary accountability;
 - (vi) to any Associate of FACS to the extent necessary for the purpose of the Service Package provided they agree to maintain the confidentiality of any Commercially Sensitive Information;
 - (vii) in annual reports of FACS or the NSW Government;
 - (viii) in accordance with policies of FACS or the NSW Government or any Authority;
 - (ix) for any tender process required to be conducted under the Termination Payment Schedule; or
 - (x) where the Commercially Sensitive Information is any part of the Design Requirements or the Services Requirements, for the purpose of conducting any tender process required by the terms of this Agreement.

47.2 Confidential Information and disclosure by ServiceCo

- (a) **(Confidentiality obligation):** Subject to clauses 47.2(b) and clause 47.4(b), ServiceCo must treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of FACS make public or disclose to any person any Confidential Information.
- (b) **(Disclosure of Confidential Information):** Without limiting ServiceCo's obligation under clause 47.2(a) and subject to clause 47.2(c), ServiceCo may disclose Confidential Information:
 - (i) to its Associates to the extent necessary for the purpose of undertaking the Service Package;

- (ii) to any prospective financier or equity investor of the Service Package, subject to FACS having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that FACS considers necessary; or
 - (iii) in accordance with clause 47.4.
- (c) **(Confidentiality deed):** Before disclosing any Confidential Information, ServiceCo must ensure that the person to whom the information is disclosed enters into a confidentiality deed with ServiceCo to keep the Confidential Information, confidential in accordance with this clause 47.
- (d) **(Permitted disclosure):** ServiceCo may disclose Confidential Information and will not be required to seek FACS' consent to a disclosure, announcement or statement under clause 47.2(a) or 47.3(a) where the disclosure announcement or statement is:
- (i) required by Law, provided that it:
 - A. notifies FACS of the requirement to make that disclosure; and
 - B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;
 - (ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;
 - (iii) required to be made to a court in the course of proceedings to which ServiceCo is a party; or
 - (iv) required by a relevant recognised stock exchange, subject to:
 - A. the disclosure, announcement or statement does not refer to FACS' or any of its Associates' involvement in the Service Package; and
 - B. ServiceCo having used all reasonable endeavours to obtain FACS' consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

47.3 Public announcements by ServiceCo

Subject to clause 47.2(d), ServiceCo must:

- (a) **(FACS' prior consent):** not make any public disclosures, announcements or statements in relation to the Service Package or FACS' or any of FACS' Associates' involvement in the Service Package, without FACS' prior consent;
- (b) **(terms and conditions):** comply with any terms and conditions FACS imposes and must use all reasonable endeavours to agree with FACS the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Service Package or FACS' or any of FACS' Associates' involvement

in the Service Package before the relevant disclosure, announcement or statement is made; and

- (c) **(copies to be provided)**: as soon as practicable, give to FACS a copy of any public disclosure, announcement or statement agreed to or approved by FACS in accordance with this clause 47.3 or for which FACS' consent or approval was not required in accordance with clause 47.4.

47.4 Information public or known

Notwithstanding anything in this clause 47, either party may disclose information in connection with the Service Package (including any Confidential Information) if:

- (a) **(already available)**: the party can demonstrate that the relevant information is already generally available and in the public domain otherwise than as a result of breach of this clause 47; or
- (b) **(already in possession)**: the relevant information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

47.5 Disclosure by FACS under GIPA Act

- (a) Notwithstanding the other provisions of this clause 47, the parties acknowledge that:
 - (i) **(documents to be published)**: the Service Package Documents and information concerning the Service Package Documents will be published on FACS' contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and
 - (ii) **(availability of Service Package Documents)**: FACS may make the Service Package Documents (other than the Key Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) **(notification)**: FACS will notify ServiceCo of any proposed disclosure of Commercially Sensitive Information by FACS under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (ii) **(consultation)**: following notification by FACS in accordance with clause 47.5(b)(i), FACS will take reasonable steps to consult with ServiceCo before disclosing Commercially Sensitive Information, including under the GIPA Act;
 - (iii) **(objectives)**: if, following:
 - A. notification by FACS in accordance with clause 47.5(b)(i); or
 - B. consultation between FACS and ServiceCo in accordance with clause 47.5(b)(ii),

ServiceCo objects to disclosure of some or all of the Commercially Sensitive Information, ServiceCo must provide details of any such objection within 5 Business Days after the date ServiceCo received

notification from FACS or the date on which the consultation process concluded (as relevant);

- (iv) **(disclosure)**: FACS may take into account any objection received from ServiceCo pursuant to clause 47.5(b)(iii) in determining whether the Commercially Sensitive Information identified by ServiceCo should be disclosed; and
- (v) **(FACS' obligations)**: nothing in this clause 47.5 will limit or otherwise affect the discharge of FACS' obligations under the GIPA Act.

47.6 Personal Information

ServiceCo must:

- (a) **(collection)**: not collect any Personal Information except in accordance with the Design Requirements and Services Requirements, all Laws and Standards;
- (b) **(disclosure)**: not disclose any Personal Information to any person other than as is necessary to provide the Services or to comply with Laws, and then only in accordance with the Design Requirements and Services Requirements, all Laws and Standards; and
- (c) **(retention)**: keep, and make available to FACS on request, records detailing the recipient of any Personal Information that ServiceCo has disclosed, the date of disclosure and the Personal Information that has been disclosed.

47.7 Privacy

Without limiting any obligations in respect of privacy set out in the Design Requirements or the Services Requirements ServiceCo agrees to, and will ensure that any Subcontract contains terms which require the Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Agreement or with the Subcontract (as the case may be), in the same way as FACS would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by FACS.

48. Probity Events and Probity Investigations

48.1 Probity Event

- (a) **(Notice)**: ServiceCo must give notice to FACS immediately upon becoming aware that a Probity Event has occurred or is likely to occur.
- (b) **(Contents of notice)**: The notice under clause 48.1(a), must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, and the circumstances giving rise to the Probity Event.
- (c) **(Meeting)**: Promptly, and in any case no later than 5 Business Days after FACS:
 - (i) receives a notice under clause 48.1(a); or
 - (ii) becomes aware of a Probity Event,

FACS and ServiceCo must meet to agree a course of action to remedy or otherwise address the Probity Event and the timeframe in which that will occur.

- (d) **(Compliance)**: ServiceCo must comply with any agreement made in accordance with clause 48.1(c) in the agreed timeframe.
- (e) **(Failure to agree)**: If FACS and ServiceCo fail to agree to a course of action in accordance with clause 48.1(c) including where ServiceCo fails to meet with FACS in accordance with clause 48.1(c), ServiceCo must, at its cost, take any action required by FACS to remedy the Probity Event in accordance with any timeframe determined by FACS.

48.2 Probity Investigation

- (a) **(Requirement for Probity Investigation)**: ServiceCo agrees that FACS may, or may require ServiceCo at any time to, conduct a Probity Investigation in respect of a Relevant Person, a Consortium Member, a Group Member or any person who is proposed to become a Relevant Person, a Consortium Member or a Group Member.
- (b) **(Promptly)**: Where FACS requires ServiceCo to conduct a Probity Investigation in accordance with clause 48.2(a), ServiceCo must conduct the Probity Investigation promptly.
- (c) **(Consents required for Probity Investigation)**: ServiceCo must procure all consents necessary to enable ServiceCo or FACS to conduct any Probity Investigation.
- (d) **(No appointment without consent)**: ServiceCo must not appoint a person to the position of Relevant Person unless FACS has given approval following any Probity Investigation that it elects to conduct or any other investigation FACS reasonably requires.

48.3 FACS costs of Probity Events and Probity Investigation

- (a) **(FACS costs)**: Subject to clause 48.3(b), ServiceCo must bear all costs incurred by FACS in connection with a Probity Event or Probity Investigation that led to a Probity Event.
- (b) **(ServiceCo not liable)**: ServiceCo will not be liable for FACS' costs of any further Probity Investigation required by FACS in respect of a Probity Event in relation to which an initial Probity Investigation has been undertaken.

49. Notices and bar to Claims

49.1 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Agreement:

- (a) **(in writing)**: must be in writing;

- (b) **(addressed)**: must be addressed as specified in the Contract Particulars (as the case may be), or as otherwise notified by that party to each other party from time to time;
- (c) **(signed)**: must be signed by the party making the communication or by the solicitor for, or any attorney, director, secretary or authorised agent of, that party on its behalf;
- (d) **(form of delivery)**: must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in the Contract Particulars;
- (e) **(taken to be received)**: are taken to be received by the addressee at the address set out in the Contract Particulars:
 - (i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;
 - (ii) subject to clause 49.1(f), in the case of prepaid post, on the fourth Business Day after the date of posting to an address within Australia and on the seventh Business Day after the date of posting by airmail to an address outside Australia;
 - (iii) in the case of email, the first to occur of:
 - A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
 - B. the time that the communication enters an information system which is under the control of the addressee; or
 - C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and
- (f) **(notices sent by post)**: if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

49.2 Notices of Claims

- (a) **(Liability)**: Subject to clause 49.2(b):
 - (i) FACS and its Associates will not be liable upon any Claim that ServiceCo is entitled to make against FACS or its Associates; and

- (ii) ServiceCo is absolutely barred from making any Claim against FACS or any of its Associates,

under any FACS Service Package Document or otherwise arising in connection with the Service Package Documents, the Relevant Infrastructure or the Service Package unless ServiceCo gives FACS the notices required by clause 49.3 and, if applicable, clause 49.4.

- (b) **(Notice requirements):** Where any provision of this Agreement contains specific notice requirements (including a requirement to submit or update a Change Notice):

- (i) FACS and its Associates will not be liable upon any Claim that ServiceCo is entitled to make against FACS or its Associates; and
- (ii) ServiceCo is absolutely barred from making any Claim against FACS or any of its Associates,

arising out of, or in connection with, the event or circumstance to which the relevant provisions of this Agreement, or any other Service Package Document, entitling ServiceCo to make a Claim against FACS or its Associates apply, unless ServiceCo has complied with the specific notice requirements (including any requirement to update a Change Notice) set out in those relevant provisions.

49.3 Prescribed notices

The required notices referred to in clause 49.2(a) are:

- (a) **(intention to submit Claim):** a written notice from ServiceCo in which ServiceCo:

- (i) states that it intends to submit a Claim; and
- (ii) identifies the event on which the Claim will be based,

which notice must be given to FACS within 20 Business Days of the earlier of:

- (iii) the date on which ServiceCo first became aware; and
- (iv) the date on which ServiceCo ought reasonably to have become aware,

of the event on which the Claim is based; and

- (b) **(Claim):** a formal written notice from ServiceCo to FACS setting out the Claim, including:

- (i) detailed particulars concerning the event on which the Claim is based;
- (ii) the legal basis for the Claim, whether based on a term of FACS Service Package Documents or otherwise, and if based on a term of the FACS Service Package Documents, clearly identifying the specific term;
- (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
- (iv) details of the amount claimed and how it has been calculated,

which notice must be given to FACS within 20 Business Days of giving the notice under clause 49.3(a).

49.4 Continuing events

If the event upon which the Claim under clause 49.3(b) is based, or the consequences of that event, are continuing, ServiceCo must continue to give the information required by clause 49.3(b) every 20 Business Days after the notice under clause 49.3(b) was submitted, until after the event or consequences of the event have ceased.

49.5 Notice to Financiers

ServiceCo acknowledges that FACS may provide to the Financiers a copy of any notice from:

- (a) ServiceCo to FACS; or
- (b) FACS to ServiceCo,

in connection with the FACS Service Package Documents or the Service Package.

49.6 Power of attorney

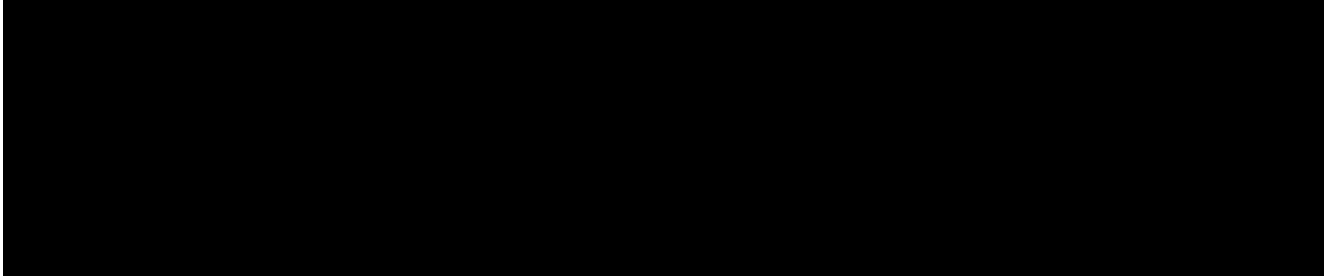
ServiceCo irrevocably:

- (a) **(appointment)**: appoints FACS, and FACS' nominees from time to time, jointly and severally, as its attorneys with full power and authority:
 - (i) with effect from the end of the Service Delivery Phase, to execute any assignment or novation contemplated by clause 22.2(a); and
 - (ii) to exercise FACS' rights in accordance with clause 28; and
- (b) **(ratification of action)**: agrees to ratify and confirm whatever action is taken by the attorney appointed by ServiceCo under clause 49.6(a).

Executed as a deed

ServiceCo

Signed sealed and delivered by
Compass Housing Services Co Limited
ACN 002 862 213



FACS

Signed sealed and delivered by
the Secretary of the Department of Family and Community Services by



Schedule 2

