

DATED

2022

(1) WOKINGHAM BOROUGH COUNCIL

and

(2) ROYAL BOROUGH OF WINDSOR & MAIDENHEAD

and

(3) OPTALIS LIMITED

SHAREHOLDERS AGREEMENT

RELATING TO OPTALIS LIMITED



BDB PITMANS

Registered Office

One Bartholomew Close
London
EC1A 7BL
DX 339401 London Wall

50/60 Station Road
Cambridge
CB1 2JH
DX 339601 Cambridge

103

The Anchorage
34 Bridge Street
Reading, RG1 2LU
DX 146420 Reading 21

Grosvenor House
Grosvenor Square
Southampton, SO15 2BE
DX 38516 Southampton 3

T +44 (0)345 222 9222

W www.bdbpitmans.com

TABLE OF CONTENTS

1	Definitions and interpretation	1
2	The business of the Company	5
3	Conduct of the Company's affairs	6
4	Directors	8
5	Director decision making/appointment of committees	9
6	Authorised Representatives/Shareholder consent	10
7	Objectives	10
8	Reserved Matters and Ongoing Duties	11
9	Production of accounts and reports	12
10	Anti-corruption	12
11	Transfer of Shares	13
12	Conflict with the New Articles and Care Services Contract	14
13	No fetter	14
14	Variations and Changes to Care Services	14
15	Funding arrangements	15
16	Deadlock/Dispute Resolution	16
17	Duration and termination	16
18	2017 Shareholders Agreement	18
19	Confidentiality	18
20	General	21
21	Assignment	22
22	No partnership or agency	22
23	Notices	22
24	Announcements and Reporting	24
25	Counterparts	24

26	Applicable law	24
Schedule 1	Deed of Adherence	25
Schedule 2	Operating Budget	26
Schedule 3	Amended Articles of Association	36

Parties

- (1) **Wokingham Borough Council** whose principal office is at Shute End, Wokingham, Berkshire RG40 1BN (**Wokingham**);
- (2) **Royal Borough of Windsor & Maidenhead** whose principal office is at Town Hall, St Ives Road, Maidenhead SL6 1RF (**RBWM**); and
- (3) **Optalis Limited** a company incorporated and registered in England and Wales with registered number 07630156 whose registered office is at Trinity Court, Molly Millers Lane, Wokingham, Berkshire RG41 2PY (the **Company**).

BACKGROUND

- (A) The Company was incorporated under the Companies Act 2006 on 11 May 2011 as a private company limited by shares. At the date of this Agreement the Company has an issued share capital of 50,100 ordinary shares of £1.00 each (as to which 25,050 A ordinary shares of £1.00 are held by RBWM and 25,050 B ordinary shares of £1.00 each are held by Wokingham).
- (B) The parties (together with Optalis Holdings Limited (Co. No. 08671532)) entered into a shareholders agreement dated 30 May 2017 relating to the Company. Optalis Holdings Limited has ceased to be a shareholder of the Company and the parties wish to record the new terms on which they will participate in the Company as its shareholders.

Agreed terms

1 Definitions and interpretation

- 1.1 The following definitions and rules of interpretation apply in this Agreement.

2017 Shareholder Agreement: means the shareholders agreement referred to in Recital B.

Annual Accounts Date: means the accounting reference date of the Company from time to time.

Annual Contract Price: means the annual Contract Price (as defined in Schedule 2) paid or payable by a Council to the Company under a Care Services Contract in a financial year (such amount does not include any payment for commissioned adult social care services instructed by the Company as agent for the Councils).

Asset Purchase Agreement: means the agreement dated on or around 30 March 2017 between RBWM and Optalis Limited.

Authorised Representatives: means the authorised representatives referred to in clause **Error! Reference source not found.**

Board or Board of Directors: means the board of directors of the Company;

Board Meeting: means a meeting of the Board of Directors.

Business: means the business of the Company described in clause 2 and the Business Plan and such other business as the Shareholders may agree from time to time in writing should be carried on by the Company.

Business Plan: means the business plan adopted in accordance with clause 2.3 from time to time which shall include details of the Operating Budget and the Savings.

Business Day: means a day other than a Saturday or Sunday or public holiday in England and Wales.

Care Services: means the services of adult social care and such other care-related services as any Council may from time to time agree to commission from the Company.

Care Services Contract: means a contract for the provision of any Care Services by the Company to the Shareholders.

CEDR: means the Centre for Effective Dispute Resolution.

Chairman of the Board: means the person appointed in accordance with clause 4.5.

Chief Executive Officer or CEO: means the person appointed as chief executive officer of the Company in accordance with clause 4.4.

Confidential Information: means any information or matter which is not in the public domain and relates to either of the Shareholders or the Company.

Costs: means any liabilities fees costs damages expenses and losses (not including indirect or consequential losses, loss of profit or reputation) and any reasonable professional costs, interest and expenses (such Costs subject always to that they must be foreseeable or in the reasonable contemplation of the parties and the obligation at law to mitigate).

Council Directors: means the RBWM Directors and the Wokingham Directors.

Councils: means Wokingham and RBWM,

Current Business Plan: means the Business Plan of the Company in effect at the date of this Agreement.

Deed of Adherence: means a deed of adherence in substantially the same form as set out in Schedule 1.

Director: means any director for the time being of the Company, including where applicable any alternate director.

Environmental Information Regulations: means the Environmental Information Regulations 2004.

Existing Commissioning Contracts: means contracts for Care Services entered into between either of the Councils and a third party before Completion.

FOIA: means the Freedom of Information Act 2000.

Group: means, in relation to the Company, the Company itself; and the expression **Group Member** shall be construed accordingly.

Information: has the meaning given to it under section 84 of the FOIA.

Intellectual Property Rights: means copyright and related rights, trademarks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including knowhow) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim [priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future.

LCIA: means the London Court of International Arbitration.

Lead Member: means the member of the executive/cabinet at the Councils whose responsibility includes adult services

LGPS: means a Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of the powers under Sections 7 and 12 of the Superannuation Act 1972 as amended from time to time.

LGPS Regulations: means the Local Government Pension Scheme Regulations 2013 as amended from time to time.

New Articles: means the new articles of association of the Company in the agreed form to be adopted on or about the date of execution of this Agreement.

Operating Budget: means the annual sum of monies required by the Company to deliver the Care Services to the Shareholders and as determined in accordance with and as set out in Schedule 2.

Prudential Code for Local Authorities: means the Chartered Institute of Public Finance and Accountancy (**CIPFA**) Prudential Code for Capital Finance in Local Authorities 2011 and accompanying Guidance Notes for Practitioners 2013 (as updated or revised from time to time).

RBWM Admission Agreement: means the agreement set out in Schedule 5 of the Asset Purchase Agreement and made pursuant to Schedule 2 of the LGPS Regulations where Optalis Limited becomes an admission body to the Royal County of Berkshire LGPS in respect of the Eligible Employees (as defined in the Asset Purchase Agreement) or, as the case may be, any subsequent admission agreement made pursuant to Schedule 2 of the LGPS Regulations where a subcontractor of Optalis Limited becomes an admission body to the Royal County of Berkshire LGPS in respect of the Eligible Employees (as defined in the Asset Purchase Agreement).

RBWM Directors: the Directors appointed by RBWM in accordance with clause 4.1.

Request for Information: has the meaning set out in the FOIA or any apparent request for information made under the FOIA or **the** Environment Information Regulations.

Savings: means the cost savings and financial efficiencies identified for each financial year that the Shareholders agree to make to reduce the Operating Budget or generate income and as documented and agreed in the Business Plan.

Shareholder: means each of the Councils and/or any person to whom it may properly transfer any Shares in accordance with this Agreement and who enters into a Deed of Adherence agreeing to be bound by the terms of this Agreement.

Shareholding Proportion: means the proportion of the issued share capital of the Company held by the Shareholders.

Shares: means the ordinary shares of £1.00 in the Company from time to time.

Trinity Court: means office at Trinity Court, Molly Millars Lane, Wokingham, Berkshire leased to Optalis under a lease dated 10th December 2018.

Wokingham Admission Agreement: means the agreement dated 14 June 2011 made pursuant to Schedule 2 of the LGPS Regulations where Optalis Limited became an admission body to the Royal County of Berkshire LGPS in respect to certain Wokingham Transferred Employees.

Wokingham Directors: means the Directors appointed by Wokingham in accordance with clause 4.1.

Wokingham Transferred Employees: means the employees who transferred to Optalis Limited under a contract for services dated 30 June 2011.

- 1.2 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Clause headings in this Agreement are for convenience only and do not affect the construction of any provision.
- 1.4 References to any gender shall include the other genders and references to the singular shall include the plural and vice versa.
- 1.5 Any reference to a person (which for the purposes of this Agreement shall include a firm, unincorporated association, body corporate, government, state or agency of state, any association or partnership or joint venture (whether or not having a separate legal personality)) shall include its successors in title.
- 1.6 Any reference to a document **in the agreed form** shall be a reference to that document in the form agreed and initialled by or on behalf of each of the Shareholders for the purpose of identification and attached to this Agreement.

2 The business of the Company

- 2.1 The Shareholders acknowledge and agree that unless and until they agree otherwise, the business of the Company shall be the provision of Care Services to the Councils and to other customers in accordance with the Business Plan.
- 2.2 The Shareholders further acknowledge and agree that the purpose of the Company is: "To be a resilient, efficient and sustainable social care company capable of delivering high quality, innovative services to our customers, delivered by passionate and skilled staff." The aims will be to:
- transform and improve the delivery of adult services (both statutory and provider services) across both boroughs to achieve quality and value for money whilst influencing and shaping the local care markets;
 - secure the stability of the workforce, ensuring that staff are retained, and their continuous professional development is enabled; and
 - identify and deliver opportunities for joint commissioning to the benefit of both boroughs.
- 2.3 The Current Business Plan will apply in respect of the current financial year of the Company (namely 1 April 2021 to 31 March 2022). The Board will prepare and adopt a revised Business Plan for subsequent financial years by the end of January each year in respect of the following financial year and submit the Business Plan to the Shareholders for approval by the Authorised Representative by end of January in each year.
- 2.4 Each Business Plan shall be substantially in the format of the Current Business Plan and will deliver the purpose of the Company as set down in clause 2.1 and include the basis (in a form required by the Shareholders) of the calculation of the Annual Contract Price for all Councils.
- 2.5 Notwithstanding any other provision of this clause 2 following the requisite approval by the Company of a proposed new Business Plan or an amended or updated and revised Business Plan, such draft Business Plan shall become, or such amended or updated Business Plan shall become, the Business Plan of the Company. For any period when a proposed Business Plan presented under clause 2.3 has not been approved and adopted by the Company in accordance with this Agreement the relevant existing Business Plan shall continue to be the Business Plan of the Company.
- 2.6 The Business Plan shall become the adopted Business Plan of the Company once it has been approved by the Councils and the Authorised Representative shall notify the Company by end of March in each of year. Where the Councils do not agree to the Business Plan then such shall be referred to disputes resolution under clause 16 of this Agreement
- 2.7 The principal place of business of the Company and the principal place for management of the Company shall be within the county of Berkshire, unless otherwise agreed in writing by both Councils.
- 2.8 The Shareholders acknowledge and agree that they will as far as reasonably possible ensure that the Business of the Company is conducted in accordance with the Business Plan and good business practice.

- 2.9 Subject to the provisions of this Agreement, the Shareholders understand and agree that the Company shall use all reasonable and proper means to maintain and improve the Business.

3 Conduct of the Company's affairs

- 3.1 With the exception of those matters requiring consent pursuant to clause 8, the day-to-day management of the Company shall be vested in the Chief Executive Officer and his management team. Without prejudice to the generality of the foregoing, the Directors of the Company will determine the general policies of the Company and the manner in which the Business is to be carried out subject to the provisions of clause 5 and subject to those matters requiring consent pursuant to clause 8 and to any other express provisions of this Agreement. In particular, but without limitation to the generality of the foregoing, the Directors shall subject to the provisions of clause 5 and subject to the limitations in clause 8, exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this Agreement, the Company shall carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with good business practices.
- 3.2 The Company shall not carry out any activity which would render the holding of Shares by any Shareholder unlawful provided that where a proposed change of law would render such shareholding unlawful such Shareholder will use all reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.
- 3.3 The Company will if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.
- 3.4 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company at any time with any officers and employees of the Shareholder designated in writing by each Shareholder for this purpose. All books, records, accounts and documents relating to the business and the affairs of the Company shall be open to the inspection of any officers and employees designated in writing by each Shareholder for this purpose, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the relevant Shareholder properly informed about the business and affairs of the Company or to protect its interests as a Shareholder. Any Confidential Information secured as a consequence of such discussions and examinations shall be kept confidential by the requesting Shareholder and its designated officers and employees in accordance with the terms of clause 19.
- 3.5 The Company agrees with the Shareholders that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Shareholders informed of the progress of the Company's business and affairs and in particular will procure that each Shareholder is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment in the Company and to comply with its obligations under the Prudential Code for Local Authorities.
- 3.6 The Shareholders shall (to the extent that it is within their powers to do so) procure that the Company shall not breach nor cause any Council to be in breach of the relevant provisions of the Local Authorities (Companies) Order 1995, Part V of the Local Government and Housing

Act 1989 or the Local Government Public Involvement in Health Act 2007 or its obligations under the Public Contracts Regulations 2015.

- 3.7 The Company shall:
- 3.7.1 identify the participation of each Council on all its official business stationery; and
 - 3.7.2 not engage in any party political publicity.
- 3.8 The Company shall use its reasonable endeavours to ensure that:
- 3.8.1 no more than 19.99% of the total average annual turnover of the Company in any period of three financial years shall derive from activities undertaken for any person who is not a Shareholder or a person over which one or more Shareholders exercise Control (and for the purposes of this obligation only Control shall have the meaning attributed to it in Regulation 12(3) or 12(5) of the Public Contracts Regulations 2015); and
 - 3.8.2 the Company shall not accept any direct private capital participation (with the exception of non-controlling and non-blocking forms of private capital participation as may be required by English legislation, which do not exert a decisive influence on the Company).
- 3.9 In order to assist compliance with the provisions of clause 3.8 the Shareholders shall procure that oversight thereof will be undertaken by one of the RBWM Directors or Wokingham Directors who will report to the chief executives of the Councils.
- 3.10 Compliance with Regulation 12(4) of the Public Contracts Regulations 2015 (**2015 Regulations**) will be undertaken by the RBWM Director who is the Director of Adult Services and the Wokingham Director who is the Director of Adult Services who shall report to their respective Council chief executives in relation to such compliance. If any of the parties become aware that, for whatever reason, the Company no longer fulfils any of the requirements of Regulation 12(4) of the 2015 Regulations (**Teckal Non-Compliance**) or such Teckal Non-Compliance is likely to occur, it shall immediately notify the other party. Following such notification, the parties shall work together to ensure action is taken to either:
- 3.10.1 remedy the Teckal Non-Compliance; or
 - 3.10.2 take steps to prevent such Teckal Non-Compliance occurring.
- 3.11 Each Shareholder shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it, in relation to the Company so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement:
- 3.11.1 the Company is managed in accordance with the objectives and provisions of this Agreement; and
 - 3.11.2 the Company performs and complies with all obligations on its part under this Agreement and the New Articles.

- 3.12 Subject to clause 3.13 the Shareholders acknowledge that in relation to the Business the Company may limit the amount available for distribution to a nominal amount by returning any efficiency savings and private income generated by any service to each Council prior to the Company's year end.
- 3.13 In the event that the Shareholders agree pursuant to clause 2.1 (but subject at all times to clause 3.8 and clause 8.1.15) that the Company undertakes any commercial activities other than in relation to the Business then unless and until otherwise agreed in writing by each of the Shareholders the full amount of the profits of the Company available for distribution according to the audited accounts for each financial period relating to such commercial activities shall be distributed by the Company by way of dividend subject only to such reserve as the Board of Directors considers to be necessary to meet future liabilities (contingent or otherwise) of the Company;

4 Directors

- 4.1 The Directors will (subject to the appointment of any non-executive director pursuant to clause 4.6) consist of five members, being two RBWM Directors and two Wokingham Directors and the Chief Executive Officer.
- 4.2 RBWM shall have the right to maintain in office two natural persons as RBWM Directors and to remove any RBWM Director so appointed and upon his removal, whether by his appointor or otherwise, to appoint another person to act as a RBWM Director in his place. Such persons shall comprise the RBWM Director of Adult Services and the Lead Member of RBWM.
- 4.3 Wokingham shall have the right to maintain in office two natural persons as Wokingham Directors and to remove any Wokingham Director so appointed and upon his removal, whether by his appointor or otherwise, to appoint another person to act as a Wokingham Director in his place. Such persons shall comprise the Wokingham Director of Adult Services and the Lead Member of Wokingham.
- 4.4 The Chief Executive Officer shall be appointed by ordinary resolution of the Shareholders.
- 4.5 The Chairman of the Board shall be the Lead Member from either the RBWM Directors or the Wokingham Directors. The Chairman of the Board shall rotate every six months between the Lead Member RBWM Director and the Lead Member Wokingham Director. The deputy chairman of the Board shall (during the period that a RBWM Director is Chairman of the Board) be the Lead Member Wokingham Director and shall (during the period that a Wokingham Director is Chairman of the Board) be the Lead Member RBWM Director.
- 4.6 If both Shareholders request then the RBWM Directors and Wokingham Directors shall appoint by unanimous decision such non-executive directors as are so requested.
- 4.7 A Directors' meeting shall be held no less than every three months at a location within the county of Berkshire. The Chief Executive Officer (or such agreed substitutes) shall provide a regular report to the Board of Directors at each meeting on each area of the Company's operations – Company Report, Provider Services, Statutory Services, Finance and Performance, HR and Corporate Services. Additional reports may be added as requested by the Board.

For the avoidance of doubt, meetings of the Board of Directors can be called at other times by notice in writing in accordance with the New Articles.

- 4.8 The quorum for the transaction of business at meetings of the Company shall be as required in paragraph 5 of this Agreement **provided that** if a quorum is not present in respect to a decision required by paragraph 5.4, then the attendees present may adjourn the meeting to a date not less than five Business Days later, and the quorum for a meeting adjourned in accordance with this clause and held at such later date shall be any two Directors of the Company.
- 4.9 Not less than five Business Days' notice shall be given to each of the Directors of the Company which shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting. This provision may be waived if all the Directors who attend the meeting agree.
- 4.10 The Company will supply the agendas and support papers to the Board of Directors and shall do so at the same time, as far as possible, as the Board of Directors receives those agendas and papers (except for minutes, which need only be supplied after signature).
- 4.11 The Councils shall ensure that its appointed Directors of the Company shall attend the meeting.
- 4.12 The Chief Executive Officer shall manage the conduct of Board meetings and shall seek to ensure that a decision is reached. In the event of deadlock on any vote, the Chief Executive Officer shall refer the matter for mediation in accordance with clause 16 unless a Wokingham Director and a RBWM Director both confirm that no such referral shall be made.
- 4.13 The Company will appoint a Company Secretary or seek company secretarial advice from a suitable qualified third party who will in addition to advising the Board on all compliance matters will advise on the operation of this Agreement.

5 Director decision making/appointment of committees

Decision making within the Company shall be as follows:

- 5.1 The CEO shall make all operational decisions of the Company for the day to day running of the Company within the Operating Budget and/or the Business Plan. The CEO may delegate such decisions to any of the other Directors.
- 5.2 Any decision of the Company which impacts on one Council only shall (to the extent that it is not an operational decision for the running of the Company within the Operating Budget and/or the Business Plan) be delegated pursuant to article [24] of the Company's articles of association to a committee consisting of the (i) CEO and (ii) either the Wokingham Directors or the RBWM Directors (depending on the Council affected by such decision).
- 5.3 Any decision of the Company which relates to matters of incurring additional financial cost, risk, or negative publicity having an impact on one Council only or which may require one Council to increase its budget (unless included within the Operating Budget and/or the Business Plan) (including without limitation any decision to vire budgets for that Council's services and/or a request for further budgets from that Council) shall be delegated pursuant to article [24] of the

Company's articles of association to a committee consisting of either the Wokingham Directors or the RBWM Directors (depending on the Council affected by such decision).

- 5.4 Any decision of the Company which relates to matters of incurring additional financial cost, risk, or adverse publicity having an impact on the Company alone or to its services or to any matters which relates to both Councils shall be taken by the Board as a whole provided that all decisions must require the unanimous consent of all of the Councils Directors.
- 5.5 The quorum required under paragraph 5.2 and 5.3 shall be both Council Directors of the relevant Council and under paragraph 5.4 shall be all Council Directors.
- 5.6 The Councils and the Company acknowledges that the relevant Council Directors shall modify, expand or add to those matters considered to of 'financial cost, risk, or adverse publicity' and shall notify the Company and the CEO from time to time of such matters. The Council Directors shall endeavour to agree a consistent approach to such matters where possible.

6 Authorised Representatives/Shareholder consent

- 6.1 Where the consent of the Councils acting as Shareholder or otherwise is to be given under the provisions of this Agreement such consent shall be required from the chief executives of the Councils who may delegate the giving of such consent to one of the Council's officers (which includes the Council Directors provided that no conflict between directorship and their Council role exists).

7 Objectives

- 7.1 The Councils agree that the objectives of the Company are:
 - 7.1.1 to be the provider of adult social care services including but not limited to the provision of the Care Services to the Councils and provider under the Care Services Contract;
 - 7.1.2 to provide high quality services to its residents at best value for money;
 - 7.1.3 to generate income from private payers and third party councils;
 - 7.1.4 to ensure the Councils to comply with their statutory duties in relation to Care Services and to fulfil the requirements of the Business Plan;

and that the decisions of the Company should be made in accordance with these aims and objectives.

- 7.2 Where opportunities for the provision of new services arise, the Councils agree that the Company is offered the first opportunity to provide such services as 'provider of first choice'. The Councils are not required to accept any offer for the provision of such services and (acting reasonably) may, directly or indirectly perform, undertake, procure, participate, compete, solicit, encourage, or initiate any part of the Care Services itself or from a third party. The reasons for not accepting the offer from the Company will be reasonably explained.

- 7.3 Clause 7.1 or 7.2 shall not prevent either Council from purchasing from Existing Commissioning Contracts or from subcontracting or securing Care Services where agreed with the other Council.

8 Reserved Matters and Ongoing Duties

- 8.1 Each of the parties shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement, the Company shall not, except as approved in the Business Plan of the Company or with the unanimous consent of the Authorised Representatives (who shall take their decision having regard to their Council's constitutional requirements) take any action or pass any resolution in respect of:

- 8.1.1 altering in any respect its articles of association or the rights attaching to any of its shares;
- 8.1.2 entering into any arrangement, contract or transaction resulting in expenditure either with a capital or revenue value in excess of £50,000.
- 8.1.3 engaging in any business with any party other than the Councils other than as contemplated by the Business Plan and Operating Budget or defraying any monies other than in good faith for the purposes of or in connection with the carrying on of such business;
- 8.1.4 changing the nature of the Business;
- 8.1.5 entering into any borrowing, credit facility or investment arrangement (other than trade credit in the ordinary course of business) that has not been approved by the Company under the Business Plan;
- 8.1.6 approving the appointment of auditors;
- 8.1.7 adopting, replacing or modifying the Business Plan in respect of each financial year, which shall include the adoption and amendment of an Operating Budget other than where such adoption, replacement or modification involves an expenditure of no more than £50,000 in any financial year;
- 8.1.8 appointing or removing any Directors (other where permitted by this Agreement);
- 8.1.9 amending in any material respect the terms and conditions on which any Director of the Company is employed;
- 8.1.10 amalgamating or merging with any other company or business undertaking;
- 8.1.11 forming any subsidiary undertakings (as defined in Section 1162 of the Companies Act 2006) or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not) with a view to providing services to third parties;

- 8.1.12 making any acquisition or disposal of any material asset(s);
- 8.1.13 allotting any shares in the Company;
- 8.1.14 passing any resolution for the winding up of the Company or presenting any petition for the administration of the Company, other than where the Company is insolvent;
- 8.1.15 undertaking any services other than Care Services to the Councils or the provision of Care Services by the Company to any third party; and
- 8.1.16 any matters which both Authorised Representatives agree should be added to the list in this clause 8.1.

9 Production of accounts and reports

- 9.1 The Company shall instruct its auditors to prepare and audit a balance sheet of the Company, as at the Annual Accounts Date each year and a consolidated profit and loss account of the Company, for the 12 month financial period ending on the Annual Accounts Date each year to be presented to the Shareholders in accordance with the timetable set out in Schedule 2 after the end of the period to which such accounts relate.
- 9.2 The Company will provide to the Shareholders full details of any actual or prospective material change in the Business or the financial position or affairs of the Company, as soon as such details are available.
- 9.3 All accounts referred to in this clause shall be prepared in pounds sterling and in accordance with applicable law and generally accepted accounting standards, principles and practices in the United Kingdom.
- 9.4 The Shareholders shall procure that the Company maintains a separation of finances relating to each Council's services in all aspects other than central management costs, which shall be apportioned as per the formula set out in paragraph 5.2 of Schedule 2.
- 9.5 The Board will provide such reports to the Councils as their chief executives and their respective Council Directors shall agree. The Councils shall seek to have the same reporting requirements and timings.

10 Anti-corruption

- 10.1 In this clause:

Adequate Procedures: means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010.

Associated Person: means in relation to a party to this Agreement, any person (including an officer, employee or agent) who performs services for or on behalf of that party.

Corrupt Activity: means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including without limitation any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 Bribery Act.

- 10.2 Each Shareholder declares and undertakes to the other parties that:
- 10.2.1 it has not and will not in relation to the Company or the operation of the Business, engage in any Corrupt Activity;
 - 10.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;
 - 10.2.3 it has and will maintain in place, or in the case of the Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;
 - 10.2.4 it has not and will not engage in any activity, practice or conduct which could place the Company or any other party in breach of section 7(1) Bribery Act;
 - 10.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause 10.2 and will provide any information reasonably requested by the other party in support of such compliance; and
 - 10.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 10.

11 Transfer of Shares

- 11.1 If such has not been achieved by the date of this Agreement, the Councils agree that they will undertake any actions required to ensure the transfer of shares in the Company to achieve an equal shareholding between Councils (whether in the Company or by way of shareholding in any parent company) and authorise the Council Directors and the Authorised Representatives to perform all actions to achieve such.
- 11.2 Except with the prior written consent of the other Shareholders each Shareholder shall comply with the provisions relating to the issue and transfer of Shares contained in the New Articles.
- 11.3 The Company shall procure that no person who acquires Shares in the Company (whether by transfer or allotment or otherwise) (a **New Shareholder**) shall be registered as their holder unless or until he has entered into a Deed of Adherence.
- 11.4 A New Shareholder who has entered into a Deed of Adherence in accordance with clause 11.3 shall have all the rights and obligations as if he were an original party to this Agreement in the capacity of a Shareholder.

12 Conflict with the New Articles and Care Services Contract

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the New Articles and/or a Care Services Contract, then it is the intention of the Shareholders that the provisions of this Agreement shall prevail. Accordingly, each Shareholder (so far as each is able) shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the New Articles and/or a Care Services Contract.

13 No fetter

Nothing in this Agreement shall operate to bind the Company or any Council to the extent that it constitutes an unlawful fetter on any statutory power of the Company or such Council.

14 Variations and Changes to Care Services

14.1 Any variation or change to the Care Services may be proposed by a Council and submitted to the Company by the Authorised Representative of that Council.

14.2 Any variation or change to the Care Services may be proposed by the CEO.

14.3 Any proposal for a variation or change to the Care Services must be accompanied by a full service and costs specification.

14.4 The Councils agree that any variation to the Care Services under any Care Services Contract shall require the proposing Council to notify the Company and the Authorised Representative of the other Council of the proposed variation with the purpose of ascertaining whether the other Council wishes to participate in the proposed variation

14.5 Any variation or change to the Care Services which impacts one Council shall only be implemented by the Company after it has been approved by the committee of that Councils Directors referred to in clause 5.2 provided and such variation or change :

14.5.1 is funded entirely by the Council requesting the variation or change; and

14.5.2 does not impact on the Care Services delivered to the non-requesting Council.

and in the circumstances where the other Council Directors object to the variation or change then the CEO will refer the matter for dispute resolution under clause 16 provided that where the CEO considers that the objection is on grounds in paragraph 14.4.1 only then the Company will implement the decision before the outcome of any dispute process

14.6 Any variation or change to the Care Services which impacts both Councils may only be approved by the unanimous consent of both Council's Directors.

- 14.7 The CEO will advise the Councils on the impact (including financial impact on shared costs, such as Central Management Costs referred to in Schedule 2) on the submitted variation or change to the Care Services and will determine whether the submitted variation or change impacts one or both Councils. In the event that a Council disputes the CEO's determination the matter will be determined in accordance with the provisions of clause 16.
- 14.8 If any Council proposes that the Company provides services other than the Care Services or provides Care Services to a third party it shall present to the Board all costings and a business plan relating thereto, together with an assessment report on how the proposal would affect the Company's existing Care Services.

15 Funding arrangements

- 15.1 Each Council is responsible for funding the full share of the Annual Contract Price of the Care Services that the Company delivers on its account and shall comply with Schedule 2 of this Agreement in relation to the funding of the Company and payment for Care Services.
- 15.2 There is no financial cross subsidy of services between the two Councils.
- 15.3 Where the same Care Services are delivered for both Councils, assurance will be provided by the Chief Executive Officer that neither Council's outcomes will be negatively impacted by an integrated approach.
- 15.4 The detail of the potential costs involved will be shared with both Directors of Adult Social Services by not later than 31 October in the preceding financial year based on the proportion of provider services commissioned by both Councils in the Company.
- 15.5 The Councils and the Company agree that they shall use reasonable endeavours to achieve the Savings in each financial year as agreed with each Council. To the extent that there is a shortfall in Savings required by either Council in respect of the Savings made, that party shall choose either to be responsible for contributing the shortfall to the Company or shall have its Care Services reduced accordingly. The Company shall be required to use reasonable endeavours to achieve the Savings and minimise any such Costs.
- 15.6 The Councils agree that each Council shall bear the cost of any insurance excess arising under their respective Care Services Contracts.
- 15.7 The Councils agree that all costs, losses, liabilities or profits of Wokingham Care Services (whether within the Company or provided directly by Wokingham) prior to the 3rd April 2017 shall be the responsibility or benefit of Wokingham.
- 15.8 The Councils agree that all costs, losses, liabilities or profits of RBWM Care Services prior to the 3rd April 2017 shall be the responsibility or benefit of RBWM.

16 Deadlock/Dispute Resolution

- 16.1 In the event of any deadlock under this Agreement (which shall include any deadlock of the Board as referred to in clause 4.12) (**Deadlock**) or in the event of any dispute under this Agreement (**Dispute**) any Deadlock/Dispute shall be referred by any Director, by the issue of notice to the Authorised Representative and Leaders in each Council in writing (**Deadlock/Dispute Notice**) that a Deadlock/Dispute has arisen.
- 16.2 If the Authorised Representative and Leaders do not resolve the dispute within 30 days of the date of receipt of the Deadlock/Dispute Notice then unless the Authorised Representative of Wokingham and RBWM both agree a further period to resolve the dispute, then either Authorised Representative shall initiate mediation and Wokingham and RBWM will enter into mediation in good faith to settle such Deadlock/Dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between Wokingham and RBWM within 14 days of notice of the Deadlock/Dispute, the mediator will be appointed by CEDR pursuant to this clause 16.2.
- 16.3 Each party shall bear its own costs in relation to the reference to the mediation.
- 16.4 Subject to FOIA all matters concerning the process and result of the mediation shall be kept confidential among the parties.
- 16.5 If and to the extent that the parties do not resolve any Deadlock/Dispute or any issue in the course of any CEDR mediation, then either party acting by Authorised Representative may refer the unresolved Deadlock/Dispute for resolution by binding arbitration under the LCIA Arbitration Rules, which Rules shall be deemed to be incorporated by reference to this clause. The number of arbitrators shall be one and the seat or legal place of arbitration shall be London.
- 16.6 The parties agree that they shall resolve any Deadlock or Dispute in accordance with the provisions of clauses 16.1 to 16.5 above and that:
- 16.6.1 they shall not commence court proceedings in relation to any Deadlock or Dispute; and
 - 16.6.2 they shall not refer any Deadlock or Dispute to any arbitration proceedings other than those referred to in clause 16.5.

17 Duration and termination

- 17.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Shareholders until the earlier of the following events:
- 17.1.1 2nd April 2027;
 - 17.1.2 both of the Shareholders agree in writing to terminate this Agreement;
 - 17.1.3 one Shareholder issuing a minimum of 12 months notice in writing to the other Shareholder that it wishes to terminate this Agreement (any such notice to expire no

less than 12 months from its issue) and this will not be issued any sooner than 1 April 2023;

17.1.4 the date of expiry or termination (as applicable) of any one of the Care Services Contracts where the Shareholder does not renew a Care Service Contract; or

17.1.5 an effective resolution is passed or a binding order is made for the winding up of the Company;

provided that this Agreement shall cease to have effect as regards any Shareholder who ceases to hold any Shares in the Company, except for any provisions which are expressed to continue in force thereafter.

17.2 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Shareholders under this Agreement that have accrued up to the relevant date of termination and up until such date the Company will continue to deliver the Care Services in accordance with the Care Services Contracts and any other services which it has undertaken to provide.

17.3 Where this Agreement is to be terminated pursuant to clause 17.1:

17.3.1 where one Shareholder has given notice to terminate this Agreement then within three months thereof (or if this Agreement expires pursuant to 17.1.1 then at least three months prior to 2nd April 2027) the Shareholders shall agree the exit arrangement that will apply following termination. This will include proposals for post termination delivery of Care Services. In default of any agreement in relation thereto, the Company shall progress termination formalities on the basis that the Care Services provided to the Company prior to termination will be transferred back to the commissioning Council and post termination shall be provided by that Council;

17.3.2 all costs and liabilities of the Company resulting from termination (including, without limitation, pension and redundancy costs) will be borne by the Shareholders in the proportions set out in Schedule 2 depending on the type of cost incurred provided that costs in relation to the following specific matters will be borne as follows:

(a) all project costs will (unless otherwise referred to in this clause 17.3.2) be shared between the Councils on a 50/50 basis;

(b) all property related costs (other than in relation to Trinity Court) will be borne by the Council in whose area the property is located;

(c) all costs associated with Trinity Court will be apportioned and treated as if they were Central Management Costs falling within paragraph 5.2.1 of Schedule 2. Any liabilities that can be determined at the date of termination will be discharged at that time in such proportions. Unless only one Council decides to occupy Trinity Court (whereupon costs and liabilities in relation thereto shall be discharged by that party) all subsequent liabilities in relation thereto shall be borne by the Councils equally and any income derived therefrom shall be paid to the Councils in equal proportions; and

- (d) if any contracts of employment of any employees of the Company are transferred to a Council (or a Council offers employment to an employee of the Company) then any such transfer/new employment will constitute a deemed payment by that Council in respect of 100% of any redundancy and other termination costs that would otherwise have been incurred by the Company in respect of those employees and an adjustment will be made in the overall calculation of the termination costs payable by the Company in respect of the employees to reflect that such costs were not assumed in the proportions set out in Schedule 2;
- 17.3.3 to act fairly and equitably and in good faith as between themselves in respect of such termination such that no party should unduly benefit or be disadvantaged compared with the others and that the most appropriate approach applicable in the relevant circumstances should be adopted wherever possible, having regard to the Shareholders' respective duties (provided nothing in this clause 17.3.3 shall affect the provisions of clauses 17.3.1 and 17.3.2).; and
- 17.3.4 to ensure that as far as legally possible, there is good, timely, open and effective communication between the Shareholders, particularly leading up to such termination.
- 17.4 Upon termination of this Agreement pursuant to clause 17.1.5, the Shareholders shall (save as provided above):
 - 17.4.1 do all such acts and things as are necessary to procure (so far as they are able) (including, without limitation, the holding of a general meeting of the Company and the passing of appropriate Shareholder resolutions) that the Company be wound up and the Shareholders shall be responsible for all Costs associated with such winding-up in accordance with the Shareholding Proportion; and
 - 17.4.2 return any Confidential Information and Intellectual Property Rights to the Shareholder who originally provided it to the other Shareholder and/or the Company and procure the return by the Company of Confidential Information and Intellectual Property Rights and procure that the Company remove from its computer systems (to the extent possible) any such Confidential Information held by it.

18 2017 Shareholders Agreement

The parties hereby agree that this Agreement shall supersede the terms of the 2017 Shareholders Agreement.

19 Confidentiality

19.1 This clause applies to:

- 19.1.1 all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to the other party whether before or after the date of this Agreement;

19.1.2 any information concerning the business affairs of one party or other information confidential to that party which the other party learns as a result of the relationship between the parties pursuant to this Agreement;

including any information relating to any party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, **Confidential Information**).

19.2 In this clause, in relation to a particular item of Confidential Information:

19.2.1 the **Disclosing Party** means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and

19.2.2 the **Receiving Party** means the other party.

19.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:

19.3.1 keep the Confidential Information confidential;

19.3.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this clause 19; and

19.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.

19.4 Notwithstanding clause 19.3, the Receiving Party may disclose Confidential Information as follows:

19.4.1 to its professional advisers (each, a **Recipient**) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and

19.4.2 to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body.

19.5 This clause 19 shall not apply to any Confidential Information which:

19.5.1 is at the date of this Agreement or at a later date comes into the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;

19.5.2 was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the same pursuant to this Agreement) and which had not previously been obtained under an obligation of confidence; or

- 19.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.
- 19.6 Each party acknowledges that the other parties are subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation, and shall facilitate each party's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 19.7 to 19.10.
- 19.7 If a party (the **Recipient**) receives a Request for Information in relation to Information that another party is holding and which the Recipient does not hold itself, the Recipient shall refer to the other party such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the other party shall:
- 19.7.1 provide the Recipient with a copy of all such Information in the form that the Recipient requires as soon as practicable and in any event within 10 Business Days (or such other period as the Recipient acting reasonably may specify) of the Recipient 's request; and
- 19.7.2 provide all necessary assistance as reasonably requested by the Recipient to enable the Recipient to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 19.8 Following notification under clause 19.7, and up until such time as the other party has provided the Recipient with all the Information specified in clause 19.7, the other party may make representations to the Recipient as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Recipient shall be responsible for determining, at its absolute discretion:
- 19.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 19.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the other party respond directly to a Request for Information.
- 19.9 The Company acknowledges that (notwithstanding the provisions of clause 19.3) each Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the FOIA, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Company:
- 19.9.1 in certain circumstances without consulting with the Company; or
- 19.9.2 following consultation with the Company and having taken its views into account.
- 19.10 The Company shall transfer to the relevant Council any Request for Information received by it as soon as practicable and in any event within three Business Days of receiving it.

- 19.11 The parties acknowledge that any lists provided which list or outline Confidential Information are of indicative value only and that each party may nevertheless be obliged to disclose Confidential Information in accordance with clause 19.9.

20 General

- 20.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.
- 20.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 20.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.
- 20.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.
- 20.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 20.6 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.
- 20.7 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.
- 20.8 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:
- 20.8.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- 20.8.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 20.9 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.
- 20.10 Each of the parties acknowledges and agrees that:
- 20.10.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this

Agreement or not) other than as expressly set out in this Agreement or those documents;

20.10.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement;

20.10.3 nothing in this clause shall operate to limit or exclude any liability for fraud.

20.11 Save for a person who enters into a Deed of Adherence pursuant to clause 11.3, no person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

21 Assignment

This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party save where the Council's function are transferred or assigned to a successor body. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

22 No partnership or agency

Nothing in this Agreement is intended to or shall operate to create a partnership, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23 Notices

23.1 Any notice or other communication given under this Agreement:

23.1.1 shall be in writing;

23.1.2 shall be signed by or on behalf of the party giving it;

23.1.3 shall be served either by:

(a) delivering it by hand or sending it by pre-paid recorded delivery or registered post at the address set out in clause 23.2 of the party due to receive it and marked for the attention of the person named in clause 23.2 (or at such other address in the United Kingdom or marked for the attention of such other person as last notified in writing to the other parties); or

(b) by sending an email to the persons referred to in clause 23.2;

23.1.4 shall be deemed to have been received:

- (a) if delivered by hand, at the time of actual delivery;
- (b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting; and
- (c) in the case of email at the time of transmission.

23.2 The addresses of the parties for the purposes of clause 23.1 are as set out at the beginning of this Agreement and the notice details are as follows:

Wokingham

Attention: Director of Adult Services

Address: Council Offices, Shute End, Wokingham, Berkshire RG40 1BN

Email: email address of DASS

RBWM

Attention: Executive Director of Adults, Health and Housing

Address: Town Hall, St Ives Road, Maidenhead SL6 1RF

Email: strategic.commissioning@rbwm.gov.uk

Company

Attention: Chief Executive Officer

Address: Trinity Court, Molly Millers Lane, Wokingham, Berkshire RG41 2PY

Email: email address of CEO

23.3 Delivery of a notice is deemed to have taken place:

- 23.3.1 if delivered by hand, at the time that the notice is left at the relevant address;
- 23.3.2 if sent by post, at 9am on the second Business Day after posting; and
- 23.3.3 if sent by email, at the time of transmission.

23.4 This clause 23 does not apply to the service of any legal proceedings or other documents in any legal action.

24 Announcements and Reporting

- 24.1 Should either party wish to make an announcement relating to the Company or the Company's Group, the announcement shall be approved in writing by both parties before such announcement is made.
- 24.2 Any reports or information provided to the Councils where such is to be placed into the public domain shall be agreed between the Councils before any supply or publication is made.
- 24.3 Nothing in clause 24.1 and 24.2 shall prevent each Council from publishing information in respect to this Agreement and the Company where required as part of each Council's constitutional requirements or any legal requirements.

25 Counterparts

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

26 Applicable law

The parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English law.

This Agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Deed of Adherence

Deed of Adherence

dated 20[]

By [Limited] a company incorporated in England and Wales (registered number []) whose registered office is at [] (the **New Shareholder**) in favour of the persons whose names and addresses are set out in the Schedule to this Deed (the **Continuing Parties**).

Introduction

- (A) This Deed is supplemental to a Shareholders' Agreement dated 2017 the Council and the Company (the **Shareholders' Agreement**) and to [insert details of any subsequent Deeds of Adherence or Amendment].
- (B) The New Shareholder wishes to [subscribe for] [acquire] [] Shares in the capital of the Company [from Transferor].
- (C) Clause [] of the Shareholders' Agreement provides that no person other than a Shareholder shall acquire shares in the Company (whether by way of transfer or allotment or otherwise) unless he enters into a Deed of Adherence in substantially the form of this Deed.

Agreed terms

- 1 The New Shareholder confirms that [he/it] has been given a copy of the Shareholders' Agreement and covenants with the Continuing Parties to observe, perform and be bound by every provision of the Shareholders' Agreement (other than the Excluded Clauses) as if the New Shareholder had been an original party to it.
- 2 In this Deed the Excluded Clauses shall mean clauses [insert numbers of clauses to be excluded i.e. ones containing a personal obligation] of the Shareholders' Agreement.
- 3 Unless the context requires otherwise, words and expressions defined in the Shareholders' Agreement shall have the same meanings when used in this Deed.
- 4 This Deed shall be governed by and construed in accordance with English law.

This Deed of Adherence has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule

[Insert names and addresses of Continuing Parties]

Schedule 2 Operating Budget

1 Duration and Effect

1.1 In this Schedule the following definitions shall have effect:

1.1.1 **Contract Price** means the price payable to the Company under the Council's Care Service Contract and includes the costs of Care Services provided directly by the Company to the Council or Commissioned Services.

1.1.2 **Commissioned Services** means Care Services which are provided by a party other than the Company to the Councils.

1.2 The Operating Budget and Contract Price shall be determined in accordance with this Schedule.

1.3 The Operating Budget for financial year commencing April 2021 shall be as stated in the annexure to this Schedule and marked 'RBWM Budget 21/22' and 'Wokingham Budget 21/22'.

1.4 The Contract Price for each financial year commencing April 2021 shall be calculated in accordance with this Schedule.

2 Budget Setting

2.1 In each financial year, the Company will submit the Contract Price for the following year to the respective Directors of Adults Services of the Councils at least 5 months prior to the end of the current financial year. The Contract Price shall include the full Operating Budget, the Contract Price for each Council and the methodology of apportioning costs.

2.2 The Contract Price will be full cost of providing the Care Services under each Council's Care Services Contract and will include consideration of matters such as:

2.2.1 the full costs of the directly provided Services by the Company (including Central Management Costs, Support Services Costs, Restricted Purpose Costs, Services (direct sole provision) and Services (direct joint provision)) and shall include matters such as (but not limited to):

- (a) costs for management overhead;
- (b) central overhead costs such as utilities, property, vehicles;
- (c) staffing costs;
- (d) regulatory and compliance costs;
- (e) insurance costs; and
- (f) jointed funded staffing costs (funded with third party organisations).

2.2.2 income received from third parties including from private payers, third party councils, rent or licence fees;

- 2.2.3 expenditure incurred to third parties include rent payable in respect to occupation of property;
 - 2.2.4 ancillary pension costs (including those eligible employees who have not joined in previous financial years);
 - 2.2.5 ancillary parking and accommodation charges including taxes and utilities;
 - 2.2.6 costs of all support services necessary to deliver the Services
 - 2.2.7 any planned Savings required by the Councils; and
 - 2.2.8 Commissioned Services.
- 2.3 The Company will also submit a payment plan and financial profile for Care Services and Commissioned Services will includes payment dates when monies will be payable to the Company by the Councils during the financial year.
- 2.4 In relation to Commissioned Services, the payment plan will specify when monies are required to be deposited in advance with the Company. Unless specified in the payment plan then the Contract Price shall be paid monthly in advance for Commissioned Services and Care Services.
- 2.5 The Contract Price and payment plan shall be reviewed by the Councils and agreed within 60 days of receipt from the Company. If the Councils do not object to the estimated Contract Price and payment plan in the 60 day period then the Contract Price and payment plan shall be deemed to be agreed. If either of the Councils objects within the 60 day period then the matter shall be in dispute and referred for determination under clause 16 (Dispute Resolution).
- 2.6 The Company shall revise the Contract Price and/or payment plan during the financial year when either Council:
- 2.6.1 novates a contract for Commissioned Services to the Company;
 - 2.6.2 requests a variation to the Services in accordance with the relevant Care Services Contract; or
 - 2.6.3 requests assistance of the Company for the purposes of Business Continuity, Emergency Planning reasons or exercising any rights under this Agreement
- and in each case the procedure in paragraph 2.5 of this Schedule shall apply.
- 2.7 The Company shall recalculate for each Council the Contract Price every three months to determine whether the Contract Price is within 1% of the Operating Budget or to determine if the payment plan ensures that each part of the Contract Price is paid when required to discharge the cost of the Services and Commissioned Services.
- 2.8 Where the Company determines that the Contract Price is greater or less than [1]% of the existing Contract Price for one or both Councils then the Company shall recalculate the Contract Price and payment plan in accordance with the procedure in paragraph 2.5 of this Schedule. The Company will make a Council aware of any potential overspend as soon as it

becomes aware and will supply to the relevant Council the reasons for the overspend (current and projected), the proposed mitigation and will undertake the mitigation to limit the overspend.

2.9 Unless agreed in advance with each Council, the Contract Price shall only be used by the Company for the Services documented in the Operating Budget and where an element of the Contract Price has been provided for use for a single Care Service (whether a particular type of Care Service element or a particular application of a Care Service element) then the Council shall only use the Contract Price for the designated purpose.

3 Invoicing and Payments

3.1 Unless determined otherwise in the payment plan, the Contract Price shall be payable by the Councils to the Company monthly in advance on the first day of each month.

3.2 The Company shall invoice the Councils for payment of the Contract Price at the time the Contract Price are expressed to be payable in accordance with the payment plan.

3.3 Where the Company submits an invoice to the Council in accordance with paragraph 3.2 of this Schedule, the Council will consider and verify that invoice within 14 days.

3.4 The Council shall pay the Company any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.

3.5 Where the Council fails to comply with paragraph 3.3 of this Schedule, the invoice shall be regarded as valid and undisputed 14 days after the date on which it is received by the Council.

3.6 Where the Company has secured Commissioned Services from third parties and the Commissioned Service is provided under a contract between the Council and the third party, then the Company will forward any third party invoice to the Council within 7 days of receipt for the Council to discharge or where funds have been deposited with the Company, pay such invoice within the payment terms.

3.7 The Company will forward copies of all receipted invoices to the Council for Commissioned Services.

4 Year End Accounting.

4.1 By the 30th June (in respect to financial year 2021/22) and by 30th April (in respect to each following financial year) after each financial year, the actual Contract Price for that year will be calculated by the Company and forwarded to the Council. The apportionment of the shared elements of the overall Contract Price will be made using the same methodology as in paragraph 5 of this Schedule.

4.2 The final Contract Price shall be reviewed by the Councils and agreed within 30 days of receipt from the Company. If the Council does not object to the final Contract Price in the 30 day period then the Contract Price shall be deemed to be agreed. If either Council objects within the 30 day period then the matter shall be in dispute and referred under clause 16 (Dispute Resolution). The Contract Price shall be modified when required by an audit (whether audit

pursuant to clause [] of this Agreement or as requirement of the Companies Act 2006) and the adjustment in the final Contract Price paid by the Council shall be made.

4.3 Where the actual Contract Price differs from the estimated Contract Price paid over the year then the Councils shall make a balancing payment to each other or to the Company within 30 days of the agreed final Contract Price in respect to any over or under payment.

4.4 The Company will provide to the Councils :

4.4.1 draft company accounts by 30st June in respect to financial year 2021/22 and 30th April in respect to each following financial year; and

4.4.2 final company accounts by 31st August in respect to financial year 2021/22 and 30th June in respect to each following financial year;

in each financial year in accordance with the requirements of the Companies Act 2006 or such reasonable period as required by the Councils to enable the Councils to prepare its statutory accounts including statutory deadlines imposed by the Accounts and Audit Regulations 2015 (or such replacement requirements or regulations).

5 Budget Setting Principles

5.1 In each financial year the Councils and Company will agree a Contract Price and Operating Budget to reflect the following agreed principles based upon the nature of the Costs forming the Care Services or Commissioned Services:

5.2

<p>5.2.1 Central Management Costs</p>	<p>Central Management Costs means costs associated with the strategic management of the Company and Includes senior management staffing, central property costs (currently Trinity Court), insurance, group company costs, all regulatory and compliance costs and professional costs/fees in running the business — costs that cannot be allocated easily to a single council or costs which are deployed for the benefit of all Councils.</p>
<p>Basis of Contract Price</p>	<p>Central costs will be split on the proportion of Services (direct sole provision) & Services (direct joint provision) that both Councils commission from the Company under the Care Services Contract with a percentage agreed for statutory services.</p> <p>In respect to the financial year 2021/22, based on the current levels of service which each council has in Company, RBWM will pay the first 10% of costs for statutory services, with the remaining 90% split 60% RBWM and 40% Wokingham.</p> <p>In respect to subsequent financial years, RBWM will pay the first 10% where statutory services are within the Company and the balance shall be split on the proportion of Services (direct sole provision) & Services</p>

	(direct joint provision) that both Councils commission from the Company under the Care Services Contract.
Savings/overspends	The Savings or overspends will be shared by the Councils based upon the proportions set out above.
Income	The Income will be shared by the Councils based upon the proportions set out above.
Exceptions	None

5.2.2 Support Service Costs	Support Services Costs means Costs associated to support the day to day operation of the Company and includes Costs of finance, internal audit, payroll, IT, human resources support, These include support provided by third parties, the Council under the Support Service Agreement and Costs incurred for support services that the Company provides to itself.
Basis of Contract Price	Costs will be apportioned based upon the usage of the support service by each part of the Service commissioned by each Council. The apportionment will be based on a fair and reasonable basis relevant to the nature of the service being provided. Support Services Costs provided for the benefit of only one Council will be paid by the benefiting Council. Only the actual incurred cost may be charged to the Company
Savings/overspends	Any Savings/overspends will be incurred on the basis described above.
Income	Where income is received from third parties it will be apportioned and credited to the Costs of the Support Services on same basis
Exceptions	Where a party is unable to calculate apportionment in an open and transparent manner to the satisfaction of the other Council then the Council hosting the Support Service will pay the full Support Service Costs.

5.2.3 Restricted purpose Costs	Restricted purpose Costs means Costs associated with a specific purpose or restricted to a particular activity or funded under an agreement with conditions. e.g. activities funded through the Better Care Fund.
Basis of Contract Price	These funds may only be utilised by the Provider to supply the requested Care Service to the commissioning Council. The cost will be borne by commissioning Council.
Savings/overspends	The Savings/overspends will fall solely to the commissioning Council.
Income	Where income is received from third parties, then income will be credited to the commissioning Council
Exceptions	None

5.2.4 Commissioned Services Costs	Commissioned Services Costs means such Care Services provided to either the Council or the Company by a party other than the Company or a subsidiary or company within the same company group as the Company.
Basis of Contract	These funds may only be utilised by the Company to supply the requested Care Service to the commissioning Council. The cost will be borne by commissioning Council.
Savings/overspends	The Savings/overspends will fall solely to the commissioning Council.
Income	Where income is received from third parties (including other councils), then income will be credited to the commissioning Council.
Exceptions	None

<p>5.2.5 Services (direct sole provision)</p>	<p>Services (direct sole provision) means Care Services of Adult Social Care supplied by the Company to a single Council using the Company's own staff and facilities.</p>
<p>Basis of Contract Price</p>	<p>Where Costs are attributed to Care Services that are performed for the benefit of only one Council (for example the Costs of a care home that only provides Care Services to one Council or where an element of Care Services is provided to one or more Councils rather than all Councils) or where Care Services are organised to supply Care Services that relate a single Council only, then the Contract Price for that Care Service will be paid by the commissioning Council.</p>
<p>Savings/overspends</p>	<p>The Savings/overspends will fall solely to the commissioning Council.</p>
<p>Income</p>	<p>Where income is received from third parties (including other councils), then income will be credited to the commissioning Council on the same basis as Contract Price.</p>
<p>Exceptions</p>	<p>The Councils agree that Costs payable to the Berkshire LGPS under the Council's Admissions Agreement shall, subject to clause 14 (Funding arrangements) of this Agreement, continue to be payable by the relevant Council.</p>

<p>5.2.6 Services (direct joint provision)</p>	<p>Services (direct joint provision) means Care Services of Adult Social Care supplied by the Company jointly to more than one Council using the Company's own staff and facilities.</p>
<p>Basis of Contract Price</p>	<p>Where Costs are attributed to Care Services that are performed for the benefit of more than one Council or organised to supply Care Services to more than one Council, then the Contract Price for such Care Services will be apportioned based upon the proportioned usage of the Services as a percentage of the total Care Services (or for such Care Service type or individual part of the Care Service) for all Councils. For example, Costs of social workers, brokerage that may be organised to provide Care Services across borough boundaries</p>
<p>Savings/overspends</p>	<p>Savings/overspends will be apportioned in the same basis as the Contract Price.</p>

Income	Income will apportion in the same basis as the Contract Price. Unable to apportion then payable 50/50
Exceptions	None.

- 5.3 The Contract Price shall be calculated annually by the Company in paragraph 2.1 to 2.5 of this Schedule in respect to all Care Services and Commissioned Services provided by the Company to the Councils based upon the principles in paragraph 5.2 of this Schedule. Any Care Services provided to a council not a party to this Agreement shall be treated as income and such Care Services will be provided at a Contract Price agreed between the Councils.
- 5.4 Any variation that increases or decreases the Care Services or Commissioned Services shall require the Company to recalculate the Contract Price and where such variation requires the Councils to make an increase to their Contract Price shall only be implemented by the Company when the requesting Council pays the associated Costs or reduces the associated Care Service.

RBWM BUDGET 21/22

Service	£
Older Persons	10,417,570
Learning Disabilities	10,728,470
Mental Health	3,435,120
Provider Services	5,334,620
Support & Operations	2,775,270
Better Care Fund	3,958,100
Total	£36,649,150

WOKINGHAM BUDGET 21/22

Service	£
Extra Care	1,641,100
Independent Living	1,479,650
Day Care	1,437,850
Residential Care	1,898,910
Supported Employment	361,420
Domiciliary Care	794,610
Provider of Last Resort	9,900
Total	£7,623,440

Schedule 3 Amended Articles of Association

Signed by _____ for and on behalf)
of **Wokingham Borough Council**)

Signed by _____ for and on behalf)
of **Royal Borough of Windsor and Maidenhead**)

Signed by _____ for and on behalf)
of **Optalis Limited**) Director & Chief Executive Officer

This page is intentionally left blank