



Ministry of
JUSTICE

OFFICIAL SENSITIVE

Contract for the Provision of Learning and Skills at HMP Berwyn

SCHEDULE 10 – BUSINESS CONTINUITY AND DISASTER RECOVERY



Contract for the Provision of Learning and Skills at HMP Berwyn

1. DEFINITIONS

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement clause A1 (Definitions):

"BCDR Plan"	has the meaning given to it in paragraph 3.1 of this Schedule;
"Business Continuity Plan"	has the meaning given to it in paragraph 3.2(b) of this Schedule;
"Contractor's Proposals"	has the meaning given to it in paragraph 8.3 of this Schedule;
"Disaster"	means the occurrence of 1 or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of 24 hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
"Disaster Recovery Plan"	has the meaning given to it in paragraph 3.2(c) of this Schedule;
"Disaster Recovery Services"	the services embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster;
"Disaster Recovery System"	the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster;
"Insolvency Continuity Plan"	has the meaning given to it in paragraph 3.2(d) of this schedule;
"Insolvency Event"	means any of the events detailed in clause H1.1(a)-(g) in the case of a company Contractor, or clause H2.1(a)-(g) in the case of an individual Contractor (Insolvency and Change of Control);



Contract for the Provision of Learning and Skills at HMP Berwyn

"Related Contractor"	any person who provides services to the Authority which are related to the Services from time to time;
"Review Report"	has the meaning given to it in paragraph 8.3 of this Schedule; and

2.



Contract for the Provision of Learning and Skills at HMP Berwyn

3. BCDR PLAN

3.1 Within 30 Working Days of the Commencement Date the Contractor shall prepare and deliver to the Authority for Approval a plan, which shall detail the processes and arrangements that the Contractor shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Contractor, and/or any Sub-Contractor); and
- (b) the recovery of the Services in the event of a Disaster ("**BCDR Plan**").

3.2 The BCDR Plan shall be divided into three sections:

- (a) Section 1 which shall set out general principles applicable to the BCDR Plan;
- (b) Section 2 which shall relate to business continuity (the "**Business Continuity Plan**");
- (c) Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**") and
- (d) Section 4 which shall relate to an Insolvency Event of the Contractor, and/or any Sub-Contractor (the "**Insolvency Continuity Plan**").

3.3 Following receipt of the draft BCDR Plan from the Contractor, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within 20 Working Days of its submission, then such dispute shall be resolved in accordance with the dispute resolution procedure set out in clause I1 (Dispute Resolution). The Contractor agrees that it will not commence provision of the Services until the contents of the BCDR Plan has been agreed.

4. SECTION 1 OF THE BCDR PLAN - GENERAL PRINCIPLES

4.1 Section 1 of the BCDR Plan shall:

- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the BCDR Plan link to each other;



Contract for the Provision of Learning and Skills at HMP Berwyn

- (b) provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Services and any goods and/or services provided to the Authority by a Related Contractor;
- (c) contain an obligation upon the Contractor to liaise with the Authority and any Related Contractors with respect to business continuity, disaster recovery and insolvency continuity where applicable;
- (d) detail how the BCDR Plan interoperates with any overarching and/or connected disaster recovery, business continuity, and/or insolvency continuity plan of the Authority and any of its other Related Contractors in each case as notified to the Contractor by the Authority from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (ii) identification of any single points of failure within the provision of Services and processes for managing those risks;
 - (iii) identification of risks arising from the interaction of the provision of Services with the services provided by a Related Contractor;
 - (iv) identification of risks arising from an Insolvency Event of the Contractor and/or any Sub-Contractor; and
 - (v) a business impact analysis of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details for the Contractor (and any Sub-Contractors) and for the Authority;



Contract for the Provision of Learning and Skills at HMP Berwyn

- (i) identify the procedures for reverting to "normal service";
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
- (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
- (l) provide for the provision of technical assistance to key contacts at the Authority as required by the Authority to inform decisions in support of the Authority's business continuity plans.

4.2 The BCDR Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
- (b) the adverse impact of any Disaster, service failure, an Insolvency Event of the Contractor and/or any Sub-Contractor, or disruption on the operations of the Authority, is minimised as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
- (d) it details a process for the management of disaster recovery testing.

4.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services and the business operations supported by the provision of Services.

4.4 The Contractor shall not be entitled to any relief from its obligations under the Key Performance Indicators or to any increase in the Price (and the parties agree and acknowledge that the Price shall in no event exceed the Maximum Annual Funding, save where otherwise agreed between the parties) to the extent that a Disaster occurs as a consequence of any breach by the Contractor of this Contract.

5. SECTION 2 OF THE BCDR PLAN - BUSINESS CONTINUITY

5.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of



Contract for the Provision of Learning and Skills at HMP Berwyn

Services remain supported and to ensure continuity of the business operations supported by the Services including:

- (a) the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and
- (b) the steps to be taken by the Contractor upon resumption of the provision of Services in order to address the effect of the failure or disruption.

5.2 The Business Continuity Plan shall:

- (a) address the various possible levels of failures of or disruptions to the provision of Services;
- (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services;
- (c) specify any applicable Key Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Key Performance Indicators in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and
- (d) set out the circumstances in which the Business Continuity Plan is invoked.

6. SECTION 3 OF THE BCDR PLAN - DISASTER RECOVERY

6.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

6.2 The Disaster Recovery Plan shall include the following:

- (a) the technical design and build specification of the Disaster Recovery System;



Contract for the Provision of Learning and Skills at HMP Berwyn

- (b) details of the procedures and processes to be put in place by the Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including:
 - (i) the process for conducting a business impact assessment to determine the acceptable length of time of non-availability;
 - (ii) such procedures and processes as are required to ensure compliance with ISO 22301:2019
 - (iii) identification of all potential disaster scenarios;
 - (iv) risk analysis;
 - (v) documentation of processes and procedures;
 - (vi) invocation rules;
 - (vii) Service recovery procedures; and
 - (viii) steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of the Services;
- (c) any applicable Key Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Key Performance Indicators in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;
- (d) details of how the Contractor shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- (e) access controls to any disaster recovery sites used by the Contractor in relation to its obligations pursuant to this Schedule; and
- (f) testing and management arrangements.

7. SECTION 4 OF THE BCDR PLAN – INSOLVENCY CONTINUITY PLAN

- 7.1 The Insolvency Continuity Plan shall be designed by the Contractor to permit continuity of the business operations of the Authority supported by the



Contract for the Provision of Learning and Skills at HMP Berwyn

Services through continued provision of the Services following an Insolvency Event of the Supplier, and/or any Sub-Contractor with, as far as reasonably possible, minimal adverse impact.

7.2 The Insolvency Continuity Plan shall include the following:

- (a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Key Personnel;
- (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Contractor and Sub-Contractors where failure of those dependencies could reasonably have an adverse impact on the Services;
- (c) plans to manage and mitigate identified risks;
- (d) details of the roles and responsibilities of the Contractor and/or Sub-Contractors to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
- (e) details of the recovery team to be put in place by the Contractor (which may include representatives of the Contractor and Sub-Contractors); and
- (f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Contractor.

8. REVIEW AND AMENDMENT OF THE BCDR PLAN

8.1 The Contractor shall review and update the BCDR Plan (and the risk analysis on which it is based):

- (a) at its own cost on a regular basis and as a minimum once every 6 Months;
- (b) at its own cost within three calendar Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 10;
- (c) within 30 days of a Change of Control; and



Contract for the Provision of Learning and Skills at HMP Berwyn

- (d) where the Authority requests in writing any additional reviews (over and above those provided for in paragraphs 7.1(a) and 7.1(b) of this Schedule) whereupon the Contractor shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Contractor shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The reasonable costs of both Parties of any such additional reviews shall be met by the Authority except that the Contractor shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.
- 8.2 Each review of the BCDR Plan pursuant to paragraph 8.1 shall assess its suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Contractor within such period as the Authority shall reasonably require.
- 8.3 The Contractor shall, within 20 Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a "**Review Report**") setting out the Contractor's proposals (the "**Contractor's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 8.4 Following receipt of the Review Report and the Contractor's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Contractor's Proposals. If the Parties are unable to agree Review Report and the Contractor's Proposals within 20 Working Days of its submission, then such dispute shall be resolved in accordance with the dispute resolution procedure set out in clause I1 (Dispute Resolution).
- 8.5 The Contractor shall ,as soon as is reasonably practicable after receiving the approval of the Contractor's Proposals, effect any change in its practices or procedures necessary so as to give effect to the Contractor's Proposals. Any such change shall be at the Contractor's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.



Contract for the Provision of Learning and Skills at HMP Berwyn

9. TESTING OF THE BCDR PLAN

9.1 The Contractor shall test the BCDR Plan:

- (a) regularly and in any event not less than once in every Contract Year;
- (b) where in the opinion of the Authority there has been a major reconfiguration of the Services;
- (c) at any time where the Authority considers it necessary (acting in its sole discretion).

9.2 If the Authority requires an additional test of the BCDR Plan, it shall give the Contractor written notice and the Contractor shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Contractor's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Contractor's costs of that failed test shall be borne by the Contractor.

9.3 The Contractor shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority.

9.4 The Contractor shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.

9.5 The Contractor shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:

- (a) the outcome of the test;
- (b) any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
- (c) the Contractor's proposals for remedying any such failures.

9.6 Following each test, the Contractor shall take all measures requested by the Authority to remedy any failures in the BCDR Plan and such remedial activity



Contract for the Provision of Learning and Skills at HMP Berwyn

and re-testing shall be completed by the Contractor, at its own cost, by the date reasonably required by the Authority.

10. INVOCATION OF THE BCDR PLAN

10.1 In the event of a complete loss of service or in the event of a Disaster, the Contractor shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Contractor shall invoke or test the BCDR Plan only with the prior consent of the Authority.

10.2 The Insolvency Continuity Plan element of the BCDR Plan, including any linked elements in other parts of the BCDR Plan, shall be invoked by the Contractor:

- (a) where an Insolvency Event of a Sub-Contractor could reasonably be expected to adversely affect delivery of the Services and/or
- (b) where there is an Insolvency Event of the Contractor and the insolvency arrangements enable the Contractor to invoke the plan.

11. FORCE MAJEURE

The Contractor shall not be entitled to relief under clause I2 (Force Majeure) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.