**Services Agreement**

relating to Prison Retail Services

1. THE SECRETARY OF STATE FOR JUSTICE

Dated 20

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**This agreement** is made the day of 20

**Between:**

1. **The Secretary of State for Justice of The Ministry of Justice** (the **Authority**); and
2. [ ]a company registered in England and Wales under company number[ ]

whose registered office is [ ](the **Supplier**) (each a **Party** and together the **Parties**).

**INTRODUCTION**

1. The Authority is responsible for providing access to certain goods and services for prisoners detained by Her Majesty's Prison and Probation Service (HMPPS) and wishes to procure the provision of such goods along with logistics and warehousing services in order to provide a retail service to the prison population in the United Kingdom.
2. On 11th January 2021 the Authority advertised in the Official Journal of the European Union (reference FTS 00163]), inviting prospective suppliers to submit proposals for the Services (as defined in this Agreement).
3. The Supplier is a leading provider of contract logistics and distribution and has experience in the requirement of delivery of managed services.
4. On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
5. Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**IT IS AGREED** as follows:

**SECTION A – PRELIMINARIES**

# DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 the singular includes the plural and vice versa;

1.2.2 reference to a gender includes the other gender and the neuter;

1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;

1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

1.2.5 any reference in this Agreement which immediately before Exit Day was a reference to (as it has effect from time to time):

1. any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic

law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

1. any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;

1.2.6 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words

shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";

1.2.7 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

1.2.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;

1.2.9 references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and

1.2.10 references to this Agreement are references to this Agreement as amended from time to time.

1.2.11 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.

1.3 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

1.3.1 the Clauses and Schedule 1 (Definitions);

1.3.2 Schedules 2.1 (Services Description) and 2.2 (Performance Levels) and their Annexes;

1.3.3 any other Schedules and their Annexes (other than Schedule 4.1 (Supplier Solution) and its Annexes); and

1.3.4 Schedule 4.1 (Supplier Solution) and its Annexes (if any).

1.4 The Schedules and their Annexes form part of this Agreement.

1.5 In entering into this Agreement, the Authority is acting as part of the Crown.

# DUE DILIGENCE

2.1 The Supplier acknowledges that:

2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;

2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any Due Diligence Information;

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

1. the Authority Requirements;
2. the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future operating environment;
3. the operating processes and procedures and the working methods of the

Authority;

1. the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
2. the existing contracts (including any licences, support, maintenance and other agreements relating to the operating environment) referred to in any Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and

2.1.4 it has advised the Authority in writing of:

1. each aspect, if any, of the operating environment that is not suitable for the provision of the Services;
2. the actions needed to remedy each such unsuitable aspect; and
3. a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement, including the Services Description and/or Authority Responsibilities as applicable.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor, subject to Clause 2.1, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

* + 1. any unsuitable aspects of the operating environment;
    2. any misinterpretation of the Authority Requirements; and/or
    3. any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of any Due Diligence Information.

# WARRANTIES

3.1 The Authority represents and warrants that:

3.1.1 it has full capacity and authority to enter into and to perform this Agreement;

3.1.2 this Agreement is executed by its duly authorised representative;

3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and

3.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable

principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents and warrants that:

3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

3.2.2 it has full capacity and authority to enter into and to perform this Agreement;

3.2.3 this Agreement is executed by its duly authorised representative;

3.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;

3.2.5 it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;

3.2.6 its execution, delivery and performance of its obligations under this Agreement

will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;

3.2.7 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this

Agreement or to the extent that the Supplier has otherwise disclosed to the

Authority in writing prior to the date of this Agreement;

3.2.9 it has notified the Authority in writing of any Occasions of Tax Non- Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;

3.2.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Goods and Services by the Authority;

3.2.11 the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;

3.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;

3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator,

manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and

3.2.14 within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.

3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination, which the Authority may have in respect of breach of that provision by the Supplier.

3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

**SECTION B – THE SERVICES**

# TERM

4.1 This Agreement shall:

4.1.1 come into force on the Effective Date, save for Clauses 1 (Definitions and Interpretation), 3 (Warranties), 4 (Term), 19 (Confidentiality), 20 (Transparency and Freedom of Information), 22 (Publicity and Branding), 23 (Limitations on Liability), 34 (Waiver and Cumulative Remedies), 35 (Relationship of the Parties),

37 (Severance), 39 (Entire Agreement), 40 (Third Party Rights), 41 (Notices), 42 (Disputes) and 43 (Governing Law and Jurisdiction), which shall be binding and enforceable as between the Parties from the date of signature; and

4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 30 (Termination Rights), terminate:

1. at the end of the Initial Term; or
2. if the Authority elects to extend the Initial Term by giving the Supplier at least 3 months' notice before the end of the Initial Term, at the end of the Extension Period.

**Financial Reporting**

4.2 The Supplier shall provide the Quarterly Dun and Bradstreet Reports to the Authority in accordance with Schedule 7.5 *(Financial Reports and Audit Rights)*, from the Effective Date until expiry or earlier termination of this Agreement.

# SERVICES AND GOODS

**Standard of Services and** **Goods**

5.1 The Supplier shall provide:

5.1.1 the Transition Services from (and including) the Transition Services Commencement Date; and

5.1.2 the Operational Services in each case from (and including) the relevant Operational Service Commencement Date.

5.2 The Supplier shall ensure that:

5.2.1 the Services:

1. comply in all respects with the Services Description; and
2. are supplied in accordance with the Supplier Solution and the provisions of this Agreement,

5.2.2 the Goods:

1. comply in all respects with the National Product List;
2. are supplied in accordance with the Supplier Solution and provisions of this Agreement;
3. are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the

Supplier by the Authority expressly or by implication;

1. are free from Defects in design material and workmanship;
2. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling, loading and unloading, and Delivery of the Goods.

5.3 The Supplier shall:

5.3.1 perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:

1. all applicable Law;
2. Good Industry Practice;
3. the Standards (including, without limitation, any ethical standard requirement set out in the Services Description);
4. the Baseline Security Requirements;
5. the Quality Plans;
6. the Authority IT Strategy;
7. the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3.1(a) to (f); and

5.3.2 deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

5.3.3 notify the Authority of any event which may adversely impact the Supplier's ability

to perform the Services or deliver the Goods, and any other risks connected with the Goods and Services, for the purposes of the Authority's maintenance of a Risk Register relating the Agreement.

* 1. In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3.1(a) to 5.3.1(g), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

**Supply of** **Goods**

* 1. Where, as part of the Services, the Supplier sells Goods to the Authority:
     1. the relevant Goods and their prices shall be as set out in National Product List;
     2. the Supplier warrants that Goods with a shelf life shall comply with the minimum requirements detailed for the length of outstanding shelf life on Delivery of the Goods set out in the National Product List. Where the Goods do not comply with such minimum requirements the Supplier shall as soon as reasonably practicable replace such defective Goods at its own expense;
     3. the Supplier shall ensure that sufficient volumes of Goods are available in the Retail Workshops and shall Deliver sufficient volumes of Goods to meet all orders placed for Goods by End Users in accordance with the Services Description; and
     4. the Supplier shall ensure that the Goods are Delivered to Serviced Sites and to any End User in accordance with the Services Description (or in the case of any Bulk Order or order for Express Services (if any) by any date specified in the order), and within the delivery windows set out for each Serviced Site in the Delivery Schedule.
  2. The Authority may inspect any of the Goods at any time before Delivery and/or any time before unloading at the Retail Workshop. If following such inspection the Authority considers that the Goods do not conform or are unlikely to comply with the requirements of Clauses 5.2 or 5.5, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action at its own cost as is necessary to ensure compliance. The Supplier shall remain fully responsible for the Goods and any such inspection shall not reduce or otherwise affect the Supplier's obligations under the Agreement and the Authority shall have the right to conduct further inspections after the Supplier has carried out any remedial actions in accordance with this Clause 5.6.
  3. The Authority is under no obligation to accept any Goods delivered in excess of the quantity ordered or where Goods are delivered in error or to the wrong delivery point.
  4. The End User may return any Goods, following delivery to the End User, for any reason. The Supplier shall handle any return, rejection or Refusal of Goods in accordance with Clauses 5.9 to 5.12 below.
  5. Where following inspection by the Authority or any End User following Delivery or unloading at a Retail Workshop, the Goods fail to meet the requirements of Clauses 5.2 or 5.5, the Authority may by giving notice to the Supplier:
     1. reject any of the Goods; and
     2. have the Goods promptly, free of charge and in any event within 2 Working Days, replaced by the Supplier with Goods which conform in all respects with the requirements of Clauses 5.2 or 5.5 and due delivery shall not be deemed to have taken place until replacement has occurred; or
     3. treat the Agreement as discharged by the Supplier's breach and obtain a refund (if payment for the Goods has already been made) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other Goods in replacement.
  6. Any Goods rejected or returned shall be returned to the Supplier at the Supplier's risk and expense (or at the option of the Authority, destroyed by the Authority).
  7. Any replacement Goods supplied under this Clause shall be subject to the same requirements as the Goods they replace and such requirements shall run from the actual date of Delivery of the repaired or replaced Goods.
  8. Where following Delivery of the Goods, the Authority Refuses the Goods, the Authority shall by giving notice to the Supplier:
     1. where the Goods are fit for resale, return such Goods which have been Refused to the Supplier at the appropriate Retail Workshop to be added back into the inventory of such Retail Workshop for future orders; or
     2. where the Goods are not fit for resale (but are not rejected in accordance with Clause 5.9), destroy the Goods.

**Risk and** **Title**

5.13 Without prejudice to any other rights or remedies of the Authority:

* + 1. risk in the Goods shall pass to the Authority at the time of unloading at the relevant Retail Workshop; and
    2. ownership of the Goods shall pass to the Authority at the time of unloading at the relevant Retail Workshop; and
    3. for the avoidance of doubt:

1. risk in the Goods whilst in transit to the Retail Workshop and whilst in transit from

the Retail Workshop to the Serviced Site, and whilst in transit from the Serviced Site to the Retail Workshop (together "**In Transit Goods**") shall remain with the Supplier;

1. risk in the Goods whilst in the Retail Workshop and at the Serviced Site, shall remain with the Authority.
   1. Where the Authority Refuses any Goods in accordance with Clause 5.12, unless the Authority destroys the Goods, such Goods will be returned to the relevant Retail Workshop and placed back into the inventory for future orders.
   2. The Supplier shall (subject to Clauses 28 and 29) promptly issue a refund for any In Transit Goods lost, damaged or destroyed.

**Packaging and** **Labelling**

* 1. The Supplier shall ensure that:
     1. the Goods are properly packed and secured in such a manner to enable them to reach their destination in good condition;
     2. each Delivery of Goods is accompanied by a Goods Received Note (GRN) which as a minimum shows:

1. the reference dispatch/order number;
2. the number of totes/quantity of the Goods;
3. delivery address and drop points;
4. number of totes/dollies/chill bags/thermos containers/buffer box/reception packs in the consignment;
5. special storage instructions (if any);

5.16.3 except where otherwise agreed between the parties, delivery includes the unloading of the Goods by the Supplier's Personnel or carriers at agreed location as the Authority or a duly authorised person reasonably directs or as indicated on the delivery note.

* 1. The Supplier shall ensure that the Goods are labelled and packaged in accordance with this Agreement and Services Description.
  2. The Supplier shall comply with the Packaging and Packaging Waste Directive (94/62/EC) implemented in the UK by the Packaging (Essential Requirements) Regulations 2015 (SI 2015/1640).
  3. Upon request by the Authority, the Supplier shall remove and dispose of all packaging materials from the Authority Premises within the period specified by the Authority.
  4. The Supplier shall:
     1. use packaging capable of easy recovery for further use or recycling;
     2. packaging materials shall be easily separable by hand into recyclable parts consisting of one material (e.g. cardboard, paper, plastic, textile);
     3. make maximum use of materials taken from renewable sources that no unnecessary limitations on the use of recycled materials exist; and
     4. if requested, provide the Authority with a description of the product packaging and

evidence to satisfy the Authority that it is reusing, recycling and reviewing its use

of packaging. The evidence should provide proof of compliance with BS EN 13430 on recyclability or BS EN 13429 on reusability, or equivalent.

**Supplier** **covenants**

5.21 The Supplier shall:

* + 1. subject to Clauses 9.1, 9.7 and 9.17, at all times allocate sufficient resources with the appropriate technical expertise to supply the Goods and any other Deliverables and to provide the Services in accordance with this Agreement;
    2. save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (Change), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services and the supply of Goods;
    3. ensure that:

1. it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services and Goods by the Authority;
2. the release of any new Software or upgrade to any Software complies with any interface requirements in the Services Description (or otherwise notified by the Authority to the Supplier from time to time) and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (Security Management)) shall notify the Authority 1 months before the release of any new Software or Upgrade;
3. all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently (where applicable) and will be supported versions of that Software and perform in all material respects in accordance with the relevant specification;
4. any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Goods or other Deliverables and/or the Services shall enable the Good or other Deliverables and/or Services to meet the Authority Requirements; and
5. the Supplier System and Supplier Equipment used in the performance of the

Services will, subject (in the case of Third Party Software only) to any rights of any third party licensors and to any reasonable third party licence restrictions, be free of all encumbrances (except as agreed in writing with the Authority);

5.21.4 minimise any disruption to the Services, provision of the Goods, the IT Environment and/or the Authority's operations when carrying out its obligations under this Agreement (including without limitation by carrying out any Upgrade, Update or New Release outside of Business Days and with prior notification to the Authority);

5.21.5 ensure that any Documentation and training provided by the Supplier to the Authority and any Prisoner Workers are comprehensive, accurate and prepared in accordance with Good Industry Practice;

5.21.6 co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services and Goods to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely

transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;

5.21.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Subcontractor in respect of any Goods or other Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;

5.21.8 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.21.7;

5.21.9 provide the Authority with such assistance as the Authority may reasonably

require during the Term in respect of the supply of the Good and Services;

5.21.10 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;

5.21.11 notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;

5.21.12 notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;

5.21.13 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority;

5.21.14 ensure that, any sub-contractors appointed by the Supplier to provide accreditations or qualifications to Prisoner Workers in accordance with the Services Description, have the proper and appropriate skills, qualifications, accreditation or other such proper and appropriate status to be capable of awarding such accreditations and qualifications to the Prisoner Workers;

5.21.15 comply with all reasonable instructions of the Authority, in relation to any Release on Temporary Licence or other security matters connected with any Prisoner; and

5.21.16 manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.

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

5.23 Without prejudice to Clauses 17.2 and 17.3 (IPRs Indemnity) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:

5.23.1 remedy any breach of its obligations in Clauses 5.21.2 and 5.21.3(a) to 5.21.3(e) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);

5.23.2 remedy any breach of its obligations in Clause 5.21.1 and Clauses 5.21.4 to 5.21.8 inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and

5.23.3 meet all the costs of, and incidental to, the performance of such remedial work and for the avoidance of doubt any such costs shall not contribute to any cap on liability set out in this Agreement,

and any failure of the Supplier to comply with its obligations under Clause 5.23.1 or Clause 5.23.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

**Specially Written Software** **warranty**

5.24 Without prejudice to Clauses 5.21 (Supplier Covenants) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:

5.24.1 be free from material design and programming errors;

5.24.2 perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and

5.24.3 not infringe any Intellectual Property Rights.

**Continuing obligation to provide the Goods and** **Services**

5.25 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Goods and Services, notwithstanding:

5.25.1 any withholding of the Charges by the Authority pursuant to Clause 7.2.4(b) (Performance Failures);

5.25.2 the existence of an unresolved Dispute; and/or 5.25.3 any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Agreement under Clause 30.3.1 (Termination by the Supplier) for failure to pay undisputed Charges.

**Optional** **Services**

5.26 The Authority may request that the Supplier to provide any or all of the Optional Services at any time by submitting a Change Request. The Supplier acknowledges that the Authority is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Optional Services from any third party.

5.27 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.

5.28 Following receipt of the Authority's notice pursuant to Clause 5.9:

5.28.1 the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;

5.28.2 the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Transition Management Plan;

5.28.3 any additional charges for the Optional Services shall be agreed in accordance with the Change Control Procedure; and

5.28.4 the Supplier shall, from the date agreed in any transition management plan agreed for the Optional Services (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services

(if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Schedule 2.2 (Performance Levels).

**Power of** **attorney**

5.29 By way of security for the performance of its obligations under Clauses 5.21.7 and 5.21.8 (Supplier covenants) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.29 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

**Authority** **Responsibilities**

5.30 The Authority shall comply with its responsibilities set out in Schedule 3 (Authority Responsibilities).

# TRANSITION

**Transition Plan and** **Delays**

6.1 The Parties shall comply with the provisions of Schedule 6.1 (Transition Plan) in relation to the agreement and maintenance of the Agreed Transition Management Plan.

6.2 The Supplier shall:

6.2.1 comply with the Outline Transition Management Plan and the Agreed Transition Management Plan; and

6.2.2 ensure that each Milestone is Achieved on or before its Milestone Date.

6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:

6.3.1 it shall:

1. notify the Authority in accordance with Clause 25 (Rectification Plan Process); and
2. comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
3. use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

**Workshop Readiness and Achievement** **of Milestones**

6.4 The Parties shall comply with the provisions of Schedule 6.2 (Workshop Readiness Check) in relation to the procedures to determine whether a Milestone, Test or Workshop Readiness Check has been Achieved.

# PERFORMANCE INDICATORS

7.1 The Supplier shall:

7.1.1 provide the Transition Services in such a manner so as to meet or exceed the Target Performance Level for each relevant Performance Indicator during the Transition Period.

7.1.2 provide the Operational Services in such a manner so as to meet or exceed the

Target Performance Level for each Performance Indicator from the Operational Services Commencement Date; and

7.1.3 comply with the provisions of Schedule 2.2 (Performance Levels) in relation to the monitoring and reporting on its performance against the Performance Indicators.

**Performance** **Failures**

7.2 If in any Service Period:

7.2.1 a KPI Failure occurs, Service Credits calculated in accordance with Schedule 2.2

(Performance Levels) shall be deducted from the Charges in accordance with Paragraph 6.4 of Schedule 7.1 (Charges and Invoicing);

7.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2.1);

7.2.3 a PI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or

7.2.4 a Material PI Failure occurs:

1. the Supplier shall comply with the Rectification Plan Process; and
2. the Authority may withhold a proportionate amount of the Charges in accordance with the process set out in Clause 10.7 (Set Off and Withholding) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

Service Credits shall not be the Authority's exclusive financial remedy for a KPI Failure and shall be without prejudice to any other right or remedy to which the Authority may be entitled whether under other express provisions of this Agreement, under general Law or otherwise. Unacceptable KPI Failure.

7.3 If in any Service Period an Unacceptable KPI Failure occurs:

* + 1. the Authority shall (subject to the Service Credit Cap set out in Clause 23.5 (Financial and other limits)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being

"**Compensation for Unacceptable KPI Failure**"); and

* + 1. if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

provided that the operation of this Clause 7.3 shall be without prejudice to any right which the Authority may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

7.4 The Supplier:

* + 1. agrees that the application of Clause 7.3 is commercially justifiable where an Unacceptable KPI Failure occurs; and
    2. acknowledges that it has taken legal advice on the application of Clause 7.3 and has had the opportunity to price for that risk when calculating the Charges.

**Critical Performance** **Failure**

* 1. If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 30.1 or 30.2 (Termination by the Authority).

**Changes to Performance Indicators and Service** **Credits**

* 1. Not more than once in each Contract Year the Authority may, on giving the Supplier at least 3 months' notice:
     1. propose a change to the Service Points that apply in respect of one or more specific Key Performance Indicators; and/or
     2. propose to convert one or more:

1. Key Performance Indicators into a Subsidiary Performance Indicator; and/or
2. Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Authority shall also set out in the notice details of what will constitute a

Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator);

such proposed change(s) shall be agreed between the parties (acting reasonably) in accordance with the Change Control Procedure.

# SERVICES IMPROVEMENT

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Performance Management Board once every 12 months on:

8.1.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Goods and Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;

8.1.2 new or potential improvements to the Goods and Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;

8.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;

8.1.4 changes in business processes and ways of working that would enable the

Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or

8.1.5 changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

# AUTHORITY PREMISES, EQUIPMENT AND MAINTENANCE

**Authority** **Assets**

9.1 On or before the Effective Date the Authority shall provide the Authority Workshop Assets as listed in the Asset Register.

9.2 The Supplier shall at all times during the Term, maintain the Asset Register in accordance with Schedule 8.4 (Reports and Records) in a format and containing the information as the Authority may request from time to time.

9.3 The Supplier shall be entitled to use any Authority Workshop Assets provided in accordance with Clause 9.1 free of charge in its provision of the Goods and Services, provided always that:

9.3.1 title and ownership of the Authority Workshop Assets shall always rest with the Authority;

9.3.2 it shall maintain such Authority Workshop Assets in accordance with Clause 9.27 (Maintenance);

9.3.3 it shall provide such access and assistance to the Authority or any agent of the Authority as the Authority may reasonably require for the purposes of maintaining, repairing, servicing or otherwise inspecting the Authority Workshop Assets;

9.3.4 it shall not charge, sell, offer for sale or otherwise incumber such Authority Workshop Assets.

9.4 The Authority provides no representation or warranty as to the availability, suitability, or condition of any Authority Workshop Assets.

9.5 Where the Supplier becomes aware that the condition of any of the Authority Workshop Assets renders such assets unsafe or un-operational ("**Unfit Assets**"), the Supplier shall notify the Authority as soon as it becomes aware of such issue.

9.6 Where the Authority reasonably determines that the Authority Workshop Assets are Unfit Assets, then, provided that the Supplier has complied with its obligations under Clause 9.27 and has taken all reasonable steps to mitigate any detrimental impact or disruption resulting from the Unfit Assets, then to the extent that any Supplier Non-Performance directly results from the Unfit Assets such Supplier Non-Performance shall be considered to have been a result of an Authority Cause for the purposes of Clause 28.

**Authority** **Premises**

9.7 The Authority shall subject to their compliance with Schedule 2.4 (Security Management), provide the Supplier with access to such parts of the Authority's Premises as the Supplier reasonably requires for the purposes only of properly providing the Services and Goods.

9.8 Any land or premises made available from time to time to the Supplier by the Authority in connection with this Agreement are on a non-exclusive licence basis free of charge and are used by the Supplier solely for the purpose of performing its obligations under this Agreement. The Supplier has the use of such land or premises as licence and shall vacate the same on termination of the Agreement or as otherwise instructed by the Authority.

9.9 If the Supplier requires modifications to the Authority Premises such modifications are subject to the written approval of the Authority (at the Authority's sole discretion) and shall be carried out in line with Schedule 8.2 (Change Control Procedure).

9.10 The Supplier shall (and shall ensure that any Supplier Personnel on the Authority Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Authority Premises as determined by the Authority including, but not limited to, those rules, policies and standards set out in Schedule 2.3 (Standards) or Schedule 2.4 (Security).

9.11 Nothing in this Agreement is intended to create a tenancy of any nature in favour of the Supplier and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Agreement, the Authority may use the premises owned or occupied by it in any manner it sees fit.

9.12 Any access to the Authority Premises and any labour and equipment provided by the Authority in connection with delivery is provided without acceptance by the Authority of any liability whatsoever to the extent permitted by law.

9.13 The Authority shall use reasonable endeavours to ensure that the Authority Premises are available during the Agreed Hours set out in the DWIP.

9.14 From time to time the Supplier may request an extension to the Agreed Hours for each Retail Workshop. Such extensions are subject to the prior written consent of the Authority. The Authority shall use reasonable endeavours to accommodate such requests but may refuse to grant an extension, including, without limitation, in circumstances where the extension would cause the Authority to suffer or incur additional costs and expenses in making the Authority Premises available, or affect the security of a Site.

9.15 During the Term, the Authority shall use reasonable endeavours to make available to the

Supplier storage facilities for the purposes of storing the Supplier Equipment. Any Supplier Equipment which are stored on any premises belonging to the Authority shall at all times remain at the Supplier's sole risk and the Authority shall have no liability for such Supplier Equipment other than for any wilful or negligent damage caused by a Prisoner or Authority Personnel.

9.16 The Supplier shall provide all reasonable assistance and access as the Authority may require from time to time to inspect, maintain or repair any Authority Premises.

**Prisoner** **Workforce**

9.17 Subject to Clause 9.8, the Authority will use its reasonable endeavours to ensure the provision of the Prisoner Workforce is available as detailed in the relevant DWIP and that:

9.17.1 it will provide sufficient time and resource to allow Prisoner Workers the opportunity to receive suitable training for the task(s). Such training shall be provided by the Supplier in accordance with Schedule 2.1 (Services Description);

9.17.2 it will ensure that Prisoner Workers who have elected to receive that training where possible on the dates and at the times agreed between the Authority and the Supplier; and

9.17.3 ensure the Prisoner Workers who have received the training are available to perform the task(s) under the supervision of the Supplier.

9.18 No representations or warranty is given by the Authority as to the availability, skill or expertise of any of the Prisoner Workers and the Authority shall have no obligation to ensure the regularity of attendance of any individual Prisoner Worker.

9.19 Where deemed required by either party, and subject to the approval of the Authority (at its sole discretion), the Authority shall provide reasonable Authority Personnel to perform security checks on Prisoner Workers entering or leaving Retail Workshop.

9.20 The Supplier shall ensure that all of its Personnel and any of its Sub-contractor's Personnel agree to and comply with searches conducted by the Authority at the relevant Authority Premises.

9.21 The Authority shall be responsible for remunerating the Prisoner Workers for their work. The actual level of remuneration shall be determined according to the Prisoner Worker attendance, productivity and accuracy as well as the overall performance of the Retail Workshops and shall be determined by the Authority.

9.22 For the avoidance of doubt, nothing in this Agreement will be construed as creating an employment contract between any Prisoner Worker and the Supplier.

9.23 The Authority may, for reasons of security or otherwise and without any liability to the Supplier:

9.23.1 withdraw any Prisoner Worker from the task(s) at any time and for any period;

9.23.2 deny the Supplier or any Supplier Personnel access to the Site(s) and/or Authority Premises;

9.23.3 prevent access to, order the cessation of all movement within, or delay the exit of any vehicle or person from, the Site(s) and/or Authority Premises at any time and for any period;

9.23.4 require the replacement or removal of any of the Supplier Equipment.

**Supplier** **Equipment**

9.24 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

9.25 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority or the wilful or negligent act or omission of Prisoners, provided that the Supplier can demonstrate to the reasonable satisfaction of the Authority its compliance with its supervision and management obligations at the Retail Workshops as set out in the Authority Requirements and/or any SOP Manual managed by the Supplier in connection with the Services or Retail Workshops.

9.26 Subject to any express provision of the Service Continuity Plan to the contrary and save as set out in Clause 28 and Clause 29, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

**Maintenance**

9.27 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment, Authority Workshop Assets or any Supplier Equipment (the "**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

9.28 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.

9.29 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or

Emergency Maintenance) where it reasonably suspects that the IT Environment, Authority Workshop Assets or Supplier Equipment or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the Authority operations at the Site(s), IT Environment and the provision of the Goods and Services.

9.30 At the Authority's request, the Supplier shall use its best endeavours to novate or assign to the

Authority any maintenance contract it has entered into in respect of any Authority Workshop

Asset or Supplier Equipment. Where a maintenance contract cannot be novated or assigned, the Authority will not reimburse the Supplier for any costs beyond the expiry of this Agreement.

9.31 The Authority shall be responsible for the repair and maintenance of the Retail Workshop unless and to the extent that the need for repair, replacement or maintenance is caused by the negligence or the fault of the Supplier ("**Supplier RW Damage**"). In the event of any Supplier RW Damage, the Supplier shall at the option of the Authority:

9.31.1 carry out itself any necessary repairs, at its own cost and to the reasonable satisfaction of the Authority;

9.31.2 provide all reasonable access and assistance to the Authority in the event that the Authority chooses to carry out any necessary repairs (and indemnify the Authority for all costs and expenses incurred by the Authority for such repairs).

**Capital** **Expenditure**

9.32 Where either party identifies that the purchase of equipment, machinery or other assets is required for the provision of the Services (and where it is the Supplier who has identified this is Approved by the Authority):

9.32.1 the Authority may at its option choose to purchase such equipment, machinery or other assets or any other materials in the delivery of the Services and they shall become Authority Assets;

9.32.2 at the request of the Authority, and where agreed, the Supplier will make investments on behalf of the Authority and may invoice the Authority for any such investment (in accordance with the provisions of Schedule 7.1 (Charges and Invoicing) upon incurring the agreed investment cost and any such investment shall become an Authority Asset.

In each case any such equipment, machinery or other asset purchased by the Authority or otherwise acquired at the expense of the Authority (whether directly or through the Supplier) shall be an Authority Asset and title for such equipment, machinery or other asset shall pass to the Authority on delivery to the appropriate Authority Premises or on successful installation (where applicable) whichever is the later.

The Supplier shall ensure that any Asset purchased in accordance with Clause 9.32 is free from material Defects and remain so for 12 months after delivery or installation, whichever applies and shall at the Authority's reasonable request either assign any manufacturer's warranty to the Authority or provide any reasonable assistance in dealing with any manufacturer in respect of any warranty in respect of any such Asset.

**HMPPS Security** **Breach**

9.33 The Supplier shall ensure that it does not and shall procure that its personnel, employees, agents, contractors and representatives do not commit an HMPPS Security Breach.

9.34 For the purposes of this Agreement an HMPPS Security Breach shall mean a breach of any Authority security requirements or policies (as amended or updated from time to time) which shall include (without limitation) the following acts:

9.34.1 bringing, throwing or otherwise conveying any Category A, Category B or

Category C items into or out of any Authority Premises by whatever means;

9.34.2 causing another person to bring, throw or otherwise convey a Category A, Category B or Category C item into or out of any Authority Premises by whatever means;

9.34.3 leaving any Category A, Category B or Category C items in any place (inside or outside of any Authority Premises) intending it to come into the possession of a prisoner;

9.34.4 giving a prisoner a Category A, Category B or Category C item; and

9.34.5 an offence under section 40D of the Prison Act 1952.

|  |  |
| --- | --- |
| **Category A items** | Drugs, explosives, firearms, or ammunition and any other offensive weapon. |
| **Category B items** | Alcohol, mobile telephones, cameras, sound recording devices (or constituent part of the latter three items). |
| **Category C items** | Tobacco, money, clothing, food, drink, letters, paper, books, tools, information technology equipment (save in respect of the Supplier complying with its obligations under this Agreement) |

**SECTION C PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

# FINANCIAL AND TAXATION MATTERS

**Charges and** **Invoicing**

10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (Charges and Invoicing).

10.2 Except as otherwise provided, the Parties agree and acknowledge that any costs and expenses incurred by the Supplier in respect of compliance with their obligations under Clauses 6.4 (Workshop Readiness and Achievement of Milestones), 12 (Records, Reports, Audits and Open Book Data), 20 (Transparency and Freedom of Information), 21 (Protection of Personal Data) may be submitted for Approval within the Operational Budget in accordance with Schedule 7.1. The Parties also agree and acknowledge that any costs and expenses resulting from a breach of this Agreement by the Supplier (including without limitation those incurred in respect of compliance with their obligations under Clause 26 (Remedial Adviser) and Clause 27 (Step-In Rights)) shall be deemed to be Excluded Costs for the purposes of Schedule 7.1.

10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

**VAT**

10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

10.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause shall be paid in cleared funds by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

**Set-off and** **Withholding**

10.6 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.

10.7 If the Authority wishes to:

10.7.1 set off any amount owed by the Supplier to the Crown or any part of the Crown

(including the Authority) against any amount due to the Supplier pursuant to Clause 10.6; or

10.7.2 exercise its right pursuant to Clause 7.2.4(b) (Performance Failures) to withhold payment of a proportion of the Charges,

it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

**Benchmarking**

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

**Financial** **Distress**

10.9 The Parties shall comply with the provisions of Schedule 7.4 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

**Promoting Tax** **Compliance**

10.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

10.10.1 notify the Authority in writing of such fact within 5 Working Days of its occurrence; and

10.10.2 promptly provide to the Authority:

1. details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
2. such other information in relation to the Occasion of Tax Non- Compliance as the Authority may reasonably require.

**SECTION D CONTRACT GOVERNANCE**

# GOVERNANCE

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

**Representatives**

11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.

11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (Key Personnel). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (Supplier Personnel).

11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

# RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

12.1 The Supplier shall comply with the provisions of:

12.1.1 Schedule 8.4 (Reports and Records) in relation to the maintenance and retention of Records; and

12.1.2 Part A of Schedule 7.5 (Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data.

12.2 The Parties shall comply with the provisions of:

12.2.1 Part B of Schedule 7.5 (Financial Reports and Audit Rights) in relation to the provision of the Financial Reports; and

12.2.2 Part C of Schedule 7.5 (Financial Reports and Audit Rights) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

# CHANGE

**Change Control** **Procedure**

13.1 Any requirement for a Change shall be subject to the Change Control Procedure.

**Change in** **Law**

13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:

13.2.1 a General Change in Law save to the extent that such change directly affects the

Supplier's costs in delivering the Services (as the same are set out in the relevant Operational Budget) in which case the Supplier may submit such increase in costs to the Authority, for Approval as part of the Operational Budget provided that any costs connected with General Changes in Law which are reasonably foreseeable at the Effective Date shall not be recoverable; or

13.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2.2), the Supplier shall:

13.3.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:

1. whether any Change is required to the Services, the Charges or this Agreement; and
2. whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and

13.3.2 provide the Authority with evidence:

1. that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
2. as to how the Specific Change in Law has affected the cost of providing the Services; and
3. demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (Services Improvement), has been taken into account in amending the Charges.

13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2.2) shall be implemented in accordance with the Change Control Procedure.

**SECTION E SUPPLIER PERSONNEL AND SUPPLY CHAIN**

# SUPPLIER PERSONNEL

14.1 The Supplier shall:

14.1.1 provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;

14.1.2 ensure that all Supplier Personnel:

1. are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
2. are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (Services Description) and Schedule 2.4 (Security Management); and
3. comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (Security Management);

14.1.3 subject to Schedule 9.1 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;

14.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;

14.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

14.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;

14.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

14.1.8 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

14.2 Without prejudice to the generality of Clause 14.1, where reasonably required under an Authority and/or legal requirement or policy, the Authority shall provide training to the Supplier to ensure that the Supplier and Sub-contractors who are employed to work within the Retail Workshops adhere to the Authority's policies and Standards particularly in relation to health and safety, security and self-protection. The Supplier shall ensure that all of its and any of its Sub-contractors' relevant staff attend such Authority training.

14.3 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:

14.3.1 refuse admission to the relevant person(s) to the Authority Premises; and/or

14.3.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

**Key** **Personnel**

14.4 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (Key Personnel) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

14.5 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.

14.6 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:

14.6.1 requested to do so by the Authority;

14.6.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;

14.6.3 the person's employment or contractual arrangement with the Supplier or a Subcontractor is terminated for material breach of contract by the employee; or

14.6.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

14.7 The Supplier shall:

14.7.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);

14.7.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;

14.7.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;

14.7.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and

14.7.5 ensure that any replacement for a Key Role:

1. has a level of qualifications and experience appropriate to the relevant Key Role; and
2. is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

**Employment** **Indemnity**

14.8 The Parties agree that:

* + 1. the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
    2. the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of

the Authority or any of the Authority's employees, agents, consultants and contractors.

**Income Tax and National Insurance** **Contributions**

14.9 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:

* + 1. at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
    2. indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

**Staff** **Transfer**

14.10 The Parties agree that:

14.10.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (Staff Transfer) shall apply as follows:

1. where the Relevant Transfer involves the transfer of Transferring Authority

Employees, Part A and Part C of Schedule 9.1 (Staff Transfer) shall apply;

1. where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part C of Schedule 9.1 (Staff Transfer) shall apply;
2. where the Relevant Transfer involves the transfer of Transferring Authority

Employees and Transferring Former Supplier Employees, Parts A, B and C of Schedule 9.1 (Staff Transfer) shall apply; and

1. Part C of Schedule 9.1 (Staff Transfer) shall not apply;

14.10.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (Staff Transfer) shall apply, Part D of Schedule 9.1 may apply and Parts A and B of Schedule 9.1 (Staff Transfer) shall not apply; and

14.10.3 Part D of Schedule 9.1 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

# SUPPLY CHAIN RIGHTS AND PROTECTIONS

**Advertising Sub-contract** **Opportunities**

15.1 The Supplier shall:

15.1.1 subject to Clauses 15.3 and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;

15.1.2 within ninety (90) days of awarding a Sub-contract to a Sub- contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;

15.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

15.1.4 provide reports on the information at Clause 15.1.3 to the Authority in the format and frequency as reasonably specified by the Authority; and

15.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

15.2 Each advert referred to in Clause 15.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.

15.4 Notwithstanding Clause 15.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

**Appointment of Sub-contractors**

15.5 The Supplier shall exercise due skill and care in the selection and appointment of any Subcontractors to ensure that the Supplier is able to:

15.5.1 manage any Sub-contractors in accordance with Good Industry Practice;

15.5.2 comply with its obligations under this Agreement in the delivery of the Services; and

15.5.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.

15.6 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:

15.6.1 the proposed Sub-contractor's name, registered office and company registration number;

15.6.2 the scope of any Services to be provided by the proposed Sub- contractor; and

15.6.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.

15.7 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6, the Supplier shall also provide:

15.7.1 a copy of the proposed Sub-contract; and

15.7.2 any further information reasonably requested by the Authority.

15.8 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information requested pursuant to Clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:

15.8.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;

15.8.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;

15.8.3 the proposed Sub-contractor employs unfit persons; and/or

15.8.4 the proposed Sub-contractor should be excluded in accordance with Clause 15.22 (Termination of sub-contracts);

in which case, the Supplier shall not proceed with the proposed appointment.

15.9 If:

15.9.1 the Authority has not notified the Supplier that it objects to the proposed Subcontractor's appointment by the later of 10 Working Days of receipt of:

1. the Supplier's notice issued pursuant to Clause 15.6; and
2. any further information requested by the Authority pursuant to Clause 15.7; and

15.9.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.10 (Appointment of Key Sub-contractors),

the Supplier may proceed with the proposed appointment and, where the Sub- contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.4 (Third Party Contracts).

**Appointment of Key Sub-contractors**

15.10 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

* + 1. the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
    2. the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
    3. the proposed Key Sub-contractor employs unfit persons; and/or
    4. the proposed Key Sub-contractor should be excluded in accordance with Clause 15.22 (Termination of sub-contracts).
  1. The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (Notified Key Sub-contractors).
  2. Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
     1. provisions which will enable the Supplier to discharge its obligations under this Agreement;
     2. a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
     3. a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
     4. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub- contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
     5. obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:

1. data protection requirements set out in Clauses 18 (Authority Data and Security

Requirements) and 21 (Protection of Personal Data);

1. FOIA requirements set out in Clause 20 (Transparency and Freedom of Information);
2. the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute;
3. the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
4. the conduct of Audits set out in Part C of Schedule 7.5 (Financial Reports and Audit Rights);

15.12.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 30.1.1 (Termination by the Authority) and 31.4 (Payments by the Authority) and Schedule 7.2 (Payments on Termination) of this Agreement;

15.12.7 a provision restricting the ability of the Key Sub-contractor to sub- contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;

15.12.8 a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 26 (Remedial Adviser);

15.12.9 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 27 (Step-in Rights);

15.12.10 a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub- contractors in, the Multi-Party Dispute Resolution Procedure; and

15.12.11 a provision requiring the Key Sub-contractor to:

1. promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
   * + 1. the occurrence of a Financial Distress Event in relation to the Key Subcontractor; or
       2. any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Subcontractor,

and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such; and

1. co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (Financial Distress), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 4.3.2(b) of Schedule 7.4 (Financial Distress).
   1. The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

**Supply chain** **protection**

* 1. The Supplier shall ensure that all Sub-contracts (which in this Sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:
     1. giving the Supplier a right to terminate the Sub-contract if the Sub- contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
     2. requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
     3. that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph 15.14.2, the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph 15.14.2 after a reasonable time has passed;
     4. requiring the Supplier or other party to pay any undisputed sums which are due

from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;

* + 1. giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
    2. requiring the Sub-contractor to include a clause to the same effect as this Clause 15.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

15.15 The Supplier shall:

15.15.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty

(30) days of verifying that the invoice is valid and undisputed;

15.15.2 include within the Year to Date Dashboard Report produced by it pursuant to

Schedule 2.2 (Performance Levels) a summary of its compliance with Clause 15.5.1, such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.16 Without prejudice to Clause 15.5.1, the Supplier shall:

15.16.1 pay any sums which are due from it to any Sub-contractor or Unconnected Subcontractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:

1. the date set out for payment in the relevant Sub-contract or Unconnected Subcontract; or
2. the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and

15.16.2 include within the Year to Date Dashboard Report produced by it pursuant to

Schedule 2.2 (Performance Levels) a summary of its compliance with Clause 15.16.1, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

15.17 If any Year to Date Dashboard Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall upload to the Virtual Library within 15 Working Days of submission of the latest

Year to Date Dashboard Report an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:

* + 1. identification of the primary causes of failure to pay 95% or above of all Subcontractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
    2. actions to address each of the causes set out in sub-paragraph 15.17.1; and
    3. mechanism for and commitment to regular reporting on progress to the Supplier's Board.
  1. The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is uploaded to the Virtual Library.
  2. Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Subcontractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
  3. The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).
  4. Notwithstanding any provision of Clauses 19 (Confidentiality) and 22 (Publicity and Branding), if the Supplier notifies the Authority (whether in a Year to Date Dashboard Report or otherwise) that the Supplier has failed to pay a Sub- contractor's undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub- contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

**Termination of Sub-contracts**

* 1. The Authority may require the Supplier to terminate:

15.22.1 a Sub-contract where:

1. the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 30.1.2 (Termination by the Authority);
2. the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
3. the relevant Sub-contractor has failed to comply in the performance of its Subcontract with legal obligations in the fields of environmental, social or labour law; and/or
4. the Authority has found grounds for exclusion of the Sub- contractor in accordance with Clause 15.27; and

15.22.2 a Key Sub-contract where there is a Change of Control of the relevant Key Subcontractor, unless:

1. the Authority has given its prior written consent to the particular Change of

Control, which subsequently takes place as proposed; or

1. the Authority has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

**Competitive** **Terms**

15.23 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-forlike basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:

* + 1. require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
    2. enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
  1. If the Authority exercises either of its options pursuant to Clause 15.23, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
  2. The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
     1. the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
     2. any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

**Retention of Legal** **Obligations**

* 1. Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub- contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Subcontracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

**Exclusion of Sub-contractors**

* 1. Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
     1. if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
     2. if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

**Reporting SME/VCSE Sub-contracts**

* 1. In addition to any other Management Information requirements set out in this Agreement, the

Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Authority thirty (30) days prior to the of the end of each Financial Year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.4 (Reports and Records) Annex D and in accordance with any guidance issued by the Authority from time to time.

* 1. The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

**SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

# INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Agreement:

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

1. the Supplier Software;
2. the Third Party Software;
3. the Third Party IPRs; and
4. the Supplier Background IPRs;

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

1. the Authority Software;
2. the Authority Data; and
3. the Authority Background IPRs;

16.2 Specially Written Software and Project Specific IPRs shall remain the property of the Supplier, and where applicable its licensors. The Supplier hereby grants to the Authority and, where applicable, shall use all reasonable endeavours to procure the grant to the Authority of a free, non-exclusive, perpetual, sub-licensable licence to use (for any purpose relating to the Authority's business or function) the Specially Written Software and the Project Specific IPRs including (without limitation):

* + 1. the Documentation, Source Code and the Object Code of the Specially Written Software; and
    2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**");
    3. but not including any Know-How, trade secrets or Confidential Information.]
  1. Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
  2. Neither Party shall have any right to use any of the other Party's names, logos nor trade marks on any of its products or services without the other Party's prior written consent.

**Grant of** **Licences**

* 1. The Supplier grants to the Authority, or shall procure the direct grant to the Authority of, a free, non-exclusive, non-transferable licence during the Term to use (solely to the extent necessary for receiving the Services in accordance with this Agreement):
     1. the Supplier Software;
     2. Third Party IPRs;
     3. Third Party Software; and
     4. Supplier Background IPRs.
  2. The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (and save where otherwise agreed between the parties in Schedule 5.1 (Digital)), grant or procure the grant to the Authority or the Replacement Supplier of a free, perpetual, transferable licence to use (for any purpose of relating to the Authority's business or function) any of the Specially Written Software, Project Specific IPRs, Supplier's Software, Third Party Software, Supplier Background IPRs or Third Party IPRs, subject to the Authority or the Replacement Supplier entering into confidentiality undertakings with the Supplier in a form reasonably acceptable to the Authority.
  3. For the avoidance of doubt, where the Parties have agreed in Schedule 5.1 that the licences for the Supplier’s Software, Third Party Software, Supplier Background IPRs or Third Party IPRs shall be licences for the Term only, then the requirement in Clause 16.5 above shall not apply.
  4. The Authority grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use:
     1. the Authority Software;
     2. the Authority's documentation, processes and procedures;
     3. the Authority's Background IPRs;
     4. the Specially Written Software;
     5. the Project Specific IPRs; and
     6. the Authority Data, including the right to grant sub-licences to its Sub-contractors, provided that any Sub-contractor has entered into appropriate confidentiality undertakings.
  5. The licence granted in Clause 16.65 is granted solely to the extent necessary for performing the Services and delivering the Goods in accordance with this Agreement. The Supplier shall not use the licensed materials for any other purpose.

**Third Party Software and Third Party** **IPRs**

* 1. The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Schedule 5.1 (Digital) or approval is granted by the Authority following a review by the Technical Board.

**Termination and Replacement** **Suppliers**

* 1. For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 16 where such licences are expressed as perpetual licences.
  2. The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (Exit Management) and at the Supplier's cost:

16.11.1 grant (or procure the grant) to any Replacement Supplier of:

1. (save where otherwise agreed in Schedule 5.1 (Digital)) a licence to use any

Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 16 subject to receipt by the Supplier of a confidentiality undertaking in its favour duly executed by the Replacement Supplier;

1. (save where otherwise agreed in Schedule 5.1 (Digital)) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or

16.11.2 use reasonable endeavours to facilitate the transfer of, or grant to any

Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

**Patents**

16.12 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially

Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

# IPRs INDEMNITY

17.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the

Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

17.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

17.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

17.2.2 replace or modify the relevant item with non-infringing substitutes provided that:

1. the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
2. the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
3. there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
4. the terms and conditions of this Agreement shall apply to the replaced or modified Services.

17.3 If the Supplier elects to procure a licence in accordance with Clause 17.2.1 or to modify or replace an item pursuant to Clause 17.2.2, but this has not avoided or resolved the IPRs Claim, then:

* + 1. the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
    2. without prejudice to the indemnity set out in Clause 17.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

# AUTHORITY DATA AND SECURITY REQUIREMENTS

18.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

18.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

18.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (Services Description).

18.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

18.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-todate back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).

18.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.

18.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

18.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or

18.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning).

18.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

18.9 The Supplier shall comply with the requirements of Schedule 2.4 (Security Management ).

18.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.

18.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

18.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 18.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.

# CONFIDENTIALITY

19.1 For the purposes of this Clause 19, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

19.2 Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

19.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

19.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

19.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and

19.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

19.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 20 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;

19.3.2 the need for such disclosure arises out of or in connection with:

1. any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
2. the examination and certification of the Authority's accounts (provided that the

disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or

1. the conduct of a Central Government Body review in respect of this Agreement; or

19.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

* 1. If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
  2. The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
     1. Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
     2. its auditors; and
     3. its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 19.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

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

* + 1. on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
    2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
    3. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
    4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 19.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
    5. on a confidential basis for the purpose of the exercise of its rights under this

Agreement, including the Audit Rights, its step-in rights pursuant to Clause 27

(Step-In Rights), its rights to appoint a Remedial Adviser pursuant to Clause 26

(Remedial Adviser) and Exit Management rights; or

* + 1. on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 19.

19.7 Nothing in this Clause 19 shall prevent a Recipient from using any techniques, ideas or knowhow gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

# TRANSPARENCY AND FREEDOM OF INFORMATION

20.1 The Parties acknowledge that:

20.1.1 the Transparency Reports;

20.1.2 the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:

1. any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
2. Commercially Sensitive Information; and

20.1.3 the Publishable Performance Information

(together the "**Transparency Information**") are not Confidential Information.

* 1. Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of

the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

* 1. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (Reports and Records).
  2. If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
  3. The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
  4. The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
  5. The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
     1. provide all necessary assistance and cooperation as reasonably requested by the

Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

* + 1. transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
    2. provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
    3. not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

20.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45

Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the

FOIA) to the extent that it is permissible and reasonably practical for it to do so but

(notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

# PROTECTION OF PERSONAL DATA

21.1 The Parties shall comply with the provisions of Schedule 11 (Data Protection) in relation to the Processing of any Personal Data under this Agreement.

21.2 Annex A of Schedule 11 sets out the respective roles of the Parties pursuant to Data Protection Legislation in respect of all data processing under the Agreement and the Parties agree to comply with the responsibility and obligations of such roles pursuant to Schedule 11 (Data Protection).

21.3 By no later than the Operational Service Commencement Date the Parties shall complete a joint data mapping exercise to identify all aspects of data processing under this Agreement and either approve the content of Annex A or amend it to reflect the factual reality.

21.4 The data mapping exercise is being undertaken jointly by both Parties, either Party shall notify the other Party immediately in respect of any concerns or issues and both Parties will use all reasonable endeavours to resolve any concerns and/or issues. The Parties shall enter the Dispute Resolution Procedure where the content of the Annex A cannot be agreed.

The Parties shall continue to monitor and review the content of AnnexA throughout the Term of the Agreement and where required make amendments in accordance with the Change Control Procedure.

# PUBLICITY AND BRANDING

22.1 The Supplier shall not:

22.1.1 make any press announcements or publicise this Agreement or its contents in any way; or

22.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

22.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

**SECTION G – LIABILITY, INDEMNITIES AND INSURANCE**

# LIMITATIONS ON LIABILITY

**Unlimited** **liability**

23.1 Neither Party limits its liability for:

23.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

23.1.2 fraud or fraudulent misrepresentation by it or its employees;

23.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

23.1.4 any liability to the extent it cannot be limited or excluded by Law.

23.2 The Supplier's liability in respect of the indemnities in Clause 10.4 (VAT), Clause 14.8.1

(Employment Indemnity), Clause 14.9 (Income Tax and National Insurance Contributions), Clause 17 (IPRs Indemnity), Schedule 9.1 (Staff Transfer) and the Annexes to Schedule 9.1 (Staff Transfer) shall be unlimited.

23.3 The Authority's liability in respect of the indemnities in Clause 14.8.1 (Employment Indemnity), Schedule 9.1 (Staff Transfer) and the Annexes to Schedule 9.1 (Staff Transfer) shall be unlimited.

**Indemnity**

23.4 Each Party shall indemnify the other against any third party claims which arise as a direct result of any wilful or negligent act or omission by that Party or its employees, agents, representatives and personnel (which shall in the case of the Authority shall include any wilful or negligent act or omission of a Prisoner). This indemnity (in the case of the Supplier) is subject to the Supplier's demonstration to the Authority's reasonable satisfaction of compliance with its supervisory and oversight obligations within the Authority Requirements and any SOP Manual or Workshop System maintained by the Supplier in connection with the Services and/or the Retail Workshop.

**Financial and other** **limits**

23.5 Subject to Clauses 23.1 and 23.2 (Unlimited Liability) and Clause 23.8 (Consequential losses):

23.5.1 the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including the Goods, technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10million;

23.5.2 the Supplier's aggregate liability in respect of:

1. loss or damage to Authority Data;
2. breach of the Data Protection Legislation; and
3. breach of Schedule 11 (Data Protection),

that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £10million;

23.5.3 the Supplier's aggregate liability in respect of all:

1. Service Credits; and
2. Compensation for Unacceptable KPI Failure;

incurred in any Service Period shall be subject to the Service Credit Cap; and

23.5.4 the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:

1. in relation to Defaults occurring in the first Contract Year, an amount equal to

150% of the Supplier Profit or £10million, whichever is the higher;

1. in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Supplier Profit in the Contract Year immediately preceding the occurrence of the Default or £10million, whichever is the higher; and
2. in relation to Defaults occurring after the end of the Term, an amount equal to 150% of the Supplier Profit in the 12 month period immediately prior to the last day of the Term or £10million, whichever is the higher,

provided that where any Losses referred to in this Clause 23.5.4 have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to 150% shall be deemed to be references to 200% and references to £10 million shall be deemed to be references to £15 million.

* 1. Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 23.5.4.
  2. Subject to Clauses 23.1 to 23.3 (Unlimited Liability) and Clause 23.8 (Consequential Losses) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

23.7.1 the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 30.1

(Termination by the Authority) or by the Supplier pursuant to Clause 30.3 (Termination by the Supplier) shall in no event exceed the following amounts:

1. in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of

Schedule 7.2 (Payments on Termination);

1. in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (Payments on Termination); and
2. in relation to the Compensation Payment, the amount set out in Paragraph 6 of

Schedule 7.2 (Payments on Termination); and

23.7.2 the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed:

1. in relation to Defaults occurring in the first Contract Year, an amount equal to the

Estimated Year 1 Supplier Profit or £10 million, whichever is the greater;

1. in relation to Defaults occurring during any subsequent Contract Year, an amount

equal to the total Supplier Profit paid and/or due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default or £10 million, whichever is the greater; and

1. in relation to Defaults occurring after the end of the Term, an amount equal to the total Supplier Profit paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term £10 million, whichever is the greater.

**Consequential** **Losses**

23.8 Subject to Clauses 23.1 to 23.2 (Unlimited Liability) and Clause 23.8, neither Party shall be liable to the other Party for:

* + 1. any indirect, special or consequential Loss; or
    2. any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

23.9 Notwithstanding Clause 23.8 but subject to Clause 23.5, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

* + 1. any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
    2. any wasted expenditure or charges;
    3. the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
    4. any compensation or interest paid to a third party by the Authority;
    5. any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

**Conduct of indemnity** **claims**

* 1. Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (Conduct of Claims) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

**Mitigation**

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

# INSURANCE

24.1 The Supplier shall comply with the provisions of Schedule 2.5 (Insurance Requirements) in relation to obtaining and maintaining insurance.

**SECTION H – REMEDIES AND RELIEF**

# RECTIFICATION PLAN PROCESS

25.1 In the event that:

25.1.1 there is, or is reasonably likely to be, a Delay; and/or

25.1.2 in any Service Period there has been:

1. a Material KPI Failure; and/or
2. a Material PI Failure; and/or

25.1.3 the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a "**Notifiable Default**"), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the

Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event which is incapable of remedy, the Authority may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

**Notification**

25.2 If:

25.2.1 the Supplier notifies the Authority pursuant to Clause 25.1 that a Notifiable Default has occurred; or

25.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

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

25.3 The "**Rectification Plan Process**" shall be as set out in Clauses 25.4 (Submission of the draft Rectification Plan) to 25.9 (Agreement of the Rectification Plan).

**Submission of the draft Rectification** **Plan**

25.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 25.2 (Notification). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

25.5 The draft Rectification Plan shall set out:

25.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;

25.5.2 the actual or anticipated effect of the Notifiable Default; and

25.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

25.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (Dispute Resolution Procedure).

**Agreement of the Rectification** **Plan**

25.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

25.7.1 is insufficiently detailed to be capable of proper evaluation;

25.7.2 will take too long to complete;

25.7.3 will not prevent reoccurrence of the Notifiable Default; and/or

25.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

25.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

25.9 If the Authority consents to the Rectification Plan:

25.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and

25.9.2 the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default;

save in the event of a Rectification Plan Failure or other Supplier Termination Event.

# REMEDIAL ADVISER

26.1 If:

26.1.1 any of the Intervention Trigger Events occur; or

26.1.2 the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "**Intervention Cause**"), the Authority may give notice to the Supplier (an

"**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:

1. a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
2. the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 26.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 26.1 prior to or instead of exercising its right to terminate this Agreement.

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

26.2.1 the Remedial Adviser shall be:

1. a person selected by the Supplier and Approved by the Authority; or
2. if none of the persons selected by the Supplier have been Approved by the

Authority (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;

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

26.2.3 any right of the Authority to terminate this Agreement pursuant to Clause 30.1.2 (Termination by the Authority) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the "**Intervention Period**").

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

* + 1. observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
    2. gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
    3. write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
    4. make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
    5. take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

26.4 The Supplier shall:

* + 1. work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
    2. ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
    3. submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
    4. implement any reasonable recommendations made by the Remedial Adviser that have been Approved by the Authority within the timescales given by the Remedial Adviser; and
    5. not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

26.5 The Supplier shall be responsible for:

* + 1. the costs of appointing, and the fees charged by, the Remedial Adviser; and
    2. its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 26.

26.6 If:

26.6.1 the Supplier:

1. fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
2. is in Default of any of its obligations under Clause 26.4; and/or

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

(each a "**Remedial Adviser Failure**"), the Authority shall be entitled to terminate this Agreement pursuant to Clause 30.1 (Termination by the Authority).

# STEP-IN RIGHTS

27.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this Clause 27 (Step-in Rights), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 19 (Confidentiality)). The Step- In Notice shall set out the following:

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

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

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

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

27.1.5 whether the Authority will require access to the Supplier's premises and/or the Sites; and

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

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

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

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

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

27.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 27.

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

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

27.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 27.4 shall apply to Deductions from Charges in respect of other Services; and

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

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

27.4.1 the degradation of any Services not subject to the Required Action; or 27.4.2 the non-Achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.

27.5 Before ceasing to exercise its step in rights under this Clause 27 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:

27.5.1 the Required Action it has actually taken; and

27.5.2 the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 27.6.

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

27.7 If the Authority does not Approve the draft Step-Out Plan, the Authority shall inform the

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

27.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 27, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

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

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

# AUTHORITY CAUSE

28.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

28.1.1 Achieve a Milestone by its Milestone Date;

28.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or

28.1.3 comply with its obligations under this Agreement, (each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 28):

1. the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
2. the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
   * + 1. to terminate this Agreement pursuant to Clause 30.1(Termination by the Authority); or
       2. to take action pursuant to Clauses 26 (Remedial Adviser) or 27 (Step-In);
3. where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
   * + 1. the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
       2. if the Authority, acting reasonably, considers it appropriate, the Agreed Transition Management Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
       3. the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Annex D of Schedule 7.1

(Charges and Invoicing); and/or

1. where the Supplier Non-Performance constitutes a Performance Failure:
   * + 1. the Supplier shall not be liable to accrue Service Credits;
       2. the Authority shall not be entitled to withhold any of the Charges pursuant to Clause 7.2.4(b) (Performance Failures);
       3. the Authority shall not be entitled to withhold and retain any

Compensation for Unacceptable KPI Failure pursuant to Clause 7.3.1

(Unacceptable KPI Failure); and

* + - 1. the Supplier shall be entitled to invoice for the Charges for the relevant Operational Services affected by the Authority Cause,

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

* 1. For illustrative purposes only and without prejudice to the generality of Clause 28.1 where, for example, one of the Authority's Premises becomes unavailable to the Supplier due to an

Authority Cause, the Parties agree and acknowledge that the Authority may remove such affected premises from the calculation of the relevant KPIs but continue to measure the performance of the non-affected premises.

* 1. In order to claim any of the rights and/or relief referred to in Clause 28.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier NonPerformance, give the Authority notice (a "**Relief Notice**") setting out details of:
     1. the Supplier Non-Performance;
     2. the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;
     3. any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
     4. the relief and/or compensation claimed by the Supplier.
  2. Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.
  3. The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
  4. Without prejudice to Clause 5.25 (Continuing obligation to provide the Services), if a Dispute arises as to:
     1. whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
     2. the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

28.7 Any Change that is required to the Agreed Transition Management Plan or to the Charges pursuant to this Clause 28 shall be implemented in accordance with the Change Control Procedure.

# FORCE MAJEURE

29.1 Subject to the remaining provisions of this Clause 29 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning)), a Party may claim relief under this Clause 29 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement, which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

29.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

29.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 29 to the extent that consequences of the relevant Force Majeure Event:

29.3.1 are capable of being mitigated, but the Supplier has failed to do so;

29.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or

29.3.3 are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).

29.4 Subject to Clause 29.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

29.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome, mitigate or minimise the consequences of the Force Majeure Event and any costs incurred by the Supplier in overcoming, mitigating or minimising the Force Majeure Event may be submitted for Approval as an Exceptional Cost in accordance with Schedule 7.1 (Charging and Invoicing).

29.6 Where, as a result of a Force Majeure Event:

29.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:

1. the other Party shall not be entitled to exercise any rights to terminate this

Agreement in whole or in part as a result of such failure other than pursuant to

Clause 30.1.3 (Termination by the Authority) or Clause 30.3.2 (Termination by the Supplier); and

1. neither Party shall be liable for any Default arising as a result of such failure; 29.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:
2. the Authority shall not be entitled:
   * 1. during the continuance of the Force Majeure Event to exercise its rights under Clause 26 (Remedial Adviser) and/or Clause 27 (Step-in Rights) as a result of such failure;
     2. to receive Service Credits, to withhold any of the Charges pursuant to

Clause 7.2.4(b) (Performance Failures) or withhold and retain any of the

Charges as compensation pursuant to Clause 7.3.1 (Unacceptable KPI

Failure) to the extent that a Performance Failure has been caused by the Force Majeure Event; and

1. the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
   1. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
   2. Relief from liability for the Affected Party under this Clause 29 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 29.7.

**SECTION I – TERMINATION AND EXIT MANAGEMENT**

# TERMINATION RIGHTS

**Termination by the** **Authority**

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

30.1.1 for convenience at any time following the third anniversary of the Effective Date giving no less than 12 months' notice;

30.1.2 where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;

30.1.3 if a Supplier Termination Event occurs;

30.1.4 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or

30.1.5 if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

30.2 Where the Authority:

30.2.1 is terminating this Agreement under Clause 30.1.3 due to the occurrence of either

limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or

30.2.2 has the right to terminate this Agreement under Clause 30.1.3 or Clause 30.1.4, it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the Partial Termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

**Termination by the** **Supplier**

30.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

30.3.1 this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds **REDACTED**

30.3.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 30.3.2 would result in a Partial Termination, the provisions of Clause 30.4 (Partial Termination) shall apply.

**Partial** **Termination**

30.4 If the Supplier notifies the Authority pursuant to Clause 30.3.2 (Termination by the Supplier) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services

incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 30.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

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

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

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

30.5.3 the Supplier shall not be entitled to reject the Change.

# CONSEQUENCES OF EXPIRY OR TERMINATION

**General Provisions on Expiry or** **Termination**

31.1 The provisions of Clauses 5.24 (Specially Written Software warranty), 10.4 and 10.5 (VAT),

10.6 and 10.7 (Set-off and Withholding), 12 (Records, Reports, Audits and Open Book Data), 14.8 (Employment Indemnity), 14.9 (Income Tax and National Insurance Contributions), 16

(Intellectual Property Rights), 16.11 (Licences Granted by the Supplier), 17 (IPRs Indemnity),

19 (Confidentiality), 20 (Transparency and Freedom of Information), 21 (Protection of

Personal Data), 23 (Limitations on Liability), 31 (Consequences of Expiry or Termination), 37

(Severance), 39 (Entire Agreement), 40 (Third Party Rights), 42 (Disputes) and 43 (Governing

Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 7.1 (Charges and

Invoicing), 7.2 (Payments on Termination), 7.5 (Financial Reports and Audit Rights), 8.3 (Dispute Resolution Procedure), 8.4 (Reports and Records), 8.5 (Exit Management), and 9.1 (Staff Transfer), shall survive the termination or expiry of this Agreement.

**Exit** **Management**

31.2 The Parties shall comply with the provisions of Schedule 8.5 (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

**Payments by the** **Authority**

31.3 If this Agreement is terminated by the Authority pursuant to Clause 30.1 (Termination by the

Authority) or by the Supplier pursuant to Clause 30.3 (Termination by the Supplier), the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):

31.3.1 the Termination Payment; and

31.3.2 the Compensation Payment as calculated in accordance with Schedule 7.2, if

either of the following periods is less than three hundred and sixty-five (365) days:

1. the period from (but excluding) the date that the Termination Notice is given by the Authority pursuant to Clause 30.1 (Termination by the Authority) to (and including) the Termination Date; or
2. the period from (and including) the date of the non-payment by the Authority referred to in Clause 30.3 (Termination by the Supplier) to (and including) the Termination Date.

31.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 30.1.2, 30.1.3 and/or 30.2 (Termination by the Authority), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

* + 1. payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (Exit Management); and
    2. payments in respect of unpaid Charges for Services received up until the Termination Date.

31.5 The costs of termination incurred by the Parties shall lie where they fall if:

31.5.1 either Party terminates or partially terminates this Agreement for a continuing

Force Majeure Event pursuant to Clauses 30.1.34 or 30.2.2 (Termination by the Authority) or 30.3.2 (Termination by the Supplier); or

**Payments by the** **Supplier**

* 1. In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.
  2. If this Agreement is terminated (in whole or in part) by the Authority pursuant to Clause 30.1.2

(Termination by the Authority) prior to Achievement of one or more CPP Milestones, the

Authority may at any time on or within 12 months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "**Milestone Adjustment Payment Notice**") require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

* 1. A Milestone Adjustment Payment Notice shall specify:
     1. each CPP Milestone to which it relates;
     2. in relation to each such CPP Milestone, each Deliverable relating to that CPP

Milestone that the Authority wishes to retain, if any (each such Deliverable being a "**Retained Deliverable**"); and

* + 1. those Retained Deliverables, if any, the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an "**Allowable Price Adjustment**"),

and may form part of a Termination Notice.

31.9 The Supplier shall within 10 Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:

* + 1. notify the Authority whether it agrees that the Retained Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
    2. in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Authority of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;
    3. provide the Authority with its calculation of the Milestone Adjustment Payment

Amount in respect of each CPP Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:

1. all relevant Milestone Payments; and
2. the Allowable Price of each Retained Deliverable; and

31.9.4 provide the Authority with such supporting information as the Authority may require.

* 1. If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within 20 Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.
  2. If the Authority issues a Milestone Adjustment Payment Notice pursuant to Clause 31.8:

31.11.1 the Authority shall:

1. securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and
2. ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor,

voicemail system or any other device containing such all Non-retained Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate

Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and

31.11.2 all licences granted pursuant to Clause 16.11 (Licences granted by the Supplier) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

**SECTION J – MISCELLANEOUS AND GOVERNING LAW**

# COMPLIANCE

**Health and** **Safety**

32.1 Each Party shall perform their obligations under this Agreement (including those in relation to the Services) in accordance with:

32.1.1 all applicable Law regarding health and safety; and

32.1.2 the Health and Safety Policy whilst at the Authority Premises.

32.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

**Equality and** **Diversity**

32.3 Each Party shall:

32.3.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

1. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
2. the Authority's equality and diversity policy as provided to the Supplier from time to time; and
3. any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

32.3.2 take all necessary steps, and inform the other party of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

**Modern** **Slavery**

32.4 The Supplier shall, and procure that each of its Sub-contractors shall, comply with:

* + 1. the Modern Slavery Act 2015 ("**Slavery Act**"); and
    2. the Authority's anti-slavery policy as provided to the Supplier from time to time ("**Anti-slavery Policy**").

32.5 The Supplier shall:

* + 1. implement due diligence procedures for its Sub-contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;
    2. respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
    3. prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
    4. maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority regarding the Agreement; and
    5. implement a system of training for its employees to ensure compliance with the Slavery Act.

32.6 The Supplier represents, warrants and undertakes throughout the Term that:

* + 1. it conducts its business in a manner consistent with all applicable laws, regulations and codes including the Slavery Act and all analogous legislation in place in any part of the world;
    2. its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
    3. neither the Supplier nor any of its Sub-contractors, nor any other persons associated with it:

1. has been convicted of any offence involving slavery and trafficking; or
2. has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.

32.7 The Supplier shall notify the Authority as soon as it becomes aware or:

* + 1. any breach, or potential breach, of the Anti-Slavery Policy; or
    2. any actual or suspected slavery or trafficking in a supply chain which relates to the Agreement.
  1. If the Supplier notifies the Authority pursuant to Clause 32.7, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Agreement.
  2. If the Supplier is in Default under Clauses 32.5 or 32.6 the Authority may by notice:
     1. require the Supplier to remove from performance of the Agreement any Subcontractor or other persons associated with it whose acts or omissions have caused the Default; or
     2. immediately terminate the Agreement.

**Official Secrets Act and** **Finance** **Act**

32.10 The Supplier shall comply with the provisions of:

* + 1. the Official Secrets Acts 1911 to 1989; and
    2. section 182 of the Finance Act 1989

**Environment and** **Sustainability**

32.11 The Supplier shall at all times comply with the environmental and sustainability requirements set out in the Services Description and in any Authority policy from time to time.

# ASSIGNMENT AND NOVATION

33.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

33.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

33.2.1 any Central Government Body; or

33.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 33.2.

33.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 33.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

33.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier [and the Guarantor where applicable] were references to the Successor Body).

# WAIVER AND CUMULATIVE REMEDIES

34.1 The rights and remedies under this Agreement may be waived only by notice and in a manner

that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

# RELATIONSHIP OF THE PARTIES

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

# PREVENTION OF FRAUD AND BRIBERY

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

36.1.1 committed a Prohibited Act or been formally notified that it is subject to an

investigation or prosecution which relates to an alleged Prohibited Act; and/or

36.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

36.2 The Supplier shall not during the term of this Agreement:

36.2.1 commit a Prohibited Act; and/or

36.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub- contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

36.3 The Supplier shall during the term of this Agreement:

36.3.1 establish, maintain and enforce, and require that its Sub-contractors establish,

maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

36.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and

46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the

Supplier do not commit tax evasion facilitation offences as defined under that Act;

36.3.3 keep appropriate records of its compliance with its obligations under Clause

36.3.1 and make such records available to the Authority on request; and

36.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

36.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 36.1 and/or 36.2, or has reason to believe that it has or any of the Supplier Personnel have:

36.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

36.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

36.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

36.5 If the Supplier makes a notification to the Authority pursuant to Clause 40.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (Records, Reports, Audits and Open Book Data).

36.6 If the Supplier is in Default under Clauses 36.1 and/or 36.2, the Authority may by notice:

36.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or

36.6.2 immediately terminate this Agreement.

36.7 Any notice served by the Authority under Clause 36.6 shall specify the nature of the Prohibited

Act, the identity of the Party who the Authority believes has committed the Prohibited Act and

the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

# SEVERANCE

37.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise

unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

37.2 In the event that any deemed deletion under Clause 37.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

37.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 37.2, the matter shall be dealt with in accordance with Paragraph 5 (Commercial Negotiation) of Schedule 8.3 (Dispute Resolution

Procedure) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 37.3.

# FURTHER ASSURANCES

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

# ENTIRE AGREEMENT

39.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

39.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

39.3 Nothing in this Clause 39 shall exclude any liability in respect of misrepresentations made fraudulently.

# THIRD PARTY RIGHTS

40.1 The provisions of Clause 17 (IPRs Indemnity), Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C and Part D of Schedule 9.1 (Staff Transfer) and the provisions of Paragraph 6.9 of Schedule 8.5 (Exit Management) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

40.2 Subject to Clause 40.1, save for Additional Users (and subject to Paragraph 1.1 of Schedule

2.6 (Additional Users)), a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

40.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

40.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 40.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

# NOTICES

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

41.2 Subject to Clause 41.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

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

|  |  |  |
| --- | --- | --- |
|  | **Supplier** | **Authority** |
| **Contact** |  |  |
| **Address** |  |  |
| **Email** |  |  |

41.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 41.2:

41.4.1 Step-In Notices;

41.4.2 Force Majeure Notices;

41.4.3 notices issued by the Supplier pursuant to Clause 30.3 (Termination by the Supplier);

41.4.4 Termination Notices; and

41.4.5 Dispute Notices.

41.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 41.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 41.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

41.6 This Clause 41 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (Dispute Resolution Procedure)).

# DISPUTES

42.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.

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

# GOVERNING LAW AND JURISDICTION

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

43.2 Subject to Clause 42 (Disputes) and Schedule 8.3 (Dispute Resolution Procedure) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non- contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of )

: )

)

)

Signature:

Name (block capitals):

Position:

SIGNED for and on behalf of )

Ministry of Justice )

)

)

Signature:

Name (block capitals):

Position:

**Prison Retail Service Project**

**Schedule 1**

**Definitions**

**SCHEDULE 1**

**DEFINITIONS**

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

|  |  |
| --- | --- |
| "**Accounting Reference**  **Date**" | means the date to which the Supplier prepares its audited financial statements; |
| "**Accounting Report**" | has the meaning given to it Schedule 8.4 (Report and Records); |
| "**Achieve**" | means:   1. in respect of a Test, to successfully pass a Test in accordance with any requirements of Schedule 6.2 (Workshop Readiness Check); and 2. in respect of a Workshop Readiness Check, to successfully complete a Workshop Readiness Checklist; 3. in respect of a Milestone, the Approval of a Workshop Readiness Checklist in respect of that Milestone in   accordance with the provisions of Schedule 6.2 (Workshop Readiness Check),  and "**Achieved**" and "**Achievement**" shall be construed accordingly; |
| "**Acid Ratio**" | means the test as set out in Schedule 7.4 (Financial Distress); |
| "**Actual Expenditure**" | means the total of all expenditure incurred by the Supplier wholly in connection with the delivery of the Operational Services but excluding any Cost of Goods, Exceptional Costs or Supplier Profit; |
| "**Acquired Rights**  **Directive**" | means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time; |
| "**Additional Users**" | shall be as defined and described in Schedule 2.6 (Additional Users); |
| "**Additional User**  **Premises**" | means the site or sites of Additional Users as notified from time to time; |
| "**Affected Party**" | means the Party seeking to claim relief in respect of a Force Majeure Event; |
| "**Affiliate**" | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time; |
| "**Agreed Hours**" | means the hours to be worked by a Prisoner Worker within a Retail Workshop as are set out in the DWIP for each Site; |

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| --- | --- |
| **Agreed Transition Management Plan**" | means the finalised Transition Management Plan as agreed by both parties in accordance with Schedule 6.1 (Transition Plan); |
| "**Annual Budget**" | means either the Transition Budget or the Operational Budget for each Financial Year as agreed by both the Authority and the Supplier in accordance with Schedule 7.1 (Charges and Invoicing); |
| "**Annual Contract**  **Report**" | shall have the meaning given to it in Schedule 7.5 (Financial Reports and Audit Rights); |
| "**Anticipated Contract**  **Life Profit Margin**" | means the anticipated Supplier Profit Margin over the Term as reflected in the Financial Model (See also Schedule 7.1 – Charges and Invoicing); |
| "**Approve**" | means the prior written consent of the Authority and Approved shall be construed accordingly; |
| "**Approved User**" | means a person or persons granted permission to manage, access or make decisions regarding Prison Retail; |
| "**Assets**" | means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement including the Authority Assets and the Supplier Equipment; |
| "**Asset Register**" | means an asset register is a detailed list of all Assets in the form and containing the information as the Authority may reasonably request from time to time; |
| "**Associated Person**" | has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017; |
| "**Assurance**" | means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority; |
| "**ATP Milestone**" | means the Milestone linked to the completion of the Workshop  Readiness Checklist for the Operational Services set out in the Agreed Transition Management Plan; |
| "**Audit**" | means any exercise by the Authority of its Audit Rights pursuant to  Clause 12 (Records, Reports, Audit and Open Book Data) and  Schedule 7.5 (Financial Reports and Audit Rights); |

**Audit Agents**"

the Authority's internal and external auditors;

1. the Authority's statutory or regulatory auditors;
2. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
3. HM Treasury or the Cabinet Office;
4. any party formally appointed by the Authority to carry out audit or similar review functions; and
5. successors or assigns of any of the above;

|  |  |
| --- | --- |
| "**Audit Log**" | means an audit log is a document that records an event in an information (IT) technology system. In addition to documenting what resources were accessed, audit log entries usually include destination and source addresses, a timestamp and user login information; |
| "**Auditor General**" | means an auditor general, also known in some countries as a  comptroller general or comptroller and auditor general (of the National  Audit Office), is a senior civil servant charged with improving government accountability by auditing and reporting on the government's operations; |
| "**Audit Report**" | means an audit report is an appraisal of a business' complete financial status. Completed by an independent accounting professional, this document covers a company's assets and liabilities, and presents the auditor's educated assessment of the firm's financial position and future; |
| "**Audit Rights**" | means the audit and access rights referred to in Schedule 7.5 (Financial Reports and Audit Rights); |
| "**Authority**" | means The Secretary of State for Justice acting through his representatives in the Ministry of Justice; |
| "**Authority Assets**" | means the Authority Materials, the Authority Workshop Assets, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services; |

**Authority Background IPRs**"

|  |  |  |
| --- | --- | --- |
|  | IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;   1. IPRs created by the Authority independently of this Agreement; and/or 2. Crown Copyright which is not available to the Supplier otherwise than under this Agreement;   But excluding IPRs owned by the Authority subsisting in the Authority Software; | |
| "**Authority Board**  **Members**" | means the representative(s) appointed by the Authority pursuant to Schedule 8.1 (Governance); | |
| "**Authority Cause**" | means: | |
| (a) | any material breach by the Authority of any of the Authority Responsibilities; and/or |
|  | (b) | any failure by the Authority to comply with its obligations to provide:   1. the Authority Workshop Assets in accordance with Clause 9.1; 2. the Authority Premises in accordance with Clause 9.7; and 3. the minimum number of prisoners to make up the   Prisoner Workforce is 520 (or as otherwise agreed)]; |
|  | (c) | EXCEPT to the extent that such breach or failure is:   1. the result of any act or omission by the Authority to which the Supplier has given its consent; or 2. caused by the Supplier, any Sub-contractor or any Supplier Personnel; |
| "**Authority Confidential**  **Information**" | means all Personal Data and any information however it is conveyed, that relates to the business affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential; | |
| "**Authority Consent**" | means Approval by the Authority; | |

**Authority Data**"

the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

* 1. supplied to the Supplier by or on behalf of the

Authority; and/or

* 1. which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or

(b) any Personal Data for which the Authority is the Data Controller;

|  |  |
| --- | --- |
| "**Authority IT Strategy**" | means the Authority's IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure; |
| "**Authority Materials**" | means the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:   1. are owned or used by or on behalf of the Authority; and 2. are or may be used in connection with the provision or receipt of the Services,   but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third-Party Software; |
| "**Authority Policies**" | means policies used by and operated by the Authority in running every aspect of the services within the organisation (as per Schedule 2.3.).  These include PSI's / PSO's and Policy Frameworks; |
| "**Authority Premises**" | means premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them); |
| "**Authority**  **Representative**" | means the representative appointed by the Authority pursuant to Clause 11.4 (Representatives); |
| "**Authority Requirements**" | means the requirements of the Authority set out in Schedules 2.1 (Services Description), 2.2 (Performance Levels), 2.3 (Standards), 2.4  (Security Management), 2.5 (Insurance Requirements), 6.1 (Transition Plan), 8.4 (Reports and Records Provisions), 8.5 (Exit Management) and 8.6 (Service Continuity and Corporate Resolution Planning); |
| "**Authority**  **Responsibilities**" | means the responsibilities of the Authority specified in Schedule 3 (Authority Responsibilities); |
| "**Authority Software**" | means software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services; |

|  |  |
| --- | --- |
| **Authority System**" | means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services; |
| "**Authority Workshop**  **Assets**" | means any item of hardware or other equipment provided by the Authority for use in the Retail Workshops, as described in the Asset Register; |
| "**Bankers Automated**  **Clearing Service**" or  "**BACS**" | means the Automated Clearing System which facilitates Settlement of money transfers between Financial Institutions in the United Kingdom; |
| "**Baseline** **Security**  **Requirements**" | means the Authority's baseline security requirements, the current copy of which are described in Annex A of Schedule 2.4 (Information  Security and Assurance), as updated from time to time by the Authority and notified to the Supplier; |
| "**Benchmarking**" | means a review of one or more of the Services carried out in accordance with Clause 10.8 to determine whether those Services represent Good Value; |
| **“Bi-Annual”** | Twice per contract year |
| "**Board**" | means the Supplier's board of directors; |
| "**Board Confirmation**" | means the written confirmation from the Board in accordance with Paragraph 8 of Schedule 7.4 (Financial Distress); |
| "**Board Meeting**" | has the meaning as defined in Schedule 8.1 (Governance); |
| "**Bravo**" | means the Government Portal for managing ITT publication and supplier responses, now referred to as Jagger; |
| "**Breakage Costs**  **Payment**" | shall bear the meaning given to it in Schedule 7.2 (Payments on Termination); |
| "**British Business**" | means a supplier of goods or services that has its operations within the UK and is registered at Companies House; |
| "**British Products**" | products that are offered or produced within the UK using items, ingredients that are grown or manufactured using products sourced from UK; |
| "**Broadly Comparable**" | shall have the meaning given to it in Schedule 9.1 (Staff Transfer); |
| "**Budgeted Costs**" | shall bear the meaning given to it in Paragraph 12.1 of Schedule 7.1 (Charges and Invoicing) |
| "**Budget Review**" | means the review further described in Paragraph 14 of Schedule 7.1 (Charges and Invoicing); |
| "**Budget Review Report**" | means the report produced further to the Budget Review as further described in Paragraph 14 of Schedule 7.1 (Charges and Invoicing); |
| "**Buffer** **Box**" | means a pre-determined box of goods that enables prisoners' orders to be fulfilled at the point of distribution; |
| "**Bulk Orders**" | means an order to purchase a large quantity of Goods at once; |
| "**Business Days**" | means days of work from 6am Monday through to 6pm Friday and includes for public holidays. For clarity within HMPPS the only nonworking Business Day is Christmas Day; |
| "**Cabinet Office Markets and Suppliers Team**" | meant the UK government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function; |
| "**Capital Expenditure**" | means any capital investment or capital expense (capex or CAPEX) used to buy, maintain, or improve Assets as further described and charged in accordance with Schedule 7.1 (Charging and Invoicing); |
| "**Central Government**  **Body**" | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:   1. Government Department; 2. Non-Departmental Public Body or Assembly Sponsored Public   Body (advisory, executive, or tribunal);   1. Non-Ministerial Department; or 2. Executive Agency; |
| "**Change**" | means any change to this Agreement; |
| "**Change Authorisation**  **Note**" | means a form setting out an agreed Contract Change which shall be substantially in the form of Annex B of Schedule 8.2 (Change Control Procedure); |
| "**Change Control**  **Procedure**" | means the procedure for changing this Agreement set out in Schedule 8.2 (Change Control Procedure); |
| "**Change in Law**" | means any change in Law which impacts on the performance of the Services which comes into force after the Effective Date; |
| "**Change Request**" | means a written request for a Contract Change substantially in the form of Annex A of Schedule 8.2 (Change Control Procedure); |
| "**Charges**" | means the charges for the provision of the Goods and Services set out in or otherwise calculated in accordance with Schedule 7.1 (Charges and Invoicing), which shall be comprised of: |

1. Transition Costs; and
2. Operational Costs; and
3. any Rehabilitation Payment or Profit Share Payment;

|  |  |
| --- | --- |
| "**Claim**" | shall have the meaning given to it in Schedule 8.7 (Conduct of Claims); |
| "**Commercially Sensitive**  **Information**" | means the information listed in Schedule 4.2 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to:   1. the pricing of the Services; 2. details of the Supplier's IPRs; and 3. the Supplier's business and investment plans;   which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; |
| "**Commodity Tracker**" | means the reporting process for recording and monitoring the price of agreed commodities and defining the agreed base information or source of the commodity tracker for each commodity to be tracked; |
| "**Comparable Supply**" | means the supply of services to another customer of the Supplier that are the same or similar to any of the Services; |
| "**Compensation for**  **Unacceptable KPI**  **Failure**" | has the meaning given in Clause 7.3.1 (Unacceptable KPI Failure); |
| "**Compensation**  **Payment**" | means the amount of compensation payable to the supplier in the event of a termination triggered by the Authority (in line with calculation stated in Paragraph 6 of Schedule 7.2 (Payments on Termination)); |
|  |  |

**Confidential** means:

**Information**"

1. Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
   1. the Disclosing Party Group; or
   2. the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
2. other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
3. discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
4. Information derived from any of the above, but not including any Information which:
   1. was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
   2. the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient
   3. was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
   4. was independently developed without access to the

Confidential Information; or

* 1. relates to the Supplier's:
  2. performance under this Agreement; or
  3. failure to pay any Sub-contractor as required pursuant to Clause 15.15.1 (Supply Chain Protection);

"**Contract Amendment** shall have the meaning given to it in Schedule 7.5 (Financial Reports

**Report**" and Audit);

|  |  |
| --- | --- |
| **Contract Change**" | means any change to this Agreement other than an Operational Change; |
| "**Contract Inception**  **Report**" | means the initial Financial Response Template, Transition Budget and Operational Budget in a form agreed by the Supplier and the Authority in writing on or before the Effective Date; |
| "**Contracts Finder**" | the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015; |
| "**Contract Right Third-**  **Party Act (CRTPA)**" | means Contract Right Third-Party Act; |
| "**Contract Surplus**" | shall be a sum as calculated in accordance with Paragraph 17.1 of Schedule 7.1 (Charges and Invoicing); |
| "**Contract Year**" | means:   1. a period of 12 months commencing on the Effective Date; or 2. thereafter a period of 12 months commencing on each anniversary of the Effective Date;   provided that the final Contract Year shall end on the expiry or termination of the Term; |
| "**Control**" | means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "**Controls**" and "**Controlled**" shall be interpreted accordingly; |
| "**Control of Chemicals and Hazardous Substances**  **Regulations**" | means the Control of Substances Hazardous to Health Regulations 2002; |
| "**Controlled Documents**" | means a controlled document is any digital or hard-copy entity which is required by a company, a standards organization, or a regulatory agency to be managed within a tightly controlled process that maintains the integrity of the document's content through revisions; |

**Corporate Change** means:

**Event**"

1. any change of Control of the Supplier or a Parent Undertaking of the Supplier;
2. any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
3. any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the

Authority, could have a material adverse effect on the Services;

1. a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
2. an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
3. payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12-month period;
4. an order is made, or an effective resolution is passed for the winding up of any member of the Supplier Group;
5. any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
6. the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
7. any process or events with an effect analogous to those in Paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

"**Corporate Resolution** means together the:

**Planning (CRP)**

**Information**" (a) Group Structure Information and Resolution Commentary; and

(b) UK Public Sector and CNI Contract Information;

"**Corporate Social** means any effort or initiative made by a party to improve society and

**Responsibility (CSR)**" contribute towards sustainable development;

|  |  |
| --- | --- |
| **Corrective Action Plan**" | means an agreed action plan that is developed and implemented to resolve an issue within an agreed timeframe and to an agreed quality standard; |
| "**Cost of Goods**" | means in each week of a Service Period, the total cost of Goods ordered as further described in paragraph 4.2 of Schedule 7.1 (Charges and Invoicing); |
| "**Costs**" | means any cost forming part of the Transition Cost or Operational Cost as set out in an Annual Budget or otherwise Approved by the  Authority as an Exceptional Cost in accordance with Schedule 7.1 (Charges and Invoicing); |
| "**CPP Milestone**" | means a contract performance point as set out in the Agreed Transition Management Plan, being the Milestone at which the  Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 6.2 (Workshop Readiness Check); |
| "**Critical Performance**  **Failur**e" | means:   1. the Supplier accruing in aggregate 50 or more Service Points (in terms of the number of points allocated) in any period of 3 months; or 2. the Supplier accruing Service Credits or Compensation for   Unacceptable KPI Failure which meet or exceed the Service Credit Cap; |
| "**Critical Service**  **Contract**" | means the overall status of this Agreement as determined by the Authority and specified in Paragraph 10.1 of Part 2 to Schedule 8.6  (Service Continuity Plan and Corporate Resolution Planning); |
| "**CRP Information**" | means the Corporate Resolution Planning Information; |
| "**CRTPA**" | means the Contracts (Rights of Third Parties) Act 1999; |
| "**CSPS Eligible**  **Employees**" | has the meaning Civil Service Pension Service Eligible Employees as used in Schedule 9.1; |
| "**Current Assets**" | means Assets that the company intends to consume, turn into cash, or sell in the normal cause of business, usually within twelve months of the date of the Balance Sheet. They usually include stocks and work in progress, cash in hand and at bank, and debtors; |
| "**Current Liabilities**" | means Liabilities which fall due for payment within a year from the date of the Balance Sheet and include bank overdraft, trade creditors, taxation, and dividends which have not yet been paid; |
| "**Current Ratio**" | means a liquidity ratio that measures a company's ability to pay shortterm obligations or those due within one year; |
| "**Cyber Essentials**  **Scheme**" | means the government led IT security scheme which covers the requirements for basic technical protection from Internet cyber-attacks.  This is the "Stage 1" of the certification. It involves responding to the Cyber Essentials questionnaire; |
| **Cyber Essentials Plus**" | means Cyber Essentials PLUS is the second stage of assessment following the successful completion of stage 1 (Cyber Essentials Scheme) and includes for a more thorough assessment where an internal vulnerability scan takes place; |
| "**Data Controller**" | means a data controller is a person, company, or other body that determines the purpose and means of personal data processing (this can be determined alone, or jointly with another person/company/body). For the official GDPR definition of "data controller", please see the definition of "controller" in Article 4.7 of the  GDPR; |
| "**Data Loss Event**" | means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach; |
| "**Data Protection Impact**  **Assessment**" | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| "**Data Protection**  **Legislation**" | means:   1. the GDPR and any applicable national implementing Laws as amended from time to time 2. the DPA to the extent that it relates to processing of personal data and privacy; 3. all applicable Law about the processing of personal data and privacy; |
| "**Data Subject**" | has the meaning given in the GDPR; |
| "**Data Subject Request**" | has the meaning given to it in Paragraph 2.3.1.8 of Schedule 11 (Data Processing); |
| "**Debtor Days**" | The means the debtor days ratio measures how quickly cash is being collected from debtors. Debtor days can also be referred to as Debtor collection period.; |
| "**Deductions**" | means all Service Credits, Compensation for Unacceptable KPI  Failure, or any other deduction which is paid or payable to the Authority under this Agreement; |
| "**Default**" | means any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement: |

1. in the case of the Authority, of its employees, servants, agents; or
2. in the case of the Supplier, of its Sub- contractors or any Supplier Personnel,

in connection with or in relation to the subject- matter of this Agreement and in respect of which such Party is liable to the other;

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| "**Defect**" | means: | |
| (a) | any error, damage or defect in the manufacturing of any Goods or a Deliverable; or |
|  | (b) | any error or failure of code within the Software which causes  Goods or a Deliverable to malfunction or to produce unintelligible or incorrect results; or |
|  | (c) | any failure of any Goods or a Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or |
|  | (d) | any failure of any Goods or a Deliverable to operate in conjunction with or interface with any other Goods or  Deliverable in order to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant  Goods or Deliverable from meeting its associated Test  Success Criteria or Workshop Readiness Checklist; |
| "**Delay**" | means:   1. a delay in the Achievement of a Milestone by its Milestone Date; or 2. a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Agreed Transition Management Plan; | |
| "**Defra Scorecard**" | means the Defra Balanced Scorecard serves two purposes:   1. primarily to assist public sector procures consider and evaluate everything that Defra think we should (as part of the tender exercise) reference evaluation questions Stage 1; 2. secondly to then keep certain aspects of performance under review and monitor as part of contract management.   Within the Retail Services contract we have specified a certain report to show performance as part of contract management BAU. This report is included within Schedule 8.4 Reports and Records provision; | |
| "**Deliverable**" | means an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement; | |

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| "**Delivery**" | means the Goods shall be delivered:   1. where Products on the National Product List are to be delivered to the End User by the Supplier in accordance with the Services Description and the DWIP, at the point at which the Goods are received by the End User; and 2. in all other cases for the Products on the National Product List at the point that they are unloaded at the Serviced Site; 3. for any other Goods, Authority Assets or other Deliverables at the point at which they are unloaded and if required installed at the Site; |
| "**Delivery and Workshop**  **Data (DWIP 101)**" | means specific data relating to the picking, packing and delivery of prisoner's goods; |
| "**Delivery and Workshop**  **Information Pack**  **(DWIP)**" | means supporting information relating to the picking, packing and delivery of prisoner's goods; |
| "**Delivery Information**  **(Logistics Network)**" | means specific logistics plan outlining the delivery timetable; |
| "**Delivery Schedule**" | means a delivery schedule specifies the time for delivery of goods or services from the supplier to the prisoner and for each Site shall be as set out in the DWIP; |
| "**Devolved**  **Administrations**" | means the devolved administrations of Scotland, Wales and Northern  Ireland (the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly); |
| "**Digital and ICT Security**  **Lead**" | means the person appointed by Supplier who has responsibility for the supplier's provision of IT and security aspects. The person will be identified in Schedule 9.2 (Key Personnel); |
| "**Disclosing Party**" | has the meaning given in Clause 19.1 (Confidentiality); |
| "**Disclosing Party Group**" | means:   1. where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and 2. where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the   Supplier interacts in connection with this Agreement; |
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| "**Dispute**" | means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure; |

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| **Dispute Notice**" | means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute; |
| "**Dispute Resolution**  **Procedure**" | means the dispute resolution procedure set out in Schedule 8.3 (Dispute Resolution Procedure); |
| "**Documentation**" | means the descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development  information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:   1. is required to be supplied by the Supplier to the Authority under this Agreement; 2. would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services; 3. is required by the Supplier in order to provide the Services; and/or 4. has been or shall be generated for the purpose of providing the Services; |
| "**DOTAS**" | means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as  extended to national insurance contributions by the National Insurance  Contributions (Application of Part 7 of the Finance Act 2004)  Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992; |
| "**DPA**" | means the Data Protection Act 2018; |
| "**Due Diligence**  **Information**" | means any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date; |
| "**EAN**" | means International Article Number (originally European Article Number); |
| "**Early Termination Date**" | means the date as notified to Supplier of the date set out in a  Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate; |
| "**Earnings Before**  **Interest and Tax**" | is a measure of a firm's profit that includes all incomes and expenses (operating and non-operating) except interest expenses and income tax expenses; |
| "**Eco Management and**  **Audit Scheme (EMAS)**" | means the EMAS Regulation 1836/93 first introduced in 1993 as an environmental policy tool devised by the European Commission in a step towards fulfilling the Community's goal of sustainable development. It has since been revised a number of times to include for the extension of the scope of EMAS to all sectors of economic activity including local authorities, and the integration of the international environmental management system standard EN ISO 14001. Suppliers shall ensure that they comply with the latest version of EMAS Regulations; |
| "**Effective Date**" | means the later of:  the date on which this Agreement is signed by both Parties; |
| "**Effective Date of**  **Termination or Expiry**" | means the date as notified to Supplier of the date set out in a  Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate or the expiry date of the contract; |
| "**EIRs**" | means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations; |
| "**Electronic Data**  **Interchange**" | means the exchange of electronic files in a standard format that is easily process-able by a computer so that the exchange can be automated without any human intervention; |
| "**Emergency**  **Maintenance**" | means ad hoc and unplanned maintenance provided by the Supplier where: |

1. the Authority reasonably suspects that the IT Environment, Authority Workshop Assets or any Supplier Equipment or any other part of the Services, or any part thereof, has or may have developed a fault, and notifies the Supplier of the same; or
2. the Supplier reasonably suspects that the IT Environment, Authority Workshop Assets or any Supplier Equipment or any other part of the Services, or any part thereof, has or may have developed a fault;

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| **Employee Liabilities**" | means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following: | |
| (a) | redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; |
|  | (b) | unfair, wrongful or constructive dismissal compensation; |
|  | (c) | compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; |
|  | (d) | compensation for less favourable treatment of part-time workers or fixed term employees; |
|  | (e) | outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; |
|  | (f) | employment claims whether in tort, contract or statute or otherwise; |
|  | (g) | any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |
| "**Employment**  **Regulations**" | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other  Regulations implementing the Acquired Rights Directive; | |
| "**End User**" | means the person (prisoner) or Serviced Site/Site receiving the Goods and Services; | |
| "**End User Delivery**" | means the process where the prisoners orders will be distributed from a designated place on the wings or central location as determined by local requirements. Distribution of orders may be done by prison staff or Supplier Employees, as set out in the DWIP; | |
| "**Environmental Sustainability Plan**" | means the Suppliers environment sustainability plan that encapsulates all elements of the Good and Service provided in terms of people, product, waste and demonstrates a measured commitment to reducing the impact of the Goods and Services on the environment; | |
| "**EPOD**" | means Electronic Proof of Delivery in relation to the provision of Goods as supplied in accordance with this Agreement | |
| "**Escalation**" | as set out in Paragraph 3 of Schedule 8.3 (Dispute Resolution Process); | |

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| **Escalation Procedure**" | as set out in Paragraph 3 of Schedule 8.3 (Dispute Resolution Process); |
| "**Escalation Report**" | as set out in Paragraph 3 of Schedule 8.3 (Dispute Resolution Process); |
| "**Estimated Year 1**" | means the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Response Template; |
| "**ETI Ethical Trade**  **Initiative**" | means Ethical Trade Initiative addresses the ethical aspects of organisations including worker welfare, agricultural practice, natural resource conservation, and sustainability of the environment.; |
| "**Exceptional Costs**" | means charges, costs and expenses which have been pre-approved in writing by the Authority in accordance with Paragraph 5 of Schedule  7.1 (Charges and Invoicing) and are costs that are outside of the Annual Budget; |
| "**Existing Supplier**" | means the incumbent Supplier of the existing retail services contract; |
| "**Exit Assistance Notice**" | has the meaning given to it in Schedule 8.5 (Exit Management); |
| "**Exit Day**" | shall have the meaning in the European Union (Withdrawal) Act 2018; |
| "**Exit Manager**" | means the Supplier or Authority appointed person who has responsibility for managing the Exit process from the contract. This person will be defined in Schedule 9.3 (Key Personnel); |
| "**Exit Period**" | has the meaning given to it in Schedule 8.5 (Exit Management); |
| "**Exit Plan**" | means the plan produced and updated by the Supplier during the  Term in accordance with Paragraph 4 of Schedule 8.5 (Exit Management); |
| "**Expedited Dispute**  **Timetable**" | means the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (Dispute Resolution Procedure); |
| "**Expert**" | has the meaning given in Schedule 8.3 (Dispute Resolution Procedure); |
| "**Expert Determination**" | means the process described in Paragraph 6 of Schedule 8.3 (Dispute Resolution Procedure); |
| "**Expiry Date**" | means the termination date of the Agreement; |
| "**Express Service**" | means the process as set out in the Services Description (if any) for the Authority to place orders for new receptions and first night prisoners at any time for the Express Service; |
| "**Extension Period**" | means the permitted period or periods that the Authority may extend the Initial Term by, being any period or periods (of no less than 12 months) up to a maximum of 24 months from the expiry of the Initial Term; |

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| **Fair Deal Employees**" | shall have the meaning given to it in Schedule 9.1 (Staff Transfer); |
| "**Final Reconciliation**  **Report**" | shall be as defined in Schedule 7.5 (Financial Reports and Audit); |
| "**Financial Distress**  **Event**" | means the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 (Financial Distress); |
| "**Financial Distress**  **Remediation Plan**" | means a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs; |
| "**Financial Response**  **Template**" | means the response template showing the Supplier's costs of delivering the Services in the first Financial Year, and forming the basis of the initial Transition Budget and Operational Budget; |
| "**Financial Reports**" | means the reports to be provided by the Supplier in accordance with Schedule 7.5 (Financial Reports and Audit Rights); |
| "**Financial Transparency**  **Objectives**" | shall be as defined in Schedule 7.5 (Financial Reports and Audit Rights); |
| "**Financial Year**" | means the Authority's financial year running from 1 April to 31 March in each year; |
| "**Flash Price**" | means a discount or promotion offered by the Supplier for a short period of time and agreed with the Authority. The time limit and limited availability encourage prisoner to purchase Goods; |
| "**FOIA**" | means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information  Commissioner or any relevant Central Government Body in relation to such Act; |
| "**Food Labelling**  **Standards**" | means all pre-packed food requires a food labelling that display certain mandatory information. All foods will be subject to general food labelling requirements and any labelling provided must be accurate and not misleading; |
| "**Force Majeure Event**" | means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain; |
| "**Force Majeure Notice**" | means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event; |

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| **Former Supplier**" | has the meaning given in Schedule 9.1 (Staff Transfer); |
| "**Fresh, Frozen and**  **Chilled Goods**" | means fruits and vegetables that have not been processed in any manner.  Frozen products are items that have had their temperature reduced and maintained to below their freezing point for the purpose of storage and transportation until they are ready to be eaten. Chilled goods are food products that has been stored at refrigeration temperatures, which are at or below 0 – −5 °C The key requirements for chilled food products are good quality and microbiological safety at the point of consumption; |
| "**GDPR**" | means the General Data Protection Regulation (EU) 2016/679; |
| "**General Anti-Abuse**  **Rule**" | means:   1. the legislation in Part 5 of the Finance Act 2013; and 2. any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; |
| "**General Change in Law**" | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply; |
| "**Good Hygiene Practice**" | means the requirements meeting the requirements of any Law and Good Industry Practice and any other Authority Requirements to prevent contamination of food in order to provide safe food to the End Users; |
| "**Good Industry Practice**" | means at any time, the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws; |
| "**Goods**" | means the goods to be provided by the Supplier in accordance with the terms of this Agreement, meeting the requirements of the Services  Description, (including those Products as further described in the National Product List); |
| "**Goods Received Note**" | means GRN – Record at the point of receipt of goods received. This record confirms receipt of all goods delivered; |
| "**Government Buying**  **Standards**" | means the Government Buying Standards for Food and Catering Services (GBSF) are a set of criteria outlined by the Department for Environment, Food and Rural Affairs (Defra) to ensure the use of sustainable food products; |
| "**Green Public**  **Procurement (GPP)**" | means the process where public authorities seek to source goods, services or works with a reduced environmental impact; |

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| **Group Structure**  **Information and**  **Resolution Commentary**" | means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix 1 of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning); |
| "**Halifax Abuse Principle**" | means the principle explained in the CJEU Case C-255/02 Halifax and others; |
| "**Hardware Builds**" | means the process as set out in the Services Description in which the Supplier will construct the infrastructure build of the system and will include for architecture drawings and data information flows; |
| "**Head of Retail**" or "**HoR**" | means the Authority role with responsibility to manage the prisoner retail policy, and provide operational and contract management for the Agreement; |
| "**Health and Safety**  **Policy**" | means the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety; |
| "**High Value Items**" | means any item that is deemed by Authority representatives at each Site as a High Value item. This may not just be governed by the price for the particular item but whether or not the item could be utilised as contraband; |
| "**HMPPS Security**  **Breach**" | shall have the meaning given to it in clauses 9.34 of this Agreement; |
| "**HMRC**" | means HM Revenue & Customs; |
| "**Impact Assessment**" | has the meaning given in Schedule 8.2 (Change Control Procedure); |
| "**Indemnifier**" | means any Party providing an indemnity under this Agreement; |
| "**Indemnified Person**" | means the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement; |
| "**Information**" | means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium  (including CD-ROM, magnetic and digital form); |
| "**Information Commissioner**" | means the Information Commissioner in place from time to time in the United Kingdom or any other regulatory body or person performing such functions in the UK; |
| "**Information Security**  **Management System**  **(ISMS)**" | means the information security management system (ISMS) and processes developed by the Supplier in accordance with Schedule 2.4 (Information Security and Assurance) as updated from time to time; |

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| "**Infrastructure**" | means a set of IT components that are the foundation of an IT service. These are typically physical components but may include various software and network components; |
| "**Initial Term**" | means the period of 5 years from and including the Effective Date; |
| "**Initial Upload Date**" | means the occurrence of an event detailed in Schedule 8.4 (Reports and Records Provisions) Annex C (Virtual Library) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library; |
| "**Insolvency Event**" | with respect to any person, means: |

1. that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
   1. (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
   2. (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
2. that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that that person with one or more other companies or the solvent reconstruction of that person;
3. another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
4. a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within 14 days;
5. that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
6. where that person is a company, an LLP or a partnership:
   1. a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;

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|  | 1. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person; 2. (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or 3. (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or   (g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above; |
| "**Institute of Chartered**  **Accountants of England and Wales**" | this is a professional membership organisation that promotes, develops and supports chartered accountants and students across the world. The ICAEW was established by royal charter in 1880; |
| "**Intellectual Property**  **Rights**" **or “IPR's”** | means:   1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; 2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and 3. all other rights having equivalent or similar effect in any country or jurisdiction; |
| "**Internet Protocol**  **Security (IPSec)**" | means a secure network protocol that authenticates and encrypts data to provide secure encrypted communication between two devices over a network; |
| "**Intervention Cause**" | has the meaning given in Clause 26.1 (Remedial Adviser); |
| "**Intervention Notice**" | has the meaning given in Clause 26.1 (Remedial Adviser); |
| "**Intervention Period**" | has the meaning given in Clause 26.2 (Remedial Adviser); |

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| "**Intervention Trigger**  **Event**" | means:   1. any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event; 2. a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; 3. the Supplier accruing in aggregate 38 Service Points or more (in terms of the number of points allocated) in any period of 3 months; 4. the Supplier accruing Service Credits which meet or exceed   75% of the Service Credit Cap; and/or   1. the Supplier not Achieving a Key Milestone within 75 days of its relevant Milestone Date; |
| "**IPRs Claim**" | means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that  Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement; |
| "**IRCA**" | means the International Register of Certificated Auditors; |
| **“IRCPE”** | Means the operational management team for Industries, Retail, Catering and PE Services |
| "**IT**" | means information and communications technology; |
| "**IT Environment**" | means the Authority System and the Supplier System; |
| "**Joint Controllers**" | where two or more Controllers jointly determine the purposes and means of processing; |
| "**Key Performance**  **Indicator**" | means a Transition KPI or an Operational KPI; |
| "**Key Personnel**" | means those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (Key Personnel) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (Key Personnel); |
| "**Key Roles**" | means a role described as a Key Role in Schedule 9.2 (Key Personnel) and any additional roles added from time to time in accordance with Clause 14.4 (Key Personnel); |
| "**Key Sub-contract**" | means each Sub-contract with a Key Sub-contractor; |

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| "**Key Sub-contractor**" | means any Sub-contractor:   1. which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or 2. with a Sub-contract with a contract value which at the time of   appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this  Agreement (as set out in the Annual Budget); |
| "**Know-How**" | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Agreement; |
| "**KPI Failure**" | means a failure to meet the Target Performance Level in respect of a Key Performance Indicator; |
| "**KPI Report**" | means report in the format as defined in Schedule 8.4 (Reports and Records Provision); |
| "**KPI Service Threshold**" | shall be as set out against the relevant Key Performance Indicator in Tables 1a and 2a of Part I of Annex A of Schedule 2.2 (Performance Levels); |
| "**Law**" | means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply; |
| "**Legacy Contracts**" | means any contract that the supplier or Authority has in place that may or may not novate across to the new supplier; |
| "**Legislation**" | is a law or a set of laws that have been passed by Parliament; |
| "**Legitimate Expectation**" | means the expectation of an End User that Goods shall be of good quality and in accordance with the National Product List, Authority Requirements, and any applicable Laws; |
| "**Licensed Software**" | means all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Supplier Software, Third  Party Software and/or any Specially Written Software; |
| "**Local Product List**" or  "**LPL**" | means the products that prisoners may buy in any particular establishment are determined by that prison's local product list (LPL).  The establishment can choose up to 750 products at any one time. The Governor is responsible for ensuring that all the items chosen are compliant with local security restrictions, and suitable for the regime; |
| "**Losses**" | means all losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties |

whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

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| "**Maintenance Schedule**" | shall have the meaning set out in Clause 9.27 (Maintenance); |
| "**Malicious Software**" | means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence; |
| "**Management**  **Information**" | means the management information specified in Schedule 2.2 (Performance Levels), Schedule 7.1 (Charges and Invoicing) and Schedule 8.1 (Governance) to be provided by the Supplier to the Authority; |
| "**Management Report**" | shall have the meaning of the management reports as defined in Schedule 8.4 (Reports and Records Provision); |
| "**Manifests**" | means a list of the goods carried by the Suppliers vehicle; |
| "**Master File**" | shall bear the meaning given to it in the Services Description, Paragraph 2.16; |
| "**Material KPI Failure**" | means:   1. a Serious KPI Failure; 2. a Severe KPI Failure; or 3. a failure by the Supplier to meet a KPI Service Threshold; |
| "**Material PI Failure**" | means:   1. a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or 2. a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance   Indicators that are measured in that Service Period; |
| "**Material Safety Data**  **Sheets**" | means a material safety data sheet (MSDS), or product safety data sheet (PSDS) are documents that list information relating to occupational safety and health for the use of various substances and products. MSDSs catalogue information on chemicals, chemical compounds, and chemical mixtures. MSDS information may include instructions for the safe use and potential hazards associated with a particular material or product, along with spill-handling procedures; |
| "**Measurement Period**" | in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier's performance is measured as the same is set out in the tables in Schedule 2.2  (Performance Management), and in the event no measurement period is indicated, the default measurement period shall be one Service Period; |

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| "**Milestone**" | means an event or task described in the Agreed Transition Management Plan which, if applicable, shall be completed by the relevant Milestone Date; |
| "**Milestone Adjustment**  **Payment Amount**" | means in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula:  A – B  Where:   1. A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone; and 2. B is an amount equal to aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero; |
| "**Milestone Adjustment**  **Payment Notice**" | has the meaning given in Clause 31.7 (Payments by the Supplier); |
| "**Milestone Date**" | means the target date set out against the relevant Milestone in the Agreed Transition Management Plan by which the Milestone must be Achieved; |
| "**Milestone Payment**" | means a payment identified in Schedule 7.1 (Charges and Invoicing) to be made following the Achievement of a Milestone; |
| "**Minor KPI Failure**" | shall be as set out against the relevant Key Performance Indicator in  Table 1a and Table 2a of Part I of Annex A of Schedule 2.2 (Performance Levels); |
| "**Mobilisation**" | means Mobilisation Period as described in Schedule 2.1 (Services Description) (including but not limited to 6.1 in the Services  Description) and the Agreed Transition Management Plan as per Schedule 6.1; |
| "**Monitored Suppliers**" | refers to all suppliers as defined in Schedule 7.4 Financial Distress which includes for Prime and Key subcontractors; |
| "**Month**" | means a calendar month and "**monthly**" shall be interpreted accordingly; |
| "**Monthly Review**  **Meeting**" | has the meaning given in Schedule 8.1 (Governance); |
| "**Multi-Party Dispute**  **Resolution Procedure**" | has the meaning given in Paragraph 10.1 of Schedule 8.3 (Dispute Resolution Procedure); |
| "**Multi-Party Procedure**  **Initiation Notice**" | has the meaning given in Paragraph 10.2 of Schedule 8.3 (Dispute Resolution Procedure); |
| "**National Archives**" | means the National Archives is a non-ministerial government department. Its parent department is the Department for Digital, |

Culture, Media and Sport of the United Kingdom of Great Britain and

Northern Ireland. It is the official archive of the UK government and for England and Wales; and "guardian of some of the nation's most iconic documents, dating back more than 1,000 years." There are separate national archives for Scotland and Northern Ireland;

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| "**National Cyber Security**  **Centre**" | means the National Cyber Security Centre is an organisation of the United Kingdom Government that provides advice and support for the public and private sector in how to avoid computer security threats; |
| "**National Prison Retail**  **Satisfaction Survey**" | means a satisfaction survey is a questionnaire designed to assist the Retail team and Supplier to understand what the prisoners think about their products or services, their brand, and their customer support. The prisoner satisfaction surveys allow the Supplier to improve products strategically, optimize user experience, and deliver exactly what is required; |
| "**National Product List**" **or** "**NPL**" | means a cumulative list of all items that is available for prisons to select for sale to their prisoners. Not every item on the NPL is available at every prison; |
| "**National Surveys**" | means a questionnaire designed to assist the Retail team and Supplier to understand what the prisoners think about the Products and Services their brand, and their customer support. The prisoner surveys allow the Supplier to improve products strategically, optimize user experience, and deliver exactly what is required; |
| "**NCSC**" | stands for "National Cyber Security Centre", as defined above; |
| "**NCSC Assured Service**" | means a service that aligns with the National Cyber Security Centre's secure design principles; |
| "**Net Book Value**" | means the value of an asset, taking into account diminutions, depreciations, and other accounting charges, as reasonably recorded in the accounts of its owner; |
| "**Net Debt**" | means a metric that indicates the overall debt situation of a company by netting the value of the liabilities and debts of a company along with its cash and other similar liquid assets. Simply put, net debt refers to the total debt of a company minus cash on hand; |
| "**Network Plan**" | refers to the system architecture and infrastructure of the proposed IT system; |
| "**New Employer**" | means a supplier supplying services to the Authority after the Relevant  Transfer Date that are the same as or substantially similar to the Services (or any part of the Services); |
| "**New Releases**" | means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item; |
| "**New Supplier**" | means a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub- |

contractor of such supplier (or any sub-contractor of any such subcontractor);

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| "**NOMIS**" | means HMPPS - National Offender Management Information System (NOMIS) used within Prisons; | |
| "**Non-trivial Customer**  **Base**" | means a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor; | |
| "**Non-retained**  **Deliverables**" | in relation to a CPP Milestone Payment Notice and each CPP  Milestone the subject of that CPP Milestone Payment Notice,  Deliverables provided to the Authority which relate to the relevant CPP  Milestone(s) and which are not Retained Deliverables; | |
| "**Notifiable Default**" | shall have the meaning given in Clause 25.1 (Rectification Plan Process); | |
| "**Object Code**" | means Software and/or data in machine-readable, compiled object code form; | |
| "**Occasion of Tax Non-**  **Compliance**" | means: | |
|  | (a) | any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:   1. a Relevant Tax Authority successfully challenging the   Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;   1. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or |
|  | (b) | any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion; |
| "**On-Boarding Plan**" | means the mechanism and or process through which new Prisons opt in to receive the Goods and Services as further described in the Services Description; | |
| "**Open Book** **Data**" | shall have the meaning given to it in Schedule 7.5 (Financial Reports and Audit Rights); | |
| "**Open Book Rebate**" | means an Open Book rebate would be any adjusting payment that a supplier needs to make to the Authority following the conclusion of an Open Book Review; | |

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| **Open Book Review**" | means the review by the Authority as further described at Paragraph 8 of Schedule 7.1 (Charging and Invoicing); |
| "**Open Source**" | means computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source; |
| "**Operational Budget**" | means the budget agreed between the Parties' in accordance with Schedule 7.1 (Charges and Invoicing) in respect of any Operational Costs for each Financial Year; |
| "**Operational Costs**" | means the Charges payable by the Authority and calculated in accordance with Paragraph 4 of Schedule 7.1 (Charges and Invoicing); |
| "**Operational Change**" | means any change in the Supplier's operational procedures which in all respects, when implemented:   1. will not affect the Charges and will not result in any other costs to the Authority; 2. may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; 3. will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and   in each case will not require a change to this Agreement; |
| "**Operational KPIs**" | means the Performance Indicators set out in table 2a of Schedule 2.2 (Performance Levels); |
| "**Operational SPIs**" | means the Performance Indicators set out in table 2b of Schedule 2.2 (Performance Levels); |
| "**Operational Services**  **Costs**" | means the cost of delivering the Operational Services calculated in accordance with Paragraph 4.3 of Schedule 7.1 (Charging and Invoicing); |
| "**Operating System**" | means the IT solution that the supplier has proposed to operate the services; |
| "**Operational Services**" | means any Services described in the Services Description which are not Transition Services including without limitation retail services, distribution services, end user delivery service (including without limitation costs for: processing of all End User orders, delivery of End  User orders to the agreed Service Sites/Sites, End User Delivery  (distribution) of orders (where agreed), provision of an Express Delivery Service, provision of all service requirements as detailed in the Services Description and training and related skills programmes for the assistance of rehabilitation of prisoners); |

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| **Operational Service Commencement Date**" | means in relation to an Operational Service, the later of:   1. the date identified in the Agreed Transition Management Plan upon which the Operational Service is to commence; and 2. where the Agreed Transition Management Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone; |
| "**Optional Services**" | means the services described as such in Schedule 2.1 (Services Description) which are to be provided by the Supplier if required by the  Authority in accordance with Clause 5.26 (Optional Services); |
| "**Other Supplier**" | means any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware; |
| "**Outline Transition**  **Management Plan**" | means the outline plan set out in Schedule 4.1 (Supplier Solution); |
| "**PABX**" | means has the meaning Private Automatic Branch Exchange. Is an automatic telephone switching system; |
| "**Parent Undertaking**" | has the meaning set out in section 1162 of the Companies Act 2006; |
| "**Partial Termination**" | means the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 30.2.2 (Termination by the Authority) or 30.3.2 (Termination by the Supplier) or otherwise by mutual agreement by the Parties; |
| "**Parties**" **and** "**Party**" | have the meanings respectively given on page 1 of this Agreement; |
| "**Profit Share Payment**" | means the payment calculated in accordance with Paragraph 17 of Schedule 7.1 (Charges and Invoicing); |
| "**Performance Failure**" | means a KPI Failure or a PI Failure; |
| "**Performance Indicators**" | means the Key Performance Indicators and the Subsidiary Performance Indicators; |
| "**Permitted Maintenance**" | has the meaning given in Clause 9.27 (Maintenance); |
| "**Performance**  **Management Board**" | shall have the meaning given to it in Schedule 8.1 (Governance); |
| "**Performance Monitoring**  **Report**" | has the meaning given in Schedule 2.2 (Performance Levels); |
| "**Performance Review**  **Meeting**" | has the meaning as defined in Schedule 8.4 (Reports and Records Provisions) and as defined in Schedule 8.1 (Governance); |

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| **Permitted Disclosures**" | means Information that the Authority has obtained approval to disclose or information that the Supplier has agreed can be released; | | |
| "**Permitted Purpose**" | shall bear the meaning given to it in Schedule 7.3 (Benchmarking); | | |
| "**Personal Data**" | has the meaning given in the GDPR; | | |
| "**Personal Data Breach**" | has the meaning given in the GDPR; | | |
| "**Personnel**" | means Supplier and or HMPPS staff associated with the provision or receipt of the Services; | | |
| "**Pick List**" | means a list of goods that is produced once the order has been tilled detailing what prisoners have ordered. This is a" blind" list which has no prisoners' details on; | | |
| "**PI Failure**" | means a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator; | | |
| "**PI Service Threshold**" | shall be as set out against the relevant Subsidiary Performance Indicator in Table 1b and 2b in Schedule 2.2 (Performance Levels); | | |
| "**PPE**" | Personal Protection Equipment; | | |
| "**Prisoner Income and**  **Expenditure System**  **(PIES)**" | means a software application used by local finance teams to amend prisoners spends; | | |
| "**Prisoner Order Forms**" | means known locally as the canteen form. A list of goods which allows prisoner to order their goods; | | |
| "**Prisoner Worker**" | means a prisoner who is selected to work in the Retail Workshop; | | |
| "**Prisoner Workforce**" | means number of prisoners who have been allocated to the Retail Workshop; | | |
| "**Prison Service Order**" and "**Prison Service Instruction**" | shall be an such instruction as provided by the Authority from time to time; | | |
| "**Processing**" | has the meaning given to it under the GDPR; | | |
| "**Processor**" | has the meaning given to it under the GDPR; | | |
| "**Products**" | means any item of Goods which is identified on the National Product  List; | | |
| "**Product Prices**" | means cost prices of goods sold to prisoners via the canteen process; | | |
| "**Product Ranges**" | means the list of products included within a category, e.g. Toiletries, confectionary; | | |
| **Product Recall**" | means a product that the Supplier has found a manufacturing issue with and therefore the product needs to be returned to the manufacturer; | |
| "**Product Review Pack**" | means a set of documents with is produced by the Supplier and presented at the Quarterly Range Review; | |
| "**Product Selling Price**" | Retail means retail prices of goods sold to prisoners via the canteen process; | |
| "**Product Stock**  **Information**" | means a set of documents with is produced by the Supplier and presented at the Quarterly Range Review; | |
| "**Prohibited Act**" | means: | |
| (a) | to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:   1. induce that person to perform properly a relevant function or activity; or 2. reward that person for improper performance of a relevant function or activity; |
|  | (b) | to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; |
|  | (c) | an offence:   1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); 2. under legislation or common law concerning fraudulent acts (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or 3. defrauding, attempting to defraud or conspiring to defraud the Authority; or |
|  | (d) | any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK; |
| "**Promotional Products**" | shall have the meaning given to it in Schedule 8.1 (Governance); | |
| "**Promotion**" | means pre-determined period when products can be sold to prisoners as a Promotion. This could entail a lower Retail price or be associated with a Religious celebration; | |
| "**Proof of Delivery**" | means a record that the End User has received the Goods; | |
| "**Project Specific IPRs**" | means: | |

1. Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments

of these items including (but not limited to) database schema; and/or

1. Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;

but shall not include the Supplier Background IPRs or the Specially Written Software;

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| "**Public Sector**  **Dependent Supplier**" | means a supplier where that Supplier, or that Supplier's Group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business; | |
| "**Public Sector and CNI**  **Contract Information**" | means the information requirements set out in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of Schedule 8.6  (Service Continuity Plan and Corporate Resolution Planning); | |
| "**Quality Plans**" | means quality plans to ensure that the Services meet the required Standards (as set out in Schedule 2.3 and Schedule 2.4) which shall be Approved by the Authority; | |
| "**Quarter**" | means the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement); | |
| "**Quarterly Contract**  **Report**" | means a set of documents (including without limitation the Quarterly Dun & Bradstreet Report) which is produced by the Supplier in accordance with Schedule 7.5. This should highlight performance of the Contract; | |
| "**Quarterly Range**  **Review**" (or "**QRR**") | means a pre-determined meeting between HMPPS and the Supplier to review all products on the National Product List. Taking into consideration previous sales data and external market trends and which is conducted in accordance with Schedule 8.1 (Governance); | |
| "**RAID**" | means Risk, Assumptions, Issues and Dependencies (RAID); | |
| "**REACH**" | is a European Union regulation concerning the Registration, Evaluation, Authorisation and restriction of Chemicals; | |
| "**Reception Packs**" | means an approved pack of Goods that a prisoner can purchase upon entering Prison; | |
| "**Recipient**" | has the meaning given in Clause 19.1 (Confidentiality); | |
| "**Records**" | has the meaning given in Schedule 8.4 (Reports and Records Provisions); | |
| "**Recovery Point**  **Objective**" | means a period of time between the most recent usable backup and the point in which a disruptive event took place, e.g. a service outage; | |
| "**Rectification Plan**" | means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default; | |
| **Rectification Plan Failure**" | means: | | |
|  | (a) | the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses  25.4 (Submission of the draft Rectification Plan) or 25.8  (Agreement of the Rectification Plan); | |
|  | (b) | the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 25.7 (Agreement of the Rectification Plan); | |
|  | (c) | the Supplier failing to rectify a material Default within the later of:   1. 30 Working Days of a notification made pursuant to   Clause 25.2 (Notification); and   1. where the Parties have agreed a Rectification Plan in   respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the  Rectification Plan by which the Supplier must rectify the material Default; | |
|  | (d) | a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred; | |
|  | (e) | the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or | |
|  | (f) | following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default; | |
| "**Rectification Plan**  **Process**" | means the process set out in Clauses 25.4 (Submission of the draft Rectification Plan) to 25.9 (Agreement of the Rectification Plan); | | |
| "**Refuses**" | means the option of the Authority to return or destroy Goods, which are provided by the Supplier in accordance with this Agreement and the Services Description, and are in all respects fit for purpose and meet the ordered requirement, for reasons due to (without limitation): | | |

1. prisoner behaviour,
2. prisoner unavailability,
3. prisoner funds; and/or
4. such other circumstances which are not known to the Authority at the time of ordering the Goods; and "**Refuse**" and "**Refusal**" shall be construed accordingly;

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| **Release on Temporary Licence (ROTL)**" | enables participation in activities outside of the prison establishment, directly contributing to community resettlement and development of a purposeful, law-abiding life. There is no entitlement to ROTL. It is discretionary and only allowed following a robust risk assessment.  There are four types of ROTL:   1. Resettlement day release for activities linked to sentence plans, for example, paid and unpaid work, training or education, maintaining family ties. 2. Resettlement overnight release allows prisoners to spend time at their release address. This is to re-establish links with family and local community. Release is for a maximum of four nights. 3. Childcare resettlement licence for prisoners who are sole carers for children. Helps maintain the parent/child relationship and prepare for parental duties. Release is for a maximum of three days. 4. Special purpose licence allows prisoners to respond to exceptional, personal circumstances. For example, for medical treatment and other criminal justice needs. Release is usually for a few hours; |
| "**Relevant Authority**" | means the Authority or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team; |
| "**Relevant IPRs**" | means IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided  access) to the Authority or a third party in the fulfilment of the Supplier's obligations under this Agreement including IPRs in the  Specially Written Software, the Supplier Non-COTS Software, the  Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier  COTS Software, the Supplier COTS Background IPRS, the Third  Party COTS Software and/or the Third Party COTS IPRs; |
| "**Relevant Requirements**" | means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act  2010; |
| "**Relevant Tax Authority**" | means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established; |
| "**Relevant Transfer**" | shall have the meaning given to it in Schedule 9.1 (Staff Transfer); |
| "**Relief Notice**" | has the meaning given in Clause 28.3 (Authority Cause); |
| "**Remedial Adviser**" | means the person appointed pursuant to Clause 26.2 (Remedial Adviser); |
| "**Remedial Adviser**  **Failure**" | has the meaning given in Clause 26.6 (Remedial Adviser); |

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| **Repeat KPI Failure**" | has the meaning as defined in Schedule 2.2 (Performance Levels); |
| "**Replacement Services**" | means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party; |
| "**Replacement Supplier**" | means any third-party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority); |
| "**Reports and Records**  **Provisions**" | has the meaning as defined in Schedule 8.4 (Reports and Recording Provisions); |
| "**Retail Liaison Contact**" | means the single point of contact within a prison who is responsible for prison retail at any Site; |
| "**Retail Operations Team**" | means HMPPS Personnel as notified by the Authority from time to time and are responsible for the day to day Authority operations in connection with the Goods and Services; |
| "**Retail Workshop**" | means an internal workshop employing prisoners to carry out the picking and packing operation for prison retail; |
| "**Retail Workshop Site**" | means any Site at which a Retail Workshop is located; |
| "**Retirement Benefit**  **Obligations**" | means a projected benefit obligation (PBO) is an actuarial measurement of what a company will need at the present time to cover future pension liabilities. It is used to determine how much must be paid into a defined benefit pension plan to satisfy all pension entitlements that have been earned by employees up to that date, adjusted for expected future salary increase; |
| "**Returns**" | means products or goods that prisoners return to the Retail Workshop due to them being either faulty or not suitable; |
| "**Revenue**" | means the income that a business generates from its normal business activities, usually from the sale of goods and services to customers.  Revenue is also referred to as sales or turnover; |
| "**Request for**  **Information**" | means a Request for Information under the FOIA or the EIRs; |
| "**Required Action**" | has the meaning given in Clause 27.1.1 (Step-In Rights); |
| "**Retained Deliverables**" | has the meaning given in Clause 31.8.2 (Payments by the Supplier); |
| "**Risk Register**" | means the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is set out in Annex D of Schedule 7.1 (Charges and Invoicing); |
| "**Sales**" | means sales of Goods to End Users; |

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| **Sales Report**" | means a sales report provided by the Supplier which describes the record of all sales transactions which have been made, including the specific details of the products that have been sold during a particular period; |
| "**Satisfaction Surveys/**  **User Feedback**" | means a prisoner satisfaction survey is a process that assists HMPPS to measure the prisoners' level of satisfaction with the Retail service. They're especially useful for identifying concerns that prisoners have as well as those who are more positive; |
| "**Security Incidents and**  **Risks**" | means a report providing an overview and summary of any risks, security or health and safety incidents for the reporting period and YTD tracking. Information to include   1. Workshop / incident type 2. Related incidents 3. Behavioural incidents; |
| "**Security Management**  **Plan**" | means the Supplier's security plan as attached as Annex B of Schedule 2.4 (Information Security and Assurance) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 2.4 (Information Security and Assurance); |
| "**Sensitive Claim**" | has the meaning as defined in Schedule 8.7 (Conduct of Claims); |
| "**Serious KPI Failure**" | shall be as set out against the relevant Key Performance Indicator in  Table 1a and Table 1b of Part I of Annex A of Schedule 2.2 (Performance Levels); |
| "**Service Continuity Plan**" | means any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) as may be amended from time to time; |
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| "**Service Credits**" | means credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Schedule 2.2; |
| "**Service Credit Cap**" | shall in each Service Period be a sum equal to the total Supplier Profit calculated in accordance with Schedule 7.1 (Charges and Invoicing), prior to the deduction of any Service Credits; |
| "**Service Description**" | as defined in Schedule 2.1 (Service Description) and as agreed as Supplier Solution Schedule 4; |
| "**Service Downtime**" | means the time that the service was not operational until the service was operational. It will also include for any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Authority and the Supplier for the next Quarter; |
| "**Service Management**  **Board (SMB)**" | has the meaning as defined in Schedule 8.1 (Governance); |

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| **Service Period**" | means a calendar month, save that:   1. the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and 2. the final service period shall commence on the first day of the   calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term; |
| "**Service Points**" | in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in Table 1a and 2a in Schedule 2.2 (Performance Levels); |
| "**Services**" | means any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (Services Description); |
| "**Service Severity Levels**" | means the level of service performance for a given KPI measured against a defined threshold to determine what if any service points should be attributed; |
| "**Serviced Sites**" | means a Site (including Authority Premises, the Suppliers premises or third-party premises and any additional users' premises) where the Goods are delivered for distribution to End Users; |
| "**Service Transfer Date**" | has the meaning given in Schedule 9.1 (Staff Transfer); |
| "**Severe KPI Failure**" | shall be as set out against the relevant Key Performance Indicator in Table 1a and Table 2a of Schedule 2.2 (Performance Levels); |
| "**Sites**" | means any premises (including the Authority Premises, the Supplier's premises or third-party premises):   1. from, to or at which:    1. the Goods are (or are to be) delivered;    2. the Services are (or are to be) provided; or    3. the Supplier manages, organises or otherwise directs the provision or the use of the Services; or 2. where:    1. any part of the Supplier System is situated; or    2. any physical interface with the Authority System takes place;   (and includes any Retail Workshop Site or Serviced Site); |
| "**SME**" | means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission  Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; |

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| "**Software**" | means Specially Written Software, Supplier Software and Third-Party Software; |
| "**Software Supporting**  **Materials**" | has the meaning given in Clause 16.2.2 (Specially Written Software and Project Specific IPRs); |
| "**Source Code**" | means the computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software; |
| "**Specially Written**  **Software**" | means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or ThirdParty Software created specifically for the purposes of this Agreement; |
| "**Specific Change in Law**" | means a Change in Law that relates specifically to the business of the Authority and which would not affect:   1. a Comparable Supply; 2. a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply; |
| "**Standards**" | means the standards, polices and/or procedures identified in Schedule  2.3 (Standards); |
| "**Step-In Notice**" | has the meaning given in Clause 27.1 (Step-In Rights); |
| "**Step-In Trigger Event**" | means:   1. any event falling within the definition of a Supplier Termination Event; 2. a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; 3. the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement; 4. the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 27 (Step-In Rights) is necessary; 5. the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or 6. a need by the Authority to take action to discharge a statutory duty; |
| "**Step-Out Date**" | has the meaning given in Clause 27.5.2 (Step-In Rights); |

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| "**Step-Out Notice**" | has the meaning given in Clause 27.5 (Step-In Rights); |
| "**Step-Out Plan**" | has the meaning given in Clause 27.6 (Step-In Rights); |
| "**Stock**" | means the general term that includes for all products and goods that are to be held as defined on the National Product List (NPL) within the workshop inventory; |
| "**Strategic Supplier**" | means those suppliers to government listed at  https://www.gov.uk/government/publications/strategic-suppliers; |
| "**Strategic Management**  **Board**" | has the meaning as defined in Schedule 8.1 (Governance); |
| "**Sub-contract**" | means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub- contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof; |
| "**Sub-contractor**" | means any third party with whom:   1. the Supplier enters into a Sub-contract; or 2. a third party under (a) above enters into a Sub- contract, or the servants or agents of that third party; |
| "**Sub-processor**" | means any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement; |
| "**Sub-Supplier**" | means any Sub Supplier that has been contracted by the Prime Supplier or Key Contract to provide services or goods under the  Agreement. Sun Contractors have to be declared on the Supply Chain Entities Disclosure Form; |
| "**Subsidiary**  **Undertaking**" | has the meaning set out in section 1162 of the Companies Act 2006; |
| "**Subsidiary Performance**  **Indicator**" or "**SPI**" | means the performance indicators set out in Table 1b and Table 2b in Schedule 2.2 (Performance Levels); |
| "**Successor Body**" | has the meaning given in Clause 33.4 (Assignment and Novation); |

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| "**Supplier Background**  **IPRs**" | means:   1. Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or 2. Intellectual Property Rights created by the Supplier independently of this Agreement,   which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software; |
| "**Supplier Board**  **Members**" | means the representative(s) appointed by the Supplier pursuant to Schedule 8.1 (Governance); |
| "**Supplier COTS**  **Background IPRs**" | means any embodiments of Supplier Background IPRs that:   1. the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and 2. has a Non-trivial Customer Base; |
| "**Supplier COTS**  **Software**" | means the Supplier Software (including open source software) that:   1. the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and 2. has a Non-trivial Customer Base; |
| "**Supplier Default**" | this is where the supplier fails to deliver specific obligations to the Authority; |
| "**Supplier Equipment**" | means the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services; |
| "**Supplier Group**" | means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Affiliates of such Dependent Parent Undertakings; |
| "**Supplier Non-COTS**  **Background IPRs**" | any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs; |
| "**Supplier Non-COTS**  **Software**" | means Supplier Software that is not Supplier COTS Software; |
| "**Supplier Non-**  **Performance**" | has the meaning given in Clause 28.1 (Authority Cause); |
| "**Supplier Personnel**" | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement; |
| "**Supplier Profit**" | shall be the sum calculated in accordance with Paragraph6 of Schedule 7.1 (Charges and Invoicing); |
| "**Supplier Profit Margin**" | shall bear the meaning given to it in Schedule 7.1 (Charges and Invoicing); |
| "**Supplier**  **Representative**" | means the representative appointed by the Supplier pursuant to Clause 11.3 (Representatives); |
| "**Supplier Software**" | means software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5.1 (Digital); |
| "**Supplier Solution**" | means the Supplier's solution for the Services set out in Schedule 4.1 (Supplier Solution) including any Annexes of that Schedule; |
| "**Supplier System**" | means the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System); |
| "**Supplier Termination**  **Event**" | means: |

1. the Supplier's level of performance constituting a Critical Performance Failure or otherwise the occurrence of a KPI failure giving a right to terminate under Schedule 2.2;
2. the Supplier committing a material Default which is irremediable;
3. as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 23.5(a) (Financial Limits);
4. a Remedial Adviser Failure;
5. a Rectification Plan Failure;
6. where a right of termination is expressly reserved in this Agreement, including pursuant to:
   1. Clause 17 (IPRs Indemnity);
   2. Clause 36.6.2 (Prevention of Fraud and Bribery); and/or
   3. Paragraph 6 of Schedule 7.4 (Financial Distress);
   4. Paragraph 12 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
7. the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (Warranties) being materially untrue or misleading;
8. the Supplier committing a material Default under any of the following Clauses:
9. Clause 5.2, 5.3, 5.4 (Services) and 5.5 (Goods);
10. Clause 21 (Protection of Personal Data);
11. Clause 20 (Transparency and Freedom of

Information);

1. Clause 19 (Confidentiality); and (v) Clause 32 (Compliance); and/or

in respect of any security requirements set out in Schedule 2.1 (Services Description), Schedule 2.4 (Information Security and Assurance) or the Baseline Security Requirements; and/or in respect of any requirements set out in Schedule 9.1 (Staff Transfer);

1. any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 7.3 (Benchmarking);
2. an Insolvency Event occurring in respect of the Supplier ; (k) a change of Control of the Supplier unless:
   1. the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
   2. the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the

Authority was given notice of the Change of Control;

1. a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Subcontract which is approved by the Authority pursuant to Clause 15.10 (Appointment of Key Sub- contractors);
2. any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part

B of Schedule 9.1 (Staff Transfer);

1. the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement; or
2. a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or
3. the occurrence of a termination event as set out in Schedule 7.4 (Financial Distress);

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| "**Supplier Third Party**  **Software**" | means any software provided as part of this contract that is supplied by a third party and is not classed as proprietary software; |
| "**Supplier's Proposals**" | means the Suppliers response to the requests as defined in the ITT; |
| "**Supply Chain**" | this is the sequence of processes involved in the production and distribution of a commodity; |
| "**Supply Chain Entities**  **Disclosure**" | means part of the supplier's proposal that captures the contractors to be deployed in the provision of the Services; |
| "**Supply Chain**  **Transparency**  **Information Report**" | means the report provided by the Supplier to the Authority in the form set out in Annex D of Schedule 8.4 (Reports and Records Provisions); |
| "**Target Performance**  **Level**" | means the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables of Schedule 2.2 (Performance Levels); |
| "**Term**" | means the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement; |
| "**Termination Date**" | means the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate; |
| "**Termination Notice**" | means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination; |
| "**Termination Payment**" | means the payment determined in accordance with Schedule 7.2 (Payments on Termination); |
| "**Termination Services**" | means the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex A of Schedule 8.5 (Exit Management), and any other services required pursuant to the Exit Assistance Notice; |
| "**Tests**" and "**Testing**" | means any tests required to be carried out under this Agreement, as further described in Schedule 6.2 (Workshop Readiness Check) and "**Tested**" shall be construed accordingly; |

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| **Test Plan**" | shall have the meaning as defined in Schedule 6.2 Paragraph 4. Each Test Plan will contain:   1. the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied; 2. a detailed procedure for the Tests to be carried out, including:    1. the timetable for the Tests, including start and end dates;    2. the Testing mechanism;    3. dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;    4. the mechanism for ensuring the quality, completeness and relevance of the Tests; |
| "**Test Success Criteria**" | has the meaning given in Schedule 6.2 (Testing Procedures); |
| "**Testing Quality Audit**" | shall have the meaning as defined in Schedule 6.2 Paragraph 10 in which the Authority has the right to conduct a Testing Quality Audit. The focus of the Testing Quality Audits shall be on:   1. adherence to an agreed methodology; 2. adherence to the agreed Testing process; 3. adherence to the Quality Plan; 4. review of status and key development issues; and identification of key risk areas; |
| "**Third Party Beneficiary**" | has the meaning given in Clause 40 (Third Party Rights); |
| "**Third Party COTS IPRs**" | means Third Party IPRs that:   1. the supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and 2. has a Non-trivial Customer Base; |
| "**Third Party COTS**  **Software**" | means Third Party Software (including open source software) that: |

* 1. the supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and
  2. has a Non-trivial Customer base;

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| **Third Party IPRs**" | means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third-Party Software; |
| "**Third Party Non-COTS**  **IPRs**" | means Third Party IPRs that are not Third-Party COTS IPRs; |
| "**Third Party Non-COTS**  **Software**" | means Third Party Software that is not Third-Party COTS Software; |
| "**Third Party Provisions**" | has the meaning given in Clause 40 (Third Party Rights); |
| "**Third Party Software**" | means software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5.1 (Digital); |
| "**Tote**" | means a secure plastic box that the prisoners' canteen is delivered in, to the respective prisons; |
| "**Training Record**" | means a comprehensive document completed by the Supplier that provides details of all the training that an individual prisoner has under gone within the Retail Workshop; |
| "**Transferring Assets**" | has the meaning given in Paragraph 6.2(a) of Schedule 8.5 (Exit Management); |
| "**Transferring Authority**  **Employees**" | has the meaning given in Schedule 9.1 (Staff Transfer); |
| "**Transferring Former**  **Supplier Employees**" | has the meaning given in Schedule 9.1 (Staff Transfer); |
| "**Transferring Supplier**  **Employees**" | has the meaning given in Schedule 9.1 (Staff Transfer); |
| "**Transition**" | means the transfer of service provision from incumbent supplier to the new provider; |
| "**Transition Budget**" | means the agreed budget for the transition of the workshops as further described in Schedule 7.1 (Charges and Invoicing); |
| "**Transition Costs**" | means the Charges payable in relation to the delivery of the Agreed Transition Management Plan calculated in accordance with Paragraph  3 of Schedule 7.1 (Charges and Invoicing) including the Transition  Services Costs and any Capital Expenditure; |
| "**Transition Period**" | means the period from the effective date of the agreement to the acceptance of the final milestone in the transition management plan; |
| "**Transition Phase KPIs**" | means the Performance Indicators set out in Table 1a of Schedule 2.2 (Performance Levels); |

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| **Transition Phase SPI**" | the Performance Indicators set out in Table 1b of Schedule 2.2 (Performance Levels); |
| "**Transition Services**" | means the Services and Deliverables required for the completion of the Agreed Transition Management Plan; |
| "**Transition Services**  **Costs**" | means the Charges payable in relation to the provision of Services during in the delivery of the Transition Management Plan calculated in accordance with Paragraph 3.3 of Schedule 7.1 (Charges and Invoicing); |
| "**Transition Services Commencement Date**" | means specified as the date for commencement of the Transition Services as set out in the Agreed Transition Management Plan; |
| "**Transparency**  **Information**" | has the meaning given in Clause 20.1 (Transparency and Freedom of Information); |
| "**Transparency Reports**" | has the meaning given in Schedule 8.4 (Reports and Records Provisions); |
| "**Transport Layer**  **Security**" | an encryption protocol that protects communications on the internet; |
| "**UK**" | means the United Kingdom; |
| "**UK Government**  **Security Classifications**  **Policy**" | a policy stating how the government classifies information assets to ensure they are appropriately protected; |
| "**UK National Cyber**  **Security Centre**" | as defined above, under "National Cyber Security Centre"; |
| "**UK Public Sector**  **Business**" | means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations; |
| "**UK Public Sector / CNI**  **Contract Information**" | means the information to the Supplier Group to be provided in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning); |
| "**United Kingdom**  **Accreditation Service**  **(UKAS)**" | means the United Kingdom Accreditation Service (UKAS) is the sole national accreditation body recognised by the British government to assess the competence of organisations that provide certification, testing, inspection and calibration services; |
| "**Unacceptable KPI**  **Failure**" | means the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period; |
| "**Unrecovered Payment**" | shall have the meaning given to it in Schedule 7.2; |

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| "**Updates**" | in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item; |
| "**Update Requirement**" | means the occurrence of an event detailed in Schedule 8.4 (Reports and Records Provisions) Annex C (Virtual Library) which requires the Supplier to update the relevant information hosted on the Virtual Library; |
| "**Valid**" | in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning); |
| "**Upgrades**" | means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third-party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term; |
| "**User Profile**" | means Data and IT system settings relating to a specific user; |
| "**VAT**" | value added tax as provided for in the Value Added Tax Act 1994; |
| "**VCSE**" | means a non-governmental organisation that is value-driven, and  which principally reinvests its surpluses to further social, environmental or cultural objectives; |
| "**Virtual Library**" | means the data repository hosted by the Supplier containing the information about this Agreement and the Services provided under it in accordance with Schedule 8.4 (Reports and Records Provisions); |
| "**Value for Money**" | means the National Audit Office (NAO) uses three criteria to assess the value for money of government spending, that is, the optimal use of resources to achieve the intended outcomes:  **Economy**: minimising the cost of resources used or required (inputs) – **spending less**;  **Efficiency**: the relationship between the output from goods or services and the resources to produce them – **spending well**; and  **Effectiveness**: the relationship between the intended and actual results of public spending (outcomes) – **spending wisely**; |
| "**Waste**" | means the Goods sold within the Retail workshop that the date code has expired on or the quality is not sufficient to enable a sale to a prisoner; |
| "**Weekly Amendment**  **Process**" | means a process carried out at the point of canteen distribution which records any individual refunds / amendments which has arisen from the weekly delivery to prisoners; |
| "**Warehouse**  **Management System**  **(WMS)**" | means the system put forward by the Supplier which will be deployed and run to manage the ordering, workflow processing of orders and manage stock for the provision of Goods and Services meeting the requirements set out in Schedule 2.1 (Services Description). It will |

have the ability to produce management information through standard file transfer formats;

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| "**Working Day**" | means any day other than a Saturday, Sunday or public holiday in England and Wales; |
| "**Workshop Go Live**" | means the date that a Retail Workshop has been approved by both Supplier and authority (subject to rectification of any outstanding issues) that becomes operational in the provision of Retail Services; |
| "**Workshop Readiness**  **Check**" | has the meaning given to it in Schedule 6.2 (Workshop Readiness Check); |
| "**Workshop Readiness**  **Checklist**" | has the meaning given to it in Schedule 6.2 (Workshop Readiness Check); |
| "**Workshop Session**" | means a period allotted to the Retail workshop; |
| "**Workshop System**" | means the standard operating procedures. These outline all the Suppliers processes to ensure that all Goods (canteen) are picked and packed safely, and as efficiently as possible; |
| "**Year to Date Dashboard**  **Report**" | shall have the meaning given to it in Paragraph 1 of part B of Schedule 2.2 (Performance Indicators). |

**Prison Retail Service Project**

**Schedule 2.1**

**Services Description**

**SCHEDULE 2.1 RETAIL SERVICES DESCRIPTION**

This Schedule consists of 8 sections:

1. Service Overview and Product Requirements
2. Supply Chain Management
3. Retail Workshop Management
4. Corporate Requirements
5. IT & WMS
6. Transition
7. Future Proofing
8. End User Delivery and Distribution / Other

1. **SECTION 1: SERVICE OVERVIEW AND PRODUCT REQUIREMENTS** 
   1. **Service** **Overview**
      1. The Authority requires the Supplier to provide the following services:

Product Services:

* + - 1. A retail ordering service to prisoners which meets the diverse needs of the prison

population, has transparent prices, does not compromise control or security, and has standardised products, prices, and operational procedures. On a weekly basis, prisoners shall be able to order approved products by submitting either an electronic or paper-based Prisoner Order Form (DWIP 22: POF – Example). These shall be produced and delivered by the Supplier; The Supplier shall process orders for Reception Packs (DWIP 35: Reception Packs) they receive from Prisons; The Supplier shall process Bulk Orders received from Prisons.

* + - 1. The Supplier shall be required to supply and deliver approved products ordered by the Authority in bulk, on a replenishment basis, to the Retail Workshops (currently 18 but will increase over the term of the contract). The number of Retail Workshops will change (increase) over the contract term. The Supplier shall have adequate and auditable systems in place for approving food and drink suppliers, for managing compliance with technical specifications for food and drink and managing the continuing fulfilment of contract performance.
    1. Supply Chain Management Stock Ownership:
       1. Delivery Service – The supply of wholesale bulk goods to the Retail Workshops including ad-hoc requests. The Supplier will ensure that the stock holding of goods are sufficient to cover all prisoners' orders.
       2. The Authority will own all stock from the point of delivery at the Retail Workshop loading bay. The Supplier will invoice for Goods once delivered to the receiving Retail Workshop.
       3. The Supplier shall ensure timely delivery of replenishment stock into Retail Workshops. It is imperative that the Authority maintains surety of service at all times. The Supplier shall ensure that each delivery is accompanied by a delivery advice note.
    2. Retail Workshop Service
       1. The management of picking and packing products in the Retail Workshops. The

Supplier will supervise prisoners to pick and pack the goods within the Retail

Workshops. To support these prisoners, the Supplier shall produce a

Rehabilitation and Resettlement plan which shall outline training and employment opportunities they shall offer them in custody, on temporary release and following release.

* + - 1. The Retail Workshops shall have sufficient capacity to service the End User order requirements from several Prisons including the host Prison. End User orders that are picked and packed in a Retail Workshop shall be delivered to the relevant Prison. Distribution of these End User orders shall be a combination of Supplier staff and HMPS staff.
    1. The Supplier shall perform, as a minimum and without limitation, the following services within each of the Retail Workshops. In doing so the Authority shall supply prisoner workforce for the Supplier to utilise throughout delivery of the required services, provided such activities do not comprise security at the Prison:
       1. Inventory Management:
          1. Procedures for receipt and storage;
          2. Order sequencing and delivery;
          3. Receipt onto stock;
          4. Replenishment of pick faces;

1. Processing prisoner order forms;
2. Order entry;
3. Check against prisoner funds;
4. Production and issue of the pick sheet (or alternative digital service);
5. Manage approved prisoner workforce;
6. Assemble prisoner orders;
7. Pick:
8. Checking and adding of high value items;

(ii) Pick confirmation & labelling; (i) Consolidate consignment;

1. Packing and marshalling for despatch;
2. Loading;
3. Chill;
4. Fresh products;
5. Reception packs;
6. Process payment; (p) Manage errors.
   * 1. The Supplier shall ensure timely delivery of replenishment stock into Retail Workshops. It is imperative to the Authority to maintain surety of service at all times. The Supplier shall ensure that each delivery is accompanied by a delivery advice note.
     2. End User Delivery Services

The distribution of packed goods to individual End User once at the destination Serviced Site/Site. Details of which Prisons require the Supplier to distribute canteens to individual End User is detailed in DWIP 101. Note the service requires delivery of completed orders to all serviced Sites/Sites as detailed in DWIP 101.

* + 1. IT Solution

The Supplier shall supply and utilise a WMS to enable the following – Ordering of bulk goods and ensuring order capture systems are adequate. It shall also carry out stock control and procurement functions.

* + 1. Transition

Provide the transition activities set out in this Services Description and as otherwise set out in the Agreed Transition Management Plan.

* + 1. General Requirements
       - 1. Supplier to ensure that all their staff are security cleared to the appropriate security level. The different levels of security clearance are detailed in DWIP 77. The most common applied security clearance is Enhanced security Level (see DWIP 77) which is required in locals, Cat C, and open prisons. However, if staff are deployed in Long Term High Security Establishments (LTHSE) then CTC clearance is required. The size, make-up and location of the prisoner population are subject to significant change and often at very short notice. The Supplier must acknowledge this and quickly adjust to the subsequent impact on the volume and nature of Goods and Services it is required to provide under the Contract.
         2. The Supplier shall be directly responsible for managing the operating requirements needed to satisfy the Service and the supply of Products in each of the Retail Workshops.
         3. DWIP – the Supplier shall ensure that all Goods and Services are delivered in accordance with the DWIP all of the time.
         4. Operating Manual – The Supplier shall develop, maintain and comply with a detailed Operating Manual detailing how Goods and Services are to be delivered in accordance with the requirements set out in this Services Description and elsewhere in the Agreement and any other reasonable instructions of the Authority from time to time. The Operating Manual should be reviewed and updated by Supplier on an annual basis.

1.1.10 General Transition Obligations

The Replacement Supplier is required to develop and manage the transition of current services into and under the management of the Replacement Supplier in accordance with Schedule 6. Transition is the overarching term used which includes for the two phases that make up Transition, namely Mobilisation and Implementation. Mobilisation includes for all the preparation of activities required to ensure that the project can move into Implementation which is delivering the activities.

1.2 **Product** **Requirements**

1.2.1 The Supplier shall provide Products meeting the requirements set out in this Services Description:

* + - 1. All food products must be produced in a way that meets UK legislative standards for food production, or equivalent standards that achieve similar environmental outcomes.
      2. The Supplier shall ensure all palm oil (including palm kernel oil and products derived from palm oil) used for cooking and as an ingredient in food shall be sustainably sourced.
      3. The Supplier shall ensure that half of desserts available should contain at least 50% of their weight as fruit – which may be fresh, canned in fruit juice, dried or frozen. Fresh fruit alone would also count as a dessert.
      4. The Supplier shall have processes and monitoring in place to measure and manage the nutritional aspects of its service provision, and to encourage healthier diets.
      5. The Supplier shall ensure that all food and drinks must be safe, i.e., it must not be injurious to health or unfit for human consumption. This will require standards of

Good Hygiene Practice in the catering operation and selection of safe and reliable suppliers of ingredients and food products; ([http://food.gov.uk/businessindustry/guidancenotes/hygguid/)](http://food.gov.uk/business-industry/guidancenotes/hygguid/) and:

[(http://multimedia.food.gov.uk/multimedia/pdfs/fsa1782002guidance.pdf)](http://multimedia.food.gov.uk/multimedia/pdfs/fsa1782002guidance.pdf).

* + - 1. The Supplier shall have in place Supplier IT/WMS Solutions that will assess risks and manage food safety and food hygiene throughout the supply chain, including how mitigating actions are linked to the outcomes of a Supplier IT/WMS Solution risk assessment.
      2. For the supply of fresh, chilled and frozen produce Suppliers shall have in place robust Supplier IT/WMS Solutions for product traceability that comply with current UK legislation, or equivalent, for country-of-origin labelling. See General Food Law EC/178/2002, and guidance available from:

[http://multimedia.food.gov.uk/multimedia/pdfs/originlabellingguid0909.pdf.](http://multimedia.food.gov.uk/multimedia/pdfs/originlabellingguid0909.pdf)

* + 1. Origin of prepared food:

Suppliers will have in place systems that will be deployed to assess risks and manage food authenticity throughout its supply chain. This solution must be capable of recording and highlighting details of how mitigating actions are linked to the outcomes of a systematic risk.

* + 1. Completed orders (picked and packed goods) are held in totes which are used to transport goods from Retail Workshops to Prisons. The totes shall be labelled with – gross weight, shall be colour tagged with the appropriate security tag (up to 14.99kg yellow tag 15kg-20kg red colour and have label securely applied to the end of each tote clearly identifying the weight of the tote, Authority Premises, number of orders, wing/landing). All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings and shall comply with all relevant legislation.
    2. As part of the Services the Supplier shall produce:

(a) A National Product List ("**NPL**") as set out (DWIP 20: Master NPL example); (b) A Local Product List ("**LPL**") as set out (DWIP 6: LPL example).

1.2.5 To fulfil the Services the Supplier shall provide Goods to the Authority for sale by the Authority to End Users.

1.2.6 The Authority holds specific health, safety and security requirements for Products brought into Prisons and sold to End Users. Therefore, only Products approved by the Authority in writing shall be provided to End Users by the Supplier.

1.2.7 These requirements include, but are not limited to, those specified in Schedule 2.3 (Standards). The Authority reserves the right to amend these requirements from time to time at its own discretion. Such amendments shall be made utilising the Quarterly Range Review (QRR) process set out at Paragraph 1.4 unless such an amendment is, in the Authority's opinion, urgent for security reasons. Such urgent amendments will be made on within 10 working days' notice to the Supplier.

1.2.8 The Authority shall communicate such amendments, whether made by the QRR or an urgent basis, to the Supplier and the Supplier shall amend the NPL and LPL accordingly.

1.2.9 Products provided to the Authority shall meet the quality requirements set out in this Agreement.

1.2.10 Approved Products shall be added to the NPL and, where relevant, the LPL in

accordance with the process set out at Paragraphs 1.3 to 1.6 and in Schedule 8.1 (Governance). Only products on the NPL or LPL shall be sold to End Users.

Approval of Goods will be sought by the Supplier in accordance with this Agreement, in particular as set out at Paragraph 1.3 and PSI23-2013, as set out at: [https://www.justice.gov.uk/downloads/offenders/psipso/psi-2013/psi-23-2013prisoner-retail.doc](https://www.justice.gov.uk/downloads/offenders/psipso/psi-2013/psi-23-2013-prisoner-retail.doc) and as amended from time to time.

1.2.11 The Supplier shall ensure that Products provided to End Users shall:

1. adhere to the Government Buying Standards for Foods as set out at: [https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-forfood-and-catering-services,](https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-food-and-catering-services) as amended from time to time;
2. adhere to Food Labelling Standards, as amended from time to time and set out at: [https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-forfood-and-catering-services;](https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-food-and-catering-services)
3. have nutritional 'traffic light' information visible, as set out at: <https://www.gov.uk/government/publications/the-eatwell-guide>(For Wales [https://gov.wales/eatwell-guide)](https://gov.wales/eatwell-guide) where available and relevant;
4. support End Users' health and wellbeing by making available a range of Products as recommended by Public Health England and the Welsh Government adopted Eatwell Guide <https://www.gov.uk/government/publications/the-eatwell-guide>and [https://gov.wales/eatwell-guide;](https://gov.wales/eatwell-guide)
5. offer value for money to End Users and
6. shall reflect the diverse needs and protected characteristics of End Users, including but not limited to the age, disability, race, religious belief, gender reassignment, sex and sexual orientation of End Users.

1.2.12 The Supplier shall ensure that the Selling Price of all Products to End Users set out in the NPL/LPL shall not be higher than the relevant Recommended Retail Price (RRP). The Selling Price of Products shall be agreed by the Authority prior to being made available for purchase by End Users. Prices shall be proposed by the Supplier for the Authority's approval at the QRR. Where a Product is to change price as part of a Promotion this shall be agreed as part of the Promotion process.

1.2.13 The Selling Price for Products in the NPL and LPL shall be consistent across all Prisons in England and Wales serviced by this contract, whether private or public. This includes, but is not limited to, any Products that are price marked or are subject to a Promotion.

1.2.14 The Supplier shall ensure that Products do not compromise security at any Prison. Products made available to End Users shall be available in such quantities and in condition which does not, in the Authority's reasonable opinion, pose a significant risk to prison security or the health and safety of the End User or any other person, either upon receipt or during subsequent use/storage. Products shall be compliant with all security requirements set out in Schedule 2.3 (Standards) as detailed in PSI23/213 section 3.

1.2.15 The Supplier shall consider competitive 'British Business' options and utilise British Products where cost effective and practicable.

1.2.16 Throughout the Term the Supplier shall maintain a 'Master File' of all product information including but not limited to: nutritional information inclusive of 'traffic light' detail, photograph(s) of the Product, allergen advice and ingredients. A sample Master File included in the DWIP named "Product Information Guide" (DWIP 89).

1.2.17 The Supplier shall ensure the Master File includes the NPL as provided in the Delivery and Workshop Information Pack and a version of the NPL which shall be maintained and updated in line with the QRR and Weekly Amendment processes. The Supplier shall ensure this information is made available to the Authority upon request within 1 Working Day.

1.3 **National Product** **List**

1.3.1 Products available to purchase by End Users shall be listed in the National Product List NPL by the Supplier. The NPL lists the range of approved retail goods for resale to the End User. The number of goods included on the NPL shall not exceed 1,000. The NPL will be updated regularly (minimum quarterly) in accordance with the QRR process, and only by prior agreement from the Authority's Representative.

1.3.2 Not all Products on the NPL will be suitable for every Prison and therefore each Prison creates its own Local Product List (LPL), a list of Products available for purchase by End Users in that Prison.

1.3.3 The Supplier's process shall include for the development of an Outline OnBoarding Plan (OOP) to the Authority. The OOP shall detail how each Additional User shall be transitioned from their current service provision to the Service provided under this Agreement.

1.3.4 The Supplier shall only supply Products for resale to End Users that have been approved by the Authority. In accordance with the current PSI, Products offered for resale to the End User must not compromise security at any Prison.

1.3.5 The Supplier shall consider competitive 'British Business' options and utilise British Products where cost effective.

1.3.6 The Supplier shall make available a range of Products as recommended by Public Health England and approved by the Authority. To support End Users in improving their health and wellbeing in line with the Authority's recently introduced Healthy Eating initiative.

1.3.7 The NPL shall be amended in the process set out at Paragraph 1.4 and in accordance with the terms of the Agreement.

1.3.8 The NPL shall not exceed 1,000 items.

1.3.9 The format of the NPL shall be as set out in the Delivery and Workshop Information Pack (DWIP 20) including EAN numbers and RRP. Any amendments to the format of the NPL shall be subject to the written approval of the Authority.

1.3.10 Where specified by the Authority at the QRR or at such time as the Parties agree,

the Supplier shall provide both a "value" option and "leading brand" option for the core products (DWIP 104) such as Tea, Coffee, Milk, Sugar, Cordials, Shower Gel, Toothpaste, Shampoo, Supplements, Vapes which will be clearly marked on the NPL. An example NPL is set out in the Delivery and Workshop Information Pack. (DWIP 20).

1.3.11 The Supplier shall ensure that the NPL categorises Products as either:

1. non-food;
2. ambient storage required;
3. chilled storage required; or (d) frozen storage required.

1.3.12 The Supplier shall work with the Authority towards obtaining the rights for reproducing illustrations and logos from Public Health England and the Welsh Government, to be used on documents and information provided to End Users including, but not limited to; leaflets, product lists and the POF.

1.3.13 Products will only be included on the NPL with written approval from the Authority.

1.4 **Amending the NPL and** **QRR**

1.4.1 Amendments to the NPL shall be agreed by the Parties utilising either:

1. the Quarterly Range Review (QRR) (See Contract Management Schedule 8.1 (Governance)); or
2. the Weekly Amendment Process; or
3. at the discretion of the Authority, acting reasonably.

Subject to final approval from the Authority and in accordance with the terms of the Agreement.

1.4.2 Individual Prisons are not able to add to the NPL. Requests to add new lines can be made by e-mail to the Suppliers stock manager and the Head of Prison Retail, and these will be considered at the next range review. The Authority will inform the Supplier immediately in writing if a particular product requires removing due to a security issue or a Health & safety issue.

1.4.3 The NPL shall only be updated once the Supplier has received written approval of amendments from the Authority.

1.4.4 The Supplier shall review the NPL every 13 weeks and present the results at the Quarterly Range Review (QRR) or at such a time frame as agreed by the Parties in accordance with Schedule 8.1 (Governance). The Supplier shall detail the unit Cost Price of each Product, demand and supply trends, and make recommendations to the Authority for the removal and/or replacement of obsolete or slow-moving goods. All changes to the NPL shall be agreed with the Authority at the QRR.

1.4.5 The Supplier shall make recommendations to the Authority which reflect current customer preferences in wider society for consideration at the QRR.

1.4.6 A maximum of 10 new Products may be added to the NPL at each QRR.

1.4.7 The Supplier shall ensure any recommended revisions consider general market trends, sales volumes, selling price and End User or staff requests.

1.4.8 When looking at including Products on the NPL, the Supplier shall consider and confirm if the products relate to the Incentives Policy Framework [https://intranet.noms.gsi.gov.uk/policies-and-subjects/policyframeworks/incentives-policy-framework.](https://intranet.noms.gsi.gov.uk/policies-and-subjects/policy-frameworks/incentives-policy-framework)

and whether they:

1. Pose a threat to safety, order and control in Prisons;
2. Could aid End User escape; or
3. Could hamper the detection of or control of illicit drugs.

1.4.9 Weekly Amendment Process – On a weekly basis the Supplier shall submit to the

Authorities representatives a comprehensive list of Product Prices Changes and Product Stock issues. This process allows more frequent price changes which means that prices available to End Users better reflect the reality of retail price increases (and decreases) as experienced by the general public. It will also allow prices to change in real time rather than at Quarterly Range Review. This will also support the weekly local product lists that might include short term offers and remove items that are temporarily unavailable or withdrawn for supplier or security reasons.

1.4.10 Where a manufacturer changes or modifies a product such that it could, in the opinion of the Authority, have security implications then the Authority reserves the right to seek approval for the new product from its Security Policy Unit before the Product can be made available to End Users. The Authority will normally respond in writing within 20 Working Days, however failure to respond within this timescale does not imply approval.

1.4.11 The timescale by which the Authority responds to any amendment to the NPL will be overridden by any potential security implications.

1.4.12 The Authority may receive Product requests from End Users. Where relevant the Authority shall communicate these to the Supplier via Retail Liaison Co-ordinator (RLC) for consideration at the QRR.

1.4.13 The RLC for each Prison (DWIP 15: RLC List) shall send such requests to the Supplier no less than 15 Working Days prior to the QRR. The Supplier will then review all requests and undertake market research on each suggestion which will include but not be limited to: suitable Supplier(s), Product availability, cost, minimum order requirements and supply chain impacts. The Supplier shall present their findings and suggestions to the Authority at the QRR. Where necessary, the Supplier shall refuse any requests which fail to comply with Authority security policy, including those policies set out in Schedule 2.3 (Standards).

1.4.14 The Supplier shall provide a written response on the outcomes of such requests, including reasons for any rejections, to all relevant RLCs within 5 Working Days following the QRR.

1.5 **Local Product** **List**

1.5.1 The Local Product List (LPL) is a list of Products derived from the NPL that End Users can purchase specific to the Prison they reside in. The Products to be listed on each LPL shall be determined by the Authority at its sole discretion and may be updated on a weekly basis by the Supplier.

1.5.2 On a weekly basis, the Supplier shall develop processes and be responsible for all the administration required including production of each Prisons' LPL. The processes to achieve any change to the LPL shall be approved by the Authority prior to any changes being implemented. This shall also include a process for Prisons to de-select, remove or opt-out of receiving products listed on the NPL.

1.5.3 Any proposed amendments to the LPL by the Supplier shall be made following the Weekly Amendment Process as set out at Paragraph 1.4.9.

1.5.4 The Supplier shall provide a document setting out revisions to the NPL to every (RLC) no later than 5 Working Days following the QRR. Each RLC shall then consider what, if any, amendments it wishes to make to each LPL.

1.5.5 No later than 10 Working Days following receipt of the document setting out amendments to the NPL the RLC will inform the Supplier of the amendments it wishes to make to the LPL.

1.5.6 Upon receipt of each RLC's choices, the Supplier shall:

1. Consider each request to ensure feasibility (e.g. If frozen products are requested then Supplier will check that the relevant Retail Workshop or Prison has freezers); and
2. Establish if there is sufficient interest in any new suggested product(s) to ensure that such products would be economically viable and if there is market availability for such products.

1.5.7 The Supplier shall inform the Authority and each RLC with its findings within 10 working days of receipt of the request from the RLC and shall amend the LPL accordingly.

1.5.8 Each RLC shall approve or refuse the amended LPL within 2 Working Days of receiving the updated LPL.

1.5.9 Upon receipt of approval from the RLC, the Supplier shall amend the Product range on each LPL and return to the respective Prison 10 working days prior to the LPL going live.

1.5.10 Should the RLC refuse the LPL then it shall escalate such refusal to the Authority. If the Authority and the Supplier cannot resolve such refusal within 10 Working Days, then the matter shall be referred to the Dispute Resolution Process set out in Schedule 8.3 (Dispute Resolution).

1.5.11 If, in the reasonable opinion of the Authority, any Product on the LPL will have an

unacceptable negative impact on the health and safety of Authority Personnel or End Users or on the security of Prisons then such Products shall be removed from LPL by the Supplier within 2 Working Days of notification of such by the Authority. This process may occur separate to any other process for amending the LPL.

1.5.12 In Prisons which use kiosks (kiosks are touch panels located in various parts of

certain prisons that allow End Users to complete their selection of items of the relevant LPL electronically and therefore they do not receive the paper version of a POF) the items selected via a kiosk are automatically sent to the relevant Retail Workshop for printing out. The Supplier shall provide updated LPL and NPL in Comma Separated Value (CSV) format no less than 10 Working Days before the amended lists are to be made available to End Users.

1.5.13 The Supplier shall maintain a record of amendments made to each LPL throughout the Contract Term. Such record shall be made available to the Authority upon request within 2 Working Days.

1.6 **Product Shelf** **Life**

The Supplier shall ensure that Products delivered to Prisons have the minimum shelf life set out in the Delivery and Workshop Information Pack (DWIP 59: Technical Specs Shelf Life) or as specified when a new Product is added to the NPL.

1.7 **Product** **Promotion**

1.7.1 The Supplier shall make regular promotional offers to the End User population. The Authority considers that the provision of approved promotional goods for resale to End Users improves the sense of well-being for the End User.

1.7.2 The regularity of making available different promotional offers to the End User population will be agreed with the Authority's Representative.

1.7.3 Promotional products that are to be provided by the Supplier shall be classed as either an entirely new product that is not listed on the NPL or potentially a product that is already contained on the NPL which price could be marked or on special offer (e.g. reduced Selling Price, 'When its Gone Its Gone').

1.7.4 As part of the financial justification for the provision of promotional goods to the Authority, the Supplier shall provide an assessment of the forecast impact upon sales (cost and volume) based on similar items that are contained on the NPL. Such assessment shall forecast the estimated sales and sales profile of the promotional items in accordance with the relevant Work Instructions.

1.7.5 At each QRR, the Supplier shall propose periodic special offers for specific

Products from the NPL ("**Promotions**") in accordance with Schedule 8.1

(Governance). The content, range and selling price of Products within any Promotion will be agreed in writing with the Head of Retail prior to offering such Promotions to End Users.

1.7.6 The Supplier shall not split multi-pack offers for Products for subsequent resale as single unit items or integrate similar single units from multi-packs into general supply of Products to End Users as promotional products.

1.7.7 The Supplier shall offer a minimum of 9 promotional offers annually, in addition to

those offered as part of QRR or the Supplier Monthly Review Meeting as set out in Schedule 8.1 (Governance). The Supplier shall ensure Promotions take place at the following times:

1. Easter;
2. Christmas;
3. Ramadan;
4. Seasonally at Spring, Summer, Autumn and Winter and an additional 2 promotions annually.

1.7.8 The Supplier shall ensure that products considered by Public Health England as being healthy options are included in Promotions. See the Delivery and Workshop Information Pack (DWIP 14: Special Offers – Healthier Eating) as an example not an exhaustive list.

1.7.9 The Supplier shall offer Promotions for new Products where requested by the Authority.

1.7.10 The Supplier shall, at the start of each Contract Year, provide a forecast timetable for planned Promotions (as set out at Paragraph 1.7.3), including length of availability, to the Head of Prison Retail.

1.7.11 The Supplier shall manage the Promotion availability in such a way that all Prisons have equal chance of securing Products on promotion. The Supplier shall not work on a 'first come first served' basis.

1.7.12 The Supplier shall ensure all Prisoner Order Forms (DWIP 22: POF – Example) are updated with details of the Promotion.

1.7.13 The Supplier shall provide the Authority with the sales forecast at the QRR on (cost and volume) for Products contained on the NPL. This shall include a forecast of estimated sales and sale profiles of the promotional Products.

1.7.14 The Supplier shall design and provide colour printed leaflets, currently A6 double

sided, full colour for each Promotion in order to advertise upcoming Promotions.

1.7.15 The Supplier shall provide draft leaflet(s) in an electronic format compatible with the Authority's systems for review by the Head of Retail prior to distribution to End Users. Only leaflets approved by the Authority shall be provided to End Users. The Supplier shall provide the draft to the Head of Retail for approval no less than 10 working days prior to the Promotion commencing.

1.7.16 When the leaflet is approved by the Head of Retail the Supplier shall produce and deliver sufficient leaflets for all End Users and an additional 10% to cater for missing or damaged leaflets. These are to be placed in each End User's Product Bag during the packing stage. Additional leaflets (Circa 1600) will be required for Prisons who do not receive a Picked and Packed service as specified in Delivery and Workshop Data (DWIP 101). The Supplier shall deliver the leaflets no later than 5 Working Days prior to the Promotion commencing.

1.7.17 The Supplier is permitted to include the supply of promotional Products that have been price marked or displays a Flash Price that is not consistent with the Selling Price of the Products displayed on the Prisoner Order Form, provided the Selling Price is less than the marked price or displayed Flash Price. The Flash Price is governed by the manufacturer.

1.7.18 In the event that demand for Product(s) included in a Promotion exceed supply resulting in orders not being able to be fulfilled, the Supplier shall ensure that the End User is not charged for the Product(s) and shall include the list of unavailable Products on the End Users' Products receipt which shall be placed in the Product Bag.

1.8 **Prisoner** **Surveys**

1.8.1 The Supplier shall, twice per Contract Year, undertake a National Prison Retail Satisfaction Survey (DWIP 60: Master Survey Questions) of the entire prison population resident in all public and private Prisons in England and Wales which utilise the Services. The content of the National Prison Retail Satisfaction Survey shall be developed by the Supplier with the Authority. It shall cover but not be limited to – product price, product availability and delivery consistency in accordance with the relevant Work Instructions. The content and format of the National Prison Retail Satisfaction Survey must be approved by the Authority before circulation to prisoners.

1.8.2 The Supplier shall, at the Authority's request, across the Prison estate undertake

ad-hoc prisoner engagement exercises including but not limited to ascertain End User preferences and satisfaction with the Prison Retail Service. The Supplier where possible will ensure End User attendance to any such engagement exercise by careful workforce planning.

1.8.3 The Supplier shall be responsible for undertaking satisfaction surveys including all administration and production of multiple reports for the Authority, for ad-hoc surveys and National Surveys.

1.8.4 The Supplier shall obtain written approval from the Performance Management Board (PMB) for the content, format and proposed process for all End User surveys prior to commencement of any survey.

1.8.5 The Authority may additionally request the Supplier conduct specific surveys to support improvements in the Services. These may be targeted at a specific Prison or part of the prison population as required, which the Supplier shall agree to and conduct within jointly agreed timescales. These additional surveys may focus on, but are not limited to:

1. Products contained in religious, cultural and medical product categories; or
2. Ensuring the NPL has sufficient Products to satisfy requirements related to protected characteristics such as Age, Disability, Race, Religious belief, Gender reassignment, Sex and Sexual orientation.

1.8.6 Using outputs from all and any surveys conducted, the Supplier shall offer the

Performance Management Board proposals to amend and/or improve the

Services. The Performance Management Board is under no obligation to accept

any proposal offered. Supplier proposals may consider such areas, but are not limited to:

1. Continuous improvements;
2. Addition of Products to the NPL (to be considered under the process set out in Paragraph 1.4);
3. Improvements to packaging; and (d) Suggested innovations.

1.8.7 Supplier proposals shall include any relevant sales data, forecast demand, statistics and evidence to support them.

1.9 **Prisoner Order** **Forms**

* + 1. The layout and content of the Prisoner Order Form (DWIP 22: POF – Example) shall be the responsibility of the Supplier and shall be subject to approval from the Authority.
    2. The Supplier shall standardise the layout of the Prisoner Order Form such that the appearance, font size, font colour, and font characterisation used is the same throughout the prison estate.
    3. The Supplier will be responsible in ensuring that the POFs are delivered to each site / serviced site.
    4. The Supplier shall share only the necessary and required information with the Suppliers Personnel and those prison workers employed within the Retail Workshops as part of the process for the items that have been ordered, where it needs to comply with a legal obligation and where it is necessary for HMPPS' legitimate interests (or those of a third party) and shall at all times comply with the data protection requirements set out in the Agreement.
    5. Once each Prison has agreed their LPL the Supplier shall produce a template Prison Order Form (POF) for distribution to End Users which is subject to the approval of the Authority.
    6. The Supplier shall produce electronic templates for those Prisons which order via electronic means as well as paper copies for Prisons which use hard copy documents.
    7. The Supplier shall produce sufficient POF based on the Prison Operational Capacity; as detailed in the Delivery and Workshop Data (DWIP 101) plus 10% margin to allow for any lost or irreparably damaged forms.
    8. End Users require sight of their available funds and the Supplier shall ensure that the POF has a facility to allow the Authority to provide this information to End Users digitally (if available) or otherwise.
    9. The POF includes End User's Personal Data and shall comply with the Data Protection Legislation. The Supplier shall develop a template which eradicates the need for printing personal End User details thereby safeguarding End Users' personal data and complying with Data Protection Legislation.
    10. The following data is required to ensure deliveries can be made to the correct End User:

1. End User Name;
2. End User Number;
3. Prison Name;
4. Prison Wing Reference;
5. Prison Cell Reference; (f) Available Funds.

1.9.11 The Supplier shall develop a POF template in a suitable format which includes the LPL for the relevant Prison, the agreed Product prices and Promotions and shall be broken down into categories and sub-categories to enable easy use of the POF by End Users.

1.9.12 The Supplier shall ensure the design and format of the POF supports ease of use by the prison population, taking into consideration the generally low standards of literacy and numeracy amongst End Users.

1.9.13 The Supplier shall ensure it produces a POF which has the most suitable appearance and format for people with dyslexia, visual impairments or other learning disabilities.

1.9.14 The Supplier shall ensure that products are identified on the POF as suitable for individuals' dietary requirements and preferences such as Vegan, Halal, Vegetarian, Fair trade, Gluten Free, Sugar Free, Healthy option and Kosher. The Supplier shall also ensure that the POF denotes all religious and cultural Products as well as those with medical significance.

1.9.15 The Supplier shall ensure that a disclaimer is included on the POF as specified on the sample POF which can be found in the Delivery and Workshop Information Pack (DWIP 22: POF – Example) or as agreed and amended with the Authority in writing is included on every POF.

1.9.16 The Supplier shall produce all POFs in English unless otherwise instructed by the Authority. The Supplier shall additionally provide POFs in the following languages

(all costs to be included in the operational (non-staff) costs in the Financial Response Template as and when requested by the Authority within 24 hours of the request being made:

1. Arabic;
2. French;
3. German;
4. Lithuanian;
5. Polish;
6. Punjabi;
7. Romanian;
8. Spanish;
9. Vietnamese;
10. Welsh;
11. Any other language to be provided upon request of the Authority'

1.9.17 Following receipt of the approved template POF from the Supplier, the Authority shall be responsible for distribution of the relevant POF at each Prison.

1.9.18 The Supplier shall retain a hard copy of all defaced POFs that have not been fulfilled for inspection by the Retail Operations Team highlighting the area(s) that prevented completion of the order. Upon instruction from the Retail Operations Team, the Supplier may be required to complete the End User Order as far as is reasonably possible.

1.9.19 Should the Supplier encounter a defaced POF in the Retail Workshop that prevents picking and packing and thereby fulfilling the order, the Supplier shall not be obligated to complete the order.

1.9.20 The Supplier will be required to provide a means to enable the completed POFs to be transmitted to the respective Retail Workshop within specified cut-off times to enable the orders to be processed. The Supplier shall be responsible for sorting the received Prisoner Order forms from Sites/Serviced Sites into an order that facilitates processing.

1.10 **Prisoner Income and Expenditure System** **(PIES)**

1.10.1 The Authority administers the Prisoner Income and Expenditure System (PIES) which is a standalone system that holds all prisoner personal data. The Supplier shall not be permitted direct access to PIES or any replacement system.

1.10.2 The Authority shall export relevant data from PIES on a weekly basis and provide to the Supplier in a suitable electronic format for upload onto the Supplier's system(s) to assist with the operation of Retail Workshops.

1.11 **Prisoner Spends / Earnings**

1.11.1 The Supplier shall ensure that any Supplier System implemented in connection with the Services shall be capable of providing sales data on Personal

Identification Number (PIN) phone credits taken from the Prisoner Order Forms.

1.11.2 The Supplier shall provide a summary of amount spent by each prisoner order to the Site / Serviced Site at the agreed time by secure email.

1.11.3 Prisoners are able to spend their earnings and private cash which has been transferred into their spends account to purchase items for their own use via the Retail Service. The Supplier shall ensure that any records of Prisoner Order fault or error rectification are retained at the Retail Workshop and provide to the Authority all data of any debit or credit to a prisoner account promptly and within any timescales or format required by the Authority.

1.11.4 All prisoner expenditure on items for personal use is debited from the spending account. The maximum amount that can be spent at any one time is limited to ten times the private cash allowance, according to the prisoner's Incentives and Earned Privileges (IEP) level. Once the spending account balance reaches this limit, or is higher, the transfer of private cash to the spending account ceases. Earnings continue to be credited.

1.11.5 The Supplier will ensure that all Phone Credits and Canteen Spends are sent to the Site / Serviced Site at the pre agreed day and time. The current process "freezes" prisoners accounts from the moment their canteen orders are printed locally until the amount is debited from their account by HMPPS staff. This takes up to 48 – 72 hours. For the avoidance of doubt, unless otherwise requested by the Authority, the Authority shall supply any PIN phone credits free of charge for inclusion within the orders.

1.12 **Management Information and** **Reporting**

1.12.1 The Supplier shall produce a report which comprises a sales mix analysis or 'basket of goods' comparison of HMPPS sale price against 'convenience stores' retail price. This report shall be produced quarterly or at such frequency as the

Authority specifies. This shall be a cost comparison of a range of popular Products. The Products used shall be agreed in advance in writing with the Head of Retail. The results of this report shall be provided to the Authority 10 Working Days before the Product Review Board and shall form part of the QRR as outlined in Schedule 8.1 (Governance).

1.12.2 The Supplier shall meet its obligations and deliver all reports and data within specified timelines and formats as detailed in Schedule 8.4 (Reports and Records Provision). Failure to do so shall impact upon the KPIs specified in Schedule 2.2 (Performance Levels).

1.12.3 The Supplier shall provide reports and MI to the Authority as detailed in Schedule 8.4 (Reports and Records Provisions) on a weekly basis to enable the HMPPS Retail Operational and the MOJ Commercial Retail Teams to interrogate the data to confirm the Supplier is compliant with the contract.

1.12.4 The Supplier shall provide information to the Authority detailing the daily prisoner attendance in the Retail Workshops, Retail Workshop performance, and Retail Workshop efficiency in dashboard form. A template of the dashboard can be found in the Delivery and Workshop Information Pack (DWIP 97: Dashboard).

1.12.5 In advance of the Performance Management Board, the Supplier shall provide to the Authority a data dashboard. The data dashboard shall enable better safety decisions by monitoring and visualising irregularities in prisoners' buying patterns. This shall include but is not limited to information regarding:

1. Identify relationships between violence, canteen and debt;
2. Identify individual prisoners in debt;
3. Identify drug deals being conducted;
4. Identify individuals being bullied;
5. Identify prisoners becoming increasingly socially isolated'

1.12.6 The Supplier shall produce, and review annually, an Operations Manual, which provides an overview of how the core services (see below) and tasks will be provided, including the Account Management structure and key aspects of the service delivery. It documents the approved standard procedures for performing the Retail Services operations safely to produce the goods and provide services.

This is to be provided digitally in a format accessible on Authority systems. Content will include information but not limited to:

1. Organisational hierarchy;
2. Job descriptions;
3. Contact details;
4. Documented processes and systems;
5. Standard Operating procedures;
6. Logistics plan;
7. Occupational health and safety instructions;
8. Emergency procedures;
9. Products & Services Policies and position statements;
10. Delivery of a Qualification; and
11. Rehabilitation and resettlement opportunities'

1.12.7 The Supplier will provide on a monthly basis an easily accessible digital Management Information Suite of documents in a format accessible on Authority systems that combines multiple data streams to give a comprehensive overview of prisoner purchasing activities in order to provide the following intelligence:

* + - 1. Overview of all items picked from previous month to current date, split by week including percentage increase/decrease alongside compared to the average week for the contract. (Contract Level);
      2. Provides information on orders completed and units picked for the contract on a weekly basis including previous 6 weeks split by warehouse. (Warehouse Level);
      3. All units picked and orders completed by Prison and Warehouse level, also provides data on average items per order and how many units on average tilled per order. (Prison Level);
      4. Total customer spend by Prison for the last 4 weeks. (Prison Level);
      5. Prisoner spend by Prison for the previous month split in to customer spending brackets. (Prison Level);
      6. Overview of any extra costs, transport/couriers required and assets used;
      7. List of issues faced on the HMPPS Retail contract that account for any increase/decrease of units sold or financial costs for a particular week.
  1. **Market and Sector** **Analysis**

The Supplier shall monitor trends in the retail market and will report quarterly on any potential impact on the Retail Service. A sales mix analysis, or basket of goods should be carried out quarterly, with a different part of the country audited each quarter. See DWIP 43 for an example of a typical "shopping basket".

* 1. **Optional** **Services**

*This section describes the Optional services that the Supplier may be required to deliver as part of ensuring continuity of service. Note the requirements listed below are for illustration and not exhaustive.*

1.14.1 The Supplier may be required, with prior approval from Authority, to facilitate repairs and maintenance to a Retail Workshop facility. These repairs/maintenances may include but not be limited to:

* + - 1. repairs/maintenance of Retail Workshop building/infrastructure;
      2. provision of additional utilities such as, lighting, power;
      3. provision of ancillary works such as, minor alterations to building fabric, installation of equipment fridges/freezers, CCTV etc.
    1. Changes to operating procedures/provision of Services in the event of a major incident/accident to ensure continuity of service.
    2. Provision of fully equipped and staffed external Retail Workshop(s) in the event of a planned or unplanned incident whereby existing Retail Workshop capacity cannot cover demand.
    3. Provision of external resources to ensure continuity and security of service.
    4. Provision of approved additional Retail Workshop equipment as defined by Supplier or the Authority either procured, hired, leased to replace, to satisfy provision of service or to improve efficiency of service.

1.15 **Provision of External Contingency Retail Workshop** **Site**

*This section describes the potential requirement for the Supplier to be able to stand up (within agreed time frame and for an agreed period) a fully functioning external Retail Services type workshop. The volume capacity and head count are purely indicative. The costings of a contingency external retail workshop should include for; but not limited for;*

1.15.1 For scale and capacity for external workshop has been drawn from the average across the current workshops, therefore Suppliers should use the following metrics:

* + - 1. Max weekly order capacity 4,277;
      2. Weekly average orders 3,526;
      3. Weekly average number of items (picked and packed) 68,720'
    1. Should a Contingency Retail Workshop be required the Supplier shall ensure that it is staffed to meet the above work throughput. The FRT requires Suppliers to indicate the number of staff required to meet demand together with Supervisory staff numbers.
    2. Suppliers to indicate the cost of setting up the external contingency Retail Workshop together with standard operational costs and where appropriate the cost to stand facility down.
    3. Suppliers to advise whether the potential facility would be leased, already owned or part of a shared facility and indicative costs for the facility'
    4. Suppliers to indicate approximate costs for fitting out the Retail Workshop. This should include provision for but not limited to:
       1. technology infrastructure fit out including processing of Prisoner Order forms;
       2. provision of facility equipment to support inventory storage and processing;
       3. secure storage of high value items'

1. **SECTION 2: SUPPLY CHAIN MANAGEMENT** 
   1. **Stock** **Management**
      1. The Supplier shall manage the supply chain of products from source through to delivery to the Serviced Sites/Sites. The Supplier will ensure availability and continuity of Product demand from source through to fulfilment of End User orders. This will include for but not limited to:
         1. Generating and distribution to Serviced Site/Site of the POFs and arranging timing collection of the collated POF for processing by the associated Retail Workshop;
         2. Sourcing of Products as defined on the NPL list;
         3. Provision of managing the Retail Workshop inventory to ensure appropriate minimum stock levels are maintained such that there is no stock out of products to fulfil End User orders;
         4. Manage the pick and pack operation;
         5. Ensuring dispatch and delivery of orders to Serviced Site/Site;
         6. Provision of all documentation to support delivery and where agreed distribution of canteen orders to End Users.
      2. The Authority will own the stock once delivered to the loading bay of the Retail Workshop. The Finance Response Template (FRT) and any subsequent Annual Budget should be costed according to the following principles:
2. The Authority will have ownership and title to all Goods supplied under the terms of the contract and in accordance with Products detailed on the relevant NPL and LPL.
3. The risk, title and ownership of Goods will transfer to The Authority when the Products are delivered to the Retail Workshops.
4. The Supplier will ensure that sufficient quantities of Goods are stored and maintained at the Retail Workshops to ensure that there are no stock outs of any lines. This will be monitored through the application of specific KPIs.
5. The Supplier will invoice for Goods only when they are delivered to the Retail Workshop.
6. The Supplier will be responsible for performing stock checks of at least 25% of all stock (excluding High Value Items), on a random basis, and that a weekly stock take is undertaken, ensuring a 100% stock take of all items over a rolling 4 or 5 week period. A stock take of all High Value Items is conducted every week.
7. The Supplier will be responsible for reconciling via management reports any variants/ amendments to products ordered and supplied to End Users.
8. The Supplier will notify The Authority via wastage management reports any discrepancies between stock inventory in Retail Workshop following weekly inventory checks.

2.1.3 The Supplier shall acknowledge that as a Government department, the Authority has a duty to ensure the integrity of its supply chain in accordance with the highest social and ethical standards and includes such requirements as Modern Slavery, Social Values. To the extent that it is applicable to the performance of the Goods and Services associated with the Agreement, the Supplier shall use all reasonable endeavours to ensure that all components of its entire supply chain, including the Supplier's operation and any third-party operation, is engaged in the performance of the Agreement and is operated to the highest standards.

2.1.4 The Supplier shall ensure that Product receiving processes are efficient and fit for purpose in a custodial environment, utilising any technology as appropriate. Items purchased are issued in quantities and condition which do not pose a significant risk to prison security or the health and safety of any prisoner or any other person, either upon receipt or during subsequent use/storage.

2.1.5 The Supplier shall ensure there is sufficient stock within each Retail Workshop to meet all demand. The Supplier shall purchase sufficient stock to meet anticipated prisoner orders. The Supplier shall also identify likely volume impacts on related lines due to seasonal demand or emerging trends and adjust their orders accordingly.

2.1.6 The Supplier will be responsible for ensuring all prisoner workers receive a full Retail Workshop induction prior to starting work. A record and date of the induction is to be kept in the training record (DWIP 94: Prisoner Training 2055c Card). The induction will comply with all local policies and procedures. As a minimum the induction must include, but not limited to:

1. Retail Workshop Health and Safety regulations and specific hazards which includes Manual Handling;
2. Location of fire exits and evacuation drill;
3. Tour of the Retail Workshop;
4. Overview of the end-to-end Retail Services process;
5. Introduction to the Supplier;
6. Training Programme;
7. Rehabilitation of Offender Program.

2.1.7 The Supplier shall ensure that prisoner workers who have successfully undergone the Retail Workshop Induction process and working on the Retail Services contract are utilised for relevant processes, so they are trained and upskilled in current warehouse operating including all aspects of supply chain management, stock control procedures and Warehouse Management Systems. Within 2 months of the Effective Date, the Supplier shall provide a detailed plan on how they intend to train the prisoner workers employed in the Retail Workshops.

2.2 **Supply of chilled and frozen** **Goods**

* + 1. The Supplier will manage the bulk supply of chilled and frozen Goods to the agreed Retail Workshops; storage at Retail Workshops; transportation between Retail Workshops and Sites/Serviced Sites in accordance with the relevant legislation.
    2. The Supplier will keep all chilled and frozen goods in a temperature-controlled environment until the Prisoner Order is distributed to the receiving prisoner. The Supplier should provide audited evidence of this when requested by the Authority.
    3. The Supplier will ensure that any chilled and/or frozen goods ordered by an End User from the Prisoner Order Form is delivered with the Prisoner Order in accordance with timings as agreed in the MOUs.
    4. The Supplier shall ensure prior to any picking and packing process within any Retail Workshop that there is a secure, locked and Supplier managed facility to process the receiving and storing of High Value Items (DWIP 103) in Retail Workshops utilising Supplier staff only. The supplier will ensure that access by Authority Personnel shall be permitted to the high value room by drawing the key from the gate lodge which will need approval from the Duty Governor. This shall be monitored via the Workshop Readiness Checklist.
    5. The Supplier shall ensure that 25% of all stock (excluding High Value Items), on a random basis, undergoes a weekly stock take, ensuring a 100% stock take of all items over a rolling 4 or 5-week period.
    6. The Supplier shall undertake a stock take of all High Value Items is conducted every week.
    7. The Supplier shall ensure conjunction with the Authority that full Retail Workshop stock takes are undertaken every 6 months.

2.3 **Distribution**

* + 1. The Supplier shall ensure that individual orders are picked and packed in accordance with demand, unless identified as Bulk Goods Delivery provision within the MoU.
    2. The Supplier shall be responsible for the disposal of any out of date stock. The

disposal method must comply with all relevant legislation. The Supplier shall also

produce and implement a Sustainability and Environmental Plan. The Supplier will provide the Authority with their Sustainability and Environmental Plan within 20Working Days of the Effective Date.

* + 1. The Supplier shall ensure that the proof of picking or confirmed order dispatch slip (DWIP 66: Amendment Slip and Dispatch Ticket) is placed and sealed and clearly visible in the relevant Product Bag before distribution.
    2. The Suppler shall ensure that the maximum weight of any Tote being distributed does not exceed 20kg. The Supplier shall ensure that each Tote is identified with an approved security tag / seal, provided by the Supplier, denoting the weight. The Supplier shall use:

(a) a yellow tag for Tote boxes weighing 0 – 14.99kg; and (b) a red tag for Tote boxes weighing 15 – 20kg.

2.3.5 The Supplier shall ensure that a printed label is securely applied to the end of each box clearly identifying the following for easy distribution. The label shall not include the prisoner's name. An example label is included in the Delivery and Workshop Information Pack (DWIP 64 – Tote Box Label):

1. the weight of the Tote;
2. Prison location;
3. number of orders;
4. house block / wing / landing.

2.3.6 The Supplier shall ensure that all dollies, totes, pallets and roll cages deliveries are prepared for transport using the most effective method to avoid damage to Products and to minimise any possibility of tampering with Products. They shall be prepared for transport in an environmentally sustainable method.

2.3.7 The Supplier shall comply with all relevant Legislation when producing manifests for vehicles delivering Products to Prisons.

2.3.8 The Supplier shall ensure as a minimum, for Prisons that either the Authority or Supplier performs End User delivery, that all deliveries of Products are accompanied by a manifest summarising the Totes for the house block / wing / landing / prison, and a manifest for each distribution point (i.e. wing for larger prison / prison for smaller drops) listing:

1. the prisoners in the agreed distribution sequence (alphabetically or cell order);
2. the delivery address;
3. the tote box that the picked order is in;
4. the number of bags for the prisoner;
5. a blank 'field' for the prisoner to sign for receipt of the order;
6. an additional area to comment on whether a discrepancy report has been raised.

2.3.9 Example of the manifest is shown in DWIP 65. As this document will contain personal information the Supplier must ensure that the processing of Personal Data complies with GDPR. The Supplier will ensure that any process they introduce complies with the General Data Protection Regulations (GDPR) to, minimise the risk of information loss, and uphold the protection of personal data. The GDPR laws apply to 'personal data' and relates to a living individual who can be:

* + - 1. identified from it;
      2. from piecing it together with other information already in the Authority possession, or that is likely to come into the Authority possession;
      3. it includes any expression of opinion about the individual, and any indication of intentions towards them;
      4. GDPR requires privacy to be built into processes and Supplier IT/WMS Solutions from the start.
    1. The Supplier shall ensure a Proof of Delivery is produced for each delivery and a copy is retained by the Supplier for a period of 12 months following delivery. The Supplier shall ensure that the proof of Delivery is made available to the Authority upon request.
    2. The Supplier, 3 months from the Effective Date, shall confirm the delivery plan in writing to the Authority. They shall follow the pre-agreed delivery days/times including multi-drops and drops to each Prison where necessary, as specified in the Delivery and Workshop Data (DWIP 101).
    3. The Supplier shall ensure that Prisons are informed via the Duty Governor as soon as they become aware, of any potential delays to agreed schedule(s).

2.4 **Stock** **Replenishment**

* + 1. The Supplier shall be responsible for all stock replenishment and will ensure there is sufficient stock to meet order demand. The Supplier shall at all times maintain sufficient stock levels of each Product offered on the NPL to fully satisfy each and every Prisoner Order on a weekly basis and shall not operate a substitution process. In the event that the Supplier fails to supply the Products offered and insufficient stock is available then End Users shall not be charged for that Product.
    2. The Supplier will ensure stock replenishment to Retail Workshops meet the agreed Delivery Schedule days/times as specified in Delivery and Workshop Data (DWIP 101).

2.5 **Stock** **Returns**

2.5.1 Returns from Retail Workshops will be covered by Supplier credit note see Schedule 7.1 (Invoicing and Charges). The Supplier shall, within 30 Working Days of the Effective Date, establish and agree with the Authority, a process for rejected and returned Products that have been supplied by the Supplier to a Prison that do not meet the End User's expectations in line with the Consumer Rights Act. Returns of Products may occur for the following reasons:

* + - 1. Prisoner has been released or transferred;
      2. Prisoner is temporarily away from prison, e.g. a court appearance;
      3. Wrong product due to picking or keying error;
      4. Damaged product;
    1. The Supplier shall ensure Products to be returned from Prisons or End Users are collected in accordance with the Delivery Schedule set out in the Delivery and Workshop Data (DWIP 101) or as otherwise agreed. Where fresh, frozen and chilled Products are undistributed and due to be returned, these Products are to be disposed of via local agreements as specified by the Authority that includes, but is not limited to, destruction in local bins and waste management units or providing the products to the Kitchen/Catering team for use where possible.
    2. The Supplier shall operate a process for collection of Assets and undistributed canteen. This process shall ensure the return of ambient products such as tinned, and other non-perishable products to the Retail Workshops, minimising wastage.
    3. The process should be established as part of the Workshop Readiness Checklist.

2.6 **Reception Pack** **Management**

* + 1. The Supplier is required to supply Reception Packs that shall be made up of standard Products available from the NPL. Reception Packs are generally provided to prisoners upon arrival at a Prison following either sentencing or after transfer from elsewhere within the prison estate.
    2. Reception Packs are to be provided in several distinct types that contain a simple range of Products to satisfy demand for a prisoner that smokes, vapes, grocery pack, Vegan pack and for juvenile prisoners. The contents of each type of reception pack shall be agreed with the Authority's Representative and reviewed at the Product Review Board.
    3. The Supplier shall ensure Reception Packs are delivered to the required timelines, including standing orders, specified in the Delivery and Workshop Data (DWIP 101).
    4. The Supplier shall ensure that sufficient Reception Packs are picked and packed in preparation to deliver to Prisons upon receipt of an order to meet the requirements and the range of Packs detailed in the Workshop and Information Pack (DWIP 35: Reception Packs).
    5. The Supplier shall ensure that the range of Reception Packs are reviewed on a quarterly basis and shall make any recommendations for rationalisation or alternative products to the Authority at the QRR or as justified due to an increase in RRP or Government duty.
    6. The Supplier shall not provide reception packs to Additional Users of the contract, unless approved by the Authority.

2.7 **Logistics**

* + 1. The Supplier shall ensure that all vehicles used in the delivery of Products for this

Agreement are tracked via GPS which meets and complies with all relevant

Legislation including, but not limited to, roadworthiness and insurance. The Supplier shall continually validate and improve the effectiveness of tracking systems for vehicles and goods in line with Good Industry Practice.Vehicles on short term lease that are not fitted with GPS are excluded. For vehicles that are dedicated to the provision of service must be fitted with compliant GPS tracking system.

* + 1. The Supplier will ensure that they have an operator's licence to operate (O Licence) vehicles above 3.5 tonnes gross vehicle weight (GVW) that are used to carry goods (i.e. anything not permanently attached to the vehicle) on public roads for trade or business purposes. This includes short-term rental vehicles hired for as little as one day. The operator's licence must be held by the person – whether an individual or a company – who 'uses' the vehicle and this may or may not be the owner of the vehicle. The user of the vehicle can be:
       1. the driver, if they own it or if they are leasing, buying on hire purchase terms, hiring or borrowing the vehicle (e.g. a typical owner-driver operation);
       2. the person whose servant or agent the driver is – i.e. whoever employs or controls the driver.
    2. The Supplier shall ensure that it provides multi chambered HGV’s to cater for ambient, fresh, chilled and frozen products.
    3. The Supplier shall ensure their drivers abide by The Drivers Handbook in the Delivery and Workshop Information Pack (DWIP 24: Delivery Handbook).
    4. The Supplier shall ensure their fleet meets the needs of Gate access restrictions as detailed in Delivery and Workshop Data (DWIP 101).

2.8 **Product** **Recall**

* + 1. The Supplier shall carry out a Product Recall in relation to any Product which may reasonably be regarded as unfit for consumption or otherwise unacceptable due to, for example, contamination or damaged packaging.
    2. The Supplier shall operate a process that shall identify at all times the location and quantity of each individual product including those distributed to End Users, irrespective of the method of End User Delivery.
    3. The Supplier shall, as soon as reasonably practicable and in any case within two

(2) hours of becoming aware of the need to implement a Product Recall:

* + - 1. Quarantine, where possible within the confines of the Retail Workshop, all affected Products held in the Retail Workshops; and
      2. contact the RLC at all Prisons that have ordered or received deliveries of the affected Products to inform them of the Product Recall.

2.8.4 The Supplier shall inform the RLC(s) of the following:

* + - 1. recalled Product description and Supplier code;
      2. total number of Products affected by the Product Recall;
      3. batch numbers and relevant date period(s) affected by the Product Recall;
      4. the reason for the Product Recall;
      5. the location of affected Products within its own supply chain and at Prisons;
      6. any relevant impacts on the Prison;
      7. the steps that the Supplier will take to collect and provide replacement Products; and
      8. Alternative Products for the Products that are subject to the Product Recall.

2.8.5 The Supplier shall either, with prior approval from the Authority:

* + - 1. collect the Products as soon as practicably viable, utilising the Delivery Schedule

all the Products that are subject to the Product Recall from each affected Prison and replace those Products. In which case, the relevant RLC(s) shall agree the interim storage requirements relating to such Products with the Supplier; or

* + - 1. agree with the relevant RLC(s) that disposal of the Products is appropriate, in which case such RLC(s) shall arrange for such disposal to take place and the reasonable costs associated with the disposal shall be borne by the Supplier.
    1. The Supplier shall supply like-for-like replacement Products or, where such replacements are unavailable, alternative Products to replace those collected or disposed of as soon as reasonably possible at no additional cost to the Authority.
    2. Where Product is recalled due to reasons as specified in requirement 2.8 and the product has yet to be delivered to the End User, the Supplier will be solely responsible for claims against, where applicable, the manufacturer or suppliers

within their supply chain. If the product is damaged during transit it will be solely at replacement cost by the Supplier.

* + 1. The Supplier will in the event of a Product Recall collate all details of which End User has ordered the recalled products and with approval of Authority comply with requirement 2.8 Where this is not possible the Supplier will advise the relevant finance departments of any End User expenditure and submit via amendment slips so that the finance departments can reimburse the End Users.
    2. Where an alternative product is offered it will not be at a higher price than the original Product.

2.9 **Buffer** **Boxes**

* + 1. Whilst the Supplier shall, wherever possible, avoid picking errors and/or damages, a small stock of contingency items will be available during the distribution process to alleviate the impact of any mis-picks or damaged Products. These Products are referred to as "Buffer Boxes". The Products available shall be agreed by each Prison with the appropriate Retail Liaison Contact representative and should reflect the Local Product List and sales profile. These are considered essential items to facilitate the prompt replacement and resolution of queries or errors that may arise from time to time.
    2. The Supplier shall meet all current Buffer Box Prison Orders (prisons that utilise Buffer Boxes are detailed in the Delivery and Workshop Data DWIP 101) and all future instructions from additional users when specified as and when required by the Authority via the Change Control Procedure set out in Schedule 8.2.
    3. The Supplier shall ensure that Buffer Box(es) are easily identifiable as such.
    4. The Supplier shall ensure that Buffer Box(es) are delivered as per the agreed Delivery Schedule as per the Delivery and Workshop Data (DWIP 101).
    5. The Supplier shall design a process enabling Prisons to amend Buffer Box contents at any point prior to an order for Buffer Box(es) being placed.
    6. The Supplier shall ensure that all Buffer Box(es) are collected by the Supplier and returned to the relevant Retail Workshop on a weekly basis.
    7. The Supplier shall not provide Buffer Boxes to Additional Users, unless approved by the Authority.

2.10 **Bulk** **Orders**

* + 1. The Supplier shall operate a process for Prisons to be able to place Bulk Orders which enables the purchasing of Products by Prisons in larger quantities for prisoners to purchase. These are supplied directly by the Supplier to the requesting Prison to an agreed schedule or in alignment with the relevant MOU. The Authority or third-party shall take ownership of such stock upon delivery depending on the site.
    2. The process shall be established as part of the Workshop Readiness Checklist.
    3. The Supplier shall ensure they have the capacity and ability to deliver Bulk Orders to every Prison in accordance with the Delivery Schedule set out in the Delivery and Workshop Data (DWIP 101).
    4. Bulk Orders (Bulk Goods Delivery) will be the primary provision provided to additional users of the Prison Retail Contract as detailed in Annex A and any other provision will be exceptional and require approval by the Authority.
    5. Bulk Orders (Bulk Goods Delivery) to additional users will be governed by the Bulk Goods Delivery MOU template agreed by the Supplier and identified Additional User.
    6. All Bulk Goods Delivery MOU’s will be held by the authority.

2.11 **Small and Medium Enterprises** **(SMEs)**

* + 1. The Supplier shall ensure that their Supply Chain complies with Government target with regards SMEs. The SME % (percentage) measure can be a combination of volume of products sourced via SMEs, or percentage of overall spend or actual ratio of suppliers in the supply chain.
    2. The Supplier shall have in place processes for ensuring there is open and fair competition for its supply chain, these processes must include for:
       1. facilitation of bids from SME suppliers;
       2. approach to ensuring fair treatment of its suppliers.
    3. The Supplier shall comply with all and any requests from the Authority for SME data such as percentage of their business turnover for this contract or number of employees performing activity related to this contract, within timescale reasonably requested by the Authority.
    4. It is the intention of the Authority to grow the spend with SME over the life time of the contract.

2.12 **Express** **Delivery Not applicable section 2.12.1 through 2.12.4**

* + 1. The Supplier shall ensure an agreed range of products derived from the LPL are delivered or via the normal scheduled delivery process of Supplier receipt of order or by a dedicated additionally weekly delivery.
    2. The Supplier shall propose, [ insert period ] months prior to Operational Services Commencement Date, a process enabling Prisons to place orders for new receptions and first night prisoners at any time for the Express Service (approximately 2000 per week) for consideration by the Authority. Should the process not be agreed and operational [inert period]months from the Effective Date the matter shall be referred to the Dispute Resolution Process.
    3. The Supplier shall ensure that any Express Service Products are picked and packed in accordance with order requirements and delivered as part of scheduled weekly delivery or on a dedicated day. All Express Service Products are delivered in a secure container, labelled and clearly identified as Express.
    4. The Supplier shall ensure proof of Delivery is produced for each delivery and

retained by the Supplier. This shall be provided at the request of the Authority.

1. **SECTION 3: RETAIL WORKSHOP MANAGEMENT** 
   1. **Picking and Packing** **Process**
      1. The Supplier shall provide all management and technical resource necessary to operate the Retail Workshops. The Supplier must work closely with the Authority to ensure that approved prisoner workforce is supervised properly at all times and that security is not compromised.
      2. The Supplier shall comply with all relevant Health and Safety standards, and all

staff should be trained as a minimum on basic food hygiene, manual handling, fire, and generic Health and Safety training. They should all be made available to attend any courses, as deemed necessary by the Authority at the relevant Retail Workshop, to ensure their understanding and compliance with local security requirements and other issues relating to working inside a prison environment (e.g. jail craft, breakaway techniques) as contained in the Operating Manual.

* + 1. The Supplier shall manage the Retail Workshops in order to for Products to be received, pick and packed and then distributed to End Users.
    2. The Supplier shall acknowledge that the size, make-up and location of the prisoner population is subject to significant change and often at very short notice, including local interruptions where prisoners may not be supplied to the Retail Workshop for short or extended periods. The Supplier shall develop written contingencies to quickly adjust to the subsequent impact on the volume and nature of Products and Services it is required to provide under the Agreement. Contingency plans (as defined in Schedule 8.6 (Service Continuity and Corporate

Resolution Plan) should be provided to the Authority and reviewed within the

timescales and at the frequency required by Schedule 8.6. The contingency plan should contain detailed guidance and operational procedures for restoring the Services.

* + 1. The Supplier's Personnel shall be responsible for the direct supervision of the approved prisoner workforce once the prisoner workers have entered the Retail Workshop. To support these prisoner workers, the Supplier shall produce a Rehabilitation and Resettlement plan which shall outline training and employment opportunities they shall offer them in custody, on temporary release and following release.
    2. The Supplier shall supervise the approved prisoner workers (prisoners who have been selected to work in the Retail Workshop) to accurately and quickly collect and fulfil each End User's order. The Supplier shall supervise and manage prisoner workers to complete the order picking (including high value items) in accordance with the Pick List, checking, bagging, labelling and marshalling for dispatch.
    3. The Supplier shall institute checks throughout the picking and packing process

that provide full traceability of the picking process, with particular regard for High Value and desirable goods such as vapes, batteries, supplements, and stamps.

* + 1. The Supplier shall establish a picking and packing process that restricts the exposure of direct reference to the name of the End User or prisoner number which could be used by the approved prisoner worker to identify the End User for whom they are picking the order.
    2. The steps contained in the Supplier's Standard Operating Manual (SOP) should

retain the integrity of Prisoner Order anonymity until the goods are prepared for sealing in a secure transparent bag prior to the marshalling of bagged goods into containers for onward dispatch.

* + 1. The Supplier shall provide a corresponding dispatch slip for deposit into sealable and durable transparent bag. Multiple bags may be necessary when required by the size and quantity of the order, more than one bag may be required.
    2. The Supplier shall ensure that the picking and packing processes for all Products whether ambient, fresh, chilled or frozen, or non-food, including individual End User orders, Bulk Orders, Reception Packs, Buffer Boxes and Express Service is efficient and fit for purpose to provide the End Users with the goods they have ordered, delivered as and when required and fulfils the End User's order completely. The Supplier shall supervise the approved prisoner workers to collect each Prisoner Order and provide a corresponding goods receipt for deposit into sealable and durable transparent bag accurately and quickly.
    3. Utilising technology enablers as appropriate. An enabling technology is the use of equipment or change to working processes alone or in combination with associated technologies, which provides the means to increase performance and capabilities of the user, product, and process.
    4. The Supplier shall ensure that picking of High Value Items is undertaken as set out at Section 2 Paragraph 2.2.4 and shall only be undertaken by Supplier Personnel.
    5. The Supplier shall ensure that the picking and packing processes are fully auditable, in real time, to provide product traceability throughout the entire order and deliver process including delivery to the Retail Workshop, loading onto the vehicles used for delivery to Site/Serviced Sites and delivery to the End User.
    6. The Supplier shall ensure that each Prisoner Order is packed into 100%

recyclable, transparent, sectional, sealable bag(s) and in accordance with

Directive EN71 (as amended from time to time) and which contain minimal plastic content.

* + 1. The Supplier shall ensure that once used and no longer needed, each Pick List used for picking products is securely destroyed.
    2. The Supplier shall not provide any substitute Product(s) for any ordered product which is not available or not in stock in the Retail Workshop unless the substitute is an Alternative Product approved by the Authority.
    3. The Supplier shall ensure that the Retail Workshops have a high level of operational resilience (such as: Retail workshops have sufficient assets to cover for individual equipment failures, sufficient supply of consumables, or can ensure timely replacements so as not to cause delays to provision of service) and capacity to cope with peaks in demand and other operational issues.
    4. Subject to the terms of the Agreement, the number of approved prisoner workers required by the Supplier for each Retail Workshop shall be prepared for agreement by the Authority, in sufficient time to ensure the optimum operation of the Retail Workshops and the regimes in the Sites/Serviced Sites.
    5. The Supplier shall accurately monitor and record, using the Authority's Management Information System (NOMIS) (or any other application provided by the Authority), each prisoner's attendance (hours/date), productivity, and accuracy as well as the overall performance of the Retail Workshop and provide this to the Authority as required in accordance with the Administrative Instructions. The accuracy of the reports from the Supplier shall be critical in determining the actual remuneration paid by the Authority to each prisoner worker included in the pool of approved prisoner workforce.
    6. In the event that sufficient prisoner workforce is not provided, or prisoner productivity is below that which could reasonably be expected, the Supplier's Service Continuity and Corporate Resolution Plan as defined in Schedule 8.6 (Service Continuity and Corporate Resolution Plan) shall be invoked.
  1. **Waste** **Management**
     1. The Supplier shall ensure that all waste resulting from the provision of this Contract is recycled or destroyed in an environmentally friendly manner with certificated evidence available for the Authority upon request, this includes but not limited to all packaging, pallets and fresh food.
     2. The Supplier shall comply with Directive 2008/98/EC on Waste (Waste Framework Directive), as amended from time to time.
     3. The Supplier shall seek the Authority's written approval for agreement to assign any Products as Waste.
     4. The Supplier shall work with the Authority on initiatives to reduce Waste during the Term.
  2. **Prisoner** **Management**
     1. The Supplier shall ensure that meaningful work activities are provided daily throughout the life of the Agreement to (currently) approximately 930 Prisoners allocated to work in the Retail Workshops at all times including Transition. Although due to daily interruptions such as visits, legal visits and education the Retail Workshops actually employ 520 prisoner workers on a daily basis. These activities shall be of similar nature to those outside the custodial environment providing real work experience and transferable skills. The Supplier shall ensure it maintains sufficient contingency to ensure the Services can be delivered in

accordance with the Performance Indicators should prisoner numbers not be met due to absences or Prison lock-downs.

* + 1. The Supplier shall ensure there is sufficient work throughout the Term to enable the prisoner workforce to fulfil a role and to prevent any reduction in the number of available work positions to prisoners.
    2. The Supplier shall ensure full records are kept and maintained on NOMIS (or any other application provided by the Authority) of the prisoner workers attendance and non-attendance at the beginning and end of each Workshop Session forming part of the respective Prison's Core working day.
    3. To ensure adequate supervision of the prisoner workforce, the Supplier shall ensure that each Retail Workshop, has a top-level prisoner to Supplier staff ratio of 1:6. The Supplier Personnel to prisoner worker ratio is set at 1:10 as a minimum. Prisoner workers need to be observed at all times in the Retail Workshops not only for Health and Safety but also Security reasons. The prisoner worker headcount is based on the total roll allocated to the Retail Workshop, as this would be the maximum level of Supplier supervision required.
    4. It should be noted that ratios are specific to prison type and the physical environment, therefore the Supplier shall ensure that if Governors require amendments these are complied with on a Services Site/Site-by-Serviced Site/Site basis.
    5. The Supplier shall ensure that positive and negative case notes are inputted on a daily basis to individual prisoners NOMIS (or any other application provided by the Authority) account.
    6. The Supplier shall ensure full records are kept and maintained on NOMIS (or any other application provided by the Authority) of all prisoner workforce absences which the Authority has approved for any of the unavoidable reasons as set out below:
    7. Acceptable Absence: Prisoner workers absent from an allocated Activity for more than half of a session should be recorded as Acceptable Absence providing their absence falls into one of the following categories:

1. Visits – Domestic and Legal;
2. Internal medical appointments arranged by Healthcare staff;
3. Sentence Planning Boards, Interviews and Resettlement appointments;
4. Attendance at adjudications;
5. Religious observance;
6. Lockdown authorised by the Governor;
7. Prisoner Reps/Listeners etc. on official duties;
8. Drug testing;
9. Other activities designated as legitimate by the Governor or Deputy (i.e. training shut-downs).

Official Appointments that fall into the above categories will be shown on daily Unlock Lists.

3.3.9 Unacceptable Absence: All other absences are classified as unofficial and must be recorded on NOMIS (or any other application provided by the Authority) as Unacceptable Absence. Reporting staff must find out the reasons for absence and

ensure that these are entered onto NOMIS (or any other application provided by the Authority). Prisoner workers will receive no pay.

3.3.10 Unacceptable Behaviour: If prisoner workers behave inappropriately, or do not properly engage during Activities, they should be recorded on NOMIS (or any other application provided by the Authority) as Unacceptable Behaviour. Reporting staff must record information about inappropriate behaviour onto NOMIS (or any other application provided by the Authority). Prisoner workers will receive No pay.

3.3.11 The Supplier shall comply with the Equality Act 2010 including making proportionate reasonable adjustments for Prisoners with physical and/or learning disabilities allocated as prisoner workforce in a Retail Workshop. All costs to accommodate any structural changes to ensure the Supplier adheres to the Equality Act will be met by the Authority. The Supplier will be required to submit an Additional Works Request to the local Facilities Management. Approval must be obtained from the Authority prior to any works being carried out.

3.3.12 An authorised person is a person who is working at a Prison (including employees or contractors); and falls within one of the groups listed below:

1. Prison officers and operational managers;
2. Prisoner custody officers (those employed by escort contractors can only search the prisoners they are escorting);
3. Instructional officers;
4. Stores staff;
5. Catering staff;
6. Agricultural and horticultural craftsmen;
7. Night patrols;
8. Prison Auxiliaries;
9. Nurses in Healthcare;
10. Operational support grades;
11. Civilian grades who have prisoners in their custody or supervision; and

Each case has been authorised by the Authority (governor or director) to conduct searches.

3.4 **Prisoner Training and** **Rehabilitation**

* + 1. The Supplier shall ensure that all prisoner workers allocated as prisoner workforce (circa 930) are given full Induction training on Supplier Retail Workshop processes including all and any piece(s) of machinery. The Supplier will ensure that each prisoner worker signs a Training Record in the form set out in the DWIP (Training Record). The training record template can be produced by the Supplier or they can utilise the HMPPS training record 20555c (DWIP 94: Prisoner Training 2055c Card), confirming that they have completed and understood the training. These Training Records are the responsibility of the Supplier to maintain and shall be retained for the entire Term.
    2. The Supplier shall ensure that all prisoner workers understand and sign the Authority's compact. The compact is an agreement between the Supplier and the prisoner worker, stating the Retail Workshop hours, rates of pay and the terms and conditions of employment to work the Retail Workshop.
    3. The Supplier shall provide training to prisoner worker which leads towards a nationally recognised qualification which supports the rehabilitation and future job prospects for the prisoner worker. To ensure compliance, the Supplier will provide a structured and accredited training programme, ideally to include but not limited to Warehouse and Storage Level 2 NVQ, or other relevant vocational qualifications. The structured training programme shall be applied in all Retail Workshops and will provide all prisoner workers working in the Retail Workshop the opportunity to enrol on the appropriate course.

3.5 **Supplier Personnel** **Training**

* + 1. The Supplier shall ensure that all Supplier Personnel allocated to work in Retail Workshops undertake all mandatory security and safety training provided by the relevant Serviced Site/Site, prior to commencement of employment within a Retail Workshop as detailed in the Delivery and Workshop Information Pack (DWIP 76: Staff Training). This includes Personnel supporting any activity on site for Transition activities or BAU running of Retail Workshops.
    2. Within 5 Working Days from the Operational Commencement Date the Supplier shall ensure that all Supplier Personnel will be fully trained to the standard specified by the Authority on how to escort vehicles within the grounds of each Site/Serviced Site, the movement of vehicles and items in and out each Site/Serviced Site.
    3. The Supplier shall ensure that all Supplier Personnel allocated to work in the Retail Workshops undertake all necessary locally scheduled Inductions for working in a prison environment along with their own Retail Workshop processes and practices, prior to starting their role. The HMPPS Induction process differs from Site/Serviced Site to Site/Serviced Site, therefore the Supplier must be flexible in allowing their Personnel to attend such courses. In some cases, staff will not be allowed to enter the Site/Serviced Site until the mandated training has been completed.
    4. The Supplier shall provide where required prisoner workforce uniforms for those Retail Workshop Sites/Serviced Sites. The Supplier shall for indicative costing purposes (reference Tab "Other Operating Costs" in Financial Response Template and any subsequent Annual Budget base their costings on the following volumes and allocations.

|  |  |  |
| --- | --- | --- |
| **Item** | **Allocation per prisoner** | **Number of Users** |
| T Shirts | 5 | 750 |
| Sweatshirts | 3 | 750 |
| Casual Trousers | 3 | 750 |
| Freezer Jackets | 3 per workshop | 54 |
| Thermal gloves | 3 per workshop | 54 |

* + 1. Actual volumes required will be specified prior to contract placement and included within DWIP 101.
    2. The uniform shall conform with the specification listed below and be agreed by the Governor of each Prison where it is to be used, prior to use. Quantities will be agreed between the Supplier and the Authority locally.
    3. The Supplier shall provide high vis jackets / thermal coats for working in chiller / freezer units / all other PPE as necessary or as specified by the Governor of each Prison. These shall be provided for prisoner workers and Supplier Personnel.
    4. The Supplier shall ensure that uniform conforms with the following:

1. No black items permitted, with the exception of leggings.
2. No hoods.
3. No offensive slogans/designs, football teams, countries etc.
4. Nothing padded or quilted.
5. Hats shall not:
   * + 1. Cover the face;
       2. Be of officer uniform type;
       3. Peak cap;
       4. Have side flaps that cover any part of the head; (v) Be lined, padded or quilted.
6. Tee Shirts shall consist of 100% Carded cotton.
7. Sweatshirts shall consist of Polyester and/or Cotton brushed back fleece and have long straight sleeves, a Straight body and a neck with rib binding.
8. Casual Trousers shall include a Zip fly, stud waist fastening, slanted side pockets and consist of Polyester/cotton twill.
9. All items shall be able to withstand 70°C temperature wash.
   * 1. The Supplier shall provide all PPE required by the prisoner workforce except safety footwear which shall be provided by the Authority. Should a prisoner arrive at a Retail Workshop without appropriate footwear then the Supplier shall notify the Authority before permitting the prisoner entry to the Retail Workshop so that the Authority can source appropriate footwear.
     2. The Supplier shall provide their own work wear for Supplier Personnel. Supplier

Uniforms shall not be similar to that of a prison officer in order to differentiate the Supplier Personnel from Authority Personnel. This includes not permitting Supplier Personnel to wear white collared shirts with black trousers.

* + 1. All clothing supplied by the Supplier shall be appropriate to the environment that the prisoners and Supplier Personnel are working in.
    2. Authority Personnel are required to be identifiable at all times whilst in Prisons

and on Authority Premises. As such Suppliers Personnel shall wear and keep visible name badges and security passes at all times. Name badges shall not carry the HMPPS logo unless the wearer is a direct employee of HMPPS. The Supplier shall obtain the approval of the Head of Prison Retail for any Uniform prior to the Effective Date or changes to agreed Uniform.

3.6 **CCTV**

3.6.1 CCTV is in place within the Retail Workshops to ensure the safety of the Retail

Workshops goods, equipment, Assets and Personnel. The CCTV is owned by the Authority and should be maintained and repaired by the Authority. In the event that the Supplier is required to supply and install CCTV. The Supplier shall:

1. ensure that all CCTV Supplier IT/WMS Solutions supplied and installed in Retail

Workshops comply with the Regulation of Investigatory Powers Act 2000 (RIPA);

1. prior to the installation of any CCTV system, the Supplier shall obtain written approval to do so from the Local Head of Security or the Governing Governor and follow the Change Control Procedure as detailed in Schedule 8.2 (Change Control);
2. ensure that CCTV which is put in place, shall be the responsibility of the Authority and be added to the Prison asset list for service and maintenance by the relevant Supplier;
3. ensure that they are aware of the relevant local Prison policy on the use of CCTV and the processes and procedures to be followed;
4. ensure that there is a functional independent CCTV system in operation in the Retail Workshops which provides visual evidence in the event of any personal accident or incident happening in the Workshop;
5. Any issues with the CCTV shall be raised with the local Head of Security and repairs and replacement sought via the facilities management; and ensure that approval from the Local Head of Security at each Workshop is obtained prior to the viewing or downloading of any CCTV.
6. **SECTION 4: CORPORATE REQUIREMENTS** 
   1. **Authority Policy** **Requirements**
      1. It is the Authority's duty to look after prisoners with decency and humanity and to help them lead law-abiding and useful lives in custody and after release.
      2. The sale of Products to prisoners is a crucial part of the operation of a

Site/Serviced Site and integral to the Authority's decency agenda. Tactical use of the Prison Retail Service assists with maintaining control and order within a Site/Serviced and can be used by the Authority to manage prisoners that may be at risk of self-harm or even suicide. To a prisoner, the opportunity to purchase extra products to supplement daily provisions enables them to exercise individual preference and maintain important contact with family and friends using their standard weekly allowance or earned income.

* 1. **Personnel**
     1. The Supplier shall ensure their Personnel comply with all health and safety and security requirements and conduct relevant induction and ongoing training.
     2. The Supplier shall ensure that all Supplier Personnel have been security vetted

prior to being deployed on any Site/Serviced. This includes Supplier Personnel working directly in the Retail Workshops or involved in the distribution of prisoner canteens. The level of security clearance required depends on where the individual is deployed. Details of the levels of security clearance and vetting process can be found in DWIP 77.

* 1. **KPIs and Performance** **Measures**
     1. The Supplier shall operate the Service and provide Products to meet the Performance Indicators as set out in Schedule 2.2 (Performance Levels). Achievement of KPIs shall be linked to the accrual of Service Points and Service Credits.
     2. The Supplier's nominated staff shall attend meetings to provide updates on performance and achievement against the KPIs and progress reports as required by Schedule 8.1 (Governance).
     3. During Transition and for the first 6 months following the Operational Service Commencement Date, the KPI reporting frequency shall be at least fortnightly or as agreed between the Parties.
     4. The Supplier shall provide the required reports set out in Schedule 8.4 (Reports and Records Provisions) on performance and achievement against the KPIs. These reports shall be capable of being automatically generated by the Supplier IT Solution and shall be provided by the Supplier in accordance with Schedule 8.4 (Reports and Records Provisions).
     5. The Supplier shall provide the information in the format specified by the Authority during the Transition.
  2. **Price** **Management**
     1. The Supplier shall establish a clear and robust process for informing and managing Product Prices changes throughout the Term of the Agreement. This process shall include the requirements in Schedule 7.3 (Benchmarking).
     2. In accordance with the Open Book provisions set out in Schedule 7.1 (Charges and Invoicing) the Supplier shall be able to demonstrate:
        1. Price management on Goods, as well as all elements of the Services;
        2. Cost reduction on Goods during the Term, through consolidation, product improvement and rationalisation;
        3. Value for Money through efficiencies and innovation.
     3. In accordance with Schedule 7.1 (Charges and Invoicing) the Supplier shall demonstrate that their provision of the Services continues to provide Value for Money to the Authority.
     4. The Supplier shall employ appropriate methods to reduce costs throughout the Term. These could include (but are not limited to) the following:
        1. Product standardisation and leverage volume;
        2. Product range rationalisation (remove slow burners by approval);
        3. Improvement to sourcing process;
        4. Recycling income;
        5. Reduced inventory;
        6. Improved efficiency in warehousing processes; (g) Improved efficiency in Delivery.
     5. The Supplier shall provide a completed Financial Response Template which is compliant with the terms of Schedule 7.1 (Charging and Invoicing) as part of the ITT and will be documented in Schedule 4.1 (Supplier Solution).
     6. In accordance with Schedule 7.5 (Financial Reports and Audit Rights) the Supplier will provide to the Authority an Open Book accounting model for Goods and Services. The Supplier's Charges will be in the format for the Financial Response Template and thereafter the Annual Budget as required by the

Authority and shall include (but not be limited to) a breakdown of the following costs:

* + - 1. Cost of Products;
      2. Warehousing;
      3. inventory storage;
      4. distribution;
      5. Overheads;
      6. Profit margin (gross and net);
      7. resource costs, and
      8. where appropriate software and hardware.
    1. The Supplier shall be responsible for procurement of all Goods. All procurement should be competitive and conducted in a fair and transparent manner which delivers demonstrable financial value for the Authority. This shall be monitored in accordance with Schedule 7.3 (Benchmarking).
    2. Where a new or alternative Product is required by the Authority, which may be bespoke or specialist in nature, the Authority may instruct the Supplier to undertake a competitive sourcing exercise for such Products. The Authority shall inform the Supplier of any such requests for products at least 5 working days from the QRR, giving details of any new or alternative Products for consideration at the QRR.
    3. Where a new product is sourced from outside of the Supplier's existing Supply Chain, including but not limited to those notified in Schedule 4.3 (Notified KeySubcontractors), the Supplier shall on-board, integrate and manage the SubContractor in line with this Services Description and Agreement.
  1. **Environmental &** **Sustainability**
     1. Within 20 days of the Effective Date, the Supplier shall provide to the Authority,

for the Authority's approval, an Environmental Sustainability Plan that is compliant with ISO14001 (or equivalent), Eco Management and Audit Scheme (EMAS) and REACH and conforms to the Authority's ethical and environmental policies as amended and updated from time to time.

* + 1. The Supplier shall conform with any standards updated post EU Exit Day by accessing; [http://www.hse.gov.uk/brexit/index.htm.](http://www.hse.gov.uk/brexit/index.htm) The Environmental

Sustainability Plan shall also be compliant with the Government Buying Standards (GBS): [https://www.gov.uk/government/collections/sustainable-procurement-thegovernment-buying-standards-gbs](https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs) and the Green Public Procurement (GPP).

* + 1. The Supplier is responsible for ensuring that the specific Environmental

Sustainability Plan is developed and reviewed annually. The plan should contain SMART objectives and the progress against these objectives should be monitored. The plan should include but is not limited to the following objectives:

* + - 1. Auditing performance against statutory requirements;
      2. Measuring, managing, reporting and improving the environmental impact of its operations, including but not limited to:
         1. Co2 emissions per miles travelled;
         2. Fuel efficiency;
         3. Business miles travelled;
         4. Recycling of waste;
         5. Reduction of packaging;
         6. Sourcing consumables from sustainable and ethical sources; (vii) Compliance to Carbon Neutral Plan and ULEV strategy.
    1. The Supplier shall not use any materials, components, chemicals or packaging that involve a disproportionately adverse effect on the natural environment. From the Effective Date the Supplier shall take responsibility for the environmental impact of all the entities listed on the Supply Chain Entities Disclosure form.
    2. Within 20 days of the Effective Date the Supplier shall provide its Environmental

Sustainability Plan for approval by the Authority. The Environmental Sustainability Plan shall incorporate procedures to manage the whole Product life cycle impact under 5 classifications:

1. Products that qualify or that are required to reference international (REACH) and each entities' local mandatory standards, the Supplier shall detail policies on managing harmful waste, recycling and the treatment of effluent.
2. Finished products from the manufacturing process shall be compliant with international (REACH, WRAP) mandatory standards, the Supplier shall detail policies on managing the presence of banned and harmful substances on the products manufactured.
3. The Control of Chemicals and Hazardous Substances in accordance with the Control of Chemicals and Hazardous Substances Regulations through the presence and maintenance of Material Safety Data Sheets.
4. WEEE regulations.
5. End of life cycle recycling and sustainable disposal.

4.5.6 Within 30 days of receipt of the Supplier's proposed Environmental Sustainability Plan the Authority shall agree or reject the Environmental Sustainability Plan. Should the Parties be unable to agree on a final Environmental Sustainability Plan then the matter shall be referred to Dispute Resolution.

4.5.7 The Supplier shall comply with all relevant Environmental & Sustainability mandatory standards.

[https://www.gov.uk/government/publications/environmental-and-sustainabilitypolicy.](https://www.gov.uk/government/publications/environmental-and-sustainability-policy)

4.5.8 The Supplier's Environmental Sustainability Plan shall set out in detail how the Supplier shall progressively reduce the adverse effect on the natural environment the performance of this contract causes. This plan shall detail what methods the Supplier shall utilise to prevent waste occurring and to reduce it during the Term. These methods shall include but are not limited to, smarter use of packaging and reducing the use of products that have by-products requiring disposal.

4.5.9 The Supplier shall ensure that all packaging waste (secondary & tertiary) in delivering food and products for the Retail service is minimised and that packaging complies with the following standards:

1. tertiary and secondary packaging consists of high (= 70%) recycled content cardboard;
2. where other materials are used, the tertiary packaging is either reusable, or all materials contain some recycled content.

4.5.10 The Environmental Sustainability Plan shall be formally reviewed and amended by the Authority annually as part of the annual Performance Management Board. The Authority shall on request, be permitted (or permit an Independent Third Party, acting on the Authority's behalf) access to all the Supplier's Premises listed on the Supply Chain Disclosure form to check compliance with the Environmental Sustainability Plan in accordance with Schedule 7.5 (Financial Reports and Audit Rights).

4.6 **Ethical** **Standards**

* + 1. The Supplier acknowledges that the Authority has a duty to ensure the integrity of its supply chain in accordance with the standards produced by the Ethical Trading Initiative (ETI), International Labour Organisation (ILO) and therefore the Supplier shall conform with these standards. The Supplier acknowledges that as a Government department, the Authority has a duty to ensure the integrity of its supply chain in accordance with the highest social and ethical standards. To the extent that it is applicable to the performance of the Goods and Services associated with the Agreement the Supplier shall use reasonable endeavours to ensure that components of any off-shore supply chain, including the Supplier's operation, any third party operation engaged in the performance of the Agreement is operated to the standard set out in the Ethical Trading Initiative (ETI) Base Code, as may be updated from time to time, below.
    2. To the extent that it is applicable to the performance of the Goods and Services associated with the Agreement, the Supplier shall use reasonable endeavours to provided copies of official documentation of independent accredited third party audits which evaluate and certify adherence to criterion set against the ethical employment of labour, equal opportunities, anti-discrimination policies, occupational health and safety, work conditions, training and development and emergency policies where requested by the Authority.
    3. For each component of the supply chain, the Supplier shall, without limitation, maintain an up to date Corporate Social Responsibility (CSR) dossier and provide the Authority with all information it requires from time to time to demonstrate that the Authority is meeting the required standards.
    4. To complete the CSR dossier, the Supplier shall also annually submit an Independent Audit Report and Corrective Action Plan for each Production site carried out by an IRCA approved auditor.
    5. This should evidence that the Supplier's supply chain is operating according to the internationally accepted Ethical Trading Initiative (ETI), International Labour Organization (ILO) standards.
    6. The Authority reserves the right at any time during each Contract Year to select a random sample of up to 50% of the Sub-Contractors on the Supply Chain Entities Disclosure form and request that the Supplier arranges independent audits of those Subcontractors and their Supply Chain. Reports from such audits shall be provided to the Authority in full and without delay upon completion.
    7. The Authority shall be entitled, either itself or via its servants or agents, and at its absolute discretion and at its own expense, to accompany the Supplier or the Supplier's representative, during any internal or independent audit, or to make unannounced visits to any approved facility listed on the Supply Chain Entities Disclosure form.
    8. Where any internal or accredited independent third party audit shows that any

production facility or approved Sub-Contractor engaged by the Supplier in the performance of the Agreement or any production facility where Products are made fails to achieve the required standard, or repeatedly fails to comply with the criterion set out in the Ethical Trading Initiative (ETI) base code, copy of which is held in DWIP 98, or Corrective Action Plan, if one is in place, such that it irreversibly undermines the confidence of the Authority in the continued performance of the Agreement, the Authority shall be entitled to require the Supplier to remove the entity from its operation and propose an alternative SubContractor.

* + 1. The Supplier shall ensure that where food is sourced from states that:
       1. have not ratified the International Labour Organization Declaration on Fundamental Principles and Rights at Work (1998); or
       2. are not covered by the OECD Guidelines for Multinational Enterprise.

4.6.10 It shall carry out due diligence against the ILO Declaration on Fundamental Principles and Rights at Work (1998). The Supplier shall ensure that Risk based audits have been conducted against social / ethical supply chain standards e.g. SA8000 compliance and have obtained audit evidence for Ethical Trade Initiative

(ETI) Base Code compliance, or equivalent. In relation to Dairy products the Voluntary Code of Practice on Best Practice on Contractual Relationships (http://www.dairyuk.org/2014-04-23-11-00-42) shall apply.

4.7 **Service Continuity & Corporate Resolution** **Planning**

* + 1. The Supplier shall put in place a Service Continuity & Corporate Resolution Planning ("**SCCR Plan**") to ensure continuity of Service in accordance with Schedule 8.6 (Service Continuity and Corporate Resolution Plan) to be approved by the Authority. This shall be reviewed annually by the Authority and any recommendations agreed are to be implemented by the Supplier in an agreed timescale.
    2. The SCCR Plan shall be capable of full implementation from the Effective Date. The SCCR Plan shall ensure continuity of the Service to the Authority in the event of a breakdown in normal operations. The Supplier's SCCR Plan shall provide contingency for all Products and shall:

(a) Ensure continuity of the Service in the event of a breakdown in normal operations including but not limited to the following:

* + - * 1. Supply Chain disruption or failure;
        2. Failure of Distribution Network;
        3. Loss of Key Personnel; (iv) IT Failure.
      1. Detail Supplier Personnel responsible for monitoring and implementing contingency arrangements.
      2. Stipulate how the implementation of the arrangements shall be communicated to the Authority.

4.7.3 If, for any reason, the Supplier is unable to provide, in part or in whole, the Service then the Supplier shall contact the Authority's Representative to discuss and agree such action as required. This may include, but is not limited to, the following:

* + - 1. Use of additional or alternative Sub-contractors; the Supplier shall not use any manufacturer other than those shown in the Supply Chain Entities Disclosure form without the express written consent of the Authority's Representative. In considering any such proposal, the Authority shall require, as a minimum, copies of recent audit and inspection reports and appropriate pre-production samples;
      2. Provision of additional Supplier Personnel at the Supplier Premises;
      3. Hire of additional transport or external courier services for Delivery;
      4. Dispatch of the manufactured Products from their country of origin by air freight; (e) Implementation of the SCCR Plan.
    1. The costs of any remedial action borne by the Authority shall be calculated and recovered from the Supplier on an indemnity basis.
    2. The Supplier's SCCR Plan shall cover the entire supply chain and review this with

the Authority at the end of each Contract Year at the Annual Performance Review which is reviewed annually by the Performance Management Board or as frequently as specified by the Authority.

* 1. **Benchmarking**

The Supplier shall undertake independent Benchmarking every other contract year at their own expense and share results with the Authority. The contents of Products and Services that could be subject to benchmarking are detailed in Schedule 7.3 (Benchmarking). The Supplier will quarterly, or as directed by the Authority, undertake a comparison study of an agreed basket of goods. The comparison of goods will be against like for like goods as retailed in convenience stores.

* 1. **Corporate** **Objectives**
     1. The Supplier shall assist the Authority by supporting the Authority's key strategic objectives in the rehabilitation of prisoners. While conforming to any security requirements (as specified by the Authority) the Supplier shall work with the Authority on scoping out and defining opportunities for prisoner's employment or work experience across their supply chain. The Supplier shall also ensure and demonstrate that it is compliant with the Law, Standards and Authority Policies set out in Schedule 2.3 (Standards) and the Armed Forces Covenant.
     2. The Supplier shall, and procure that each of its Sub-Contractors shall, comply with:
        1. the Modern Slavery Act (MSA) (see DWIP 100: UK Government Modern Slavery

Act) also; <https://www.modernslaveryhelpline.org/report>and

* + - 1. the Authority's anti-slavery policy as provided to the Supplier from time to time ("**Anti-slavery Policy**").

The requirements of Clause 32.4-32.9 of the Agreement (Modern Slavery) and this Paragraph 4.9.2 shall be without prejudice to any requirements of the Agreement relating to Modern Slavery.

4.9.3 The Supplier shall:

* + - 1. 30 Working Days prior to the Operational Services Commencement Date, implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;
      2. respond promptly, and in any case no later than 10 Working Days, to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
      3. prepare and deliver to the Authority at the start of each Contract Year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
      4. maintain a complete set of records to trace the supply chain of all Services provided to the Authority regarding the Agreement;
      5. report the discovery or suspicion of any slavery or trafficking by it or its Sub-

Contractors to the Authority and to the Modern Slavery Helpline; and

* + - 1. prior to the Operational Services Commencement Date, implement a Supplier IT/WMS Solution of training for its employees to ensure compliance with the MSA including highlighting to its employees the existence and contact details of the Modern Slavery Helpline.

4.9.4 The Supplier represents, warrants and undertakes throughout the Term that:

* + - 1. it conducts its business in a manner consistent with all applicable laws, regulations and codes including the MSA and all analogous legislation in place in any part of the world;
      2. its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
      3. neither the Supplier nor any of its Sub-Contractors, nor any other persons associated with it:
         1. has been convicted of any offence involving slavery and trafficking; or
         2. has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.

4.9.5 The Supplier shall notify the Authority as soon as it becomes aware of:

* + - 1. any breach, or potential breach, of the Anti-Slavery Policy; or
      2. any actual or suspected slavery or trafficking in a supply chain which relates to the Contract.
    1. If the Supplier notifies the Authority pursuant to Paragraph 4.9.5 of this Section 4, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract and in accordance with Schedule 7.5 (Financial Reports and Audit Rights).
    2. If the Supplier is in default under Section 4 the Authority may by notice:
       1. require the Supplier to remove from performance of the Contract any SubContractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the default; or
       2. immediately terminate the Agreement.

4.10 **Governance**

4.10.1 In addition to the Governance meetings detailed in Schedule 8.1. The Supplier will be obligated to attend the following Operational meetings:

(a) Retail Local Cluster Meeting – a bi-annual local level forum in which to address current retail issues, review supplier performance, and plan ahead. Discuss current operational issues and agree solutions to be implemented to address. These will include for but not limited to:

* + - * 1. Review local list selections and provide expert advice from the supplier on products and their commercial performance.
        2. Planning for known events, and review of contingency arrangements for unknown ones-Seek end user feedback, updates from prisoners via the Retail Liaison Contact (RLC) on changes and address local issues. Operational Retail and Supplier Leads meet with RLC's by individual Retail Workshop cluster, with Retail Workshop managers.
        3. Prisoner Consultation Meetings – Retail Operational Managers and Supplier managers attend a minimum of 6 Prisoner Consultative Committee (PCC) forum meetings a year each, to collect feedback from the end user. These are organised and run by the Prisons. These meetings are attended by HMPPS representatives along with Supplier managers. These meetings provide a direct line to the end users and provide valuable feedback on the products and service being delivered.
    1. The Supplier shall make recommendations to the Authority on any proposed changes to the staff structure or prisoner workforce numbers. Any potential changes to be reported monthly.
    2. On a quarterly basis the Supplier shall submit information on the minimum number of prisoners that are required to complete the defined tasks within each Retail Workshop that shall be needed to support the overall delivery of the Retail Service.
    3. The Supplier shall submit a prisoner workforce requirement proposal to the Authority on an annual basis and shall consider any prisoner workforce fluctuations associated with seasonality, religious festivals and holy days. The Supplier may update, as necessary, the forecast prisoner workforce requirement for subsequent approval by the Authority.
    4. The Supplier shall assist the Authority by supporting the Authority's key strategic objectives in the rehabilitation of prisoners. While conforming to any security requirements (as specified by the Authority) the Supplier shall work with the Authority on scoping out and defining opportunities for prisoner's employment or work experience across their supply chain. The Supplier shall also ensure and demonstrate that it is compliant with the Law, Standards and Authority Policies set out in Schedule 2.3 (Standards) and the Armed Forces Covenant.

1. **SECTION 5: IT & WMS**

5.1 **Supplier IT/WMS** **Solution**

* + 1. Where a Supplier is offering an IT/WMS Solution, it has to conform with the requirements as defined in this section and comply with the requirements as specified in Schedules 2.4 (Security Management), 5.1 (Digital), 6.2 (Workshop Readiness Check), 11 (Processing Personal Data).
    2. The Supplier is encouraged to provide innovative solutions on how stock is managed, receiving and managing of End Users orders, and provision of Information Management within a managed service. The Context document, Prison retail 'how to' guide (DWIP 1b) and DWIP 101 provide good oversight to current processes deployed in provision of services. DWIP 105 details the current IT infrastructure.
    3. The Authority is seeking as part of the re-procurement exercise to innovate and improve the efficiency of the overall Retail Service provision. This includes for, but not limited to – supplier's innovative solutions on how the end-to-end point provision of the service can be improved. The Authority is seeking responses from suppliers that will address areas of the service that potentially could be within the tender response or within the term of the contract. Within the scope of an IT/WMS System solution, the Authority has headlined areas where improvements to the service could be made. The list is not exhaustive and not limited to:

Revaluation of media used to produce, distribute and collect End Users Order Forms;

* + - * 1. Implementation of a paperless pick and pack operation;
        2. Application of agile digital solutions to reduce paper and manual intervention;
        3. Reduction of carbon footprint across the Retail Service's supply chain;
        4. Evaluation and application of eco-friendly materials throughout Retail Service's supply chain;
        5. Design and implementation of more efficient and accurate workshop processes;
        6. Implementation of services and processes that align with Industry Best Practice;
        7. Providing quantifiable rehabilitation opportunities to prisoners;
        8. Reduce and speed up processing of compensation claims raised by End Users with regards to Retail Services.

5.2 **Warehouse Management Supplier IT/WMS** **Solution**

* + 1. The Supplier shall provide a Warehouse Management Supplier IT/WMS Solution ("**WMS**") which shall be a digital service supporting the operation of the Service by supplier personnel and prisoner labour.
    2. The WMS shall facilitate the management of:
       - 1. Daily planning and organisation;
         2. Staffing;
         3. Direction and control of Retail Workshops; and
         4. Utilisation of resources for the movement (in, out and within) Retail Workshops.
    3. The WMS shall ensure at a minimum that it supports staff and prisoners in performing the processes required to operate a Retail Workshop including, but not limited to:
       - 1. Processing received orders;
         2. Inspection and acceptance of orders received;
         3. Put-away of stock received;
         4. Internal replenishment of stock to picking locations;
         5. Picking the orders as per POFs;
         6. Packing the orders as per POFs;
         7. Value added services which would further aid the warehouse process;
         8. Order assembly in preparation for dispatch;
         9. Production of all required documentation; and (j) Dispatch (loading onto the Supplier's vehicles).
    4. The WMS shall:

Assist in directing and validating each step of the processes used in operating the Retail Workshops and shall capture and record all Product movement and status changes;

* + - * 1. Record by location the Supplier inventory, stock levels within the warehouse in real time, including by way of tracking Supplier IT/WMS Solutions, including automatic identification and data capture (AIDC) and barcode scanners to make sure that goods can be found easily when they need to move;
        2. Manage the demand/supply profile of products and provide MI on supply chain operations from the manufacturer or wholesaler to the Retail Workshop, then to the End User;
        3. Enable Retail Workshops to customise workflow, picking and packing processes to ensure that Workshops are designed for optimised product allocation and establishes product locations in a way which maximises storage space and accounts for variances in seasonal products;
    1. Assist the processes for:
       - 1. receiving and put away, which allows stock to be put away and retrieved efficiently, consideration to pick-to-voice technology to help warehouse workers locate Products;
         2. the picking and packing of Products, including bulk and location picking, wave picking and batch / bulk picking;
         3. loading/unloading management, which assists the Supplier's Personnel entering a

Retail Workshop to find the correct Products for delivery;

* + - * 1. Generates packing lists and manifests for the shipment and send advance shipment notifications to recipients;
        2. Monitors and tracks the performance of Prison Labour; and
        3. The production of reports which allows the Suppliers Staff and the Authority's staff to analyse the performance of warehouse operations and find areas to improve. 5.3 **Hardware** **Restrictions**
    1. Where the supplier is proposing deployment of an IT solution, then the following restrictions apply:
    2. Proposed terminals/devices:
       - 1. Shall not have a built-in Camera or a means and evidence that cameras have been disabled;
         2. Shall only access WiFi where approved and only via HMPPS WiFi, or otherwise will be hard wired;
         3. If Bluetooth is intended, it should not be lower than version 4.2;
         4. Shall include a keyboard and mouse for each terminal/device (except where all-inone device is proposed) and connection will be via a secure and restricted USB port;
         5. Shall restrict USB port connection to peripherals (i.e. keyboard and mouse) either at BIOS or OS level. USB ports shall not be capable of being used for data sticks or similar.

5.3.3 The Supplier shall supply two Hardware Builds:

Prisoner User 'Build' shall be restricted/limited to those functions and features necessary to run the Asset/WMS Supplier IT/WMS Solution and all unnecessary features shall be locked down/removed.

(b) Manager/Supervisory 'Build' shall include all the functions and features necessary to run the Asset/WMS Supplier IT/WMS Solution and also provide related users with full access to MS Office functions, and IE (or equivalent).

* 1. **Printers**
     1. The Supplier shall supply industry best practice printing devices where required, with the following minimum specification:
        + 1. Copy and Print/Secure Print Option;
          2. Scan to Home and Network Fax enablement only;
          3. Duplex Print Feature;
          4. Capable of A3 and A4 size;
          5. where required full colour option; (f) where required printing of labels.
  2. **Operating** **System**
     1. The Supplier IT/WMS solution shall provide details of the Operating System;
     2. An active/maintained anti-virus solution shall be adopted as part of any solution;
     3. Any directory services (e.g. active directory) shall be maintained and transferable to a future Supplier with associated software and hardware. Any data shall be the property of the Authority;
     4. The Supplier IT/WMS Solution shall be compatible and consistent across a range of devices without the need for amendment.
     5. The Supplier IT Solution shall:
        + 1. Deploy security architecture that considers both the rights of the User and the location where data is accessed;
          2. Not require browser plug-ins to work;
          3. Be universally accessible by industry standard and Authority approved browsers.
  3. **Security and** **Transfer**
     1. Data centres and data stored for the provision of the service shall reside within the UK and where cloud services are proposed, the service shall comply with the National Cyber Security Centre cloud security principles.
     2. The Supplier service shall transfer any/all data over HTTPS or equivalent with encryption in transit and at rest.
     3. The Supplier service shall follow the standards defined in the Government Service Design Manual and be compliant with the Data Protection Legislation.
     4. The Supplier shall actively partner with the Authority in providing ongoing service enhancements and these shall be agreed by the Authority prior to deployment of any enhancements.
     5. The Supplier shall provide system updates and hot fixes as/where appropriate independent of Authority technology services.
     6. The Supplier service shall and continue to meet (as a minimum) the WCAG 2.0 Level AA accessibility standard (or equivalent). This applies to WMS, the operating system, and any other IT services.
     7. The Supplier shall also ensure, where there is non-compliance to point 5.6.6 above or failure to meet Equality Act 2010, that there is prompt remediation to resolve the issue.
     8. Audit log data shall be held in a database that is segregated from the Supplier IT/WMS Solution and service data and is only accessible by a Supplier IT/WMS Solution administrator.
     9. The Supplier shall carry out Penetration testing at least on 12 monthly cycle or following any major software release.
     10. All Data and transfer of Data to be in compliance with Schedule 2.4 (Security Management) and Schedule 11 (Processing of Personal Data).
  4. **Service** **Design**
     1. The Supplier IT/WMS Solution and service shall be designed to allow the implementation of a rules-based Supplier IT/WMS Solution to facilitate if required, the switching of Retail Workshop activity to a backup secondary Retail Workshop to fulfil orders.
     2. The service design shall have the flexibility to allow for different roll out scenarios; such as multiple Prisons, Regional or phased by Prison local geography.
     3. The Supplier IT/WMS Solution and services shall be capable of retaining Data for a configurable period of time (currently 7 years), ensuring information is actively planned and managed and compliance with relevant Record Retention Schedules and Data Protection Act.
     4. Where the Archiving of data is provided as part of the service, the user shall have the ability to request the automated retrieval of data that has been archived. (Access to data shall be subject to permissions and approved access).
     5. The Supplier IT/WMS Solution shall provide ways to restore the business data to a known, consistent state following the discovery of any fault in the application software.
     6. The Supplier IT/WMS Solution shall provide built-in protection against any theft, loss or corruption of data during transmission or storage together with ongoing protective monitoring.
     7. The Supplier IT/WMS Solution shall validate all data entry fields against a specified format before they are submitted.
     8. The Supplier IT/WMS Solution and services shall not require the installation of an executable on the desktop aside from a supported browser i.e. the solution shall be 'thin client'.
     9. In the event of an application component failure, user data loss shall be restricted to a limited time frame of no more than 30 minutes.
     10. The solution shall be designed as a service-based solution to enable common functions to be more easily used by other applications.
     11. The Supplier IT/WMS Solution and services shall be platform independent.
     12. Integration with other Supplier IT/WMS Solutions and services shall take place over open standards such as REST over HTTPS.
     13. The Supplier IT/WMS Solution/services shall allow for Data to be interchanged with Authority Supplier IT/WMS Solutions via APIs or other agreed data transfer processes.
     14. The Supplier IT/WMS Solution and services shall provide the capability to pass any flagged events to MOJ Supplier IT/WMS Solutions as may be defined.
     15. The Supplier IT/WMS Solution and services shall comply with current government standards on interoperability as defined in the MoJ Standard Information Base.
     16. Any content and advanced user interface controls developed with Ajax, HTML, JavaScript, and related technologies shall take into account the recommendations of the W3C WAI Accessible Rich Internet Applications Suite guidelines in order to improve accessibility for people with disabilities.
  5. **Supplier IT/WMS Solution Performance and** **Availability**
     1. The Supplier shall supply performance related information as requested on a time-to-time basis including but not limited to:
        + 1. Supplier IT/WMS Solution Availability (% availability; % unavailable including brief description);
          2. Performance;
          3. Supplier IT/WMS Solution Reliability.
     2. The Supplier IT/WMS Solution shall include application performance monitoring in order to provide the Authority (on request) with meaningful application performance monitoring data.
     3. Any backup or monitoring processes shall not degrade Supplier IT/WMS Solution performance.
     4. The Supplier shall supply agreed levels of service availability during core office hours (6.00am-6.00pm UK time), 365 days per year, noting Bank Holidays are normal working days in HMPPS.
     5. The Supplier shall supply statistics reports including availability and performance as and when required.
     6. The Supplier IT/WMS Solution shall have sufficient resilience such that failure of a single component hardware or software will not affect the overall availability of the Supplier's IT/WMS Solution/service.
     7. Where a system provision to a workshop(s) is not available for 3-4 hours the Supplier must have in place a workshop rectification plan. That rectification plan must include for the redirection of operations to other workshop(s) so as to maintain overall service provision.
  6. **Supplier IT/WMS Solution** **Resilience**
     1. Databases shall be configured to minimize the loss of transaction data in the

event of a system failure so that normal system performance in not affected.

* + 1. Full Supplier IT/WMS Solution backup and restoration tests shall be conducted on a pro-rata basis with a short report issued to the Authority on the test results.
    2. The Supplier IT/WMS Solution shall have sufficient resilience such that failure of a single component hardware or software will not affect the overall availability of the Supplier's IT/WMS Solution/service.
  1. **Supplier IT/WMS Solution** **Maintenance**
     1. A Roadmap shall be provided for all COTS hardware and software components used in the solution so that upgrades can be planned and scheduled with the Authority to ensure technical obsolescence is managed through the life of the contract.
     2. All changes to the service shall be controlled via a Change Control Procedure as defined in Schedule 8.2.
     3. Sufficient stocks of spare components/devices shall be made available so that there is a maximum delay of no more than 4 hours to issue resolution.
     4. Supporting contracts including for hardware maintenance, software licenses shall be in place for the Contract Term, or be renewable to extend coverage beyond the Initial Term of the Contract.
  2. **Service** **Levels**
     1. Service levels shall be measured quarterly across all Prisons. Service levels shall be measured in two categories:
        + 1. Serviceability (i.e. the percentage of time workshop IT/WMS Solution in service); and
          2. Fault response.
     2. Serviceability is divided into two areas:
        + 1. The ability of Retail Workshop users (prisoners) to perform functions using the Supplier IT/WMS Solution; and
          2. Information services provided by the Supplier IT/WMS Solution.
     3. Each of these areas shall be separately measured. The serviceability targets shall be as follows:
        + 1. **Service affecting faults: >99%**
          2. **Service non- service-affecting faults: >95%**
          3. **Information services: service-affecting faults: >99%**
          4. **Information services: non- Service-affecting faults:** **>95%**
          5. Recovery Point Objective of 30 minutes – Near real-time replication of transactional data is required to minimise risk of data loss in the event of a disaster.
          6. Recovery Time Objective of 8 hours (for P1 incidents) – Effective DR solution provision and processes to assure quick return to service.
          7. Application availability >= 99.7% and during service hours (High resilience with no single points of failure. Operational processes and Supplier IT/WMS Solution that don't require down time).
     4. The Supplier shall respond to fault reports by:
        + 1. Providing advice by telephone, including advice, where appropriate, as to tests and checks to be carried out by the Authority;
          2. Where possible, carrying out diagnostic checks from the Supplier's premises; or
          3. Visiting the Authority's premises where (a) and (b) do not diagnose or clear the

fault.

* + 1. The Supplier shall maintain records of serviceability, faults and fault response and achievement against the targets provided in para. 11 Service Levels and shall provide access to such records as the Authority may request from time to time.
    2. The Supplier IT/WMS Solution shall allow approved users to:
       - 1. Run pre-defined Management Information Reports (at Retail Workshop and

national level);

* + - * 1. Create ad-hoc Management Information Reports (at Retail Workshop and national

level);

* + - * 1. Reports cross referenced in Schedule 8.4 (Reports and Records Provisions).
  1. **Software**
     1. The Supplier shall list all Supplier Proprietary Software proposed or to be used in

the support of this contract. The Supplier shall clearly list the software required in Schedule 5.1 (Digital) including Supplier (or affiliate) and commercial name of software together with – Purpose, Number of Licences, any restrictions, Number of copies and type of licence (COTS or Non-COTS), perpetual or annual costs including any maintenance.

* + 1. The Supplier shall list all third-party software used (or proposed or to be used) in the support of this Contract as required to be listed in Schedule 5.1 (Digital).
  1. **Supplier IT/WMS** **Solution**
     1. The Supplier IT/WMS Solution(s) shall be capable of creating and maintaining data required by the Authority, on each Canteen Product. This data shall include, but is not limited to:
        + 1. Authority and Supplier Item ID;
          2. Short Product Description;
          3. Long Product Description;
          4. Unit of Measure;
          5. Unit of Purchase Quantity;
          6. Unit Price;
          7. Minimum Order Quantity;
          8. Maximum Order Quantity;
          9. Quantity Interval;
          10. Lead Time;
          11. Image;
          12. EOQ;
          13. EAN code;
          14. Country of origin; (o) Restricted items.
     2. The Supplier IT/WMS Solution(s) shall support the Authority's policies and be capable of providing functionality that supports business rules for Prisoner Order quantities including (but not limited to):
        + 1. Presenting products required (showing where items are out of stock with back order functionality to support);
          2. Individual limits on the ordering of products;
          3. Order quantity and product order calculation against set order limits.
     3. The Supplier shall ensure that the Supplier IT/WMS Solution(s) shall support an Approved User request or bulk orders. This shall include data capture and business rules in support of capturing (but not limited to):
        + 1. Details of the order and frequency of orders;
          2. Bulk order requests and maintain copy of requests for ease of next order;
          3. Generating weekly orders for reception packs (per Prison) as standard order items;
          4. Generating weekly buffer box orders (per Prison) as standard order items.
     4. The Supplier shall ensure that the Supplier IT/WMS Solution shall support customisation request(s) as defined by the Authority representative. This shall include data capture and business rules in support of (but not limited to):
        + 1. Approved Users submitting a request, including type of customisation required, what customisation is required and business justification;
          2. An approval process within the Prison, which allows further information to be requested or the request to be rejected;
          3. A quotation process from the Supplier based on information provided by User.
  2. **Prisoner Orders and Stock** **Levels**
     1. It is the Supplier responsibility to ensure that the levels of stock held at each Retail Workshop is sufficient to avoid stock outs. Therefore, the Supplier shall ensure that the Supplier IT/WMS solution can support this by, but not limited to:
        + 1. Enabling each prison Retail Workshop to hold information on their respective current stock levels;
          2. Providing stock management facilities to ensure accuracy of stock levels; (c) Expiry date of product.
     2. Where Products have been ordered and subsequently delivered/received at a Retail Workshop, the Supplier IT/WMS Solution shall allow received Products to be recorded on the system in an efficient and straightforward manner where appropriate utilising enabling technology.
     3. Information about each End User/order is required to enable the processing and

delivery of canteen orders. This information is managed and maintained by the

Authority. The Supplier shall therefore ensure that the WMS shall be able to receive a data file from other HMPPS systems.

* + 1. The Supplier IT/WMS Solution shall be able to hold the following details and in compliance with latest GPDR requirements about a prisoner:
       - 1. End User name;
         2. End User number;
         3. Prison location;
         4. Cell location;
         5. Amount End User can spend that week.
    2. The Supplier IT/WMS Solution shall be able to fulfil orders for a number of different Prisons from one Retail Workshop.
    3. For each order, the Supplier IT/WMS Solution shall capture:
       - 1. End User name;
         2. End User number;
         3. Prison location;
         4. Cell location;
         5. Amount available for the End User to spend (spend account balance);
         6. Goods ordered (item by item);
         7. Quantity of each item ordered;
         8. Items unfulfilled due to lack stock or other reason.
    4. The Supplier shall ensure that the Supplier IT/WMS Solution shall:
       - 1. Be capable of anonymising orders (name, account balance) to enable blind order picking.
         2. Create and print a receipt showing the items that are included in the End User's order (reconciling End User details where anonymising orders is utilised).
         3. Ensure that the item price shown on the receipt shall be the same as those advertised on the order form.
         4. Ensure that the items included in an End User's order do not exceed the amount (£ and quantity) the End User is allowed to spend.
         5. Ensure that the Supplier IT/WMS Solution shall be able to prioritise the order in which goods are deducted from an End User's balance.
         6. Ensure that the Supplier IT/WMS Solution shall provide functionality to restrict the quantity of an item that End Users can buy; and
         7. Provide functionality to restrict the quantity across a range of items specified by the Authority that End Users can buy.
    5. The Supplier IT/WMS Solution shall hold data on End User purchases for a period of seven (7) years.
  1. **User** **Access**
     1. The Supplier IT/WMS Solution shall allow Approved Users to log-on securely to view and update their User Profiles (keeping a full audit of all changes made).
     2. The Supplier IT/WMS Solution and services must adhere to the Equalities Act 2010 and be able to support Assistive Technology Users through a range of Assistive Technology software and hardware as decided by the Authority.
     3. The Supplier shall demonstrate that the Equality Act 2010 has been suitably considered.
  2. **Connectivity**
     1. The service shall utilise industry best practice to connect to HMPPS approved Hardware and Devices deployed in Prison Retail Workshops. The service shall use WAN/LAN connectivity as provided by the authority.
     2. Any proposed use of WiFi connectivity in prison Retail Workshops shall first be approved by the Authority, shall be secure, restricted to approved users and functions (i.e. Asset/WMS).
     3. Any proposed use of Bluetooth connectivity in prison Retail Workshops should not be below 4.2, shall first be approved by the Authority and shall be secure and restricted to Warehouse/Asset Automation (see Sec 5.17).
     4. Any Prison Retail Workshop Routers shall first be approved by the Authority and shall be configured to allow LAN device connectivity and shall be restricted to required source and destination.
     5. The provision of connectivity with Suppliers external Warehouse Management System can be either via WiFi or an Authority provided WAN.
  3. **Warehouse** **Automation**
     1. The Supplier IT/WMS Solution shall be capable of managing inbound deliveries to Retail Workshops and shall include but not be limited to:
        + 1. Manifest checking of inbound goods and products either by generation of manual blind manifest check sheet or by means of a blind barcode scanner or such like device.
          2. Manual or automated quality of inbound goods or products with exception reporting.
     2. Where possible, the Supplier shall deploy technology to manage the warehouse stock levels, and "pick and pack" identification of products.
     3. Where Supplier IT/WMS Solution technology cannot be deployed, the Supplier to have a paper-based warehouse management system solution which would incorporate a ticket based blind pick and pack operation together with paper labelled warehouse aisle and bin locations; and
     4. Where the Supplier can deploy a technology-based Supplier IT/WMS Solution then the deployment of bar code scanners and automated scanning of POFs can be introduced or alternative technology, the Supplier will provide all the necessary hardware and infrastructure to support such deployment.
     5. The Supplier IT/WMS Solution shall operate either:
        + 1. Fully automated auto-scanning of Prisoner Order Forms (POFs) into the Supplier IT/WMS Solution and automated generation of blind Pick Lists (unique pick list order) via handheld devices;
          2. Manual input into Supplier IT/WMS Solution the POF (tilling) and generate blind picking lists (unique pick list order) for each order.
     6. The WMS shall generate dispatch list manifest lists for each delivery and be able to cope with multi drop deliveries to same Prison. Manifest lists shall include, but be not limited to:
        + 1. Label generation for Totes (details in DWIP);
          2. Manifest for delivery;
          3. Generate and capture dispatch manifest and time of dispatch;
          4. Use electronic POD and paper confirmation where EPOD not allowed by Serviced

Site/Site;

* + - * 1. EPOD /manual confirmation of each delivery part/multi/complete;
        2. Confirmation of collection of totes and record volume of Totes;
        3. Where the Supplier Solution proposes the use of Scanning, then Devices shall be Proprietary Cradled Bluetooth Scanner(s); (h) No device/equipment shall include loose batteries.
    1. Where the use of Devices is agreed, and deployed:
       - 1. Replacement Supplier IT/WMS Solutions and devices shall be installed in Prison Retail Workshops and designated areas of prison Serviced Site/Site as necessary;
         2. Devices shall be configured in such a way that they can only connect to the intended Services;
         3. Devices shall not be capable of connecting to any network or carrier other than that provided under the contract.
  1. **Security** **Design**
     1. The Supplier shall supply a Security Management Plan supplied as part of the bid that shall:
        + 1. Be scoped within the ISO/IEC 27001 certification (and any equivalent

replacement certification) recognised by the British Standards Institution;

* + - * 1. Identify the necessary delegated organisational roles defined for those responsible for ensuring Schedule 2.4 is complied with by the Supplier;
        2. Detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites/Serviced Sites, the Supplier IT/WMS Solution, the Authority Supplier

IT/WMS Solution (to extent that it is under the control of the Supplier) and any IT,

Information and data (including the Authority Confidential Information and the Authority Data) and any Supplier IT/WMS Solution that could directly or indirectly have an impact on that Information, data and/or the Services;

* + - * 1. Set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services;
        2. Demonstrate that the Supplier Solution has minimised the Authority and Supplier effort required to comply with Schedule 2.4 through consideration of available,

appropriate and practicable pan-government accredited services (for example,

'platform as a service' offerings from the G-Cloud catalogue); and

* + - * 1. Be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002.
    1. The Supplier shall comply with the UK Government Security Classifications Policy in order to recognise government classification and handling markings and ensure the appropriate level of information security and information management required by the same.
    2. The Supplier shall ensure that any technology developed or utilised for fulfilment of this Agreement, will be developed, reviewed and where proportional remediated, in line with Good Industry Practice including professional certified independent technical security testing (such as NCSC CHECK, TigerSCHEME or CREST) or as approved by the Authority against application source code and associated underlying infrastructure and where possible utilise and/or align to the Open Standards for Government.
    3. Professional certified independent technical security testing shall include, but not be limited to – Open Web Application Security Project (OWASP) 'Top 10'.
    4. The Supplier may not utilise Authority Materials or Authority Systems for purposes other than those permitted by this Agreement and shall take all measures to ensure the same.
    5. The Supplier IT/WMS Solution(s), including those controlling access to physical

locations, shall have auditable authorisation, authentication and access control based on least privilege, and aligned appropriately to the business and individual user requirements.

* + 1. The Supplier shall inform the Authority if a negative security event or data breach occurs, or it has reasonable suspicion that one has or will occur, directly or indirectly affecting processes Authority Material or Authority Systems within 24 hours of awareness.
    2. The Supplier shall provide the Authority with an Incident Report following remediation to any Security Incident demonstrating timescales of events from detection through to recovery.
  1. **Testing**

All Tests conducted by the Supplier shall be conducted in accordance with Schedule 6.2 (Workshop Readiness Check).

* 1. **Service** **Continuity**

In the event of disaster recovery provisions being invoked by the Authority, the Supplier shall work with the Supplier IT/WMS Solutions Integrator and the Authority to ensure that any external communications (outside the Authority and Supplier) in relation to the recovery effort are controlled and centrally issued by the Authority.

* 1. **Training**
     1. Training needs shall be identified by the Supplier in relation to all users of the Supplier IT/WMS Solution(s) and service. The type of training required (event or user communication) shall be proposed by the Supplier and agreed with the Authority.
     2. The format of any training event (tutor led or computer-based training) shall be determined by the Supplier and agreed with the Authority.
     3. The Supplier shall develop and provide the training materials and supporting documentation for any training to be delivered to users.
     4. The Supplier shall ensure that any documentation, including training materials, provided with the service is in a format that makes it accessible to all users and shall make such reasonable adjustments as requested by the Authority.
  2. **IT** **Transition**
     1. On or before the Effective Date the Supplier shall provide to the Authority a detailed Transition Management Plan in accordance with Commercial Schedule 6.1 (Transition Plan).
     2. The Transition Management Plan shall include the Supplier's strategy and methodology to deliver all aspects of the required outcomes in relation to the two phases – Mobilisation and Implementation. This should include, but not be limited to:
        + 1. Detailed arrangements for the configuration of the Supplier IT/WMS Solution and service;
          2. Detailed arrangements for the testing, Supplier IT/WMS Solution and user, of the service;
          3. Arrangements for security assurance of the Supplier IT/WMS Solution and service;
          4. Arrangements for user training of the Supplier IT/WMS Solution and service;
          5. Arrangements for the preparation of operational service;
          6. Detailed arrangements for the service testing of the ordering process;
          7. A resource profile, including skill sets, for the successful delivery of all aspects of Transition, broken down by each phase. This should include any Authority resources needed to support the Supplier to deliver the Transition outcomes;
          8. Detailed arrangements for how the Supplier will manage Risks, Issues, Assumptions and Dependencies (RAID) during the Transition period.
  3. **IT** **Exit**
     1. On contract Exit or Expiry of service, the Supplier shall comply with the Terms and Conditions set out in the Commercial Contract. As a minimum, the conditions will cover the:
        + 1. Transfer of all self-service related data;
          2. Transfer of all related IT assets;
          3. Decommissioning of the Supplier IT/WMS Solution and services; (d) Removal of any unnecessary equipment.
     2. The Supplier IT/WMS Solution and service shall be delivered in such a way that

the provision of service to prisons and End Users is uninterrupted. The Supplier shall ensure that existing equipment and assets shall be available until such time as the new service and solution is available.

* + 1. The Supplier IT/WMS Solution and service shall not be designed to preclude transition to other Supplier(s) at the end of the Agreement so as to ensure service continuity.

1. **SECTION 6: TRANSITION**

*This section describes the requirements on the Supplier for Transitioning the current services into and under the management of the Supplier. Transition is the overarching term used which includes for the two phases that make up Transition, namely Mobilisation and Implementation. Mobilisation includes for all the preparation of activities required to ensure that the project can move into Implementation which is delivering the activities.*

6.1 **Transition Management**

* + 1. The Supplier will produce at tender stage an Outline Transition Management Plan

that complies with the requirements contained in this Services Description. It shall detail the Supplier's strategy and methodology to deliver all aspects of the required outcomes in relation to the two phases that constitute Transition including actions, deliverables and milestones to ensure a timely transfer of responsibilities for managing the supply of Retail Services. It will clearly define the deliverables and milestones of the Mobilisation and Implementation phases together with the timescales to deliver the activities.

* + 1. The Authority approach to transitioning of services is on the basis of a single switch over point. This means "switch off current supplier, and immediately switch on new supplier". Therefore, the Suppliers transition of services has to be completed by 31 July 2022. This effectively gives the Supplier a 6-month window from the Effective Date to complete transition. The Authority is opened minded about Suppliers approach to transition.
    2. Transition is subject to terms and conditions as defined in Schedule 2.2

(Performance Levels) and the Schedule 7.1 (Invoicing and Charges). Within the Outline Transition Management Plan the Supplier should clearly define what deliverables are included for each milestone.

6.2 **Outline Transition Management** **Plan**

The Authority is expecting the Supplier to list all activities and timescales to complete the preparation for Mobilisation and Implementation phases and to highlight what if any input is required from the Authority, incumbent supplier or third parties. The transition activities should include for but not limited to:

* + 1. The Supplier strategy and methodology to deliver the required transition outcomes including the tasks/activities required to support them;
    2. A detailed Transition schedule (e.g. Gantt Chart) to support the Transition Management Plan;
    3. Detailed arrangements for how the Supplier will manage Risks, Issues, Assumptions and Dependencies (RAID) during the Transition period;
    4. The Supplier shall provide to the Authority representative a RAID log to support the Transition Management Plan;
    5. Risks and issues shall include risk/issue owners, detailed handling procedures including controls and mitigations. Assumptions and Dependencies shall be aligned to the Transition and Operational Commencement phases of the Service

(making the distinction between both phases);

* + 1. A resource profile, including skill sets, for the successful delivery of all aspects of Transition, broken down by each phase. This should include any Authority, incumbent and third-party resources needed to support the Supplier to deliver the Transition outcomes;
    2. Detailed arrangements for the design, build and testing of the IT/WMS solution (if appropriate);
    3. Arrangements for testing of any hand-held, desk top devices and security arrangements for these items;
    4. Arrangements for security accreditation of the Supplier IT/WMS Solution in line with Schedule 2.4;
    5. Arrangements for user training (staff and prisoners) of the Supplier IT/WMS Solution;
    6. Arrangements for the preparation of operational service this may include for; offsite build and test, on site dry runs, dummy runs, deployment of dummy data or real data;
    7. Detailed arrangements for the service testing of the ordering process;
    8. Detailed arrangements for how the Supplier will manage and maintain the quality and configuration of the required Transition outcomes delivered during the Transition period;
    9. Supplier organisational structures and governance arrangements for the successful delivery of Transition;
    10. Planning for logistics – leasing of vehicles, courier services and network schedules;
    11. Product range sourcing and procurement
    12. Retail Workshop readiness including stock, assets, consumables, workflow planning;
    13. New staff training for operating within HMP environment;
    14. Prepare and confirmation that the Retail Workshop(s) have completed and passed the Authority "Workshop Readiness Check List" as defined in Schedule 6.2 (Workshop Readiness Check);
    15. Within 10 Working Days of the Effective Date the Supplier shall provide an updated Outline Transition Management Plan for approval by the Authority this will then become the Agreed Transition Management Plan in accordance with Schedule 6.1 (Transition Plan);
    16. A Training Strategy detailing how training and/or guidance shall be delivered to prisoners, supplier staff and regular users of the Supplier IT/WMS Solution;
    17. Details of the configuration plans for the IT Supplier IT/WMS Solution;
    18. What arrangements are required for the testing of Supplier IT/WMS Solution;
    19. Arrangements for security accreditation of the IT Supplier IT/WMS Solution as detailed in Schedule 2.4 (Security Management);
    20. Arrangements for user training of the IT Supplier IT/WMS Solution;
    21. Details of the arrangements for the service testing of the ordering process using the IT Supplier IT/WMS Solution;
    22. Details of what arrangements are required to support interface testing into the Authority systems.

6.3 **Additional factors to** **consider**.

6.3.1 There are a number of activities that the Supplier should factor into their Outline

Transition Management Plan to demonstrate that they have considered, built-in

and have provision to execute within their plan including, but not limited to the following:

* + - * 1. Access to Retail Workshop is limited to normal working week hours (generally 8am-6pm weekdays only);
        2. Retail workshops have to maintain a provision of continuity of service as priority

and therefore Suppliers Outline Transition Management Plan will be required to demonstrate how best this can be achieved;

* + - * 1. Restrictions on number of personnel having access to operational Retail Workshops;
        2. Provision of external internet (PABX link to BT exchange (final mile link)) to each Retail Workshop;
        3. Infrastructure and software testing (on site) and interfacing to Authority systems (P NOMIS etc);
        4. Availability of Authority key personnel for project support and staff training;
        5. Last minute inventory checks and replenishment of products;
        6. Availability for training and induction of prison resources;
        7. Provision of POFs 2 weeks before "go live";
        8. A staff transition plan and staff orientation training plan for TUPE'd staff into new company.
    1. Supplier plans should articulate what support and assistance they will require from incumbent, Authority and third parties and indicate when and duration the resource is required.
    2. Supplier should nominate a single point of contact for managing the transition as defined in Schedule 9.1 (Staff Transfer).
  1. **Transition Management** **Reporting**
     1. Throughout the Transition period the Supplier shall provide, by means of a Management Report, provide progress and status updates to Project Board or as required by the Authority. The Management Report shall also reference performance against the KPIs and SPIs as defined in Schedule 2.2 (Performance Reporting). The Management Report should include but not be limited to the following elements:
        + 1. Key activity completed in reporting period;
          2. Identify the Workstream Leader;
          3. Overall delivery confidence RAG status;
          4. Workstream activity. For each workstream, identify workstream owner, activities completed and RAG status;
          5. Key activities to be completed in next reporting period;
          6. Performance against Transition KPIs and SPIs;
          7. Risks and issues log;
          8. The Management Report shall clearly define what the risks and issues are together with risk/issue owners, detailed handling procedures including controls and mitigations;
          9. Assumptions and Dependencies shall be aligned to the Transition and Operational Commencement phases of the Service (making the distinction between both phases);
          10. The Management Report should also include a RAID log throughout the Transition phase.
     2. Transition Readiness Checks – The Supplier shall produce, per Retail Workshop, a completed Authority Workshop Readiness Check List for approval by the Authority prior to Operational Service Commencement.
  2. **Agreed Transition Management** **Plan**
     1. Transition Management Plan is the overarching terminology for Mobilisation and Implementation Phases. The Mobilisation Phase is the period for Suppliers to prepare for Implementation and would include for activities required to ensure that the project can move into Implementation which is delivering the activities.
     2. The Supplier will produce at tender stage an Outline Transition Management Plan that complies with the requirements contained in this Services Description and details the Supplier's strategy and methodology to deliver all aspects of the required outcomes in relation to the two phases that constitute Transition actions, deliverables and milestones to ensure a timely transfer of responsibilities for managing the supply of Retail Services. It will clearly define the deliverables and milestones of the Mobilisation and Implementation phases together with the timescales to deliver the activities.
     3. For Transition, the Authority is expecting the Supplier to list all activities and timescales to complete the preparation for Implementation and to highlight what if any input is required from the Authority.
     4. This section describes the requirements on the Replacement Supplier for

Transitioning the current services into and under the management of the Replacement Supplier. Transition is the overarching term used which includes for the two phases that make up Transition, namely Mobilisation and Implementation.

* + 1. For Transition the Authority is expecting the Supplier to list all activities and timescales to complete the preparation for Implementation and to highlight what if any input is required from the Authority. These should include for but not be limited to:
       1. The Supplier strategy and methodology to deliver the required Transition outcomes including the tasks/activities required to support them;
       2. Detailed arrangements for the design, build and testing of the IT/WMS solution (if appropriate);
       3. Arrangements for security accreditation of the Supplier IT/WMS Solution;
       4. Arrangements for user training (staff and prisoners) of the Supplier IT/WMS Solution;
       5. Arrangements for the preparation of operational service;
       6. Detailed arrangements for the service testing of the ordering process;
       7. A resource profile, including skill sets, for the successful delivery of all aspects of Transition, broken down by each phase. This should include any Authority resources needed to support the Supplier to deliver the Transition outcomes;
       8. Detailed arrangements for how the Supplier will manage and maintain the quality and configuration of the required Transition outcomes delivered during the Transition period;
       9. Supplier organisational structures and governance arrangements for the successful delivery of Transition;
       10. Planning for logistics- leasing of vehicles, courier services and network schedules;
       11. Product range sourcing and procurement;
       12. Retail Workshop readiness including stock, assets, consumables, workflow planning;
       13. New staff training for operating within HMP environment;
       14. Detailed arrangements for how the Supplier will manage Risks, Issues,

Assumptions and Dependencies (RAID) during the Transition period;

* + - 1. Prepare and confirm that the Retail Workshop(s) have completed and passed the Authority "Workshop Readiness Check List".
    1. The Supplier shall provide to the Authority a detailed Agreed Transition Management Plan in accordance with Schedule 6.1 (Transition Plan). This shall include, but not be limited to:

1. Arrangements for the preparation of operational service from initial occupying of the Retail Workshop through to ensuring all provisions to support operational service. These would include for but not limited to; complete due diligence of Retail Workshop;
2. A resource profile, including skill sets, for the successful delivery of all aspects of Transition, broken down by each phase. This should include any Authority resources needed to support the Supplier to deliver the Transition outcomes;
3. Detailed arrangements for how the Supplier will manage and maintain the quality and configuration of the required Transition outcomes delivered during the Transition period;
4. Supplier organisational structures and governance arrangements for the successful delivery of Transition;
5. Detailed arrangements for how the Supplier will manage Risks, Issues,

Assumptions and Dependencies (RAID) during the Transition period;

1. Within 10 Working Days of the Effective Date the Supplier shall provide an updated Transition Management Plan for approval by the Authority this will then become the Agreed Transition Management Plan in accordance with Schedule 6.1 (Transition Plan);
2. A detailed Transition schedule (e.g. Gantt Chart) to support the Transition Management Plan;
3. A Training Strategy detailing how training and/or guidance shall be delivered to prisoners, supplier staff and regular users of the Supplier IT/WMS Solution;
4. Detailed configuration plans for the IT Supplier IT/WMS Solution;
5. Detailed arrangements for the testing, Supplier IT/WMS Solution and user, of the IT Supplier IT/WMS Solution;
6. Arrangements for security accreditation of the IT Supplier IT/WMS Solution as detailed in Schedule 2.4 (Security Management);
7. Arrangements for user training of the IT Supplier IT/WMS Solution;
8. Detailed arrangements for the service testing of the ordering process using the IT Supplier IT/WMS Solution.
9. **SECTION 7: FUTURE PROOFING**

The Supplier will ensure that all Supplier IT/WMS Solutions and process implemented provides resilience and extensibility to allow any Additional Users such as new build Prisons / Private Prisons / Secure Training Units / Immigration Centres to be introduced over the period of the contract as requested by the Authority. The Authority will submit a Change Request to the Supplier outlining the requirements to On Board the Additional Users. This process may be instigated by any stakeholder and must initially be sent to the Authority's Head of Retail. It then must follow the approved sign off stages in the agreed order before any change can be implemented. On the rare occasions when a change must be made immediately to ensure surety of service, the Change Control Procedure must be implemented as soon as possible.

* 1. **Onboarding Additional** **Users**
     1. The Supplier shall operate an On Boarding process for Additional Users as in accordance with Schedule 2.6 (Additional Users).
     2. The Supplier's process shall include the development of an Outline On-Boarding Plan (OOP) to the Authority. The OOP shall detail how each Additional User shall be transitioned from their current service provision to the Service provided under this Agreement.
     3. The OOP shall be a clear and detailed road map showing all key activities, tasks and milestones required to onboard Additional Users. These shall include, but not be limited to:
        1. Overall timeline of key activities to On Board Additional Users;
        2. Management of any user Legacy stock where applicable;
        3. Introduction of Supplier supplied stock; and
        4. Storage and distribution of the Products on the LPL for each Additional User.
     4. Additional Users shall be On Boarded in accordance with the change procedure set out in Schedule 8.2 (Change Control Procedure).
  2. **Additional Retail** **Workshops**
     1. Following consultation with the Authority where it is deemed necessary to open a new Retail Workshop, the Supplier will produce in conjunction with the Authority an outline business feasibility study case for the change-(this is referred to as an Outline Plan). The Supplier will communicate with the relevant site, plan the layout of the Retail Workshop and determine the staff resource required to operate it, make recommendations regarding volume movement, and agree these with the Authority. Once the plans are complete and agreed with the Authority, the Authority will initially consult with the incumbent estates contractor and submit the plan regarding the works. If the Authority receives written confirmation that the estates contractor has chosen not to carry out the work, the Authority will agree appropriate actions with the Supplier to implement the plan. This business case will form part of the Outline plan.
     2. The Supplier shall, in line with the indicative dates and plan provided in the Delivery and Retail Workshop Information Pack (DWIP 88: 5-year plan), increase the number of Prison Retail Workshops by setting up and operating Retail Workshops at the sites listed or at additional sites as required by the Authority. Requests from either the Supplier or the Authority to open additional Retail Workshops will follow the Change Control Process.
     3. The Supplier's process shall include the development of an outline plan to the Authority which shall detail how Services shall commence and, where applicable, transitioned from their current service provision. The Supplier shall ensure that the impact to established delivery schedules are minimised and agreed in advance by the Authority at the appropriate Performance Management Board.
     4. On the Authority approval of the submitted outline plan, the Supplier shall, within 5

working days, produce for approval of the Strategic Management Board a detailed project plan detailing all key activities and tasks required that will include for but not limited to:

* + - 1. Management of the overall project;
      2. Overall timeline of key activities;
      3. Management of any stock where applicable; (d) Changes to the distribution of Prison Retail.
    1. This shall be carried out accordance with the requirements of Schedule 8.2 (Change Control Procedure).
  1. **Closing Retail** **Workshops**
     1. The Supplier shall, in line with the indicative dates and plan provided at in the Delivery and Workshop Information Pack (DWIP 88: 5 Year Plan), operate a process for closing and ceasing to operate Retail Workshops at named

Sites/Serviced Sites. The Supplier's process shall include for the development of an outline closure plan to the Authority. This shall detail how services and supply shall be transitioned from their current service provision to the relevant Retail Workshop undertaking the picking and packing services instead. The Supplier shall ensure that impacts to established delivery schedules are minimised and agreed in advance by the Authority at the appropriate Performance Management Board.

* + 1. The Supplier shall provide a project plan for approval by the Strategic Management Board detailing all key activities and tasks required, these should include for but not be limited to:
       1. Management of the overall project;
       2. Overall timeline of key activities;
       3. Management of any stock where applicable; (d) Changes to the distribution of Products.
    2. This shall be carried out accordance with the requirements of Schedule 8.2 (Change Control Procedure).
  1. **Future** **Changes**
     1. The Supplier shall note the Governments plans to create an extra 10,000 prison

places by building new prisons and expanding existing ones. The Supplier shall also note that sentencing reforms may increase the demand for the Retail Service over the life of the contract.

* + 1. The operational nature of the services the Authority provides means that the Supplier may be required to make changes to provision. The Supplier shall enable the Authority to make changes as required and in accordance with the requirements of Schedule 8.2 (Change Control Procedure).

1. **SECTION 8: END USER DELIVERY AND DISTRIBUTION** 
   1. **End User** **Delivery**
      1. The Supplier shall only distribute goods within the designated Sites/Serviced Sites; see the Delivery and Workshop Data (DWIP 101) or relevant MoU.
      2. Completed End User Orders will be distributed to End Users by the Supplier in accordance with the specified method of delivery contained in the Delivery and Workshop Data (DWIP 101).
      3. The Supplier shall obtain robust proof of acceptance (signature) from the End User at the point of delivery that validates the End User has received the Goods and accepts the value of goods that have been delivered to the End User.
      4. The Supplier must set aside any Goods that do not meet the Legitimate

Expectation of the End User and return them to the predetermined collection point within the Site/Serviced Site. The Supplier's Personnel must annotate the reasons for the rejection of the Goods together with their own name for future traceability requirements.

* + 1. Similarly, the Supplier must record where Goods originally requested on the Prisoner Order Form have not been included in the End User Order or has erroneously been substituted with an incorrect Good.
    2. The Supplier shall provide the Authority with a data file containing a list of total amounts each End User has spent from the order capture system, on a Site/Serviced Site-by-Site/Service Site basis and broken down by End User so that the Authority can update its central prisoner monies financial system (PIES).
  1. **Method of** **Distribution**
     1. Following confirmation of delivery of the consignment of containers / tote boxes at the Site/Serviced Site at the agreed delivery window the Supplier shall deliver containers /tote boxes to agreed points within the Site/Serviced Site and distribute them to End Users at the predetermined times in accordance with the relevant site MoU. For the avoidance of doubt, this service does not apply to Bulk Goods Deliveries.
     2. Supplier will be required to distribute the completed Prisoner Orders in one of the three following ways and as specified. With each method of delivery, the Supplier's Personnel shall be accompanied by the Authority's Personnel during distribution:
        1. Cell drop – ordered Goods are delivered direct to the individual cell.
        2. Wing drop – End Users called forward to collect their ordered Goods from a designated serving point on a Site/Serviced Site wing.
        3. Central drop – End Users are called forward to collect their ordered Goods from a single designated serving point within a Site/Serviced.
     3. Irrespective of the distribution approach employed at each Site/Serviced Site and

prior to the End User unsealing the End User Order, the Supplier must allow the End User a reasonable opportunity to inspect the Goods before confirming acceptance of the delivered Goods. Such confirmation from the End User can only be validated with a signature from the receiving End User. For the avoidance of doubt, End Users shall not be permitted to break the bag containing their End User Order during their inspection of the Goods and to do so shall invalidate any claim that an End User has not received ordered Goods or that the Goods received have been damaged in any way. The bag containing the goods must, therefore, be transparent to permit the End User inspection process.

* + 1. As part of the picking and packing process, the Supplier shall have included a receipt with the End User Order INSIDE the sealed bagged that clearly itemises the Goods that have been picked and packed in the delivered End User Order, the unit price paid for each delivered Good and the total amount charged. The Goods receipt shall, therefore, be clearly on display within the bag.
    2. Where necessary, the goods receipt provided by the Supplier shall also clearly denote any Goods that have been rejected due to lack of funds or incompatibility with the Incentives and Earned Privileges scheme.
    3. The Supplier must work closely with the Authority at each Site/Serviced Site to ensure that prisoners are supervised closely at all times during the distribution of completed End User Orders at the Site/Serviced Site.
    4. Provided that the integrity of bagged Goods is in no way compromised by the End User prior to acceptance and the End User identifies their End User Order has not met Legitimate Expectation then the Supplier shall record the inaccuracy or breakage for financial administration purposes.
    5. In the event that the Supplier has reasonable grounds to suspect that an End User has compromised the integrity of the bagged goods prior to acceptance, they shall immediately alert the Authority Personnel member that is escorting the Supplier during distribution and suspend any further distribution. Thereafter, the Supplier shall strictly adhere to all instructions given by the Authority's Personnel member.
  1. **End User Order** **Amendments**
     1. Where a legitimate fault or error is identified with an End User Order at the point of delivery the Supplier must immediately record the nature and details of the fault or error and shall either:
        1. Immediately remove and subsequently replace a missing Good(s) from available buffer stock at point of delivery once all the End User Orders have been distributed;
        2. Immediately remove Goods supplied in error and use the record to subsequently complete the administration process to refund the End User;
        3. Use the record to subsequently complete the administration process to refund the End User for any missing good(s) not able to be replaced with the buffer stock; or (d) Remove damaged good(s) for return back to the Retail Workshop.
     2. If a replacement product is provided from the buffer stock by the Supplier, then

relevant records shall be completed by the Supplier to identify the difference in price between the Good(s) originally provided and the replacement Goods in order that the End User's account can be updated.

* + 1. In addition to recording the nature and details of a fault or error of an End User Order, the Supplier shall include, as a minimum, the End User's name and number. The Supplier shall ensure that any aspect of the rectification process that may or could result in a financial transaction, either debiting or crediting an End User account, must be accompanied with End User's signature for validation and audit purposes.
    2. All records of End User Order fault or error rectification shall be retained by the Supplier at the relevant Retail Workshop for audit purposes. Any record that effects a financial transaction, either debiting or crediting an End User account, shall be provided to the Authority in a timely fashion so it can update the central prisoner monies financial system (PIES).
    3. There are currently a variety of different service options throughout the estate. As specified by the Authority and detailed in Delivery and Workshop Data (DWIP 101); Goods are delivered to End Users by either:
    4. The Supplier – utilising one of the distribution methods detailed at Clause 8.3.7-

8.3.8 below ("**End User Delivery**"); or

* + 1. Authority service – Products are delivered to the Site/Serviced Site by the Supplier then distributed to End Users by the Authority; or
    2. Partial Service – Products are delivered to the Site/Serviced Site by the Supplier then distributed to End Users by the Authority with the Supplier handling the amendment process. The Supplier will provide a 3-part Amendment Form which is to be completed for all shortages and returns (one copy to End User, one copy to the local finance office and one copy returned to the Retail Workshop).
    3. End User Delivery is the process by which the Supplier distributes the End User's bag of goods directly to them within the prison once picked and packed. Full details on the end-user delivery service to End Users can be found in the Delivery and Workshop Data (DWIP 101). Key tasks include:
       1. Issue of completed orders direct to End Users either via a cell door drop or "servery" type distribution;
       2. Receipt and movement of secure Dollies and Totes from and to prearranged areas of the sites/Serviced Sites;
       3. Coordination and obtaining proof of delivery and order acceptance;
       4. Collection, coordination and storage of empty tote boxes and dollies;
       5. Arranging returns of damaged/miss-picked items;
       6. Arranging returns of undelivered canteens;
       7. In conjunction with Site/Serviced Site disposal of fresh, chilled, frozen and spoilt products.
  1. **General** **Requirements**
     1. The Supplier shall provide End User Delivery services to the Serviced Site/Sites as detailed in the Delivery and Workshop Data (DWIP 101) (including those 17 Serviced Sites where the 18 Retail Workshops are hosted, numbers will change over term of contract). Where a Serviced Site/Site does not require End User Delivery services the Supplier shall deliver the completed orders solely in accordance with Section 2 of this Services Description.
     2. The Supplier shall inform the Retail Liaison Contact for the relevant Serviced Site/Site(s) or identified persons from any Additional Users as soon as they become aware of any potential delays to agreed delivery and End User distribution schedule(s) The Supplier shall also inform the Head of Prison Retail as soon as they are aware of any such delay.
     3. The Duty Governor at the relevant Serviced Site/Site shall be informed if such delay is within the 24hrs prior to the scheduled delivery.
     4. The Supplier shall ensure that all Supplier Personnel allocated to work in Serviced Site/Site undertaking End User Delivery and distribution duties are appropriately security cleared to the appropriate level and undertake all HMPPS mandatory security and safety training within 20 days of the operational serviced commencement date provided by the relevant Serviced Site/Site as detailed in the Delivery and Workshop Data (DWIP 101).
     5. The Supplier shall ensure that all Supplier Personnel who undertake End User Delivery duties undertake all necessary local Inductions for working in a custodial environment along with their own duties processes and practices, prior to starting their role. These inductions are carried out by the Authority at the sites / serviced sites accordingly.
     6. The Supplier shall provide their own work wear for Supplier Personnel who undertake End User Delivery and shall be compliant with the terms set out in Section 2 of this Services Description.
     7. Supplier Personnel who undertake End User Delivery are required to be identifiable at all times whilst on HMPPS premises. As such name badges and HMPPS provided security passes shall be worn and visible. Name badges should not carry the HMPPS logo. The Supplier shall obtain the approval of the Head of Prison Retail for any Uniform or changes to agreed Uniform.
     8. The Supplier shall provide all PPE for the Supplier Personnel who undertake End User Delivery. The Authority will provide all safety footwear for prisoners.
     9. The Supplier shall ensure the original completed Prisoner Order Forms are returned to the relevant ordering Site/Serviced Sites weekly and are sent by the Supplier to the local finance office for evidence/information should any discrepancies such as miss picks / wrong quantity picked require further investigation.
  2. **Distribution** **logistics**
     1. The Supplier will provide End User Delivery for the Sites/serviced set out in the Delivery and Workshop Data (DWIP 101). The number of Sites/Serviced Sites where the Supplier will perform the End User Distribution service is 62 (38 complete distribution service and 24 assisting HMPPS Staff). The remainder are delivered by the Authority across the estate (48 Sites/Serviced Sites), some solely by Authority Personnel and a small number (24) are delivered in partnership with the Supplier. The Supplier shall supply staff to accommodate this process to enable them to process any amendments. The Supplier will provide a 3-part Amendment Form which is to be completed for all shortages and returns (one copy to End User, one copy to the local finance office and one copy returned to the Retail Workshop). The Supplier will provide a picked and packed service to 110 different Prisons in England and Wales offering a bagged canteen service. There are a variety of different service options throughout the estate:
        1. Full Canteen distribution service operated by the Supplier (38) 34%;
        2. Partial Service with HMP Handing out orders and the Supplier managing the amendment process (24) 22%; (c) Full HMP service (48) 44%.

(Full details can be found in the Delivery and Workshop Data (DWIP 101)).

* + 1. The Supplier shall, as detailed in the Delivery and Workshop Data (DWIP 101) for each Site/Serviced, on the predetermined and designated distribution day and time attend the Serviced Site/Site and prepare and undertake distribution of ordered Products to End Users.
    2. The Supplier shall be aware that over the Term that:

1. additional Prisons may require End User Delivery;
2. Prisons which currently receive End User Delivery may no longer require End User Delivery.

8.5.4 Any change to the Prisons which do or do not require End User Delivery shall be carried out in accordance with the requirements of Schedule 8.2 (Change Control Procedure).

8.5.5 Products shall be distributed to End Users in one of the three methods outlined at

Clause 8.5.6 below. With each method of distribution, if the Service involves the Supplier Personnel, they are supported at the point of delivery and accompanied by prison officers during distribution. On the predetermined and designated distribution day and time the Supplier's distribution staff attend the site/Serviced Site and prepare and undertake distribution of ordered Products to End Users. Distribution will be at the times and days agreed with the Prison, this could be in the evening, weekend or during a Business Day.

8.5.6 Distribution of Goods takes place utilising one of the following methods:

1. Cell drop – Goods shall be delivered to each End Users cell by the Supplier (Authority Personnel accompany Supplier Personnel and unlock/lock End User cells as required);
2. Wing/House block drop – Goods shall be distributed to End Users by the Supplier

from a designated serving point on a residential unit. (Authority Personnel will be in attendance to maintain good order and discipline);

1. Central drop – Goods shall be distributed to End Users by the Supplier from a single designated serving point within a Site/Serviced Site (The Authority's Personnel will be in attendance to maintain good order and discipline).

8.5.7 The Delivery and Workshop Data (DWIP 101) sets out which distribution method

(cell drop, wing drop or central drop) is used by each Site/Serviced Site. The Authority maintains the right to change the distribution method due to operational issues as and when required.

8.5.8 The Supplier shall ensure Goods, designated on a Site/Serviced Site by

Site/Serviced Site basis and as detailed in the Delivery and Workshop Data (DWIP 101), are to be delivered to the Serviced Site/Site prisoner Reception department as opposed to direct to the End User (for recording purposes). The Supplier shall ensure that the items are clearly identifiable for onward delivery by the Authority to the End User.

8.5.9 On the distribution day (detailed in DWIP 101) and as required, at the

Site/Serviced Site, the Suppliers Personnel shall access PNOMIS and run reports and queries to enable a cross check of location and whereabouts of individual End Users against delivery manifests (DWIP 65: Prisoner Manifest). Where necessary the Supplier shall utilize this information to amend delivery locations or to remove orders for End Users no longer at the Serviced Site/Site.

8.5.10 The Supplier shall operate a process for amendments and discrepancies such as but not limited to missing products / miss picked products.

8.5.11 If an End User is unable to collect their order or is not present when cell drops occur, for any reason, the Supplier shall operate a process that enables the Authority's Personnel to accept and sign for the Goods on their behalf and assume responsibility for the Goods. At no point shall the Supplier enable another prisoner to collect an End Users order on their behalf.

8.6 **Amendments and** **Returns**

8.6.1 The Supplier shall operate a process that obtains proof of order acceptance from End Users, such as confirmation utilising the End User signature (DWIP 65: Prisoner Manifest). In all instances, sealed bags containing End User orders must only be issued directly to the End User for which the order is intended on production of a valid photo ID as mentioned above. If an End User is unable to collect their order at the time of bag distribution for any reason, e.g. out at court, then Authority Personnel will be allowed to sign for the Goods on the End User's behalf. In this case, Authority Personnel assume responsibility for the bag and its contents. At no point is a prisoner allowed to collect another End User's order on their behalf.

8.6.2 The Supplier shall obtain acceptance from End Users i.e. signature that a delivery

has been made and that the contents are accepted as correct or as documented.

8.6.3 The Supplier shall ensure proof of ID from End Users prior to handover, of the Goods to the End User this is obtained either by way of End Users showing their photographic ID cards (where applicable) or by identity confirmation from the Authority Personnel attending or supporting distribution.

8.6.4 The Supplier shall ensure the End User is given the opportunity to inspect the contents of their order against the receipt prior to acceptance. The Supplier must obtain proof of acceptance (signature) from the End User at the point of delivery that validates the End User has received the Goods and accepts the value of Goods that have been delivered to the End User.

8.6.5 The Supplier shall enable the End User to report and record any error and the Supplier shall ensure this will be investigated as long as the End User's canteen bag is still sealed and has not been tampered with. Where appropriate the Supplier shall operate a credit / refund process to ensure a credit is issued to the

End User. The Supplier will provide the Local Finance Dept. at each Site/Serviced Site all End Users credits / refunds within 48hrs of receiving the Amendments slips.

8.6.6 The Suppliers process for amendments and returns shall both enable and track amendments and returns that, as a minimum, occur for the following reasons:

1. Supply of incorrect Goods due to picking or keying error;
2. Missing Goods;
3. Damaged Goods;
4. Goods are faulty;
5. End User has been released, transferred or is temporarily away from the prison (e.g. on a period of Release On Temporary Licence (ROTL)).

8.6.7 The Supplier shall utilise the Buffer Box(es) when providing End User Delivery Services as necessary including where shortages or damaged Goods can be satisfied by items in the Buffer Box.

8.6.8 The Supplier shall operate a process that records instances of Buffer Box amendments.

8.6.9 The Supplier shall ensure that an End User cannot refuse individual items unless they are damaged/faulty but enable End Users to refuse delivery of a complete order. This complete sealed order together with any other undistributed orders shall be inspected by the Supplier and returned to stock within the relevant Retail Workshop where possible.

8.6.10 The Supplier shall confirm and make arrangements with the local site to operate a process to return all undistributed Goods to the Prison Retail Workshops.

8.6.11 The Supplier shall operate a service for returns of faulty Goods such as electrical items. The Supplier shall enable End Users to provide Products for return during End User Delivery.

8.6.12 The Supplier shall, if End Users have taken receipt of the items within the previous 30 days, initiate investigations and where applicable refunds via the manufacturer. Where the items have been in the possession of an End User for more than 30 days it is the End User's responsibility to contact and investigate with the manufacturer.

8.7 **Wastage**

8.7.1 The Supplier shall ensure, where Fresh, Frozen and Chilled goods are undistributed and are not to be returned to the Retail Workshop, that these products are disposed of appropriately prior to leaving the Site/Serviced Site at the end of the distribution.

8.7.2 The Supplier shall maintain local agreements and arrangements with Sites/serviced Site that include destruction of fresh, frozen or chilled goods by way of waste disposal in local bins or in many cases these products are provided by the Supplier to the prison Kitchen/Catering team for use where possible.

8.7.3 In the event that products cannot be distributed to recipient through no fault of the Supplier and as a consequence are deemed for local disposal the Supplier shall maintain a record via the amendment sheet and claim for compensation for the value of the disposed products.

8.8 **Assets utilised as part of providing Distribution Services to End** **User**

The Supplier shall ensure dollies and empty tote boxes, or other assets used during End User delivery are returned to the Retail Workshops by the Supplier with the undistributed stock.

8.9 **Personal Identification Number (PIN) Phone** **Credit**

8.9.1 The NPL and every LPL, will include reference to Personal Identification Number (PIN) phone credits to permit prisoners to make telephone calls.

8.9.2 Unless the Supplier is expressly instructed in writing by the Authority to remove reference to PIN phone credit, every Prisoner Order Form for each Site/Serviced Site in the prison estate will provide prisoners with the opportunity to purchase phone credit.

8.9.3 The PIN phone system for UK calls is an automated service that is provided under separate contract to the Authority. Unless the Supplier is expressly instructed in writing by the Authority to supply equivalent phone credit for UK calls, the Authority shall supply all PIN phone credits free of charge for the Contract.

8.9.4 The Supplier shall report and treat the administration of PIN phone credits in accordance with the Finance Schedule.

8.9.5 The Supplier's Supplier IT/WMS Solution shall be required to provide the Authority with the sales data on PIN phone credits from Prisoner Order Forms in accordance with their relevant Work Instructions. In doing so, the Supplier shall provide sales data in accordance with the Authorities requirements to provide intelligence on the usage. The Supplier shall electronically transmit this specified data to the Authority in a format that is compatible with the Authority's standard software applications.

**Prison Retail Service Project**

**Schedule 2.2**

**Performance Levels**

**SCHEDULE 2.2**

**PERFORMANCE LEVELS**

**PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS**

1. **PERFORMANCE INDICATORS**

The Key Performance Indicators (KPI) and Subsidiary Performance Indicators (SPI) which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are detailed in Tables:

1a Transition Phase Key Performance Indicators

1b Transition Phase Subsidiary Performance Indicators

2a Operational Key Performance Indicators

2b Operational Subsidiary Performance Indicators

* 1. The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B.
  2. Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and in respect of Transition Phase KPIs in accordance with Paragraph 4 of Part A – Transition Phase KPIs, and in respect of Operational KPIs in accordance with Paragraph 4 of Part B – Operational KPIs.
  3. The liability of the Supplier in respect of Service Credits shall be subject to Clause 23.5

(Financial and other Limits) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of this Schedule 2.2 (Performance Levels).

* 1. Service Credits are a reduction of the Supplier Profit payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
  2. The Authority shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

1. **SERVICE POINTS** 
   1. If the level of performance of the Supplier during a Measurement Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
   2. If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
   3. The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Tables 1a and 2a depending on whether the KPI Failure is a Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.
2. **REPEAT KPI FAILURES AND RELATED KPI FAILURES** 
   1. Repeat KPI Failures shall apply to both Operational KPIs and Transition Phase KPIs.
   2. If a KPI Failure occurs in respect of the same Operational KPI or Transition Phase KPI in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "**Repeat KPI Failure**".
   3. The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows: SP = P x 2 where:

SP = the number of Service Points that shall accrue for the Repeat KPI Failure; and

P = the applicable number of Service Points for that KPI Failure as set out in Table 1a and

Table 2a depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service Threshold.

Worked example:

|  |  |
| --- | --- |
| Service Severity Levels | Service Points |
| Target Performance Level: 99% | 0 |
| Minor KPI Failure: 98.0% - 98.9% | 1 |
| Serious KPI Failure: 97.0% - 97.9% | 2 |
| Severe KPI Failure: 96.0% - 96.9% | 3 |
| KPI Service Threshold: below 96% | 4 |

Example 1:

If the Supplier achieves Service Level of 98.5% in a given Measurement Period, it will incur a

Minor KPI Failure for Service in that Measurement Period and accordingly accrue 1 Service

Point. If, in the next Measurement Period, it achieves a Service level of 96.5%, it will incur a

Severe KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat

Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (i.e. SP = 3 x 2). If in the next Measurement Period it achieves Service Level of 96.5%, the Supplier will again incur 6 Service Points.

Example 2:

If the Supplier achieves Service Level of 96.5% in a given Measurement Period, it will incur a Severe KPI Failure for Service in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Service Availability of 98.5%, it will incur a Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (i.e. SP = 1 x 2). If in the next Measurement Period it achieves Service Level of 96.5%, the Supplier will incur 6 Service Points.

**PART B: PERFORMANCE MONITORING**

1. **PERFORMANCE MONITORING AND PERFORMANCE REVIEW** 
   1. Within 10 Working Days of the end of each Service Period, the Supplier shall provide:
      1. a report to the Authority Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the "**Performance Monitoring Report**"); and
      2. the Performance Monitoring Report will include a Year to Date Dashboard Report which summaries the Supplier's performance achieved over the Contract Year ("**Year to Date Dashboard Report**"). The Year to Date Dashboard Report will maintain a rolling average across all KPIs and a rolling overall consolidated KPI. The format of the Year to Date Dashboard Report shall be agreed between the parties from time to time, acting reasonably.

**Performance Monitoring** **Report**

* 1. The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

**Information in respect of the Service Period just** **ended**

* + 1. for each KPI and SPI, the actual performance achieved over the Measurement Period, and that achieved over the previous 3 Measurement Periods;
    2. a summary of all Performance Failures that occurred during the Measurement Period;
    3. the severity level of each KPI Failure which occurred during the Measurement

Period and whether each Performance Failure which occurred during the Service

Period fell below the PI Service Threshold or KPI Service Threshold;

* + 1. which Performance Failures remain outstanding and progress in resolving them;
    2. the status of any outstanding Rectification Plan processes, including:
       1. whether or not a Rectification Plan has been agreed; and
       2. where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
    3. for any Repeat KPI Failures, actions taken to resolve the underlying cause and prevent recurrence;
    4. the number of Service Points awarded in respect of each KPI Failure;
    5. the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
    6. relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
    7. such other details as the Authority may reasonably require from time to time; and

**Information in respect of previous Measurement** **Periods**

* + 1. a rolling total of the number of Performance Failures that have occurred over the past six Measurement Periods;
    2. the amount of Service Credits that have been incurred by the Supplier over the past six Measurement Periods;
    3. the conduct and performance of any agreed periodic tests that have occurred in such Measurement Period such as the annual failover test of the Service Continuity Plan; and

**Information in respect of the next** **Quarter**

* + 1. any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Authority and the Supplier for the next Quarter. Any period of such agreed down time will be excluded from the calculation of the KPI or SPI for the relevant Measurement Period.
  1. The Performance Monitoring Report shall be reviewed, and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 1.4.
  2. The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
     1. take place within 7 Working Days of the Performance Monitoring Report being issued by the Supplier;
     2. take place at such location and time (within normal business hours) as the

Authority shall reasonably require (unless otherwise agreed in advance); and

* + 1. be attended by the Supplier Representative and the Authority Representative.
  1. The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or SPI Failure.

1. **PERFORMANCE RECORDS** 
   1. Supplier shall maintain appropriate documents and records; the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both for Transition and from Full Operational Service Commencement Date for each Retail Workshop and the calculations of the amount of Service Credits for any specified period.
   2. The Supplier shall ensure that the Performance Monitoring Report, and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.
2. **PERFORMANCE VERIFICATION**

The Authority reserves the right to verify the Services and the Supplier's performance under this Agreement against the Performance Indicators.

**PART I: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS TABLES**

The KPIs and SPI that shall apply to the provision of the Transition Services and Operational Services are set out below:

**Performance Levels: Part A – Transition Phase KPIs**

1. **KEY PRINCIPLES** 
   1. The Supplier shall provide the Services promptly, professionally and diligently.
   2. Throughout Transition the Supplier shall supply the Transition Services defined in Service Description, the Transition Management Plan and Agreed Transition Management Plan to a standard that meets or exceeds the standards set out in the Transition Phase KPIs detailed in this Schedule.
   3. The Supplier shall take corrective action in the event of any failure a meet Transition Phase KPI.
   4. The Supplier shall provide a monthly report in accordance with the provisions of Part B above of this Schedule 2.2, and Schedule 8.4 (Reports and Records Provisions) which summarises the performance by the Supplier measured against the Transition Phase KPIs.
   5. If the level of performance of the Supplier during a Measurement Period achieves a Target

Performance Level in respect of a Transition Phase KPI, no Service Points shall accrue to the Supplier in respect of that Transition Phase KPI. Where the Supplier fails to meet the required performance standard against a Transition Phase KPI, the Supplier shall accrue Service Points in accordance with the Transition Phase KPIs.

* 1. Where the number of Service Points accrued in a specified period exceeds specified levels, as set out in this Schedule, the Supplier may be subject to:
     1. the application of Service Credits calculated in accordance with Paragraph 4 below;
     2. the preparation and implementation of the Rectification Plan Process;
     3. the exercise of step-in rights by the Authority;
     4. the exercise of termination rights by the Authority and/or
     5. paying compensation by way of an indemnity for loss, costs and expenses granted by the Supplier in favour of the Authority against any costs or losses incurred as a result of the Supplier failing to achieve the Transition Phase KPIs
  2. The remedies set out in this Schedule for failure to meet the Transition Phase KPIs are not intended to be the Authority's exclusive remedy for any such failure and shall be without prejudice to any other right or remedy to which the Authority may be entitled, whether under other express provisions this Agreement, under the general law or otherwise.

1. **TRANSITION PHASE KPIs** 
   1. Each of the Transition Phase KPIs shall be measured at a frequency as detailed in Table 1a-Transition Phase KPIs and accordingly relate to the standard of performance that is required and agreed, in respect of the specified tasks or activities, as specified for the relevant Transition Phase KPI.
   2. Each of the Transition Phase Subsidiary SPIs shall be measured at a frequency as detailed in Table 1b-Transition Phase SPIs and accordingly relate to the standard of performance that is required and agreed, in respect of the specified tasks or activities, as specified for the relevant Transition Phase Subsidiary SPI.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Table 1a – Transition Phase Key Performance Indicators (KPI)To be completed at contract award** | | | | | |  |
| **No.** | **Key Performance**  **Indicator Title** | | **Definition** | **Frequency of Measurement** | **Severity Levels** | | **Service**  **Points**  **TBA** |
| 1 | All Workshops readiness | | Workshop readiness, in line with Services Description and in compliance with Workshop Readiness Check sheets on or by the Agreed Transition Management Date.  Workshop delay is workshop failing to achieve Transition date as per Agreed Transition management Plan. | On or by the Agreed  Transition Management  Plan agreed date | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | 100% (no delay to any workshop)   1. Workshop delay 2. Workshops delay 3 Workshops delay   4 Workshops delay | 0 (all online)  6  12  15  20 |
| 2 | Outline Transition Plan to Agreed transition  Management Plan | | 10 days |  | Target Performance Level  KPI Service Threshold | 100 Compliance    failure | 0    20 |
|  |  | **Table 1a – Transition Phase Key Performance Indicators (KPI)To be completed at contract award** | | | | |  |
| 3 | HMPPS Security Breach |  | Compliance with HMPPS Security requirements (Security incidents reported as formal escalation to Head of Retail and confirmed on investigation) Category of Breach as per defined terms) Note security Breaches will not count towards end of year average. | Monthly & measured  collectively against all  Workshops | Target Performance Level  Category A Breaches    Category B Breaches    Category C Breaches | 100%  1 Breach  1+ Breaches  1 Breach  1+ Breaches  1 Breach  1+ Breaches | 0  18  24  12  24  6  24 |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Table 1b – Transition Phase Subsidiary Performance Indicators (SPI) TBA** | | | | |
| **No.** | **Key Performance Indicator Title** | **Definition** | **Frequency of Measurement** | **Severity Levels** | |
| 4 | Schedule adherence | Project roll out on time and in compliance with  Agreed Transition  Management Plan | Fortnightly for first 6 months then Monthly | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | On time  1-2 days late 3-4 days late  5 -7 days late  7 days or more late |

1. **REPORTING OBLIGATIONS** 
   1. The Supplier shall ensure that it has appropriate systems and procedures in place and use all necessary measures and monitoring tools in order to capture and report on compliance with the Transition Phase KPIs and Transition Phase SPIs as required by this Schedule.
   2. In advance of each Project Board the Supplier shall deliver to the Authority a KPI Report detailing performance in respect of each Transition Phase KPI and Transition Phase SPI during that Month. The KPI Report shall be included in the monthly report provided to the Project Board and shall:
      1. be in the format reasonably specified by the Authority;
      2. identify any failures to meet a particular Transition Phase KPI and Transition Phase SPIs during the relevant Month;
      3. identify where Transition Phase KPIs and Transition Phase SPIs are met; and
      4. include relevant explanatory statement in relation to any such failures describing why, in the reasonable opinion of the Supplier, the failure occurred and the steps that the Supplier proposes to take to avoid any recurrence of that failure and to rectify that failure ("**Explanatory Statements**").
   3. In order to verify the accuracy of any KPI Report:
      1. the Supplier shall promptly provide the Authority with such additional information and/or supporting documentation as the Authority may reasonably request from time to time;
      2. if requested to do so, the Supplier shall permit representatives of the Authority to have access to the Supplier's Premises for the purposes of inspecting records and other information held by the Supplier in relation to the Services.
   4. The Authority may provide representations and/or comments on any Explanatory Statement. The Supplier shall take reasonable account of all such comments and/or representations and, subject to this, shall fully implement any actions set out in the relevant Explanatory Statement.
2. **SERVICE CREDITS** 
   1. Each Service Point accrued shall have a value of 0.5% of the Supplier Profit as set out in the

Financial Response Template. Where more than 9 Service Points are accrued in any one

Month, the total value of the Service Points accrued in that Month shall be deducted from the Charges payable to the Supplier following the Operational Service Commencement Date and shall be itemised as a Service Credit on the relevant invoice submitted by the Supplier.

For example; where agreed threshold is 11 points and supplier incurs 12 service points then the supplier will deduct from their next invoice the equivalent of 6%x Supplier Profit agreed for that period. If 5% is the Supplier Profit and that equates to £100,000 then Supplier will deduct (6% x £100000) = £6,000 from next invoice. If Supplier incurs 11 service points, then there will be no deduction from next invoice.

* 1. Where by the sums owing by the Supplier are in excess of the Initial Invoice then the Authority will deduct Service Credits from subsequent invoices until the amount owing has been paid in full irrespective of how many invoice periods are accounted for.
  2. The Supplier will indemnify the Authority against any costs or losses incurred as a result of the

Supplier failing to deliver against the Agreed Transition Management Plan and the Transition Phase KPIs and Milestones in accordance with Paragraph 5 below

* 1. The Supplier acknowledges and agrees that the Service Credits are a reasonable method of price adjustment to reflect the value of poorly performed Services.
  2. The Supplier acknowledges agrees that the Service Credits are not an estimate of the loss or damage that the Authority may suffer or incur by reason of a Transition Phase KPI not being met and are not an exclusive remedy for the Authority. Any payment or deduction of Service Credits is without prejudice to the Authority's entitlement to damages that may be claimed from the Supplier under other specific remedies available to the Authority in accordance with this Agreement (provided that any claim for damages for a breach or failure where Service Credits have been paid or deducted in respect of the same failure or breach shall be reduced by the amount of those Service Credits).
  3. In all circumstances, where a Transition Phase KPI or Transition Phase SPI is not met the

Supplier shall investigate the failure and, to the extent required by the Authority, advise the Authority promptly and within the prescribed timeframe of the remedial actions being taken to minimise the impact of the failure and prevent its reoccurrence.

1. **INDEMNITY** 
   1. From the Effective Date, the Supplier will indemnify the Authority against any costs or losses incurred as a result of the Supplier failing to deliver against the Agreed Transition

Management Plan and the Transition Phase KPIs. The Authority will provide evidence of costs and losses incurred. The costs and losses may include for but will not be limited to:

* + 1. any costs of employees, agents, consultants or sub-contractors of the Authority;
    2. any costs associated and incurred with purchases of contingency services or products;
    3. any costs associated with the storage or distribution of Products;
    4. any costs associated with sourcing alternative Products;
    5. sourcing additional storage facilities; and
    6. any other direct costs or losses incurred.

1. **TRANSITION REPEAT FAILURE** 
   1. Where:
      1. the number of Service Points accrued against a Transition Phase KPI exceeds 12 (twelve) or
      2. the number of Service Points accrued over any three (3) consecutive Months exceeds 36 (thirty six) in aggregate, (each a "**Transition Repeat Failure**").
2. **RECTIFICATION PLAN**

Where a Transition Repeat Failure occurs the Supplier, at its cost, shall prepare a formal written Rectification Plan pursuant to Clause 25 of the Agreement.

1. **STEP-IN RIGHTS**

In the case of Transition Phase KPIs

total number of Service Points accrued over any three (3) consecutive Months exceeds 36

(thirty-six),

then the Authority shall be entitled to exercise a right of step-in under Clause 27 of the Agreement.

1. **TERMINATION RIGHTS**

In the case of Transition Phase KPIs

the total number of Service Points accrued over any three (3) consecutive Months exceeds 50

(fifty) in aggregate,

then the Authority shall be entitled to treat such failure as a Supplier Termination Event which is not capable of remedy and that accordingly provides grounds under Clause 30.1 for the Authority to terminate all or part of this Agreement immediately or as of the date specified in its notice to the Supplier.

**Performance Levels: Part B – Operational KPIs**

1. **KEY PRINCIPLES** 
   1. The Supplier shall provide the Services promptly, professionally and diligently.
   2. After the Operational Services Commencement Date (or such a date as the Parties may agree) the Supplier shall supply the Services to a standard that meets or exceeds the standards set out in the Operational KPIs detailed in this Schedule.
   3. The Supplier shall take corrective action in the event of any failure to meet an Operational KPI.
   4. The Supplier shall provide a KPI Report monthly in accordance with the provisions of Schedule 8.4 (Reports and Records Provisions) which summarises the performance by the Supplier measured against the Operational KPIs and Operational SPIs.
   5. If the level of performance of the Supplier during a Measurement Period achieves a Target in respect of an Operational KPI, no Service Points shall accrue to the Supplier in respect of that Operational KPI. Where the Supplier fails to meet the required performance standard against an Operational KPI, the Supplier shall accrue Service Points in accordance with the Operational KPIs.
   6. Where the number of Service Points accrued in a specified period exceeds specified levels, as set out in this Schedule, the Supplier may be subject to:
      1. the application of Service Credits in accordance with Paragraph 4 below;
      2. the preparation and implementation of the Rectification Plan Process;
      3. the exercise of step-in rights by the Authority; and/or
      4. the exercise of termination rights by the Authority.
   7. The remedies set out in this Schedule for failure to meet the Operational Phase KPIs are not intended to be the Authority's exclusive remedy for any such failure and shall be without prejudice to any other right or remedy to which the Authority may be entitled, whether under other express provisions this Agreement, under the general law or otherwise.
2. **OPERATIONAL KPIs** 
   1. Each of the Operational KPIs shall be measured on a monthly basis (save for in the first six months following the Operational Services Commencement Date, when they shall be measured and reported every two weeks) and accordingly relate to the standard of performance that is required and agreed, in respect of the specified tasks or activities, within the Services Description and KPI's specified for the relevant Operational KPI.

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| **Table 2a – Operational Key Performance Indicators (KPI)** | | | | | |  |
| **No.** | **Key**  **Performance**  **Indicator Title** | **Definition** | **Frequency of Measurement or Measurement Period\*** | **Severity Levels** | | **Service Points** |
| 1 | Order  Processing –  Accuracy | POFs processed with zero errors at any stage (processing, picking, packing, despatch) excluding inability to process due to insufficient stock (covered separately in KPI2).  *(Total number of orders processed without errors / Total number of orders x 100)* | Monthly & measured  collectively against all  Workshops | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | 99.1% or above  99.0% to 98.1%  98.0% to 97.1%  97.0% to 96.1%  96.0% or below | 0 1  2 4 6 |
| 2 | Stock Availability | Tracking availability when fulfilling orders. Excludes processing errors (covered separately in KPI3) promos and new lines for the first four weeks of availability. Excludes deleted lines.  *(Qty of goods supplied / Qty of goods ordered)* | Monthly & measured  collectively against all  Workshops | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | 99.1% or above  99.0% to 98.1%  98.0% to 97.1%  97.0% to 96.1%  96.0% or below 0 | 0 1  2 4 6 |
| 3 | Order Delivery | All prisoner orders (Full  canteens/full orders) are delivered OTIF and accepted by the Serviced Site/Site.  *(Number of deliveries OTIF /*  *Number of deliveries x 100)* | Monthly & measured  collectively against all  Workshops | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | 99.1% or above  99.0% to 98.1%  98.0% to 97.1%  97.0% to 96.1%  96.0% or below | 0 1  2 4 6 |

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| **Table 2a – Operational Key Performance Indicators (KPI)** | | | | | |  |
| 4 | Wastage | The level of controllable wastage is to be minimised. It is measured as a % CoGs. Wastage includes for against holding Out of date, QA issues, damaged goods, lost product, known theft, kitchen issue.  *(Total value of wastage / total value of goods sold x 100)* | Monthly & measured per workshop | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | 0.60%  0.61% to 0.70%  0.71% to 0.80%  0.81% to 0.90%  0.91% or above | 0 1 2 4 6 |
| 5 | HMPPS Security Breach | Compliance with HMPPS Security requirements (Security incidents reported as formal escalation to Head of Retail and confirmed on investigation) Category of Breach as per defined terms) Note security Breaches will not count towards end of year average. | Monthly & measured  collectively against all  Workshops | Target Performance Level  Category A Breaches    Category B Breaches    Category C Breaches | 100%  1 Breach  1+ Breaches  1 Breach  1+ Breaches  1 Breach  1+ Breaches | 0  18 24 12  24  6  24 |
| 6 | Rehabilitation | Prisoner completion of Industry Standard and recognised relevant qualifications (NVQ or similar).  [Note to Bidder: Target Performance Level based on attaining 50% pass rate vs enrolment.]  *(Total passes/ number enrolled x 100)* | Monthly & measured  collectively against all Retail Workshops **(target achievement applied at end of Contract Year)**  Note;  Any Service Credits will be applied at and during the | Target Performance Level  (equal or greater than 50% of passes vs enrolments)  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure | 100%        98.00% to 99.99%  95.00 to 97.99%  90.00 to 94.99% | 0        1 2 4 |
|  | **Table 2a – Operational Key Performance Indicators (KPI)** | | | | |  |
|  |  | End of year calculation to normalise percentage. Capped at 100%.  (% achievement X 2)    KPI Calculation  Example.xlsx | month of March of that Contract Year.  Target will be calculated against completed courses in the Financial Year. | KPI Service Threshold | 89.99% or below | 6 |
| 7 | End User Delivery | The Delivery of prisoner orders on time to the receiving prisoner and accepted by prisoner.  [note: based on the agreed  Prisons utilising this End User Delivery, as per Prisons detailed in DWIP]  *(Number of deliveries OTIF /*  *Number of deliveries x 100)* | Measured weekly and collated monthly collectively against all  Prisons using the End User  Service | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | 99.1% or above  99.0% to 98.1%  98.0% to 97.1%  97.0% to 96.1%  96.0% or below | 0 1 2 4  6 |

* 1. Each of the Operational SPIs shall be measured at a frequency as detailed in Table 2b-Operational SPIs and accordingly relate to the standard of performance that is required and agreed, in respect of the specified tasks or activities, as specified for the relevant Operational SPI.

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| **Table 2b – Operational Phase Subsidiary Performance Indicators (SPI)** | | | | | |
| **No.** | **Key Performance**  **Indicator Title** | **Definition** | **Frequency of Measurement** | **Severity Levels** | |
| 8 | Reporting | Compliance with  Reporting Schedule | Monthly & measured  collectively against all reports due | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | 100%   1. report late and/or inaccurate. 2. reports late and/or inaccurate 3 reports late and/or inaccurate 4 reports late and/or inaccurate |
| 9 | Pick & Pack Productivity | All POFs picked and packed in line with Suppliers daily productivity schedule. Excludes any impact of activities outside Supplier control.  *(POFs processed / POFs scheduled for processing x 100)* | Monthly & measured by Workshop | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | In line  Up to 2% variance  3% to 4% variance  5% to 6% variance  7% and above variance |
| 10 | Provision of POFs | POF produced and supplied OTIF to Serviced Sites in accordance with Services Description & Delivery and Workshop Information Pack. | Weekly & measured per Serviced Site | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | 100%  99.9% to 98%  97.9% to 96%  95.9% to 94%  93.9% & below |

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| **Table 2b – Operational Phase Subsidiary Performance Indicators (SPI)** | | | | | |
|  |  | *(Qty supplied / Qty scheduled for supply x 100)* |  |  |  |
| 11 | Collection of completed  POFs | All completed POFs collected from Serviced Sites in line with  Delivery and Workshop Information Pack. Excludes instances when forms are not ready for collection at scheduled time.  *(Qty collected / Qty scheduled for collection x100)* | Weekly & measured per Serviced Site | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | 100%  99.9% to 98%  97.9% to 96%  95.9% to 94%  93.9% & below |
| 12 | Customer satisfaction surveys | Supplier shall, twice a  Contract year undertake  National Prison Retail Satisfaction Survey of the entire Prison population (both Public & Private) utilise the Retail Service.  *Undertake National Prison Retail*  *Satisfaction Survey* | Bi annual (twice a year) | Target Performance Level      KPI Service Threshold | 2 surveys issued to Prison population and returns evaluated and MI report issued  Failure to issue Prison survey or failure to produce MI report |
| 13 | Pin and Prisoner spends | Supplier shall Report to Finance Hubs the Pin and Prisoner Spends information OTIF as per Prison MOU. Based on | Weekly & measured per Serviced Site | Target Performance Level  Minor KPI Failure | 100% 99.9% to 98% |

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| **Table 2b – Operational Phase Subsidiary Performance Indicators (SPI)** | | | | | |
|  |  | the agreed Prisons utilising this End User Delivery, as per Prisons detailed in DWIP 101.  *(Qty collected / Qty scheduled for collection x100)* |  | Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | 97.9% to 96%  95.9% to 94%  93.9% & below |
| 14 | Amendments to End User Delivery orders collated  and reported | Supplier shall report to  Finance Hubs the  Amendments recorded  OTIF as per Prison MOU.  Based on the agreed  Prisons utilising this End  User Delivery, as per  Prisons detailed in DWIP 101  *(Qty collected / Qty scheduled for collection x100)* | Weekly & measured per Serviced Site | Target Performance Level  Minor KPI Failure  Serious KPI Failure  Severe KPI Failure  KPI Service Threshold | 100%  99.9% to 98%  97.9% to 96%  95.9% to 94%  93.9% & below |

1. **REPORTING OBLIGATIONS** 
   1. The Supplier shall ensure that it has appropriate systems and procedures in place and use all necessary measures and monitoring tools in order to capture and report on compliance with the Operational KPIs as required by this Schedule.
   2. In advance of each Performance Management and the Strategic Management Boards the Supplier shall deliver to the Authority a Performance Monitoring Report detailing performance in respect of each Operational KPI during that Month. The Performance Monitoring Report shall be included in the monthly report provided to the Performance and Strategic Management Boards and shall:
      1. be in the format reasonably specified by the Authority;
      2. identify any failures to meet a particular Operational KPI during the relevant Month;
      3. identify where Operational KPIs are met; and
      4. include relevant Explanatory Statement.
   3. In order to verify the accuracy of any Performance Monitoring Report:
      1. the Supplier shall promptly provide the Authority with such additional information and/or supporting documentation as the Authority may reasonably request from time to time;
      2. if requested to do so, the Supplier shall permit representatives of the Authority to have access to the Supplier's Premises for the purposes of inspecting records and other information held by the Supplier in relation to the Services.
   4. The Authority may provide representations and/or comments on any Explanatory Statement. The Supplier shall take reasonable account of all such comments and/or representations and, subject to this, shall fully implement any actions set out in the relevant Explanatory Statement.
2. **SERVICE CREDITS** 
   1. Each Service Point accrued shall have a value of 0.5% of the Supplier Profit as set out in the Financial Response Template. Where more than 9 Service Points are accrued in any one Month, the total value of the Performance Points accrued in that Month shall be deducted from the Charges payable to the Supplier.

For example; where Supplier incurs 12 Service Points then the Supplier will deduct from their next invoice the equivalent of 6% x Supplier Profit agreed for that period. So, if 5% is the Supplier Profit and that equates to £100,000 then Supplier will deduct (6% x £100000) = £6,000 from next invoice. If Supplier incurs 11 service points, then there will be no deduction from next invoice.

* 1. The Supplier acknowledges and agrees that the Service Credits are a reasonable method of price adjustment to reflect the value of poorly performed Services.
  2. The Supplier acknowledges agrees that the Service Credits are not an estimate of the loss or damage that the Authority may suffer or incur by reason of an Operational Phase KPI not being met and are not an exclusive remedy for the Authority. Any payment or deduction of Service Credits is without prejudice to the Authority's entitlement to damages that may be claimed from the Supplier under other specific remedies available to the Authority in accordance with this Agreement (provided that any claim for damages for a breach or failure where Service Credits have been paid or deducted in respect of the same failure or breach shall be reduced by the amount of those Service Credits).
  3. In all circumstances, where an Operational KPI or Operational SPI is not met the Supplier shall investigate the failure and, to the extent required by the Authority, advise the Authority promptly and within the prescribed timeframe of the remedial actions being taken to minimise the impact of the failure and prevent its reoccurrence.

1. **INDEMNITY** 
   1. From the Full Operational Commencement Date, the Supplier will indemnify the Authority against any costs or losses incurred as a result of the Supplier failing to deliver against the approved Operational KPIs. The Authority will provide evidence of costs and losses incurred. The costs and losses may include for but will not be limited to:
      1. any costs of employees, agents, consultants or sub-contractors of the Authority;
      2. any costs associated and incurred with purchases of contingency services or products;
      3. any costs associated with the storage or distribution of Products;
      4. any costs associated with sourcing alternative Products;
      5. sourcing additional storage facilities; and
      6. any other direct costs or losses incurred.
2. **OPERATIONAL REPEAT FAILURE**

Where

the number of Service Points accrued over any three (3) consecutive Months exceeds 24 (twenty-four) in aggregate

(each an "**Operational Repeat Failure**")

1. **RECTIFICATION PLAN**

Where an Operational Repeat Failure occurs the Supplier at its costs shall prepare a formal written Rectification Plan pursuant to Clause 25 of the Agreement.

1. **STEP-IN RIGHTS**

In the case of Operational Phase KPIs the total number of Service Points accrued over any three (3) consecutive Months exceeds 48 (forty-eight), then the Authority shall be entitled to exercise a right of step-in under Clause 27 of the Agreement.

1. **TERMINATION RIGHTS** 
   1. In the case of Operational KPIs:
      1. the total number of Service Points accrued over any three (3) consecutive Months exceeds 60 (sixty) in aggregate,

then the Authority shall be entitled to treat such failure as a Supplier Termination Event which is not capable of remedy and that accordingly provides grounds under Clause 30.1 for the Authority to terminate all or part of this Agreement immediately or as of the date specified in its notice to the Supplier.

1. **END OF YEAR OVERALL PERFORMANCE CALCULATION** 
   1. At the end of the contract year the Suppliers overall performance across the Operational KPI's will be reviewed against the agreed annual performance targets.
   2. Throughout the contract year the supplier will report on a monthly basis the performance against each of the agreed Operational KPI's and also include for a running year to date average per KPI. At the contract year end the average of each Operational KPI will be used to determine the overall performance of the Supplier. This overall average will be used to determine any Profit Share owing to the Supplier, subject to the terms detailed in Schedule 7.1.
   3. Achievement of the Rehabilitation KPI will be entered at year end.
   4. The HMPPS Security Breach KPI will not be included in the end of year average overall performance calculation.
   5. Table 1 below provides an example of how end of year overall performance will be calculated. **TABLE 1**

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| KPI # | Month1 | Month 2 | Month 3 | Month 4 | Month 5 | Month 6 | Month 7 | Month 8 | Month 9 | Month 10 | Month 11 | Month 12 | Year Ave |
| KPI 1 Order Processing | 98.1 | 97.3 | 98.3 | 99.1 | 99.3 | 98.1 | 96.4 | 97.1 | 98.3 | 98.6 | 97.7 | 99.5 | 98.2 |
| KPI 2 Stock Availability | 99.3 | 96.7 | 98.2 | 95.1 | 99.4 | 98.3 | 98.3 | 98.1 | 94.2 | 98.9 | 98.2 | 96.1 | 97.6 |
| KPI 3 Order Delivery | 98.2 | 98.2 | 98.5 | 99.7 | 98.3 | 97.2 | 99 | 96.3 | 95.2 | 97.3 | 96.4 | 94.2 | 97.4 |
| KPI 4 Wastage | 97.4 | 99.1 | 96.2 | 97.3 | 98.2 | 97.4 | 95.1 | 94.6 | 98.1 | 95.8 | 97.2 | 98.2 | 97.1 |
| KPI 5 Security Breach |  |  |  |  |  |  |  |  |  |  |  |  |  |
| KPI 6 Rehabilitation |  |  |  |  |  |  |  |  |  |  |  |  | 99.1 |
| KPI 7 End User Delivery | 99.2 | 95.2 | 98.1 | 97.4 | 94.1 | 98.2 | 98.5 | 98.5 | 99.1 | 98.7 | 98.9 | 97.2 | 97.8 |
| **End of Year Average** |  |  |  |  |  |  |  |  |  |  |  |  | **97.8** |

**Prison Retail Service Project**

**Schedule 2.3**

**Standards**

**SCHEDULE 2.3**

**STANDARDS**

**1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

"**Standards Hub**" the Government's open and transparent standards adoption process as documented at http://standards.data.gov.uk/;

"**Suggested Challenge**" a submission to suggest the adoption of new or

emergent standards in the format specified on Standards Hub;

"**Sustainability Reports**" written reports to be completed by the Supplier containing the information outlined in Table A of this Schedule;

"**Waste Hierarchy**" means prioritisation of waste management in the

following order of preference:

1. Prevention – by using less material in design and manufacture. Keeping products for longer;
2. Preparing for re-use – by checking, cleaning,

repairing, refurbishing, whole items or spare parts;

1. Recycling – by turning waste into a new substance or produce, including composting if it meets quality protocols;
2. Other Recovery – through anaerobic digestion,

incineration with energy recovery, gasification and pyrolysis which produce energy (fuels, heat and power) and materials from waste; some backfilling; and

1. Disposal – Landfill and incineration without energy recovery.
2. **GENERAL** 
   1. Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier's provision, or the Authority's receipt, of the Services.
   2. Save for any updates, replacements or changes to the existing Standards by the Authority which shall be implemented with immediate effect on reasonable notification by the Authority to the Supplier; any suggested changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
   3. Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Authority's receipt, of the Services is explained to the Authority (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
   4. Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.
   5. In addition to those standards listed in this Schedule below the standards that the Supplier shall comply with from the Effective Date are listed in Annex A.
3. **TECHNOLOGY AND DIGITAL SERVICES PRACTICE**

The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government's Technology Code of Practice as documented at [https://www.gov.uk/service-manual/technology/code-of- practice.html.](https://www.gov.uk/service-manual/technology/code-of-%20practice.html)

1. **OPEN DATA STANDARDS & STANDARDS HUB** 
   1. The Supplier shall comply to the extent within its control with UK Government's Open Standards Principles as documented at [https://www.gov.uk/government/publications/openstandards-principles/open-standards-principles,](https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles) as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.
   2. Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at [http://standards.data.gov.uk/)](http://standards.data.gov.uk/). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.
   3. The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Agreement is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Authority otherwise agrees in writing.
2. **TECHNOLOGY ARCHITECTURE STANDARDS**

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with TOGAF 9.2 or its equivalent, then this shall be deemed acceptable.

1. **ACCESSIBLE DIGITAL STANDARDS** 
   1. The Supplier shall comply with (or with equivalents to):
      1. the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA; and
      2. ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive

technology (AT) – Part 1: Requirements and recommendations for interoperability.

1. **SERVICE MANAGEMENT SOFTWARE & STANDARDS** 
   1. Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:
      1. ITIL v4;
      2. ISO/IEC 20000-1 2018 "Information technology — Service management Part 1";
      3. ISO/IEC 20000-2 2019 "Information technology — Service management – Part 2";
      4. ISO 10007: 2017 "Quality management systems – Guidelines for configuration management"; and
      5. ISO 22313:2020 "Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301" and, ISO/IEC 27031:2011 and ISO 22301:2019.
   2. For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.
2. **ENVIRONMENTAL STANDARDS** 
   1. The Supplier warrants that it shall obtain ISO 14001 (or equivalent) certification for its environmental management by no later than 9 months from the Operational Service Commencement Date and shall comply with and maintain certification requirements throughout the remainder of the Term. The Supplier shall follow a sound environmental management policy, ensuring that any Goods and the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard. Where the Supplier fails to comply with this paragraph 8.1 it shall be deemed to be a material Default for the purposes of clause 25 *(Rectification Plan Process)* of this Agreement and the Supplier shall be required to follow the Rectification Plan Process.
   2. The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2006 in compliance with Directive 2002/96/EC and subsequent replacements (including those in compliance with Directive 2012/19/EU).
   3. The Supplier shall (when designing, procuring, implementing and delivering the Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.
   4. The Supplier shall comply with the EU Code of Conduct on Data Centres' Energy Efficiency. The Supplier shall ensure that any data centre used in delivering the Services are registered as a Participant under such Code of Conduct.
   5. The Supplier shall comply with the Authority and HM Government's objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document

"Greening Government: ICT Strategy issue (March 2011)" at [https://www.gov.uk/government/publications/greening-government-ict-strategy.](https://www.gov.uk/government/publications/greening-government-ict-strategy)

* 1. The Supplier shall comply with the environmental requirements set out in the Annex to this Schedule.

1. **HARDWARE SAFETY STANDARDS** 
   1. The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:
      1. any new hardware required for the delivery of the Services (including printers), shall conform to BS EN 60958-1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the

future working user environment and shall position the hardware sympathetically, wherever possible;

* + 1. any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN 62368-

1:2020+A11:2020 or any subsequent replacements;

* + 1. any new laser printers or scanners using lasers, required for the delivery of the

Services, shall conform to either of the following safety Standards: BS EN 60825-

1:2014 or any subsequent replacements; and

* + 1. any new apparatus for connection to any telecommunication network, and

required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.

* 1. Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

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| **Name** | **Hyperlink** |
| **Schedule 2.1 – Services Description** | |
| Government Buying Standards for Foods | [https://www.gov.uk/government/publications/sustainableprocurement-the-gbs-for-food-and-catering-services](https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-food-and-catering-services) |
| Food Labelling Standards | [https://www.gov.uk/government/publications/sustainableprocurement-the-gbs-for-food-and-catering-services](https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-food-and-catering-services) |
| Public Health England | <https://www.gov.uk/government/publications/the-eatwell-guide> |
| Public Health Wales | <https://gov.wales/eatwell-guide> |
| PSI 23/2013 | [https://www.justice.gov.uk/downloads/offenders/psipso/psi2013/psi-23-2013-prisoner-retail.doc](https://www.justice.gov.uk/downloads/offenders/psipso/psi-2013/psi-23-2013-prisoner-retail.doc) |
| Food Standards Agency – Business Guidance | <http://food.gov.uk/business-industry/guidancenotes/hygguid/> |
| General Food Law EC/178/2002, and guidance available | [http://multimedia.food.gov.uk/multimedia/pdfs/fsa1782002guid ance.pdf](http://multimedia.food.gov.uk/multimedia/pdfs/fsa1782002guidance.pdf) |
| Origin of prepared food | [http://multimedia.food.gov.uk/multimedia/pdfs/originlabellinggui d0909.pdf](http://multimedia.food.gov.uk/multimedia/pdfs/originlabellingguid0909.pdf) |
| Eatwell Guide | <https://www.gov.uk/government/publications/the-eatwell-guide> |
| Eatwell Guide | <https://gov.wales/eatwell-guide> |
| The Drivers Handbook | Separate attachment to ITT/ITN as detailed at 2.7.4 Services Description |

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| Directive EN71 | <https://law.resource.org/pub/eu/toys/en.71.1.2014.html>note suppliers to ensure that products conform to all or relevant part of the 13 standards within EN71 |
| Directive 2008/98/EC  (Waste Framework  Directive) | [https://ec.europa.eu/environment/waste/framework/guidance.ht m](https://ec.europa.eu/environment/waste/framework/guidance.htm) |
| ISO14001 | [https://www.iso.org/iso-14001-environmentalmanagement.html](https://www.iso.org/iso-14001-environmental-management.html) |
| Health and Safety  Executive: Brexit  Transition Period | <http://www.hse.gov.uk/brexit/index.htm> |
| Official Government Buying Standards (GBS) for food and catering services | [https://www.gov.uk/government/publications/sustainableprocurement-the-gbs-for-food-and-catering-services](https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-food-and-catering-services) |
| Green Public  Procurement (GPP) | [https://ec.europa.eu/environment/gpp/pdf/Buying-GreenHandbook-3rd-Edition.pdf](https://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf) |
| Eco Management and Audit Scheme (EMAS) | [https://ec.europa.eu/environment/emas/emas\_for\_you/premiu m\_benefits\_through\_emas/legal\_compliance\_en.htm](https://ec.europa.eu/environment/emas/emas_for_you/premium_benefits_through_emas/legal_compliance_en.htm) |
| REACH | <https://echa.europa.eu/regulations/reach/legislation> |
| WEEE regulations | [https://www.gov.uk/guidance/regulations-waste-electrical-andelectronic-equipment](https://www.gov.uk/guidance/regulations-waste-electrical-and-electronic-equipment) |
| Ethical standards covered by ETI, OLE | <https://www.ethicaltrade.org/> |
| International Labour Organization Declaration on Fundamental  Principles and Rights at  Work (1998) | <http://www.ilo.org/declaration/lang--en/index.htm> |
| OECD Guidelines for  Multinational Enterprise | <https://www.oecd.org/corporate/mne/> |
| ILO Declaration on Fundamental Principles and Rights at Work  (1998) | <http://www.ilo.org/declaration/lang--en/index.htm> |
| SA8000 | [http://www.standardsmap.org/assets/media/SocialAccountabilit yInternationalSA8000/English/AtAGlance\_EN.pdf](http://www.standardsmap.org/assets/media/SocialAccountabilityInternationalSA8000/English/AtAGlance_EN.pdf) |
| Ethical Trade Initiative (ETI) Base Code | <https://www.ethicaltrade.org/eti-base-code> |

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| Voluntary Code of Practice on Best Practice on Contractual Relationships | <http://www.dairyuk.org/2014-04-23-11-00-42> |
| Government Service Design Manual | <https://www.gov.uk/service-manual> |
| National Cyber Security Centre cloud security principles | [https://www.ncsc.gov.uk/collection/cloud-](https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles)  [security?curPage=/collection/cloud-security/implementing-thecloud-security-principles](https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles) |
| WCAG Level AA  accessibility standard | [https://www.gov.uk/service-manual/helping-people-to-useyour-service/understanding-wcag](https://www.gov.uk/service-manual/helping-people-to-use-your-service/understanding-wcag) |
| Data Protection Act | <https://www.gov.uk/data-protection> |
| MoJ Standard Information Base. | [https://www.gov.uk/government/publications/governmentbaseline-personnel-security-standard](https://www.gov.uk/government/publications/government-baseline-personnel-security-standard) |
| ISO/IEC 27001 | <https://www.iso.org/isoiec-27001-information-security.html> |
| ISO/IEC 27002 | <https://www.iso.org/isoiec-27002-information-security.html> |
| Equality Act 2010 | <https://www.gov.uk/guidance/equality-act-2010-guidance> |
| UK Government Security  Classifications Policy | [https://www.gov.uk/government/publications/governmentsecurity-classifications](https://www.gov.uk/government/publications/government-security-classifications) |
| Open Standards for Government. | [https://www.gov.uk/government/collections/open-standardsfor-government-data-and-technology](https://www.gov.uk/government/collections/open-standards-for-government-data-and-technology) |
| Open Web Application  Security Project  (OWASP) 'Top 10' | <https://owasp.org/www-project-top-ten/> |
| MOJ Password Standards/Policy | [https://github.com/ministryofjustice/itpolicycontent/blob/master/ content/security/framework/password-standard.md](https://github.com/ministryofjustice/itpolicycontent/blob/master/content/security/framework/password-standard.md) |
| UK National Cyber Security Centre (NCSC) publications and guidance | [https://www.ncsc.gov.uk/section/advice-guidance/all-](https://www.ncsc.gov.uk/section/advice-guidance/all-topics?topics=Critical%20National%20Infrastructure%20(CNI)&sort=date%2Bdesc&start=0&rows=20)  [topics?topics=Critical%20National%20Infrastructure%20(CNI) &sort=date%2Bdesc&start=0&rows=20](https://www.ncsc.gov.uk/section/advice-guidance/all-topics?topics=Critical%20National%20Infrastructure%20(CNI)&sort=date%2Bdesc&start=0&rows=20) |
| Standard MOJ Service Levels | [TBC] |
| **Schedule 2.4A and 2.4B: Security Management** | |
| ISO/IEC 27001:2013 | <https://www.iso.org/isoiec-27001-information-security.html> |
| NCSC Assured Service (CAS) Service | [https://www.ncsc.gov.uk/information/commodity-informationassurance-services](https://www.ncsc.gov.uk/information/commodity-information-assurance-services) |

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| Requirement Sanitisation Standard |  |
| ISO/IEC 27002 | <https://www.iso.org/isoiec-27002-information-security.html> |
| Security Policy Framework | [https://www.gov.uk/government/publications/security-policyframework](https://www.gov.uk/government/publications/security-policy-framework) |
| CVSS scores as set out by NIST | <http://nvd.nist.gov/cvss.cfm> |
| Prison Service Instructions | <https://www.justice.gov.uk/offenders/psis> |
| Prison Service Orders | <https://www.justice.gov.uk/offenders/psos> |
| NCSC End User Device (EUD) Security Guidance | <https://www.ncsc.gov.uk/collection/end-user-device-security> |
| ISO/IEC 20000 | <https://www.iso.org/standard/60031.html> |
| Official Secrets Act 1989 | <http://www.legislation.gov.uk/ukpga/1989/6/contents> |
| **Schedule 2.6 Additional Users** | |
| Contract Right Third Party <http://www.legislation.gov.uk/ukpga/1999/31/contents>Act (CRTPA) | |
| **Schedule 5.1 Digital** | |
| ISO/IEC 27001 | <https://www.iso.org/isoiec-27001-information-security.html> |
| ISO/IEC 20000 | <https://www.iso.org/standard/60031.html> |
| Malware Policy | [https://ministryofjustice.github.io/securityguidance/standards/anti-malware/#anti-malware](https://ministryofjustice.github.io/security-guidance/standards/anti-malware/#anti-malware) |
| Patching Policy | [https://intranet.justice.gov.uk/guidance/security/it-computersecurity/ict-security-policy-framework/patch-managementstandard/](https://intranet.justice.gov.uk/guidance/security/it-computer-security/ict-security-policy-framework/patch-management-standard/) |
| Password Standards; | [https://github.com/ministryofjustice/itpolicycontent/blob/master/ content/security/framework/password-standard.md](https://github.com/ministryofjustice/itpolicycontent/blob/master/content/security/framework/password-standard.md) |
| Information Handling Policy | https://intranet.justice.gov.uk/guidance/security/it-computersecurity/ict-security-policy-framework/information-classificationand-handling-policy/ and  [https://intranet.justice.gov.uk/guidance/security/it-computersecurity/ict-security-policy-framework/data-handling-andinformation-sharing-guide/](https://intranet.justice.gov.uk/guidance/security/it-computer-security/ict-security-policy-framework/data-handling-and-information-sharing-guide/) |

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| Security Monitoring Policy | [https://intranet.justice.gov.uk/guidance/security/it-computersecurity/ict-security-policy-framework/protective-monitoringguide/](https://intranet.justice.gov.uk/guidance/security/it-computer-security/ict-security-policy-framework/protective-monitoring-guide/) |
| **Schedule 7.3 Benchmarking** | |
| Late Payment Of  Commercial Debts  (Interest) Act 1998 | [www.legislation.gov.uk/ukpga/1998/20/contents](http://www.legislation.gov.uk/ukpga/1998/20/contents) |
| Contracts (Rights of Third Parties) Act 1999 | [www.legislation.gov.uk/ukpga/1999/31/contents](http://www.legislation.gov.uk/ukpga/1999/31/contents) |
| **Schedule 8.6 Service Continuity and Corporate Resolution Planning** | |
| ISO/IEC 27002 | <https://www.iso.org/isoiec-27002-information-security.html> |
| Resolution Planning Guidance published by the Cabinet Office  Government Commercial  Function | [https://www.gov.uk/government/publications/the-outsourcingplaybook](https://www.gov.uk/government/publications/the-outsourcing-playbook) |
| **Schedule 9.1 Staff Transfer** | |
| Pension Schemes Act 1993 | <http://www.legislation.gov.uk/ukpga/1993/48/contents/enacted> |
| the Employment Regulations | <https://www.legislation.gov.uk/ukpga/1996/18/contents> |
| Acquired Rights Directive | <http://tupe.uk.net/directive-200123ec/> |
| **Schedule 11 Processing Personal Data** | |
| Article 30 GDPR | [https://www.privacy-regulation.eu/en/article-30-records-ofprocessing-activities-GDPR.htm](https://www.privacy-regulation.eu/en/article-30-records-of-processing-activities-GDPR.htm) |
| ICO Guidance | [https://ico.org.uk/for-organisations/guide-to-dataprotection/guide-to-the-general-data-protection-regulationgdpr/](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/) |
| **Goods and Delivery** | |
| Sale of Goods Act 1979 | <http://www.legislation.gov.uk/ukpga/1979/54/part/IV> |
| Packaging (Essential Requirements)  Regulations 2015 (SI  2015/1640) | [https://www.legislation.gov.uk/uksi/2015/1640/regulation/3#reg ulation-3-5](https://www.legislation.gov.uk/uksi/2015/1640/regulation/3#regulation-3-5) |
| Packaging & Packaging  Waste Directive  (94/62/EC) | [https://www.eea.europa.eu/policy-documents/directive-94-62ec-on](https://www.eea.europa.eu/policy-documents/directive-94-62-ec-on) |
| BS EN 13430 on  recyclability | [https://infostore.saiglobal.com/en-us/Standards/EN-134302004-344934\_SAIG\_CEN\_CEN\_789181/](https://infostore.saiglobal.com/en-us/Standards/EN-13430-2004-344934_SAIG_CEN_CEN_789181/) |
| BS EN 13429 on  reusability | [https://www.en-standard.eu/bs-en-13429-2004-packagingreuse/](https://www.en-standard.eu/bs-en-13429-2004-packaging-reuse/) |
| **Other** | |
| Policy Framework – Incentives | [https://www.gov.uk/government/publications/incentives-policyframework](https://www.gov.uk/government/publications/incentives-policy-framework) |
| Policy Framework –  Prisoner Complaints | [https://www.gov.uk/government/publications/prisonercomplaints-policy-framework](https://www.gov.uk/government/publications/prisoner-complaints-policy-framework) |
| Policy Framework – Release on Temporary  Licence (ROTL) Policy  Framework | [https://www.gov.uk/government/publications/release-ontemporary-licence](https://www.gov.uk/government/publications/release-on-temporary-licence) |
| Prisoner Retail –  Operational Instructions | [https://www.justice.gov.uk/downloads/offenders/psipso/psi2013/psi-23-2013-prisoner-retail.doc](https://www.justice.gov.uk/downloads/offenders/psipso/psi-2013/psi-23-2013-prisoner-retail.doc) |
| PSI 2010-06 – Conduct and discipline | [https://www.justice.gov.uk/downloads/offenders/psipso/psi2010/psi-2010-06-conduct-discipline.doc](https://www.justice.gov.uk/downloads/offenders/psipso/psi-2010/psi-2010-06-conduct-discipline.doc) |
| PSI 23 /2013 – Prison Retail | [https://www.justice.gov.uk/downloads/offenders/psipso/psi2013/psi-23-2013-prisoner-retail.doc](https://www.justice.gov.uk/downloads/offenders/psipso/psi-2013/psi-23-2013-prisoner-retail.doc) |
| Web Content Accessibility Guidelines 2.1 | <http://www.w3.org/TR/WCAG21/> |

**ANNEX A**

**ENVIRONMENTAL REQUIREMENTS**

1. **Environmental Requirements** 
   1. The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force in relation to the Agreement.
   2. The Supplier warrants that it has obtained ISO 14001 certification from an accredited body and shall comply with and maintain certification requirements throughout the Term.
   3. In performing its obligations under the Agreement, the Supplier shall to the reasonable satisfaction of the Authority:
      1. demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Authority's reasonable questions;
      2. prioritise waste management in accordance with the Waste Hierarchy;
      3. be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Agreement is taken to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;
      4. ensure that it and any third parties used to undertake recycling disposal or other

recovery as a consequence of this Agreement do so in a legally compliant way, undertake reasonable checks on a regular basis to ensure this;

* + 1. inform the Environmental Agency within one Working Day in the event that a permit or exemption to carry or send waste generated under this Agreement is revoked and in circumstances where a permit or exemption to carry or send waste generated under this Agreement is revoked the Supplier shall cease to carry or send waste or allow waste to be carried by any Sub-contractor until authorisation is obtained from the Environmental Agency;
    2. minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and
    3. reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.
  1. The Supplier shall use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Agreement. Where unavoidable under reasonable endeavours, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so.
  2. The Supplier shall not provide to the Authority Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.
  3. The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Agreement unless:
     1. it is a Permitted Item; or
     2. the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.
  4. The Supplier shall complete the Sustainability Report in relation its provision of the Services under this Agreement and provide the Sustainability Report to the Authority on the date and frequency outlined in Table C of this Annex.
  5. The Supplier shall comply with reasonable requests by the Authority for information evidencing compliance with the provisions of this Annex within fourteen (14) days of such request, provided that such requests are limited to two per Contract Year.

**TABLE A –SUSTAINABILITY REPORTS**

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| **Report Name** | **Content of Report** | **Frequency of Report** |
| **Sustainability Impact** | 1. the key sustainability impacts identified; 2. sustainability improvements made; 3. actions underway or planned to reduce sustainability impacts; 4. contributions made to the Authority's sustainability policies and objectives; 5. sustainability policies, standards, targets and practices that have been adopted to reduce the environmental impact of the Supplier's operations and evidence of these being actively pursued, indicating arrangements for engagement and achievements. This can also include where positive sustainability impacts have been delivered; and 6. risks to the Service and   Subcontractors of climate change and severe weather events such as flooding and extreme temperatures including mitigation, adaptation and continuity plans employed by the  Supplier in response to those risks. | On the anniversary of the Effective Date |
| **Waste created** | By type of material the weight of waste categories by each means of disposal in the Waste Hierarchy with separate figures for disposal by incineration and landfill | Before contract award and on the anniversary of the Effective Date |
| **Waste permits** | Copies of relevant permits and exemptions for waste, handling, storage and disposal | Before the Effective Date, on the anniversary of the Effective Date and within ten (10) Working Days of there is any change or renewal to license or exemption to carry, store or dispose waste |
| **Greenhouse Gas Emissions** | Indicate greenhouse gas emissions making use of the use of the most recent conversion guidance set out in 'Greenhouse gas reporting – Conversion factors' available online at [https://www.gov.uk/guidance/measuring-andreporting-environmental-impacts-guidance-forbusinesses](https://www.gov.uk/guidance/measuring-and-reporting-environmental-impacts-guidance-for-businesses) | On the anniversary of the Effective Date |
| **Water Use** | Volume in metres cubed where workshop facilities are fitted with meters | On the anniversary of the Effective Date |
| **Energy Use** | Separate energy consumption figures(where assets are fitted with meters or where the facility is fitted with meters) for:   1. assets deployed on the Supplier's site; 2. assets deployed on the Authority's   site;   1. assets deployed off-site; and 2. energy consumed by IT assets and by any cooling devices deployed.   Power Usage Effectiveness (PUE) rating for each data centre/server room in accordance with ISO/IEC 31034-2/EN 50600-4-2. | On the anniversary of the Effective Date |
| **Transport Use** | 1. miles travelled by transport and fuel type, for goods delivered to the Authority's sites; 2. miles travelled by staff when visiting the Authority's sites from the Supplier's sites or home; 3. resulting Green House Gas (GHG) emissions using agreed Conversion Factors; and 4. the number of multi-lateral e-meetings   i.e. with more than two attendees, held by type (audio, webinar, v/conferencing, Teams, skype) | On the anniversary of the Effective Date |

**Prison Retail Service Project**

**Schedule 2.4**

**Security Management**

**SCHEDULE 2.4**

**SECURITY MANAGEMENT**

**1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

"**Data Destruction**" Data Destruction is the process of erasing or otherwise destroying data or information whether in physical form (such as printed paper) or stored on virtual/electronic or physical mediums such as, but not limited to, tapes and hard disks; the purpose is to render data completely irretrievable and inaccessible, and therefore void;

"**Incident Report**" a formal document outlining a series of events and/or statements in relation to a Security Incident. The document includes, but is not limited to, coverage of the timeline of the incident, commencing with initial awareness, and concluding at the later of remediation or incident closure; contact details for all actors, stakeholders, and interested parties (including police and police reference numbers, etc.); any geographic details (location of affected devices, etc.); a list of all losses or exposures (data files lost or compromised, etc.); a detailed account of all remedial activity taken; a detailed account of planned remedial activity, with an associated timeline; an assessment of the root cause or causes; an assessment of incident severity; an assessment of consequences; and any other supporting documentation and technical evidence not already addressed;

"**National Cyber Security** the [NCSC](https://www.ncsc.gov.uk/) is the UK's authority on cyber security; **Centre (NCSC)**"

"**Security Incident**" the deliberate, accidental or inadvertent access of a

system by an unauthorised person, or unauthorised alteration of a system's functionality;

"**Application programming** in general terms, it is a set of clearly defined methods of **interface (API)**" communication among various components.

1. **PURPOSE** 
   1. This Schedule conveys the spirit, principles and obligations of the minimum information security requirements required of the Supplier by the Authority while the Supplier, its Subcontractors, Sub-processors and supply-chain are in possession of, or maintains access to, Authority Data, information or systems.
   2. Due to the constant nature of evolving informational risk threats, these requirements convey principles in lieu of an exhaustive and complete description of all possible definable requirements. The Supplier is required to create and maintain a proportional and holistic approach to information security in order to appropriately safeguard Authority Materials and Authority Data, including Supplier generated data or information, in relation to the fulfilment of this Agreement.
   3. Due to the constant nature of evolving information risk and associated standards and guidance, a non-exhaustive list correct at the time of creation is included within Annex A to this Schedule. The Supplier must review and comply with these policies throughout its provision of the Services during the Term.
   4. The Supplier must continuously review and improve its approach to information security and any products or services supplied, maintained or monitored as part of this contract, to ensure any associated controls or defences are appropriate, modern, current and proportional, in order to adequately protect and assure data or information at any point in time.
   5. The Supplier must take all reasonable measures to ensure it (and any Sub-contractors and Sub-Processors) creates and maintains an adequate information security posture, fully compliant with this schedule.
2. **GOVERNANCE** 
   1. The Supplier shall create as required prior to the processing of Authority Data, and thereafter maintain, an adequate and robust information security governance regime.
   2. The Supplier shall prepare and submit to the Authority for approval in accordance with Paragraph 3.5.8, prior to go live, a fully developed, complete and up-to-date plan for the management of information security ("**Security Management Plan**") which shall comply with the requirements of Paragraph 3.5 and ISO/IEC 27001 certification (and any agreed equivalent replacement certification) recognised by the British Standards Institution.
   3. The Supplier shall have in place and shall maintain Cyber Essentials Plus (or any agreed equivalent replacement certification) throughout the Term and thereafter for as long as the Supplier holds or processes any Authority Materials and Authority Data where a directly comparable and verifiable compliance regime (such as suitably scoped ISO27001 compliance, supported by suitably scoped and qualified independent technical validations and associated remediations) are not held.
   4. The Parties acknowledge that the purpose of the Security Management Plan is to ensure a mature, modern and holistic organisational approach to security under which the specific requirements of this Agreement will be met.
   5. The Security Management Plan shall:
      1. comply with the ISO/IEC 27001 and ISO/IEC 27002 certifications (or any agreed equivalent replacement certifications) recognised by the British Standards Institution;
      2. identify the necessary delegated organisational roles and the individuals filling those roles, defined for those responsible for ensuring this Schedule is complied with by the Supplier, and the Supplier shall update the Authority within 24 hours of any change;
      3. detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the

Supplier) and any technology (IT), Information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services. This shall include SLAs, Mean Times To Recover, Patching schedules and responses to notifications of vulnerabilities;

* + 1. unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the

Authority System (to the extent that it is under the control of the Supplier) and any

IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;

* + 1. set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule;
    2. demonstrate that the Supplier Solution has minimised the Authority and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable commodity services (for example, the use of commodity 'platform as a service' offerings from the UK HMG Crown Commercial Services G-Cloud catalogue);
    3. be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, crossreferencing if necessary to other Schedules which cover specific areas included within those standards; and
    4. be written in plain English; in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.
  1. Where the Supplier does not or anticipates that it will not comply with the ISO/IEC 27001 and ISO/IEC 27002 certifications (or any agreed equivalent replacement certifications) recognised by the British Standards Institution by the Operational Services Commencement Date, the Supplier will:
     1. notify the Authority at least 4 weeks prior to the Operational Services Commencement Date that the certifications will be delayed and stipulate the anticipated date for obtaining such certifications; and
     2. provide a detailed and robust plan of how and by when it will achieve compliance with ISO 27001 and ISO 27002 to the Authority for Approval.

For the avoidance of doubt the Supplier shall not bring online or operate the Information Security Management System as part of the provision of the Services until it has achieved assurance/certification in line with the abovementioned standards.

* 1. Achievement of compliance with ISO27001 and ISO 27002 will form part of the individual Workshop Readiness Checks.
  2. If the Security Management Plan submitted to the Authority pursuant to Paragraph 3.2 is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule.
  3. If the Security Management Plan is not approved by the Authority, the Supplier shall, at the supplier's expense:
     1. amend it within 10 (ten) working days of a notice of non-approval from the Authority and re-submit it to the Authority for approval.
     2. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 (fifteen) working days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority.
     3. If the Authority does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure.
     4. No approval to be given by the Authority pursuant to this Paragraph 3.9 may be unreasonably withheld or delayed. However, any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 3.5 shall be deemed to be reasonable.
  4. Approval by the Authority of the Security Management Plan pursuant to Paragraph 3.6 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.
  5. The Security Management Plan and ISO/IEC 27001 certification (and any agreed equivalent replacement certification) must have an adequate scope to encompass all possible methods, locations and personnel that may be utilised in the processing of Authority Materials.
  6. The Security Management Plan scope must include applicable Authority security policies including, but not limited to: malware policies, software patching policies and password standards.
  7. The Security Management Plan and ISO/IEC 27001 certification (and any agreed equivalent replacement certification) must be evidenced to the Authority on demand, including but not limited to, statements of scope and applicability, risk management plans and documentation and any other related artefacts.
  8. The Supplier shall ensure there is always a named person and/or role from the Supplier, who is accountable for the Supplier's information risk and security management and the supplier should notify the Authority of any change within 24 hours. The named individual must be trained and empowered to take action necessary to safeguard the Authority's data without undue recourse to others. The Supplier shall include such named person in the Key Personnel list as part of Schedule 9.2 (Key Personnel).
  9. The Authority retains rights to audit (in accordance with the provisions of this Agreement) the Supplier's information security posture at any time and the Supplier will provide relevant certifications, information, data and artefacts applicable to the same on demand, including but not limited to, physical access for the purposes of audit to locations used to process Authority Data subject to scheduling and adequate notice periods being provided by the Authority to the Supplier.
  10. Security must be embedded in all service management processes and tools, including but not limited to, change management, incident management, and other service management artefacts as described within ISO/IEC 20000 (and any agreed equivalent replacement certification).
  11. The Supplier's organisation, including but not limited to, Supplier Systems and Personnel used or involved in the fulfilment this Agreement, must adhere to all applicable Laws or Regulation, including but not limited to, the Official Secrets Act (1989) and Data Protection Legislation and comply with the relevant provisions of this Agreement.
  12. Supplier Systems must notify all users to read and accept the terms and conditions of the Supplier System, upon system registration, authentication or re-validation.
  13. The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
      1. emerging changes in Good Industry Practice;
      2. any change or proposed change to the IT Environment, the Services and/or associated processes;
      3. any new perceived or changed security threats; and
      4. any reasonable change in requirement requested by the Authority.
  14. The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Management Plan at no additional cost to the Authority.
  15. Subject to Paragraph 3.19, any change which the Supplier proposes to make to the Security

Management Plan (as a result of a review carried out pursuant to Paragraph 3.16, an Authority request or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.

* 1. The Authority may, where it is reasonable to do so, approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

1. **ASSURANCE** 
   1. The Supplier shall comply with the UK Government Security Classifications Policy in order to recognise government classification and handling markings and ensure the appropriate level of information security and information management required by the same.
   2. The Supplier shall ensure that any technology developed or utilised for fulfilment of this Agreement, will be developed, reviewed and where appropriate proportionally remediated, in line with Good Industry Practice including professional certified independent technical security testing (such as Green Light CHECK Scheme) or as approved by the Authority against application source code and associated underlying infrastructure, and where possible utilise and align with the Open Standards for Government.
   3. Professional certified independent technical security testing must include, but not be limited to, the Open Web Application Security Project (OWASP) 'Top 10'.
   4. The Supplier may not utilise Authority Materials or Authority Systems for purposes other than those permitted by this Agreement and take all proportional measures to ensure the same.
   5. The Supplier must not Store or Process any Authority Materials outside of the United Kingdom without the prior written consent of the Authority.
2. **ACCESS, AUTHORISATION, AUTHENTICATION AND AUDIT** 
   1. The Supplier Systems, including those controlling access to physical locations, must have auditable authorisation, authentication and access control based on least privilege, and aligned appropriately to the business and individual user requirements.
   2. The Supplier Systems must ensure logical separation between purposes and zones of trust, for example, establishing and enforcing logical delineation between Supplier Systems involved in the delivery of the Services and development environments used to iterate and improve the Supplier Systems involved in the delivery of the Services. Such separation must include, but not be limited to, the unique credentials and the prohibition of the use of Authority Materials for non-service fulfilment (for example, testing) purposes unless authorised in advance by the Authority in writing.
   3. The Supplier's access to the Authority Systems must be limited to only systems, services and Supplier Personnel directly required for the performance of the Services in accordance with the terms of this Agreement.

Where Supplier access to Authority Systems uses or depends upon API credentials (such as providing a token or other credential for use during authentication, authorisations, or access control to an API endpoint), Supplier shall use industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed and during storage.

1. **RISK ASSESSMENT & MANAGEMENT** 
   1. The Supplier must undertake risk assessment(s) of any component, including but not limited to systems, services, personnel, physical locations and supply chain (including all Subcontractors and Sub-Processors), utilised or otherwise involved in the provision of the Services.
   2. Holistic risk assessment(s) must support the Supplier's Information Security Management System and proactively recommend appropriate additional controls to be proportionally implemented to continuously refresh and improve the Supplier's information security regime.
   3. The Supplier must disclose risk assessment findings on request to the Authority.
2. **AWARENESS & TRAINING** 
   1. Supplier Personnel must be provided with adequate and relevant security-related education, training and awareness and include, but not be limited to, technical, physical and procedural security.
   2. Education, training and awareness courses or certifications must be completed by all Supplier Personnel utilised in the direct or indirect performance of the Services at least once in every contracted year.
   3. In particular, awareness and training materials must include and address items found or highlighted in the risk assessments 6.0 carried out with regard to the Supplier's provision of Services to the Authority.
3. **PERSONNEL SECURITY** 
   1. The Supplier warrants that all Supplier Personnel are assured to the UK Government Baseline Personnel Security Standard (BPSS) prior to the ability to directly, or indirectly, access or influence Authority Systems or Authority Materials.
   2. Additional Supplier Personnel clearances or vetting may be required and will be determined and notified by the Authority on a case-by-case basis from time-to-time.
   3. The cost of additional Supplier Personnel clearances or vetting is the responsibility of the Supplier and the sponsorship for the same is the responsibility of the Authority.
4. **TECHNICAL SECURITY** 
   1. The Supplier warrants that all Supplier Systems or Authority Systems utilised directly, or indirectly in the performance of the Services are configured and maintained in accordance with corresponding vendor best practices or as superseded by Good Industry Practice, including but not limited to vulnerability and patch management through an aggressive and timely patching regime and security-related change control to avoid regression or introduction of negative security changes.
   2. The Supplier must continuously review technical security measures to ensure any appropriate, applicable and proportional changes are applied in response to, and in accordance with, changes to government and industry guidance.
   3. Technical Security Standards, policies and guidance should align to UK National Cyber Security Centre (NCSC) publications and guidance wherever possible. The Authority reserves the right to request information on, and audit, the same.
   4. The Supplier must ensure technical solutions and services adopt and fully comply with modern connectivity and cryptographic standards after applicable guidance and standards have been updated, including but not limited to, implementing iterations to in-transit encryption such as Transport Layer Security (TLS) and Internet Protocol Security (IPSec) and at-rest encryption.
5. **OPERATIONAL SECURITY & INCIDENT MANAGEMENT** 
   1. The Supplier must, at the Authority's request, deliver all or specified logs from systems they control, that contain Authority Data, to a location specified by the Authority in as near real time as the system can achieve. These logs must not be altered or filtered any more than is necessary in order to extract them to the Authority's designated location.
   2. The Supplier must have a robust testing strategy, including regular Vulnerability Assessments and Penetration Tests. The outcomes of these tests, insofar as they apply to Supplier Systems containing the Authority Data, must be shared with the Authority and taken into account when implementing and updating the Security Management Plan.
   3. The Supplier must conduct continuous vulnerability, security, penetration testing. The findings are used to produce, and implement, security improvement plans to address fully any issues raised by the same.
   4. Information security related monitoring must be carried out in line with modern best practices and as required by both risk assessment findings and the Supplier's Information Security Management System.
   5. The Supplier must create and maintain adequate forensic readiness capability to facilitate independent review(s) of information security events or incidents. Such readiness must include, but not be limited to, granular access control data, technical network traffic data and a detailed timeline of system or user events per security event or incident.
   6. The Supplier must inform the Authority if there is reasonable suspicion and/or confirmation of a negative security event or data breach that directly or indirectly processes Authority Material or Authority Systems, within 24 (twenty-four) hours of awareness.
   7. The Supplier must inform the Authority of a press release or supplier notification of a vulnerability within 24 hours, unless contracts with said supplier preclude it.
   8. The Supplier must provide the Authority with an Incident Report following remediation to any Security Incident demonstrating timescales of events from detection through to recovery.
6. **DATA DESTRUCTION** 
   1. The Authority requires the Supplier to ensure that Data Destruction has been adequately completed at the natural end and/or termination of contract and/or end of Term as per Schedule 8.5 para 7.6 (Exit Management).
   2. The Supplier shall take all reasonable commercial measures to ensure Data Destruction is an irrevocable action to prevent the reconstitution of data from any individual or aggregate source, including archives, backups or 'cloud' storage:
      1. through the revocation or otherwise destruction of decryption keys and/or decryption mechanisms in order to render data inaccessible or otherwise void through the use of modern cryptography and/or;
      2. data overwriting methods consisting of at least 3 (three) complete overwrite passes of random data and/or;
      3. paper cross-shredding methods to satisfy at least the DIN 66399 Level 4 standard with a maximum cross cut particle surface area 160 (one hundred and sixty) millimetres squared with a maximum strip width of 6 (six) millimetres and/or;
      4. in alignment with methods described in Schedule 8.5 para 7.6 (Exit Management).
   3. The Supplier shall notify the Authority when data destruction has taken place, including the final date by which such destruction shall be complete in the case of scheduled data destruction or natural data management lifecycles such as through automated backup or disaster recovery systems.
   4. Where data cannot be immediately destroyed, access control methods must be put in place to limit completely any ability for data Retrieval or Processing until data destruction is completed.
   5. The Supplier shall provide evidence of data destruction on request from the Authority, including but not limited to, copies of third-party data destruction certificates, copies of internal policy and process documents in relation to data management and data destruction.
   6. The Supplier shall notify the Authority within 24 (twenty-four) hours of identification of unsuccessful or incomplete data destruction.
7. **BUSINESS CONTINUITY** 
   1. In addition to the Supplier's obligations under Schedule 8.6 (Service Continuity and Corporate

Resolution Planning), where applicable, the Supplier shall appropriately backup and/or archive Authority Data and any data arising from the Services at least once every 24 (twenty-four) hours.

* 1. The Supplier shall ensure that any data backup or archiving locations meet the information security requirements of the original data source, system or service.
  2. The Supplier shall ensure that the backup systems and resulting backup data copies are adequately resistant from tamper, corruption or otherwise negative influence, such as (but not limited to) virulent malware manipulating both source and backup data copies in the same event.
  3. The Supplier shall – not less than quarterly – test and assure that backup and archival systems are viable, including but not limited to, a data and system restoration test to validate that restoration of the backup and archival systems are fully functional as designed and required by the Supplier's business continuity policies and plans. The Supplier will also verify that back-up is retained for 7 years

**ANNEX A**

**SCHEDULE 2.4**

**SECURITY MANAGEMENT**

The list below is a non-exhaustive list of standards and guidance location(s) the Supplier is required to review and appropriately consider and integrate into their Services.

This list is supplementary to, or may be superseded by, other published commercial best practices/guidance, National Cyber Security Centre (NCSC) guidance or Authority guidance/instructions.

This list is correct at the time of issue and may be revised from time to time.

|  |  |
| --- | --- |
| **Guidance & Policies** | **Location** |
| Ministry of Justice Data Sharing Principles | [link](https://mojdigital.blog.gov.uk/2016/10/06/data-principles-the-right-ingredients-to-solving-the-data-spaghetti-problem/) |
| Ministry of Justice Security Guidance | [link](https://ministryofjustice.github.io/security-guidance/) |
| APIs and System Integration Standard | [link](https://www.gov.uk/guidance/gds-api-technical-and-data-standards) |
| Email security Standard | [link](https://www.gov.uk/government/publications/email-security-standards) |
| Digital Service Standard | [link](https://www.gov.uk/service-manual/service-standard) |
| Open Standards for Government | [link](https://www.gov.uk/government/publications/open-standards-for-government) |
| UK HMG Technology Code of Practice | [link](https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice) |
| Minimum Cyber Security Standard | [link](https://www.gov.uk/government/publications/the-minimum-cyber-security-standard) |
| ISO/IEC 20000 | [link](http://www.iso.org/) |
| ISO/IEC 27001 | [Link](https://www.iso.org/isoiec-27001-information-security.html)<http://www.iso.org/> |
| ISO/IEC 27002 | [link](https://www.iso.org/standard/54533.html) |
| Cyber Essentials Plus | [link](https://www.cyberessentials.ncsc.gov.uk/) |
| National Cyber Security Centre (guidance) | [link](https://www.ncsc.gov.uk/guidance) |
| National Cyber Security Centre (risk management) | [link](https://www.ncsc.gov.uk/guidance/risk-management-collection) |
| National Cyber Security Centre (CHECK scheme) | [link](https://www.ncsc.gov.uk/scheme/penetration-testing) |
| National Cyber Security Centre (end-user device reset procedures) | [link](https://www.ncsc.gov.uk/guidance/end-user-device-guidance-factory-reset-and-reprovisioning) |
| National Cyber Security Centre (secure sanitisation of storage media) | [link](https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media) |
| National Cyber Security Centre (Cloud Security  Principle 2: Asset Protection and Resilience – Data Destruction) | [link](https://www.ncsc.gov.uk/guidance/cloud-security-principle-2-asset-protection-and-resilience#sanitisation) |
| Payment Card Industry Data Security Standard (Data Destruction) | [link](https://www.pcisecuritystandards.org/) |
| Government Security Classifications | [link](https://www.gov.uk/government/publications/government-security-classifications) |
| Security Policy Framework | [link](https://www.gov.uk/government/collections/government-security#security-policy-framework) |

**Prison Retail Service Project**

**Schedule 2.5**

**Insurance Requirements**

**SCHEDULE 2.5**

**INSURANCE REQUIREMENTS**

1. **OBLIGATION TO MAINTAIN INSURANCES** 
   1. Without prejudice to its obligations to the Authority under this Agreement, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex A and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
   2. The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
   3. The Insurances shall be taken out and maintained with insurers who are:
      1. of good financial standing;
      2. appropriately regulated;
      3. regulated by the applicable regulatory body and is in good standing with that regulator; and
      4. except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
   4. The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.
2. **GENERAL OBLIGATIONS** 
   1. Without limiting the other provisions of this Agreement, the Supplier shall:
      1. take or procure the taking of all reasonable risk management and risk control

measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;

* + 1. promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
    2. hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

1. **FAILURE TO INSURE** 
   1. The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
   2. Where the Supplier has failed to purchase any of the Insurances or maintain any of the

Insurances in full force and effect, the Authority may elect (but shall not be obliged) following

written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

1. **EVIDENCE OF INSURANCES**

The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form reasonably satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

1. **CANCELLATION** 
   1. Subject to Paragraph 5.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
   2. Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 5.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.
2. **INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES** 
   1. The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the

Services and/or this Agreement for which it may be entitled to claim under any of the

Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.

* 1. The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.
  2. Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
  3. Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

**ANNEX A**

**REQUIRED INSURANCES**

**PART A: INSURANCE CLAIM NOTIFICATION**

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of £100,000 relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

**PART B: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

1. **Insured**

The Supplier

1. **Interest** 
   1. To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:
      1. death or bodily injury to or sickness, illness or disease contracted by any person; and
      2. loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

1. **Limit of indemnity**

Not less than £10,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £10,000,000 in the aggregate per annum in respect of products and pollution liability.

1. **Territorial limits**

United Kingdom

1. **Period of insurance**

From the date of this Agreement for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

1. **Cover features and extensions**

Indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

1. **Principal exclusions** 
   1. War and related perils.
   2. Nuclear and radioactive risks.
   3. Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
   4. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
   5. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
   6. Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
   7. Liability arising from the ownership, possession or use of any aircraft or marine vessel.
   8. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
2. **Maximum deductible threshold**

Not to exceed £50,000 for each and every third party property damage claim (personal injury claims to be paid in full).

**PART C: UNITED KINGDOM COMPULSORY INSURANCES**

1. The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.
2. The Employers Liability Insurance limit of indemnity shall be not less that £10,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.
3. The Employers Liability Insurance shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury to the Supplier's Staff arising out of or in connection with the Agreement and for which the Supplier is legally liable.

**PART D: OTHER INSURANCES**

1. The Supplier shall maintain insurances in respect of any liability for losses in respect of:
   1. any Goods held at the Supplier's risk during the Term (in accordance with the terms and conditions of the Agreement);
   2. any vehicle or other Supplier Equipment used in the provision of the Services.
2. In each case the limit of indemnity shall be not less than the full reinstatement value of the Goods, or Supplier Equipment (as applicable) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.

**Prison Retail Service Project**

**Schedule 2.6**

**Additional Users**

**SCHEDULE 2.6**

**ADDITIONAL USERS**

1. **DEFINITIONS** 
   1. "**Additional Users**" means a person named as such in Annex A to this Schedule, and may include but not be limited to;
      1. public sector bodies;
      2. Central Government Bodies;
      3. private sector bodies;
      4. Devolved Administrations; and
      5. any person managing a facility further described in Paragraph 2.1 below.
2. **SERVICE BENEFICIARIES** 
   1. The Authority has entered into this Agreement both for its own benefit and for the benefit of the Additional Users. Additional Users may use the Goods and Services, in their management of facilities including but not limited to those listed below:
      1. Private Sector Prisons. A private sector prison, or for-profit prison, is a facility

where people are imprisoned by a third party private sector body further to a contract for the running and management of such facility entered into between the private sector body and a government agency.

* + 1. Newly built prisons (Public and Private sector) – in Wellingborough, Full Sutton, Glen Parva, Port Talbot,
    2. Immigration Removal Centres – Immigration Removal Centres are holding centres for foreign nationals awaiting decisions on their failed asylum application claims or awaiting deportation following a failed application.
    3. Approved Premises – In the United Kingdom, Approved Premises, formerly known as probation or bail hostels, are residential units which house ex-offenders in the community. They are recognised under the Offender Management Act 2007.
    4. Secure training Units – A type of secure accommodation that children may be placed in if they are in custody. Secure training centres are for children up to the age of 17.
    5. Visits Centres – provide a friendly environment for families before and after a prison visit. Visitor Centres provide families with a dedicated area where they can sit down, have refreshments, use the crèche facilities and relax within comfortable surroundings.
    6. HMP Staff mess / canteen facilities – The staff mess / canteen is an area where HMPPS personnel socialise, eat, and are able to purchase ready cooked meals etc.
  1. The Additional Users who are to benefit under the Agreement are identified in Annex A to this Schedule.
  2. Additional Users shall not be granted the same rights as the Authority under this Agreement.
  3. Each of the Additional Users will be a third-party beneficiary for the purposes of the Contract Right Third-Party Act (CRTPA) and may enforce the relevant provisions of an Agreement pursuant to CRTPA.
  4. Unless otherwise specified, should any Change (whether made by the Change Control Procedure or otherwise) be made to the Agreement between the Authority and the Supplier then the Change shall also apply to Additional Users.
  5. Additional Users who will receive any of the Good and Services at the Effective Date are listed in Annex A along with which of the Goods and Services they shall receive.
  6. Additional Users shall be added to the Agreement in order to receive the Goods and Services by the change process in Schedule 8.2 (Change Control Procedure) and shall be added to the list at Annex A to this Schedule. The list in Annex A shall be amended as Additional Users begin or cease to receive the Goods and Services.
  7. Additional Users are subject to the following provisions:
     1. the Authority may enforce any provision of the Agreement on behalf of an Additional User;
     2. any claim from an Additional User shall be brought by the Authority if reasonably practicable for the Authority and Additional User to do so; and
     3. any claim made by an Additional User will not impact on the limit and exclusions of liability as agreed with the Authority (as set out at Paragraph 5of this Schedule).
  8. Notwithstanding that Additional Users shall each receive their agreed service provision from the Supplier, the following adjustments will apply in relation to how the Agreement will operate in relation to the Authority and Additional Users:
     1. Goods and Services will be provided by the Supplier to each Additional User and Authority separately;
     2. the Supplier will provide the Authority with a consolidated invoice which includes for both Authority and Additional Users. The invoice will clearly break out and identify cost of Services to each of the Serviced Sites/Site. The invoices will be formatted in agreement with the Authority as set out in Schedule 7.1;
     3. separate invoices will correlate to the Goods provided to the respective Authority and Additional Users;
     4. the Charges to be paid for the Goods and Services shall be calculated on a per Serviced Site/site basis. Invoices will be sent to the Authority for processing and payment;
     5. each Additional User shall maintain its own Local Product List in line with the QRR Process; and
     6. such further adjustments as the Authority may notify to the Supplier from time to time.
  9. The Supplier shall provide all reasonable assistance required by the Authority in order for any Additional User to commence ordering Goods.
  10. The Supplier shall not frustrate, prevent or refuse the onboarding of any Additional User.
  11. The Supplier hereby acknowledges that in addition to the Authority, Additional Users shall be able to place bulk orders for Goods.
  12. Additional Users will be onboarded via the change control process. The change control process will be agreed and included for the Additional User transition plan, Local Product List, and the MOU between Retail Workshop and Additional User. The change control request must, in addition to standard change request requirements as described in Schedule 8.2 (Change Control Procedure), include but not limited to:

2.13.1 Additional User information (public/private or another body as described in Paragraph 1 “Definitions” of this Schedule 2.6)

2.13.2 Scope of service (Bulk Delivery or Pick and Pack Service)

2.13.3 Requirement of Buffer Boxes

2.13.4 Requirement of Reception Packs

2.13.5 Local Product List

2.13.6 Nomination of a Retail Liaison Contact or identified Single Point of Contact

* 1. By default, only Bulk Goods Deliveries will be made available to Privately Managed Prisons unless exceptionally authorised by the Senior Business Owner.
  2. A change authorisation note, signed by both the Supplier and Authority and a completed MoU for any Additional User must be in place a minimum of one month prior to the commencement of services.

1. **OPERATING TERMS** 
   1. Additional Users cannot modify, amend or delete any of the provisions of the Agreement or terminate or extend the Agreement except with the Authority's express written approval save that Additional Users may agree and modify Local Product List as in line with the agreed QRR and Schedule 2.1 (Services Description). Any Change to the Agreement shall be made in accordance with Paragraph 2.5 above and the Change Control Procedure.
   2. Notwithstanding that Additional Users shall each receive their agreed Goods and Services (which may differ from the Authority) from the Supplier, the following adjustments will apply in relation to how the Agreement will operate in relation to the Authority and Additional Users:
      1. the KPIs and corresponding Service Credits will be calculated in respect of Additional User and Authority together, and they will be reported and deducted against Charges due by the Authority;
      2. each Additional User shall maintain its own Local Product List and shall be agreed and amended as set out in Schedule 2.1 (Services Description); and

such further adjustments as the Authority may notify to the Supplier from time to time.

* 1. Orders placed by Additional Users shall be Delivered to the Additional User Premises specified in the relevant MoU and in accordance with the provisions of the Agreement.
  2. Should any issues arise during Delivery, then Additional Users shall, in the first instance, attempt to resolve the dispute with the Supplier by discussions with their Retail Liaison Contact (RLC) or Single Point of Contact (SPOC). The Head of Retail (HoR) team should also be informed of any dispute, whether resolved or not. Where a dispute cannot be resolved at this level then the dispute shall be escalated by the Supplier to the HoR. Should any disputes not be resolved at HoR level then the provisions of Schedule 8.1 (Governance) and Schedule 8.3 (Dispute Resolution Procedure) shall apply. The Authority reserves the right to assume conduct of any dispute with the Supplier or any third party in place of the Additional User.
  3. The Authority shall provide all necessary information regarding Additional Users required by the Supplier to facilitate a successful Delivery including accessible times and processes at Additional User Premises, as set out in any agreement between the Authority and relevant Additional User.
  4. Should any Additional User wish to return any Goods then they shall do so following the same process as the Authority, as set out in Schedule 2.1 (Service Description). At any stage in the dispute the Authority may intervene and, as necessary, take the place of any Additional User should returns of Goods reach the point of Escalation in accordance with Schedule 8.3 (Dispute Resolution Procedure).

1. **FINANCIAL**

As each Additional User is onboarded to use the Agreement the Supplier shall increase each of the Insurances required in accordance with Schedule 2.5 (Insurance Requirements) on a pro-rata basis.

1. **LIABILITIES** 
   1. The Supplier shall agree a liability cap with each Additional User separate to the liability cap which it holds for the Authority as set out at Clause 23 of the Agreement.
   2. Any claim made by an Additional User shall not affect or impact the liability or liability limits or aggregate liability of the Supplier to the Authority or any other Additional User, including but not limited to, those set out at Clause 23 of the Agreement.
   3. Any claim made by the Authority shall not affect the liability cap for any Additional User.
2. **GOVERNANCE AND POLICIES** 
   1. The Authority may invite representatives of Additional Users to attend any of the Boards as set out in Schedule 8.1 (Governance) at its own discretion.
   2. Additional Users may request that they attend any of the Boards arranged by the Authority. The Authority shall permit such attendance by Additional Users at its own discretion.
   3. Attendance by Additional Users at Boards does not grant Additional Users voting rights and their attendance shall not be counted towards the quorate.
   4. Each Additional User shall supply a Retail Liaison Contact or Single Point of Contact who shall act as a point of contact for the Authority and the Supplier.
   5. Retail Liaison Contact or Single Point of Contact appointed by Additional Users shall update the Authority on performance by the Supplier as requested.
3. **SERVICE CONTINUITY AND CORPORATE RESOLUTION** 
   1. Upon the onboarding of Additional Users, the Supplier shall suitably amend their Service Continuity and Corporate Resolution plan to take into account any additional requirements of Additional Users.
   2. The Supplier shall provide an updated version of the Service Continuity and Corporate Resolution plan to the Authority as each Additional User is onboarded.
4. **COSTS** 
   1. The onboarding or exiting of Additional Users or any action taken pursuant to this Schedule 2.6 shall be agreed through Schedule 8.2 (Change Control Procedure).
   2. The Supplier shall use reasonable endeavours to ensure minimal input is required from the Authority as part of the onboarding or exiting process.
5. **INTELLECTUAL PROPERTY** 
   1. In accordance with the provisions of the Agreement any Intellectual Property Rights vested in or belonging to the Supplier prior to the Effective Date shall be retained by the Supplier.
   2. In accordance with the provisions of the Agreement any Intellectual Property Rights vested in or belonging to the Authority prior to the Effective Date shall remain as such.
   3. Any Intellectual Property Rights which belongs to or vest in any Additional Users prior to them entering to an Additional Users Agreement shall be retained by that Additional User.
   4. Any Specially Written Software and Project Specific IPRs which are created after the Effective Date, even if created in respect to the relationship between the Supplier and an Additional User, shall belong to the Authority.
   5. Any licenses granted by the Supplier to the Authority in accordance with the provisions of the Agreement shall also be granted on the same terms to the Additional User.

**ANNEX A**

**PUBLIC SECTOR PRISONS AND PRIVATE SECTOR PRISONS WHO ARE ADDITIONAL USERS OF THE SERVICE ARE AS FOLLOWS:**

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**Prison Retail Service Project**

**Schedule 3**

**Authority Responsibilities**

**SCHEDULE 3**

**AUTHORITY RESPONSIBILITIES**

1. **INTRODUCTION** 
   1. The responsibilities of the Authority set out in this Schedule shall constitute the Authority

Responsibilities under this Agreement. Any obligations of the Authority in Schedule 2.1

(Services Description) and Schedule 4.1 (Supplier Solution) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be "Authority Responsibilities" and cross-referenced in the table in Paragraph 3 and Annex 2.

* 1. The responsibilities specified within this Schedule shall be provided by the Authority to the Supplier free of charge, unless otherwise agreed between the Parties.

1. **GENERAL OBLIGATIONS** 
   1. The Authority shall:
      1. perform those obligations of the Authority which are set out in the Clauses of this

Agreement and the Paragraphs of the Schedules (except Schedule 2.1 (Services Description) and Schedule 4.1 (Supplier Solution));

* + 1. use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff in line with Annex 2 , as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Exit Period. For the purposes of this Paragraph 2.1.2 "appropriate members of the Authority's staff" may include Prison

Officers, Head of Retail, Head of Security, Industrial Managers, Retail Liaison Contact, Health and Safety Manager, and the Rehabilitation Manager, but for the avoidance of doubt nothing in this Schedule 3 shall require the Authority to provide Authority staff to support any of the supervisory or other activities required of the Supplier in accordance with the Services Description;

* + 1. subject to below, provide those members of the Supplier's staff who need it to comply with the Supplier's obligations under this Agreement with access to training (on line) on the HMPPS internal IT system (Quantum and P-NOMIS). This will enable the Suppliers staff to attend prisoners for every session / pay prisoners / enter positive and negative case notes when required.
       1. Prison-NOMIS (P-Nomis) is the centralised Management Information System that

assists staff working in HM Prisons to manage offenders in public sector prisons only. All Personnel and contractors handling Authority Data must be security cleared in accordance with the vetting requirements set out in the Services Description section 1, and detailed in DWIP 77 to an adequate level having regard to the protective marking of the data being processed.

* + - 1. Prison-NOMIS is located in a secure national data centre and is accessed using a Quantum desktop computer. Supplier Personnel will have restricted access to certain aspects/files P-Nomis as listed below:
         1. Adjudications;
         2. Incident Reporting;
         3. Prisoner History Sheets;
         4. Prisoner Pay;
         5. Prisoner Finance (by exception);
         6. Regime & Activities;
    1. provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Agreement as defined in the Agreed Transition Management Plan;
    2. without prejudice to the provisions in this Agreement, including Clause 21 and Schedule 11, concerning Authority Data and Confidentiality use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority;
    3. procure for the Supplier such reasonable and agreed access and use of the Authority Premises, subject to Clause 9.7 to 9.16 of the Agreement and providing always that the Supplier complies with any training or reasonable instruction of the Authority or other authorised staff at any Site, (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority's normal working hours and on a Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed); and
    4. procure for use by the Supplier (in the performance of its obligations under this

Agreement) and maintain as reasonably possible adequate provision of utilities to Retail Workshops. Utilities shall include the supply of electricity, heating, lighting, water (portable and non-portable), gas (where applicable) and sewage provision and WiFi (from such dates as agreed in the Agreed Transition Milestone Plan and to be available during Business Days subject to reasonable notified downtime). The Authority shall also be responsible for the MDSL link between the Workshop and the Serviced Site PABX (or incoming MDSL line).

1. **SPECIFIC OBLIGATIONS** 
   1. The Authority shall, in relation to this Agreement perform the Authority's responsibilities identified as such in this Agreement and the Authority shall:
      1. work with the Supplier to manage and facilitate the transition from the Existing

Supplier to the Supplier as agreed by both parties and will form part of the Agreed

Transition Management Plan in accordance with Schedule 6.1 (Transition Management Plan);

* + 1. provide feedback to the Supplier on areas for improvement, key service issues

and concerns over the delivery of the Services, including the escalation of any failure to deliver the Services. This feedback shall form part of the Performance Monitoring Report unless there is an impact on service delivery which needs to be urgently bought to the attention of the Supplier in which case it will be supplied, without prejudice to Schedule 8.2 (Change Control Procedure), in partnership with the Supplier, shall provide advice and practical support to the Supplier in their development of any proposed changes to the Services.

* + 1. provide details of the current operations with the Existing Supplier, (save for that which is either Commercially Sensitive Information or Confidential Information) including, but not limited to:
       1. workshop locations and HMPPS staff allocations plus End User resource allocation numbers per workshop;
       2. National Product List and Local Product Lists;
       3. details of the current distribution network (hub and spokes) distribution and delivery schedules;
       4. order numbers; and
       5. pick and pack quantities to be processed.
  1. The Authority will appoint and have in place an HMPPS Head of Retail and a support team. The responsibility and accountability of the HMPPS Head of Retail, who will be the Authority Representative; and who will:
     1. Be responsible on behalf of the Authority for retail policy, providing operational and contract management for the national prison retail contract;
     2. Be responsible on behalf of the Authority for authorising the implementation of agreed changes to business as usual delivery;
     3. Represent the Authority as the policy holder for Prisoner Retail, provide expert advice in response to public requests, official reports, and to Ministers;
     4. Will have responsibility for approving the National Product List;
     5. Shall be responsible for liaising with the Supplier to provide input and approval where appropriate in regards to:
        1. Cost neutrality – the whole retail operation is funded by sales margin and without any cost to HMPPS.
        2. End User Employment – providing purposeful activity and an opportunity for End Users to acquire skills for employment, developing opportunities for End User training, Release On Temporary Licence placements, and jobs on release.
        3. Product Range – that the range reflects the diverse needs of the prison population, and creates incentives for End Users.
        4. Reasonable selling prices – ensuring that retail prices to End Users is comparative to convenience store prices and impartially verified.
        5. Security – neither the products available for purchase, nor those involved in the supply chain should compromise security.
        6. Surety of service – mitigating order and control issues by ensuring the timely and consistent provision of retail products.
        7. Relationship building and conflict resolution with Prisons.
        8. Implement effective solutions and improvement activities to address issues identified across any of the retail related activities. Including the workshop operation, logistical arrangements, and the End User delivery service.
        9. Minimise operational costs by analysing spend, comparing this to activity observed during audits, and taking action on discrepancies found or implementing cost saving opportunities identified.
        10. Build positive working relationship and develop feedback mechanisms with HMP staff, workshop managers, and supplier.
     6. Review the Supplier's performance against agreed Key Performance Indicators (KPIs) and Subsidiary Performance Indicators (SPI)s, ensuring a program of workshop audits is in place, completed, and any relating issues addressed with remedial action or an improvement plan.
  2. The Authority shall use its reasonable endeavours to provide Retail Workshops that provide facilities suitable for performing all operations of a pick and pack warehouse including secure storage for High Value products, sufficient areas and means of storing products, provide facilities for secure Supplier offices and fund the equipment and assets as per the defined asset list detailed in Annex 1 to this Schedule.
  3. The Authority shall procure to use by the Supplier of WMS hosting licenses on terms to be reasonably determined by the Authority (to be available during Business Days subject to reasonable notified downtime).
  4. The Authority shall procure that its Personnel at each Serviced Site shall ensure that POFs are distributed to End Users in a timely manner and will ensure that End User completed POFs are collated and lodged securely at prison gate, or at agreed location for scheduled collection by the Supplier, and in accordance with the timescales set out in the Delivery and Workshop Data – DWIP101, as amended from time to time.
  5. Where indicated in the DWIP that distribution of Goods from the delivery point at each

Serviced Site (as set out in the DWIP) to End Users is carried out by the Authority Personnel – The Authority shall use its reasonable endeavours to ensure that (to the extent that such are delivered to the Serviced Site by the Supplier) empty/used tote boxes, dollies, unused buffer boxes, completed amendments slips and unissued Prisoner Orders are ready for collection by the Supplier as part of the agreed or next scheduled distribution delivery to that Serviced Site/Site.

* 1. The Authority's Personnel shall escort the approved Prisoner Workforce to the Retail

Workshop in accordance with Workshop opening times contained in the Workshop Memorandum of Understanding MOU (DWIP 28: MOU – Main Workshop) which should be current and always available to all parties.

**Annex 1**

**AUTHORITY ASSET LIST**

As at 19th October 2021

**Annex 2**

**SPECIFIC AUTHORITY OBLIGATIONS**

The Authority shall, in relation to this Agreement perform the Authority's responsibilities identified in the table below:

|  |  |  |
| --- | --- | --- |
| **Area** | **Detail** | **Responsibility** |
| Prisoner spends | Ensure that prisoner spends accounts are up to date to allow timely processing of orders and in the correct format (CSV file). | Prison Finance |
| POF collection | As per the agreed local MOU, ensure that all offender retail order forms are ready for collection at an agreed location and time. | Prison |
| Prisoner Selection | Prisoner availability is determined by a number of acceptable absence factors (specification section; HMPS operates an inclusion and diversity policy and does not discriminate on the basis of level of the command of English or numeracy. The Authority will use reasonable endeavours to supply appropriate enhanced status prisoners but with no guarantee. Also specification 2.1.6 & 7 state responsibility of  Supplier to ensure all prisoners receive and complete Retail workshop induction and have training plans per prisoner. | Prison |
| Prisoner attendance | The Prisons shall ensure that the prisoner numbers above are maintained as per the MOU throughout the shifts detailed and that arrangements are made for cover in the event that any prisoner needs to be absent for any reason. The work provides an essential service and should be deemed as such. | Prison |
| Prisoner pay | Payment of offenders in a timely fashion and at the agreed rate. | Host establishment |
| Supervision / Discipline support | Specification 3.3 and specifically 3.3.4 states supplier must ensure adequate supervision of prisoners.  HMPPS will deploy Prison Officers within Retail  Workshops and support service delivery | Prison |
| Escorting | Authority will where possible provide vehicle escorts though on occasions the supplier may have to provide escorts. Authority will provide training where necessary | Prison |
| Facilities | Ensure as far as is reasonably practicable, a safe working environment for Supplier staff in regard of appropriately assessed prisoners and property maintenance inclusive of service sites. | Prison |
| Facilities | All real estate is the responsibility of MOJ / HMPPS. In the event of Supplier needing to remove operations from a particular workshop (e.g. establishment regime challenges, facility issues) then it is the customer’s responsibility to support Supplier in relocation. | Prison |
| Facilities | Ensure that workshops Supplier operate within MOJ / HMPPS property, are maintained to an acceptable standard. | Prison |
| IT Provision | HMPPS are committed to installing WiFi in line with the agreed transition management plan. Roll in plan of the Retail Workshops will be part of the agreed  transition management plan | HMPPS  (Digital) |

|  |  |  |
| --- | --- | --- |
| Utilities | The Prisons shall ensure that electricity, water, telephone services, pest control and approved cleaning materials for the Workshop are maintained, and give at least 24 hours’ notice of any planned interruption which shall be kept to a minimum. | Prison |
| Delivery Points | DWIP 101 specifies the delivery points. For Products to Retail workshops it is the workshop loading bay for distribution it is defined in DWIP 101 and specification 8.4.2. Supplier will where reasonably possible in advance be notified of any changes to delivery point. Due to operational issues it may be necessary to identify an alternative delivery point as short notice. Therefore, the supplier must have some flexibility to  accommodate this. HMPPS will endeavour to cause as little disruption as possible | Prison |
| End User Delivery | Where service is conducted by HMPPS staff, ensure all relevant paperwork and assets used on service are returned to an appropriate location ready for collection by Supplier. | Prison |
| Escorting training | Provide Supplier staff with escort and radio training where agreed to facilitate vehicle movements as required. | Prison |
| Vetting | Provide vetting facilities to supplier staff for security clearance as required. | Prison |
| Security Training | Provide all relevant and appropriate security training to Supplier staff upon induction. As a minimum this should include ACCT, Prisoner awareness / conditioning, Key & Radio training, Breakaway training | Prison |
| PNOMIS Training and access | Provide adequate log in and training for suppliers staff to access PNOMIS at the appropriate level to enable access to pay prisoners, update their reports and to submit security reports | Prison |
| Security | Ensure the security of the workshop is maintained out of normal operating hours and access suitably restricted. | Prison |
| Searching | HMPPS will conduct searches of prisoners as directed by Governor on a regular or random basis. Searches may be conducted on entrance or exit as directed.  HMPPS do not subscribe to 100% searches | Prison |
| Dismissal | Ensure that Prisoners dismissed from the Retail workshop(s) will not be re-employed for at least six months and until agreed with Supplier; re-employment within six months dependent on agreement by both the Supplier and the Prison. | Prison labour board |
| Product Range | Confirmation from central security of product suitability ahead of agreement to stock. | Head of Retail |
| Product purchase | To ensure that agreed levels of stock are purchased for new lines and promotions - Supplier will provide back-up information to aid the decision. | Head of Retail |
| Continuous Improvement | Support from HMPPS on discussions with local prisons and working together to deliver initiatives and cost saving projects. | Head of Retail |
| ROTL | Complete Work placement site visit and Risk Assessment | Prison |
| ROTL | Advertise role, identifying suitable candidates and processing required multi agency checks to deem full suitability/Risk Assessment | Prison |
| ROTL | Complete Right To Work checks and verification ensuring the candidates are eligible to work within the UK | Prison |
| ROTL | Complete workplace site checks and maintain regular communication with workplace site | Prison |
| Through the Gate Employment | Probation Officer referral form to be completed highlighting suitability/restrictions/known risks and current engagement status. | Probation Service |

**Prison Retail Service Project**

**Schedule 4.1**

**Supplier Solution**

**SCHEDULE 4.1**

**SUPPLIER SOLUTION**

Supplier solution as set out in BAFO submission document as dated 26/7/2021

Supplier submitted Outline Transition Plan as 26/7/2021

BAFO Costs as 26/7/2021

**Prison Retail Service Project**

**Schedule 4.2**

**Commercially Sensitive Information**

**SCHEDULE 4.2**

**COMMERCIALLY SENSITIVE INFORMATION**

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Date** | **Item(s)** | **Duration of**  **Confidentiality** |
| **1** |  |  |  |
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**Schedule 4.3**

**Notified Key Sub-Contractors**

1

**SCHEDULE 4.3**

**NOTIFIED KEY SUB-CONTRACTORS**

1. In accordance with Clause 15.10 (Appointment of Key Sub-contractors), the Supplier is entitled to sub-contract its obligations under this Agreement to the Key Sub-contractors listed in the table below.
2. The Parties agree that they will update this Schedule periodically to record any Key Subcontractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

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| --- | --- | --- | --- | --- | --- |
| **Key Subcontractor name and**  **address (if not the same as the registered office)** | **Registered office and company number** | **Related product/Service description** | **Key Subcontract price expressed as a percentage**  **of total projected Charges over the Term** | **Key role in delivery of the Services** | **Credit**  **Rating**  **Threshold** |
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**Schedule 4.4**

**Third Party Contracts**

**SCHEDULE 4.4**

**THIRD PARTY CONTRACTS**

1. The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
2. The Supplier shall be entitled to update this Schedule in accordance with Clause 15.5 (Appointment of Sub-contractors).

|  |  |  |
| --- | --- | --- |
| **Third party supplier name and address (if not the same as the registered**  **office)** | **Registered office and company number** | **Related product/service description** |
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**Schedule 5.1**

**Digital**

**SCHEDULE 5.1**

**DIGITAL**

1. **DEFINITIONS**

For the purpose of this Schedule 5.1 (Digital), unless the context otherwise requires:

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| --- | --- |
| "**API**" | means 'Application Programme Interface' and is a mechanism for applications to exchange data and access functionality in a standardised way independent of underlying technology differences, abstracting the implementation complexities of the underlying system or database behind a simple and consistent interface; |
| "**Authority Software**  **Applications**" | means the Authority Software and databases provided by the Authority to provide functionality for business processes and retain a master record of data; |
| "**Cyber Security Incident**" | means any malicious act or suspicious event that compromises, or is an attempt to compromise, the Electronic Security Perimeter or Physical Security Perimeter of a Critical Cyber Asset, or, Disrupts, or was an attempt to Disrupt, the operation of a Critical Cyber Asset; |
| "**Data Exchange**" | means a process of sharing data between different computer programmes by taking data structured under one source and transforming it to data structured under another source; |
| "**Government**  **Classification Scheme**" | means the 'Government Security Classification Policy' which came into force in May 2018 (as amended from time to time) and describes how the Government classifies information assets to ensure they are appropriately protected and which applies to all information that the Government collects, stores, processes, generates or shares to deliver services and conduct business; |
| "**HMG Standards and**  **Guidance**" | means the Government Digital Service's 'Technology Code of Practice and Service Standard', the National Cyber Security Centre's policies and guidance and the Cabinet Office's Security Standards (as amended from time to time); |
| "**HMPPS Data**" | means Authority Data relating to Offender Management; |
| "**HMPPS Intranet**" | means the Authority's portal for internal and thirdparty staff guides, news and content; |
| "**Information Assurance**" | means the practice of assuring information and managing risks related to the use, processing, |

storage, and transmission of information or data and the systems and processes used for those purposes;

|  |  |
| --- | --- |
| "**Information Handling**  **Policy**" | means the relevant Authority Policy on information handling; |
| "**ISO/IEC**" | means a joint technical committee of the International  Organization for Standardization and the  International Electrotechnical Commission whose purpose is to develop, maintain and promote  standards in the fields of information technology and ICT; |
| "**Malware Policy**" | means the relevant Authority Policy on malware; |
| "**Mandated Applications**" | means the Authority Software Applications and Authority's ICT Systems which are used to record data by the Supplier to provide the Services including those set out at Paragraph 12 (Authority's ICT System); |
| "**Password Standards**" | means the relevant Authority Policy on password standards; |
| "**Patching Policy**" | means the relevant Authority Policy on patching; |
| "**Information Security**  **Management System" or**  **"ISMS**" | means a set of policies and procedures for systematically managing an organization's sensitive data to minimize risk and ensure business continuity by pro-actively limiting the impact of a security breach; |
| "**Security Monitoring**  **Policy**" | means the relevant Authority Policy on security monitoring; |
| "**Single Source of Data**" | means a master version of data records held in a single system/database which is made available to other applications to provide a single source of data, removing duplication across systems; |
| "**User Interface**" or "**UI**" | means the way in which the user and a computer system interact, in particular the use of input devices and software; |
| "**Web Browser**" | means an application used to access and view websites. |

1. **INTRODUCTION** 
   1. The Authority considers ICT and Information Assurance to be key to the effective delivery of the Services with consideration given to operational effectiveness, business continuity, the security of people and data, compliance with Law (including but not limited to the Data Protection Legislation), and to the performance of specific functions of the Services.
   2. While providing scope for innovation through the use of technology, the high-level objective of this Schedule is to ensure appropriate ICT capability is delivered by the Supplier to the Authority and vice versa to enable the Supplier to operate the services.
   3. Without prejudice to the obligations set out in this Agreement, the Supplier shall comply with all requirements set out in this Schedule and any others it identifies as necessary for the Supplier to achieve the effective outcomes.
   4. The Supplier shall set out those requirements in addition to this Schedule it identifies as necessary for the delivery of the outcomes.
   5. This Schedule 5.1 (Digital) sets out the Authority's requirements for ICT (in particular, the requirements for the Supplier's ICT System and the Authority's ICT System) and the Information Assurance requirements relating to the Retail Workshops and the delivery of the Services.
   6. In order to achieve this aim, the Authority requires the Supplier to interact with existing Authority Software Applications and ICT Systems, and any replacement Authority Software Applications and ICT Systems. This will be through the use of APIs or directly by applications being directly available to the Supplier through the Supplier's ICT System over a Web Browser or, in limited circumstances, Authority-provided ICT Equipment subject to the terms of this Schedule.
   7. Where the Supplier provides an alternative User Interface to the UI provided by the Authority, the Supplier will ensure that APIs are used to ensure that the Authority's Single Source of Data remains updated in real time. The Supplier shall update or replace these systems during the lifetime of the Agreement in order to keep abreast of technology changes or enable new ways of working (e.g. mobile first/native applications). These changes will not require changes from the Authority APIs, however if required API changes and new API development may be explored by the Parties and agreed between them. For the avoidance of doubt, such changes shall not be required to be agreed through Schedule 8.2 (Change Control Procedure).
   8. The Supplier shall utilise the Mandated Applications and/or mandated data sources to deliver the relevant aspects of the Service.
2. **SCOPE** 
   1. The following is within scope of the Services Description:
      1. the Supplier's use of Authority's ICT Systems or Authority Software Applications for the Supplier's management of the Retail Workshops and/or management of End Users;
      2. the Supplier's provision and use of the Supplier's ICT Systems for the management of the workshops and/or management of their own systems and

staff;

* + 1. provision and use of the Suppliers ICT Systems for use by End Users;
    2. the data which shall be supplied by the Supplier to the Authority using the ICT Systems.
  1. This Schedule 5.1 (Digital) does not describe the ICT requirements for activities of or services provided by Third Parties.

1. **GOVERNANCE AND ASSURANCE** 
   1. The Supplier shall ensure it has available for the purposes of this Agreement an Information Security Management System certified to ISO/IEC 27001 or such equivalent or as may be amended and updated from time to time.
   2. The Supplier shall provide, as part of Schedule 9.2 (Key Personnel), the name and contact details of a person from the Supplier (the "**Digital and ICT Security Lead**"), who shall be accountable for the provision of technical, personnel, procedural and physical security aspects under the Agreement, including but not limited to security clearances.
   3. The Supplier shall provide the Authority with such access to and information on the Supplier's ICT Systems as the Authority requires in order to audit and assess technical, personnel, procedural and physical security controls at the workshops and any other sites used for the purpose of meeting the Supplier's obligations under this Agreement.
   4. The Supplier shall ensure that cyber security is embedded in all service management (in compliance with ISO/IEC 20000, as amended and updated from time to time), including, but not limited to:
      1. Change management;
      2. incident management; and
      3. other service management artefacts aligned with ISO/IEC 20000.
   5. The Supplier shall ensure that all development and test environments in Supplier's ICT Systems shall have assured separation from the live/production systems, and shall not use live/production information without prior written Authority approval.
   6. The Supplier shall ensure that the Supplier's ICT System shall be compliant with Law and Authority Policies, as amended from time to time, including but not limited to the:
      1. Malware Policy;
      2. Patching Policy;
      3. Password Standards;
      4. Information Handling Policy; and
      5. Security Monitoring Policy.
   7. The Supplier shall ensure that the Supplier's ICT System, and reviewed against good commercial practices and in accordance with Good Industry Practice, taking into account the operating environment in which it will be situated.
   8. Without prejudice to its other obligations in relation to protecting Authority Data, the Supplier shall adequately protect all information processed or retained on Supplier's ICT systems (including personal information) and ensure that their systems deliver security management of all Authority Data in accordance with the Government Classification Scheme at 'OFFICIAL'.
   9. The Supplier shall ensure that the Supplier's ICT System's design and operation follows Authority Policy and Good Industry Practice for cyber security, minimising access to those with a need to know, minimising the data that is held.
2. **ACCESS, AUTHORISATION AND AUTHENTICATION**

The Supplier shall ensure that the Supplier's ICT System and locations shall have auditable authorisation, authentication and access control based on least privilege, and aligned appropriately to the business requirement.

1. **RISK ASSESSMENT**

The Supplier shall carry out a risk assessment of the entirety of the Supplier's ICT System from network connectivity, security controls at the application level, and data in transit and at rest. The Authority retains the right to review the results of such risk assessment and the Repeatable Methodology used for risk assessments.

1. **RISK MANAGEMENT** 
   1. The Supplier shall seek authorisation from the Authority with regards to managing all securityrelated risks in both the Authority's ICT Systems and Supplier's ICT Systems to ensure they are in compliance with Clause 18 and Schedule 2.4.
   2. The Supplier must inform the Authority if there is reasonable suspicion and/or confirmation of a negative security event (including a Cyber Security Incident) or data breach (including a Data Loss Event) that directly or indirectly accesses or processes Authority Data or the Authority's ICT Systems within one (1) hour of awareness as defined in the relevant Authority Policy.
2. **ICT FOR RELEVANT ORGANISATIONS**

The Supplier shall ensure that all ICT deployed by the Supplier or any Sub-Contractors are compliant with the Information Assurance requirements described in this Schedule 5.1 (Digital).

1. **INFRASTRUCTURE** 
   1. To deliver Services using Supplier's ICT Systems, the Supplier shall provide and maintain where approved for deployment; ICT networks, Bluetooth, WiFi, ICT Equipment, applications, licences, user agreements and services to ensure:
      1. the secure and effective management of; and
      2. the exchange of information required in order to deliver;

the Services.

1. **AUTHORITY INFORMATION** 
   1. The Supplier shall ensure that all Authority Data, either transferred (via an Authority approved API) or entered directly into the Authority's ICT System by the Supplier in real time, is accurate and complete in order to meet the Authority's Requirements pursuant to Schedule 2.1 (Services Description) and the requirements detailed in the Authority Policies, including (in relation to each End User):
      1. personal information;
      2. any changes to above.
   2. The Supplier shall, on the request of the Authority, provide the Authority with unlimited read only access to all Supplier's ICT System data relating to the management of the workshops.
   3. The Supplier shall ensure that all data provided to the Authority in accordance with Paragraph 10 (Authority Information) is accurate and complete.
2. **ARCHITECTURE**

The Supplier shall upon the Authority's request provide to the Authority comprehensive and detailed documentation explaining the Supplier's ICT System including its architecture, infrastructure, applications, functionality, licences, hardware, service management, Subcontractor’s, data storage, security, business continuity and risk management processes. **12 AUTHORITY'S ICT SYSTEM**

12.1 The Supplier shall enter data into the Authority's Software Applications as required by the Authority under this Agreement using one of the following means:

* + 1. directly onto the Authority's Software Applications, directly onto the Authority's Software Applications accessed via a Web Browser, using end-user devices provided by and at the cost of the Supplier in accordance with Paragraph 2

(Introduction), and can be via an Authority User Interface or Supplier User Interface; or

* + 1. indirectly on to the Authority's Software Applications via available APIs.
  1. The Supplier shall identify its requirements in relation to Authority provided ICT Equipment including but not limited to a specified number of terminals, hand held devices, barcode scanners and printers connected to the Authority's ICT System in writing and provide this to the Authority three (3) Months prior to Services Commencement Date.
  2. This paragraph 12 (Authority's ICT System) applies where the Supplier requires access to the

Authority's Software Applications on the Authority's ICT System only via Authority provided ICT Equipment for the purposes of meeting the Authorities Requirements pursuant to Schedule 2.1 (Services Description).

* 1. The Supplier shall be responsible for the appropriate usage of the Authority's Software Applications (including replacement systems (as amended from time to time) by the Supplier's Staff), including but not limited to NOMIS and Digital Prison Services.
  2. The Supplier shall deliver all appropriate data, as defined in the relevant Authority Policies, operational guidance or in the application itself, and any data as may be required by the Authority in a timely and accurate manner.
  3. The Supplier shall deliver all appropriate data, as defined in the relevant Authority Policies, operational guidance or in the application itself, and any data as may be required by the Authority into the case management system NOMIS, or any Authority-specified replacement system, in a timely and accurate manner. The Supplier shall meet the NOMIS requirements as set out within the relevant Authority Policies as amended from time to time.
  4. If the Authority requires the Supplier to exchange data between the Supplier's ICT System and the Authority's ICT System (or vice versa), the Supplier shall do so only by a method approved in writing by the Authority. Such method may include an automated system-to-system exchange or a manual exchange (such as data entry via a user terminal).

1. **COMMUNICATIONS** 
   1. The Supplier shall comply with all policies related to communications as the Authority notifies to the Supplier from time to time.
   2. The Supplier hereby agrees that it shall allow the Authority to conduct onsite audits as and when required by the Authority (acting reasonably).

**Other** **Communications**

* + 1. On request from the Authority, the Supplier shall make available to the Authority an electronic staff directory containing contact details of the Supplier's Staff within three (3) Business Days of request.
    2. The Supplier will keep this directory up-to-date and ensure that the Authority is provided a copy of, or access to, the up-to-date information within three (3) Business Days of a request of any update.
    3. The Supplier may use the HMPPS Intranet via a Web Browser or Authority Provided ICT. The Authority may limit the Supplier's access to only certain pages of the HMPPS Intranet.
    4. The Supplier shall provide and maintain an email application (email should be configured as per NCSC guidance) that meets the security and standards contained in this Schedule and is accredited/authorised for the transmission of information marked "Official" under the Government Classification System.
    5. The Supplier shall implement and maintain any functional email addresses identified by the Supplier and/or the Authority as necessary or desirable to ensure timely, consistent and robust processes for managing End Users through the Prison and on release into the community.

1. **END USER ACCESS TO ICT** 
   1. The Supplier shall provide auditable access to ICT for End Users. Before any access to ICT is provided to End Users, the relevant ICT will need to be assessed and authorised by the Authority's cyber-security team, or those which they have delegated the task of assessment to.
   2. The Supplier must provide the Authority with an incident report following remediation of any Cyber Security Incident demonstrating timescales of events from detection through to recovery as per the Authority Policies.
   3. The Supplier shall provide End Users with opportunities to acquire relevant ICT skills.
   4. The Supplier shall not allow End User access to any websites.
   5. The Supplier shall provide End Users with opportunities to apply for, engage with and undertake activities using ICT systems for the purpose of improving their resettlement and rehabilitative outcomes.
   6. Without prejudice to the Authority's right to assess and authorise any End User ICT access pursuant to this paragraph (End User access to ICT), the Supplier shall first risk assess the level of access to ICT to provide to End Users.
2. **PROPRIETARY AND THIRD PARTY SOFTWARE**

**THE** **SOFTWARE**

* 1. The Software below is licensed to the Authority in accordance with Clause 16 (Intellectual Property Rights).
  2. The Parties agree that they will update this Schedule to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

(***Note to Bidders:*** Bidders should identify where the solution requires that Software is or is not capable of being assigned/novated/sub-licensed during or at the end of the term)

The Supplier Third Party Software includes the following items:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Third Party  Software | Supplier | Purpose | Number of Licenses | Restrictions | Number of Copies | Type (COTS or  NonCOTS) | Term/  Expiry |
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| **Software** | **Supplier**  **(if an Affiliate of the Supplier)** | **Purpose** | **Number**  **of**  **Licences** | **Restrictions** | **Number**  **of**  **Copies** | **Type (COTS or Non COTS)** | **Term/ Expiry** |
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The Supplier Third Party Software includes the following items:

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| **Third Party**  **Software** | **Supplier** | **Purpose** | **Number**  **of**  **Licences** | **Restrictions** | **Number**  **of**  **Copies** | **Type (COTS or Non COTS)** | **Term/ Expiry** |
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**Prison Retail Service Project**

**Schedule 6.1**

**Transition Plan**

**SCHEDULE 6.1**

**TRANSITION PLAN**

1. **INTRODUCTION** 
   1. This Schedule:
      1. defines the process for the preparation and transition of the Outline Transition Management Plan and Agreed Transition Management Plan; and
      2. identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Workshop Readiness Check List as referenced in Schedule 6.2 (Workshop Readiness Check).
2. **OUTLINE TRANSITION MANAGEMENT PLAN** 
   1. The Outline Transition Management Plan is set out in Schedule 4.1 (Supplier Solution) and reflects the requirements as detailed in Section 6 (Transition) in Schedule 2.1 (Services Description).
   2. All changes to the Outline Transition Management Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 28 (Authority Cause)).
3. **APPROVAL OF THE AGREED TRANSITION MANAGEMENT PLAN** 
   1. The Supplier shall submit an updated Outline Transition Management Plan to the Authority for approval within 10 Working Days of the Effective Date.
   2. The Supplier shall ensure that the updated Outline Transition Management Plan:
      1. incorporates all of the Milestones and Milestone Dates set out in the Outline Transition Management Plan;
      2. includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
         1. the completion of Workshop Readiness Checklist document (and all activities required for such completion) for the Retail Workshop(s) being brought into operational service;
         2. the completion of any Testing to be undertaken in accordance with Schedule 6.2 (Workshop Readiness Checks); and
         3. training and roll-out activities;
      3. clearly outlines all the steps required to implement the Milestones to be achieved, together with a high-level plan for the rest of the programme, in conformity with the Authority Requirements;
      4. clearly outlines the required roles and responsibilities of both Parties, including staffing requirements with proposed engagement time lines; and
      5. is produced using a software tool as specified or agreed by the Authority.
   3. Prior to the submission of the updated Outline Transition Management Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:
      1. to review any documentation produced by the Supplier in relation to the development of the updated Outline Transition Management Plan, including:
         1. details of the Supplier's intended approach to the updated Outline Transition

Management Plan and its development;

* + - 1. copies of any drafts of the updated Outline Transition Management Plan produced by the Supplier; and
      2. any other work in progress in relation to the Outline Transition management Plan; and
    1. to require the Supplier to include any reasonable changes or provisions in the updated Outline Transition Management Plan.
  1. Following receipt of the updated Transition Management Plan from the Supplier, the Authority shall:
     1. review and comment on the updated Outline Transition Management Plan as soon as reasonably practicable; and
     2. notify the Supplier in writing that it approves or rejects the updated Outline Transition Management Plan no later than 10 Working Days after the date on which the updated Outline Transition Management Plan is first delivered to the Authority.
  2. If the Authority rejects the updated Outline Transition Management Plan:
     1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and
     2. the Supplier shall then revise the updated Outline Transition Management Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised updated Outline Transition Management Plan to the Authority for the Authority's approval within 5 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted updated Outline Transition Management Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
  3. If the Authority approves the updates to the Outline Transition Management Plan, it shall will become the Agreed Transition Management Plan and replace the Outline Transition Plan from the date of the Authority's notice of approval.

1. **UPDATES TO AND MAINTENANCE OF THE AGREED TRANSITION MANAGEMENT PLAN** 
   1. Following the approval of the Agreed Transition Management Plan by the Authority:
      1. the Supplier shall submit any revisions to the Agreed Transition Management Plan to the Authority from the Effective Date and when any changes are made to the Agreed Transition Management Plan or at such a frequency as requested by the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
      2. any revised Agreed Transition Management Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
      3. the Supplier's performance against the Agreed Transition Management Plan shall be monitored at meetings of the Project Board (as defined in Schedule 8.1 (Governance)). In preparation for such meetings, the current Agreed Transition

Management Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Project Board.

* 1. Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Agreed Transition Management Plan shall be subject to Schedule 8.2 (Change Control Procedure) provided that:
     1. any amendments to elements of the Agreed Transition Management Plan which

are based on the contents of the Outline Transition Management Plan shall be deemed to be material amendments; and

* + 1. in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 28 (Authority Cause).
  1. Any proposed amendments to the Agreed Transition Management Plan shall not come into force until they have been approved in writing by the Authority.

1. **GOVERNMENT REVIEWS**

The Supplier acknowledges that the Services may be subject to Government review at key stages of the project. The Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

1. **TRANSITION KPIs**

See Transition KPIs as set out in Schedule 2.2 Part A.

**Prison Retail Service Project**

**Schedule 6.2**

**Workshop Readiness Checks**

**SCHEDULE 6.2**

**WORKSHOP READINESS CHECK**

**1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

"**Workshop Readiness** a Workshop Readiness Check List materially in the **Check List**" form of the document contained in Annex B;

"**Workshop Readiness** means a notice in the form set out in Annex A; **Notification**"

"**Workshop Readiness** means any check or other Test undertaken to

**Check**" demonstrate compliance of the Retail Workshop with

the Workshop Readiness Checklist and the Workshop Readiness Success Criteria;

"**Workshop Readiness** means in relation to the Workshop Readiness Check, **Success Criteria**" the criteria set out in Paragraph 5;

"**Test Plan**" a plan for the Testing of any Systems or any other

part of the Retail Workshop; as described further in Paragraph 4;

"**Test Reports**" the reports to be produced by the Supplier setting out

the results of Tests;

"**Test Success**" in relation to a Test, the test success criteria for that "Test Criteria" as referred to in Paragraph 5;

"**Testing Procedures**" the applicable testing procedures and Test Success

Criteria set out in this Schedule.

1. **RISK** 
   1. The issue by the Supplier of a Workshop Readiness Check Notification, or the Approval by the Authority of a Workshop Readiness Check List, shall not operate to transfer any risk that the relevant Retail Workshop will meet and/or satisfy the Authority's requirements for that Retail Workshop or the delivery of the Goods and Services.
   2. Notwithstanding the issuing of any Workshop Readiness Check Notification or the Approval of any Workshop Readiness Check List the Supplier shall remain solely responsible for ensuring that:
      1. the Supplier Solution as designed and developed is suitable for the delivery of the Goods and Services and meets the Authority Requirements;
      2. the Services are implemented, and the Goods are delivered in accordance with this Agreement.
   3. The Supplier shall undergo a Workshop Readiness Check both in readiness for the Operational Services Commencement Date and in readiness for the implementation of the Warehouse Management System and in any event as set out in the Agreed Transition Management Plan.
2. **WORKSHOP READINESS CHECK LIST OVERVIEW** 
   1. All Tests and checks conducted by the Supplier as part of the Workshop Readiness Check shall be conducted in accordance with the Supplier Test Plan and any other requirements set out in the Services Description section 5 (IT & WMS).
   2. The Supplier shall not submit a Retail Workshop to be subject to a Workshop Readiness Check List for approval:
      1. unless the Supplier is reasonably confident that it will satisfy the relevant Workshop Readiness Check List; and
      2. Supplier can confirm they have completed internal tests in accordance with their Test Plan.
   3. The Supplier shall use all reasonable endeavours to submit a Retail Workshop for Testing or re-Testing by or before the date set out in the Agreed Transition Management Plan
   4. Prior to the issue of a Workshop Readiness Check List, the Authority shall be entitled to review any Test Reports produced by the Supplier in respect of those internal tests referred to at Paragraph 3.2.2 above.
3. **TEST PLANS** 
   1. The Supplier shall develop Test Plans and where requested submit these for review by the Authority as soon as practicable following the Effective Date (or by any deadline agreed between the parties in the Agreed Transition Milestone Plan, or otherwise).
   2. Each Test Plan shall include as a minimum:
      1. the relevant Test or check definition and the purpose of the Test or check and, for each Test, the specific Test Success Criteria and/or Workshop Readiness Success Criteria to be satisfied;
      2. a detailed procedure for the Tests and checks to be carried out, including:
         1. the timetable for the Tests and checks, including start and end dates;
         2. the Testing mechanism;
         3. dates and methods by which the Authority can/may wish to inspect Test or check

results or witness the Tests or check in order to establish that the Test Success Criteria and/or Workshop Readiness Success Criteria have been met;

* + - 1. the mechanism for ensuring the quality, completeness and relevance of the Tests or checks.

1. **SUCCESS CRITERIA** 
   1. The Test Success Criteria for each Test shall be as set out in the Test Plan.
   2. The Workshop Readiness Success Criteria for each Retail Workshop will be that the Supplier can demonstrate to the reasonable satisfaction of the Authority that all the relevant requirements of the Workshop Readiness Check List have been fulfilled and that the Retail Workshop is ready to deliver the provisions of the Retail Services as described in the Services Description set out in Schedule 2.1.
   3. Once the Supplier has:
      1. successfully completed and met the Test Success Criteria for any Test conducted in accordance with this Schedule 6.2 (Workshop Readiness Check); and
      2. successfully completed the Workshop Readiness Check in accordance with this Schedule 6.2 (Workshop Readiness Check),

it shall issue to the Authority, the Workshop Readiness Notice in the form set out in Annex A along with any Test Reports or other information as the Authority may reasonably request in respect of any Test or Workshop Readiness Check.

* 1. On receipt of the Workshop Readiness Notice, the Authority may either:
     1. conduct a Test Quality Audit;
     2. request additional information from the Supplier in respect of the readiness of the Workshop for the commencement of Operational Services Commencement; or
     3. Approve the Workshop Readiness Checklist and confirm that the relevant Milestone has been Achieved.

1. **TEST QUALITY AUDIT** 
   1. Without prejudice to its rights pursuant to Schedule 7.5 (Financial Reports and Audit Rights) and Schedule 8.4 (Reports and Records Provision), the Authority may perform on-going quality audits in respect of any part of the Test and the Workshop Readiness Check.
   2. If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test or the Workshop Readiness Checklist, the Authority shall:
      1. discuss the outcome of the Testing Quality Audit with the Supplier, giving the

Supplier the opportunity to provide feedback in relation to specific activities; and 6.2.2 subsequently prepare a written report for the Supplier detailing its concerns,

and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority's report.

* 1. In the event of an inadequate response to the Authority's report from the Supplier, the Authority (acting reasonably) may withhold an approval of a Workshop Readiness Check until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

1. **DISPUTES**

Any Disputes between the Authority and the Supplier regarding the completion of the

Workshop Readiness Checklist and any Test or any other matter in this Schedule 6.2 (Workshop Readiness Check) shall be referred to Schedule 8.3 (Dispute Resolution Procedure) using the Expedited Dispute Timetable.

**ANNEX A**

**WORKSHOP READINESS NOTICE**

|  |  |  |
| --- | --- | --- |
| To: |  | [name of Authority] |
| From: |  | [name of Supplier] |

[Date]

Dear Sirs,

**Workshop Readiness Check List** for **workshop [name of workshop]**

We refer to the agreement (the "Agreement") relating to the provision of Goods and Services between the [name of Authority] (the "**Authority**") and [name of Supplier] (the "**Supplier**") dated [date].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule 6.2 (Workshop Readiness Check) of the Agreement.

We warrant and confirm that the Retail Workshop listed above has:

1. been Tested successfully in accordance with the Test Plan; and
2. undertaken a Workshop Readiness Check and has passed the Workshop Readiness

Checklist;

1. is ready for the commencement of Operational Services.

We attach the completed Workshop Readiness Checklist and Test Reports for the Retail Workshop. Yours faithfully

[Name]

[Position]

Acting on behalf of [name of Supplier]

**ANNEX B**

**Workshop Readiness Checklist**

|  |
| --- |
| This form is to be completed by a member of HMPPS staff in conduction with a member of the Supplier staff.  Evidence should be sighted where possible, if no evidence is available an action should be taken to ensure visibility of this by an agreed date. |

|  |  |
| --- | --- |
| **DATE** |  |
| **WORKSHOP LOCATION** |  |
| **CHECK CONDUCTED**  **BY** |  |
| **WORKSHOP MANAGER** |  |

**HMPPS Prison Retail - WORKSHOP READINESS CHECKLIST**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **HEALTH & SAFETY** |  |  |  |  |  |
|  | Major (M)/ Minor (m) | Evidenced Y/N | Comments / Action Required | Action Plan Required | Agreed Action Completion Date |
| There are storage locations for waste. All waste is stored in appropriate receptacles |  |  |  |  |  |
| Supplier is aware of where waste is to be disposed of. |  |  |  |  |  |
| All spares/parts are stored securely and an inventory created and maintained. Confirm where the inventory is stored. |  |  |  |  |  |
| Fire escapes and exits clear of obstruction and clearly sign posted |  |  |  |  |  |
| Emergency alarms clear of obstruction and clearly visible/accessible and have been tested |  |  |  |  |  |
| Review Signage & Racking etc |  |  |  |  |  |
| All warning, mandatory and prohibitions properly displayed (not handwritten) |  |  |  |  |  |
| All equipment checked and fully operational, including alarms |  |  |  |  |  |
| Accident record log is available and up to date (may be electronic) |  |  |  |  |  |
| Risk assessments are current and relevant including manual handling |  |  |  |  |  |
| Staff/Prisoner PPE available and used correctly |  |  |  |  |  |
| Working areas and gangways clean and clear of obstructions and slip hazards |  |  |  |  |  |
| Washing facilities and materials available |  |  |  |  |  |
| COSHH /REACH assessments carried out and documented |  |  |  |  |  |
| Visitor signing in book available and up to date |  |  |  |  |  |
| Staff/Prisoner toilet and rest areas are clean, tidy and fully operational/stocked |  |  |  |  |  |
| Staff/Prisoner working areas are clean and fit for purpose |  |  |  |  |  |
| MHE testing complete and evidenced |  |  |  |  |  |
| PAT completed and evidenced |  |  |  |  |  |
| Full security search of the workshop completed by HMPPS |  |  |  |  |  |
| Introductory site meeting for new contract including supplier, RLC, SMT, HoF, RM (Need agreed timeline from supplier) |  |  |  |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **GOVERNANCE** | | | | | |
|  | Major (M)/ Minor (m) | Evidenced Y/N | Comments / Action Required | Action Plan Required | Agreed Action Completion Date |
| Contingency / Disaster recovery plan for the workshop in place and available to view |  |  |  |  |  |
| RLC input into Business Readiness report |  |  |  |  |  |
| RLC Support for Go live |  |  |  |  |  |
| MOU received, understood and signed by all parties |  |  |  |  |  |
| Local Prisoner Forum / Consultation completed |  |  |  |  |  |
| Local Prisoner communications have been issued to wings and staff informing them of the processes and procedures |  |  |  |  |  |
| **IF** the Supplier requires physical changes to the Worksop   * Specification & drawings completed * Specification & drawings approved by the Prison * Confirm the date works due to start * Confirm if escorts will be required * Confirm final Workshop fit out date |  |  |  |  |  |

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| --- | --- | --- | --- | --- | --- |
| **STAFF** |  |  |  |  |  |
|  | Major (M)/ Minor (m) | Evidenced Y/N | Comments / Action Required | Action Plan Required | Agreed Action Completion Date |
| Confirm Prisoner uniform has been ordered |  |  |  |  |  |
| Staff & Prisoner work uniform is clean, tidy and fit for purpose |  |  |  |  |  |
| Confirm laundry process for prisoner uniform |  |  |  |  |  |
| Confirm Supplier staff have appropriate level security clearance |  |  |  |  |  |
| Confirm project information on the level and type of security clearance for contractors in correct. |  |  |  |  |  |
| Confirm Establishment Retail Liaison Contact (RLC) |  |  |  |  |  |
| Contact has been made with RLC   * Confirm who by * Confirm when made |  |  |  |  |  |
| Job descriptions for each role are available |  |  |  |  |  |
| Staff are aware of their role in the distribution of completed Orders at Serviced Sites |  |  |  |  |  |
| Confirm if the correct staffing levels are in place for go live – both Supplier and Prisoner |  |  |  |  |  |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **PRISONER TRAINING** | | | |  |  |  |
|  | Major (M)/ Minor (m) | Evidenced Y/N |  | Comments / Action Required | Action Plan Required | Agreed Action Completion Date |
| *Evidence of Prisoner training completion or dates to complete including:* | | | |  |  |  |
| Food hygiene |  |  |  |  |  |  |
| Manual handling |  |  |  | |  |  |
| Fire Safety |  |  |  | |  |  |
| Processes and Practices |  |  |  | |  |  |
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| **SUPPLIER STAFF TRAINING** | | | |  |  |  |
|  | Major (M)/ Minor (m) | Evidenced Y/N |  | Comments / Action Required | Action Plan Required | Agreed Action Completion Date |
| *Evidence of Prisoner training completion or dates to complete including:* | | | |  |  |  |
| Food hygiene |  |  |  |  |  |  |
| Manual handling |  |  |  |  |  |  |
| Fire safety |  |  |  |  |  |  |
| Local requirements (Supplier Staff only)?   * Breakaway * Induction * P-NOMIS * Radio training * Keys training |  |  |  |  |  |  |
| Processes and Practices |  |  |  |  |  |  |
| Prisoner awareness |  |  |  |  |  |  |

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| **ASSETS** |  |  |  |  |  |
|  | Major (M)/ Minor (m) | Evidenced Y/N | Comments / Action Required | Action Plan Required | Agreed Action Completion Date |
| Assets & lease register completed |  |  |  |  |  |
| Asset tags updated where appropriate |  |  |  |  |  |
| Confirm the process for collection and maintenance of Assets |  |  |  |  |  |
| List of equipment and tools prepared and handed over to the RLC (to be entered onto the Prison asset register) |  |  |  |  |  |
| Confirm the following Assets are available for use:   * Totes * Dollies * Cool Bags |  |  |  |  |  |

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| --- | --- | --- | --- | --- | --- |
| **IT** | | | | | |
|  | Major (M)/ Minor (m) | Evidenced Y/N | Comments / Action Required | Action Plan Required | Agreed Action Completion Date |
| IT System has been tested and is in full working order |  |  |  |  |  |
| IT hardware is in situ and in full working order |  |  |  |  |  |
| Printers and other hardware are in situ and fully working |  |  |  |  |  |
| Supplier understands P-NOMIS Quantum data process |  |  |  |  |  |
| Suppliers/ MOJ Digital confirms the network is operational |  |  |  |  |  |
| Confirm ability to receive CSV files |  |  |  |  |  |
| **IF** using, confirm connectivity of any Bluetooth /WiFi devices |  |  |  |  |  |
| Go live site meeting RLC & Supplier |  |  |  |  |  |
| Ensure establishment has list of Supplier security cleared staff to avoid delays. |  |  |  |  |  |
| Confirm if any cabling/any survey escort needed – enter date locally |  |  |  |  |  |
| Confirm if any cabling/any delivery escort needed – enter date locally |  |  |  |  |  |
| User acceptance training |  |  |  |  |  |
| User training including staff, prisoner & Ops. |  |  |  |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **PRODUCTS** |  |  |  |  |  |
|  | Major (M)/ Minor (m) | Evidenced Y/N | Comments / Action Required | Action Plan Required | Agreed Action Completion Date |
| Full stock take has taken place and documented |  |  |  |  |  |
| All products on shelves, correctly labelled and ready for picking |  |  |  |  |  |
| No High Value Items are on the shelves |  |  |  |  |  |
| Any stock which falls outside the  required shelf life guidelines is removed and disposed of accordingly. Any such wastage should be recorded |  |  |  |  |  |
| Any transferred stock (from previous Supplier) is entered on to the WMS |  |  |  |  |  |
| High Value Item area is:   * Sufficiently stocked * Secure |  |  |  |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **PROCESSES AND PROCEDURES** | | | | | |
|  | Major (M)/ Minor (m) | Evidenced Y/N | Comments / Action Required | Action Plan Required | Agreed Action Completion Date |
| PRISONER ORDER FORMS (POFs) |  |  |  |  |  |
| POF is reviewed and approved by the Head of Prison Retail.  These should include:   * Any transferred stock * Minimum order quantities * Week indication * Any promotions   Disclaimer |  |  |  |  |  |
| Confirm the process for  sending/receiving POFs to/from Serviced Sites |  |  |  |  |  |
| Confirm the process for handling late POFs |  |  |  |  |  |
| Confirm the day that POFs are overprinted with Prisoner data |  |  |  |  |  |
| Confirm the process for Bulk orders |  |  |  |  |  |
| Confirm the process for Buffer Boxes |  |  |  |  |  |
| WORKSHOP PROCESSES |  |  |  |  |  |
| Run and end to end process walk through |  |  |  |  |  |
| Confirm workshop operating hours |  |  |  |  |  |
| Confirm the picking and packing process |  |  |  |  |  |
| Confirm the process for handling High Value Items |  |  |  |  |  |
| Confirm the process for Express Orders |  |  |  |  |  |
| Dummy runs of Ordering |  |  |  |  |  |
| Confirm the ordering/pick and pack schedule has been produced to meet |  |  |  |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| the requirements of the MOU for each Serviced Site |  |  |  |  |  |
| Confirm how changes to LPL can be requested by the Serviced Site/Sites |  |  |  |  |  |
| Confirm local work instructions |  |  |  |  |  |
| Agree day and time when HMP finance department will receive the spends and PIN phone credit information and how this will be sent |  |  |  |  |  |
| Confirm the procedure for issuing stock to the kitchens if near sell by date |  |  |  |  |  |
| Confirm the procedure for the disposal of waste, including:   * Fresh produce * Cardboard * Packaging |  |  |  |  |  |
| DISTRUBUTION PROCESSES |  |  |  |  |  |
| Confirm the process for labelling and weighing Totes prior to dispatch |  |  |  |  |  |
| Agree days and methods for transmission of completed Orders to distribution point from the gate |  |  |  |  |  |
| Confirm & agree the proposed distribution schedule |  |  |  |  |  |
| Confirm if the Supplier will be using their own staff for Escorting Vehicles |  |  |  |  |  |
| GENERAL PROCESSES |  |  |  |  |  |
| Confirm the process for searching for Prisoners |  |  |  |  |  |
| Confirm that a Prisoner compact is in place and provide a sample |  |  |  |  |  |
| Confirm that Prisoner pay has been agreed locally with the Supplier and the Serviced Site/Site |  |  |  |  |  |
| Confirm an Operations Manual detailing all processes and procedures is in place |  |  |  |  |  |

**Definitions Minor**

Minor Problem means a condition that is not Critical or Major and will have none or very little impact on the delivery of canteen.

[Minor Problem](https://www.lawinsider.com/dictionary/minor-problem) means a problem that does not materially restrict use of the Services but does cause less significant features (that are not critical to the operation) to be unavailable.

A [Minor Problem](https://www.lawinsider.com/dictionary/minor-problem) may be tolerated during operation, though the Supplier must address any and all present Minor Problems once it has addressed any Major Problems respectively.

**Major**

[Major Issue](https://www.lawinsider.com/dictionary/major-issue) means an issue with performance and operational issues which effects the surety of service, therefore a causing a significant degrading of performance.

A major problem must be addressed immediately and possibly an action plan implemented**.**

**Prison Retail Service Project**

**Schedule 7.1**

**Charges and Invoicing**

**SCHEDULE 7.1**

**CHARGES AND INVOICING**

1. **FINANCIAL RESPONSE TEMPLATE AND BUDGET** 
   1. A copy of the Finance Response Template for the Goods and Services is enclosed at Annex A (Finance Response Template). The Finance Response Template represents the Parties' agreement regarding existing and future costs and revenues in relation to the supply and delivery of the Goods and Services as described at the Effective Date.
   2. Any Annual Budget agreed in accordance with this Schedule 7.1 (Charges and Invoicing) shall represent the Parties' agreement regarding existing and future costs and revenues in relation to the supply and delivery of the Goods and Services for each Financial Year of the Term.
   3. The Charges shall be calculated in accordance with the relevant Annual Budget and provisions set out in this Schedule 7.1 (Charges and Invoicing).
   4. The Charges for the Goods and Services are constructed of 2 (two) key components:
      1. Transition Costs

The Transition Costs include all cost elements of the provision of the Transition

Services and implementation of the Agreed Transition Management Plan (including without limitation the transitioning the Services and workshops from incumbent supplier to new supplier in readiness for Operational Services to commence). The Transition Costs will include the one-off specific costs and capital investments associated with setting up the Operational Services, equipping the workshops and complying with all the requirements on the Workshop Readiness Check List, Specification and in line with the Agreed Transition Management Plan.

* + 1. Operational Costs

The Operational Costs shall specify the costs for the provision of Goods and Operational Services following the Operational Services Commencement Date for each Retail Workshop. Operational Costs will include:

* + - 1. Cost Of Goods – the cost per unit for the Goods to be provided under this

Agreement as set out in the National Product List; and

* + - 1. Operational Service Cost – the costs for the provision of the Operational Services.
  1. The Finance Response Template provides a financial representation of the Supplier's assumptions, costs and revenues relating to the provision of the Goods and Services in order to enable agreement of any Change or addition to the Services made in accordance with Schedule 8.2 (Change Control Procedure) and to enable the Authority to monitor continuing value for money.
  2. The Financial Response Template and any Annual Budget once completed shall:
     1. provide sufficient detail for the Authority to have visibility of all costs to be incurred by the Supplier and of the Charges to be paid in respect of the provision of the Goods and Services;
     2. clearly show a breakdown with full visibility of any costs included in the Charges;
     3. quote all monetary values in pounds Sterling;
     4. quote all costs as exclusive of VAT;
     5. not be amended by the Supplier in any way which results in any part(s) of the Financial Response Template or any Annual Budget becoming hidden, protected, locked or otherwise inaccessible;
     6. include details of the Supplier's profit margin for the Transition Costs and Operational Costs.
  3. Any Annual Budget and the National Product List (NPL) or Service Site / Site Local Product List (LPL) may be updated to reflect any Operational Services volume changes or any other Change or new Operational Service agreed in accordance with the QRR and in any event within 20 Working Days following the end of each Contract Year in accordance with Schedule 7.5 (Financial Reports and Audit Rights) to reflect the revenues, costs and profits accumulated by the Supplier in connection with the provision of the Goods and Services.
  4. All changes to any Annual Budget shall be in all cases subject to the prior written approval of the Authority, and shall at all times be constructed using the same methodology as that used for the then current Annual Budget, and in accordance with the provisions of this Agreement.
  5. If the Authority disputes any change to the Annual Budget, it may request such further information from the Supplier as it reasonably requires prior to delivering a decision on whether it accepts or rejects the updated Annual Budget.
  6. In the event that the Authority and the Supplier are unable to reach agreement on any updated

Annual Budget, the matter shall be referred for determination in accordance with the Dispute Resolution Procedure and the then current Annual Budget shall apply until such Dispute is resolved and the updated Annual Budget is accepted by the Authority.

1. **CHARGING PRINCIPLES** 
   1. The Charges offered by the Supplier to the Authority for the provision of the Goods and

Services shall be calculated in accordance with Paragraphs 3 to 6. Except for Exceptional Costs no other amounts shall be paid for the performance of the Supplier's obligations, unless specified otherwise in this Agreement or unless agreed through Schedule 8.2 (Change Control Procedure).

* 1. The Supplier shall not be entitled to include within its calculation of Transition Costs or Operational Services Costs any of the following (which together shall be referred to as "**Excluded Costs**"):
     1. any part of any cost which exceeds what would be incurred by the Supplier on an arm's length commercial basis; or
     2. any part of those sums which exceeds what is fair and reasonable; or
     3. any sums described above which are not supported by appropriate evidence; or
     4. any sums that are not considered as Value for Money for the Authority; or
     5. any sums that have already been recovered by the Supplier from the Authority under any other Charge or payment under this Agreement; or
     6. any sums incurred by the Supplier as a result of:
        1. any failure of the Supplier or its Sub-Contractors to comply with the terms of this Agreement;
        2. any failure of the Supplier or its Sub-Contractors to maintain any equipment or software in accordance with the terms of this Agreement;
        3. any negligent or irresponsible action of the Supplier or its Sub-Contractors;
        4. any sums incurred in the implementation of any Rectification Plan.
  2. Unless agreed in accordance with Schedule 8.2 (Change Control Procedure) or in accordance with Schedule 7.3 (Benchmarking) or in accordance with the Quarterly Range Review meeting (QRR) and save for the Open Book Rebate at Clause 14 below, neither the Charges nor any other cost, Charge or expense shall be adjusted to take account of any inflation, changes to interest rate or any other factor including Change in Law or element which might otherwise increase the cost to the Supplier or the Supplier Subcontractors of the performance of their obligations.
  3. The Supplier shall promptly provide all information reasonably requested by the Authority to explain the Charges being made by the Supplier (including any Supplier Subcontractors).
  4. Expenses
     1. Other than those agreed in writing in the Transition Cost Budget or the

Operational Cost Budget or as an Exceptional Cost by the Authority, the Authority shall not pay expenses of the Supplier or its Sub-Contractors incurred in performing their obligation under this Agreement.

* + 1. The Supplier shall pay to the Authority any refund, credit or other rebate received by the Supplier from a third party for services, consumables, Software, goods or items paid for as a discount from the next invoice. Should any such refund, credit or other rebate become payable by the Supplier to the Authority after all invoices have been paid in full then the Supplier shall make payment to the Authority by such a method as the Authority requires.
  1. VAT and Taxes
     1. The Supplier shall be liable for any VAT and other taxes and duties (at the prevailing rates) payable by the Supplier on Goods and Services it uses in performing its obligations under this Agreement.
     2. The Authority shall be liable for any VAT and other taxes (at the prevailing rates) required to be levied on the provision of the Services. Any overpayment of VAT by the Authority is a sum recoverable by the Authority from the Supplier.
     3. The Supplier shall provide to the Authority VAT invoices (in the format and timescales required by Law) to enable the Authority to reclaim or obtain a refund of VAT payments.
     4. Where required by Law the Authority shall withhold tax from any payments to the Supplier. In such circumstances the Authority shall provide to the Supplier a formal receipt or other document evidencing the withholding in the format and timescale required by Law.

1. **TRANSITION COSTS** 
   1. The Transition Costs shall be comprised of the following elements:
      1. the Capital Expenditure calculated in accordance with Paragraph 3.2 below; plus
      2. the Transition Services Cost calculated in accordance with Paragraph 3.3 below; plus
      3. any pre-Approved Exceptional Costs related to the Transition Services calculated in accordance with Paragraph 5 below; plus
      4. the Supplier Profit calculated in accordance with Paragraph 6.3 below,

minus any Service Credit payable in accordance with Paragraph 6.4 below and Schedule 2.2 (Performance Levels).

* 1. Capital Expenditure
     1. The Transition Cost shall include the cost to the Supplier of purchasing any Authority Asset in accordance with Clause 9 of the Agreement to be procured in the implementation of the Transition Management Plan, in readiness for the commencement of Operational Services at a Retail Workshop.
     2. The Capital Expenditure may only be included in the Transition Cost, where and to the extent that:
        1. it is directly, properly and wholly incurred for the provision of the Services;
        2. such Capital Expenditure is agreed between the parties in advance in the Transition Cost Budget;
        3. such Capital Expenditure does not include any Excluded Costs.
  2. Transition Services Cost
     1. The Transition Cost shall include the cost to the Supplier or delivering any Transition Services.
     2. The Transition Services Cost(s) may only be included in the Transition Cost where and to the extent that:
        1. it is directly, properly and wholly incurred for the provision of the Services;
        2. such Transition Services Costs are agreed between the parties in advance in the Transition Budget;
        3. such Transition Services Costs does not include any Excluded Costs.

1. **OPERATIONAL COSTS** 
   1. The Operational Costs shall be comprised of the following elements:
      1. the Cost of Goods calculated in accordance with Paragraph 4.2 below; plus
      2. the Operational Services Cost calculated in accordance with Paragraph 4.3 below; plus
      3. any pre-Approved Exceptional Costs related to the Retail Services calculated in accordance with Paragraph 5 below; plus
      4. the Supplier Profit calculated in accordance with Paragraph 6.3 below,

minus any Service Credit payable in accordance with Paragraph 6.4 below and Schedule 2.2 (Performance Levels).

* 1. Cost of Goods
     1. The Operational Cost shall include the Cost of Goods, based on the price per unit set out in the National Product List applicable to the week in which the invoice is issued in accordance with Paragraph 12.6 below.
     2. Where any Goods are returned to the Supplier in accordance with the Specification or the terms of the Agreement, the Supplier shall issue a credit in respect of such Cost of Goods and apply such credit to the next invoice for Cost of Goods.
  2. Operational Services Costs
     1. The Operational Cost shall include the cost to the Supplier or delivering any Operational Services (the "**Operational Services Costs**").
     2. The Operational Services Cost(s) may only be included in the Operational Cost where and to the extent that:
        1. it is directly, properly and wholly incurred for the provision of the Operational Services;
        2. such Operational Services Costs are agreed between the parties in advance in the Operational Budget;
        3. such Operational Services Costs do not include any Excluded Costs.

1. **EXCEPTIONAL COSTS** 
   1. If at any point following the Approval of a Transition Budget or an Operational Budget, the Supplier identifies the need for additional expenditure ("**Exceptional Costs**") outside of the budgeted costs, it shall immediately notify the Authority of such requirement and an explanation and justification of any additional expenditure requested in accordance and follow the process detailed in with Schedule 8.2 (Change Control Procedure). The Authority may Approve or reject any such expenditure in accordance with Paragraph 5.2 below.
   2. The Authority shall not be required to Approve any Exceptional Costs to the extent that the Supplier cannot demonstrate to the reasonable satisfaction of the Supplier that:
      1. such costs have been identified and notified to the Authority in advance in accordance with Paragraph 5.1;
      2. have been reasonably, wholly and properly incurred in the provision of the Services to the Authority (and not to any other customer of the Supplier); 5.2.3 the Supplier has used reasonable endeavours to mitigate such costs;

5.2.4 such costs are not Excluded Costs.

* 1. For the avoidance of doubt, the Parties agree and acknowledge that Exceptional Costs are intended to reflect expenditure which was not reasonably foreseeable at the time of Approval of the Annual Budget, and Supplier shall not use the process above for the Approval of Exceptional Costs to seek to recover costs which were reasonably foreseeable at the time of Approval of an Annual Budget, and the Authority may reasonably reject any such request for such Exceptional Costs.

1. **CALCULATION OF SUPPLIER PROFIT** 
   1. In each Financial Year
   2. The percentage of supplier profit will be capped to a value of 7.6%.(seven point six)
   3. The Authority shall pay the Supplier Profit for each the Transitional Service Cost, Operational Service Cost; and any Approved Exceptional Costs minus any Service Credit calculated in accordance with Paragraph 6.4 below. The Supplier Profit shall be calculated as follows:

**Supplier Profit = Total Monthly SC x (7.6) / 100** Where Total Monthly SC is the sum of either the:

* + 1. Transitional Service Cost (only in the transition months); or
    2. Operational Service Cost and/or any Approved Exceptional Costs, in each case incurred in the calendar month to which an invoice relates.

Supplier Profit Margin is the profit margin set out at Paragraph 6.2 above.

* 1. Service Credits will be calculated as a proportion of the Supplier Profit, based on the Supplier's performance in accordance with Schedule 2.2 (Performance Levels). Any Service Credit shall be calculated and applied to the Charges in accordance with Schedule 2.2 (Performance Levels).
  2. For the avoidance of doubt, no Supplier Profit shall be payable on Capital Expenditure, or on Cost of Goods.

1. **REPORTS AND AUDIT** 
   1. During the Term, the Supplier shall comply with their obligations set out in Schedule 7.5 (Financial Reports and Audit Rights).
   2. Without prejudice to the Parties' respective rights and obligations in relation to audit access or the provision of information under the Agreement, the Supplier shall provide to the Authority and its authorised agents access to:
      1. inspect and take copies from the contract records;
      2. such Supplier Personnel as are required by the audit team to provide oral or written explanation of any queries or issues; and
      3. for the purposes of verifying the accuracy of, and any omissions from, all information provided to the Authority by the Supplier in relation to the Charges and proposed or actual variations to such information.
2. **OPEN BOOK REVIEW** 
   1. The Supplier agrees that the Authority will undertake an Open Book Review at the end of each

Financial Year in accordance with the terms of this Schedule 7.1 and the terms of the Agreement (for which the notice provisions of Clause 41.5 do not apply). The Supplier shall grant the Authority access to relevant documentation without undue delay in addition to access to such Supplier Personnel as are required to determine the systems in place, the data and other requirements.

* 1. The Authority shall be entitled to conduct a review of the Supplier's costs, margins and charges achieved, including but not limited to:

|  |  |
| --- | --- |
| **Cost Element** | **Cost Item** |
| Cost of Goods | CoGs purchase price on NPL |
| Transition Costs | Salary Costs of key positions (as identified in the Financial  Response Template). IT Costs (including Hardware, Software and installation) |
| Retail Services Costs | Salary Costs of key positions (as identified in Finance Response Template) |
| Distribution Costs | Delivery Charges including logistics costs |
| Express Delivery | Cost of Service |
| End User Delivery | Cost of Service and Resource Allocation |
| Overhead Costs | Account Management  Staff Costs |
| Margin | Profit (Gross & Net) |

* 1. The Supplier acknowledges that the Authority has the right to undertake an Open Book Review other than and in addition to at the end of the Financial Year. The Authority shall give the Supplier 3 months' written notice that it intends to carry out an Open Book Review in addition to the end of Contract Year Open Book Review. The Supplier shall grant the Authority access to relevant documentation and to such Supplier Personnel as are required to determine the systems in place and the data and other requirements. Such access must be granted within the 3-month notice period of an intended Open Book Review.
  2. To support the Open Book Review, the Supplier shall:
     1. no later than 30 days after the end of each Financial Year, provide to the Authority a statement created by the Supplier setting out the current Charges, revenues, and returns received by the Supplier in relation to the provision of the Goods and Services, and the actual and current costs (including capital costs, financing costs and ongoing revenue expenditure) incurred in relation to the Services and the provision of the Services (the "**Annual Financial Statement**");
     2. promptly make available the results of any regulatory or statutory review and shall provide access for the Authority to the regulatory or statutory auditors to discuss any actual or suspected error with respect to amounts charged to the Authority under the Agreement; and
     3. provide from its external auditors a letter in a form reasonably specified by the

Authority setting out the external auditor's confirmation that the Annual Financial Statement represents a true and fair view of the accounts relating to this Agreement.

* 1. The Open Book Review shall be concluded promptly and within 10 Working Days of the Open Book Review commencing, including the production of an Open Book Report ("**Open Book Report**") which will contain, but is not limited to, all the information required by this Schedule and the Authority (acting reasonably).
  2. The Parties shall bear their own costs with respect to any inspections or verification exercises carried out pursuant to this Schedule, save that if any Open Book Review reveals any overpayment by the Authority to the Supplier of the Charges or any underpayment by the Supplier to the Authority, the Supplier shall reimburse the Authority for the Authority's costs and expenses incurred in the Open Book Review provided that the Open Book Review has revealed an overpayment by the Authority in excess of £10,000 (and make good the overpayment or underpayment together with interest thereon at the rate of eight per cent (8%) per annum above the Bank of England's base rate for the time being in force (calculated from the date of the over or under payment)).
  3. The Charges shall also be adjusted downwards from the conclusion of the Open Book Review until the next Open Book Review and the parties shall agree a Change to the relevant Annual Budget in accordance with Schedule 8.2 (Change Control Procedure) to give effect to such adjustment (and the Supplier may not withhold its consent to such Change).
  4. Neither the Supplier nor any Sub-contractor shall be entitled to be repaid any expenses or costs incurred in complying with its obligations under this Schedule save as provided for.
  5. The Open Book Review provisions set out in this Schedule shall also apply in respect of SubContractors and the Supplier shall ensure that each Sub-Contract contains provisions which

enable the Authority to exercise its Open Book Review process in respect of that SubContractor. The Authority and the Supplier will agree in advance of any Open Book Review how the Open Book Review may apply to any particular Sub-Contractor.

1. **OPEN BOOK REBATE** 
   1. The Supplier agrees that it shall, following each Open Book Review and the production of the Open Book Report, refund to the Authority all savings that have been identified by the Parties as having been achieved by the Supplier in the previous Financial Year or in the period since the Effective Date or the last Open Book Review (the "**Open Book Rebate**").
   2. The Open Book Rebate shall be paid by way of a reduction in the Charges, such reduction to take effect on the first invoice issued by the Supplier following the issue of the Open Book Report.
2. **PAYMENT** 
   1. Unless otherwise expressly specified or agreed in writing, all Charges payable by the Authority shall be paid in arrears.
   2. All sums payable under this Agreement shall be paid in British pounds sterling or its replacement, following any adoption of any other legal tender in the United Kingdom.
   3. Purchase Order (PO) numbers are mandatory on all invoices and Supplier must have one on all invoices.
   4. Without prejudice the to the generality of and subject to Clause 10.6-10.7 of the Agreement,

the Supplier shall not be entitled to retain or set off any amount due to the Supplier from the Authority against monies owed from the Supplier to the Authority, but the Authority may set off any sums due to the Authority under this Agreement against any sums owed to the Supplier.

1. **DISPUTED SUMS** 
   1. The Authority may withhold payment of any invoice that it disputes in good faith, in whole or in part, by notice to the Supplier, within 20 Working Days after receipt of the relevant invoice, giving its reasons and specifying any additional information required to assist in resolving its concerns. The Supplier shall continue to perform all its obligations under this Agreement notwithstanding any such withholding of payment by the Authority.
   2. The Supplier and the Authority shall seek to resolve the dispute regarding such sums within 20 Working Days after which the matter shall be referred for determination in accordance with Schedule 8.3 (Dispute Resolution Procedure).
2. **INVOICING**

**Operational** **Costs**

* 1. Operational Services Costs
     1. Supplier will submit on the first day of each calendar month following the

Operational Services Commencement Date an invoice for the Operational Services Costs for the immediately preceding calendar month calculated in accordance with Paragraph 4.3 above as specified in the Operational Budget (the "**Budgeted Costs**") for Approval by the Authority and such invoice shall be Approved if the invoiced sum matches the Operational Budget for the relevant period;

* + 1. Supplier will submit within 15 days of the end of each calendar month following the Operational Services Commencement Date a budget specifying the Actual

Expenditure incurred in the immediately preceding calendar month ("**Actual** **Expenditure Budget**").

* + 1. In the event that the Actual Expenditure in any calendar month (as reported in the Actual Expenditure Budget) is lower than the Budgeted Costs then the Supplier shall issue a credit to the Authority for a sum equal to the difference between the Budgeted Costs and Actual Expenditure which may be applied by the Authority to the next payment to be made from the Authority to the Supplier.
    2. The parties agree and acknowledge that any expenditure in excess of the Budgeted Costs must be submitted for Approval as Exceptional Costs in accordance with Paragraph 5 above.
  1. Exceptional Costs

Supplier may submit an invoice for any Approved Exceptional Costs immediately following the delivery of the Goods and/or Services to which such Approved Exceptional Costs relate.

* 1. Supplier Profit

Supplier will submit following the approval of KPIs by the Performance Management Board in accordance with Schedule 8.1 (Governance) a monthly invoice in arrears for Supplier Profit associated with activities for Operational Services, as specified in the Operational Budget calculated in accordance with Paragraph 5.3 above (minus any Service Credit deductions in accordance with Paragraph 6.4 above and Schedule 2.2 (Performance Levels)).

* 1. Each invoice for Operational Services Costs shall include:
     1. a summary of all Charges and discounts listed within the invoice/s issued for the Month;
     2. all individual orders placed;
     3. details of any agreed changes which have occurred in the relevant Month which may have affected the relevant invoice(s); and
     4. a copy of the agreed KPI Report showing performance against the Performance Indicators and the Service Credits relating to the same, which have been applied to the relevant invoice(s).

**Cost Of** **Goods**

* 1. The Supplier will consolidate into a weekly invoice the Cost of Goods, following their unloading at the Retail Workshop. The invoice will include by Retail Workshop for Goods as separate cost items and be broken down in to line items. The consolidated invoice will have as reference attachment of Goods supplied to the Retail Workshops. The consolidated invoice shall include:
     1. Summary of which Retail Workshop has received which products and;
     2. Summary of returns to each Retail Workshop

**Transition** **Costs**

* 1. Each invoice for Transition Service Costs shall include:
     1. Transition Services Costs calculated in accordance with Paragraph 3.3 above;
     2. Approved Exceptional Costs calculated in accordance with Paragraph 5 above; and
     3. Capital Expenditure calculated in accordance with Paragraph 3.2 above; and
     4. Supplier Profit calculated in accordance with Paragraph 6.3 above minus any

Service Credit deductions in accordance with Paragraph 6.4above and Schedule 2.2 (Performance Levels),

each as associated with activities for Transition as specified in the Transition Budget into a consolidated invoice following the Achievement by the Supplier of a Milestone permitting the submission of an invoice for a Retail Workshop (as set out in the Agreed Transition Management Plan).

**Invoicing compliance (Operations and** **Transition)**

* 1. Each invoice shall adhere to the appropriate governmental standards and guidelines and the following criteria:
     1. a unique identification number (invoice number);
     2. the Supplier's name, address and contact information;
     3. the name and address of the department/agency in the Authority with which the Supplier is working;
     4. a clear description of the services, or goods being invoiced for;
     5. the date the goods or service were provided;
     6. the date of the invoice;
     7. the amount being charged;
     8. supplier monthly profit;
     9. any deductions against supplier profit due to application of service credits;
     10. VAT amount if applicable;
     11. the total amount owed;
     12. the Purchase Order Number (mandatory);
     13. Change Request Reference for any approved Exceptional Charges; and
     14. the amount of the invoice in British Pounds sterling or any other currency which is approved.
  2. Each invoice shall be submitted electronically and shall adhere to the following criteria:
     1. email size must not exceed 4mb;
     2. one invoice per file attachment (PDF), multiple invoices can be attached as separate files; and
     3. any supporting information, backing data etc. must be contained within the invoice PDF file.
  3. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. The Supplier shall, if so requested by the Authority, provide to the Authority such information as may reasonably be required by the Authority as to the amount of Value Added Tax chargeable on the value of the Services and payable by the Authority to the Supplier in addition to the Charges.
  4. Any overpayments by the Authority to the Supplier shall be a sum of money recoverable from the Supplier for the purposes of and in accordance with the Agreement.
  5. Unless otherwise agreed between the Authority and the Supplier or stated in the Authority Agreement, payment will be made by Bankers Automated Clearing Service (BACS) or by such a method as the Parties shall agree.
  6. Payment for Cost of Goods shall be made within 7 days of receipt of a correct and undisputed invoice, submitted weekly in arrears.
  7. Payment for Operational Services Costs (excluding the Cost of Goods) shall be made within 30 days of receipt of a correct and undisputed invoice, submitted in accordance with Paragraphs 12.1 to 12.3 (inclusive).
  8. Payment for Transition Costs (excludes Cost of Goods) shall be made within 30 days of receipt of a correct and undisputed invoice, submitted monthly in arrears.
  9. Disputed invoices not resolved within 20 Working Days shall be referred for determination in accordance with Schedule 8.3 (Dispute Resolution Procedure).
  10. Unless Approved, invoices must:
      1. not contain any lines for items which are not on the Purchase Order Number; and
      2. replicate, as far as possible, the structure of and the information contained in the Purchase Order Number in respect of the number of lines, line descriptions, price and quantity.
  11. If required by the Authority, the Supplier shall:
      1. register and comply with any reasonable eMarketplace solution adopted for invoicing and procurement catalogues by the Authority; and
      2. submit a structured electronic invoice in an Electronic Data Interchange or XML formats.
  12. Invoice for any Profit Share Payment and Rehabilitation Payment (as further described in Paragraph 17 and 18 below) will be submitted in accordance with Paragraphs 18 and 19 below and will in the first instance be approved by the Strategic Management Board clearly identifying in accordance with profit share calculation how if any profit share is payable. Any invoice for profit share must have Service Management Board Approval prior to submission.

1. **FINAL TOTAL MONTHLY CHARGES**

The final Charges in respect of all Services provided by the Supplier in the Month immediately prior to the termination or expiry of the Agreement shall not be invoiced by the Supplier to the Authority until the Supplier has produced and the Authority has agreed the final Monthly Service Report in respect of the performance in the final Month.

1. **BUDGET SETTING AND BUDGET REVIEW** 
   1. For the Transition Period the parties have agreed that the Transition Budget based on the Financial Response Template and set out in Annex B, shall apply.
   2. For the first Financial Year (being the period commencing on the Operational Services Commencement Date and ending on 31 March following the Operational Services Commencement Date) (the "First Financial Year"), the parties have agreed that the Operational Budget based on the Financial Response Template and set out in Annex C shall apply subject to the following adjustments:
      1. the salary costs contained in the Operational Budget shall be adjusted by multiplying the same salary costs by the percentage increase or changes in the weekly earnings pay figure for the period from August 2021 to March 2022 as published by the Office for National Statistics in the dataset entitled “AWE: Whole Economy Level (£) (seasonally adjusted)” with reference KAI7 in June 2022;
      2. except in relation to the Supplier’s costs for the provision of Goods as set out in the Operational Budget (which for the avoidance of doubt shall not be subject to the provisions of this paragraph 14.2.2), the non salary costs contained in the Operational Budget shall be adjusted by multiplying the same non salary costs by the percentage increase or changes in the consumer prices index for the period from August 2021 to March 2022 as published by the Office for National Statistics in June 2022.
   3. For each subsequent Financial Year, the parties shall following the Budget Review process set out below.

**Budget Review** **Process**

* 1. The Supplier shall carry out a review in November of each Financial Year and submit the outputs of the review no later than 1 January in each Financial Year prior to the annual Strategic Review Board for approval by the Authority, pursuant to Schedule 8.1 (Governance), to assess the financial performance of the Supplier in the previous Financial Year and to assess the any changes required to the Operational Budget for the upcoming Financial Year (the "**Budget Review**").
  2. At the completion of the Budget Review the Supplier will provide to the Authority a report and analysis (the "**Budget Review Report**") containing:
     1. a comparison of the relevant Operational Services Costs with open market rates for key commodities, source materials as well as the cost of personnel or contractors taking into account their particular skills and experience;
     2. a written assurance from the Finance Director of the Supplier that:
        1. the published list prices do not exceed, and that the discounts are at least equal to, those offered by the Supplier in its existing contracts with similar customers who in each case are broadly comparable with the Authority in terms of revenue derived by the Supplier in the United Kingdom (and the Supplier shall include supporting examples in the Budget Review Report of such contracting authorities); and
        2. the method of attributing the Supplier's costs to the Services is also consistently applied to those supporting examples in such a manner that the overall profit margin derived by the Supplier from the Authority is closely comparable to those for such examples.
     3. any proposed adjustment to the Operating Budget for the upcoming Budget Year along with any information as the Authority may reasonably request in order to consider such proposed adjustment.
  3. Any proposed adjustment to the Operating Budget shall be linked to:
     1. changes in tracked commodity prices using the Commodity Trackers which shall be applied on the first day of the second April following the Effective Date and on the first day of April in each subsequent year (each such date an "**adjustment** **date**"); and determined by multiplying the relevant amount or sum by the percentage increase or changes in the tracked commodity prices published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date; and
     2. changes in salary costs using the dataset entitled “AWE: Whole Economy Level (£) (seasonally adjusted)” with reference KAI7 published by the Office for National Statistics (the “Dataset”) which shall be applied for the Budget Review for the second Financial Year on the December 2022 publication date for the Dataset by the Office for National Statistics and on the relevant December publication date for the Dataset in each subsequent year (each such date an “adjustment date”) and determined as follows:
        1. for the Budget Review in the second Financial Year by multiplying the relevant salary costs by the percentage increase or changes in the weekly earnings pay figure (with reference KAI7) in the Dataset for the period from April 2022 to November 2022 as published by the Office for National Statistics on the adjustment date;
        2. for the Budget Review in the third Financial Year by multiplying the relevant salary costs by the percentage increase or changes in the weekly earnings pay figure (with reference KAI7) in the Dataset for the period from December 2022 to November 2023 as published by the Office for National Statistics on the adjustment date;
        3. for the Budget Review in the fourth and any subsequent Financial Years by multiplying the relevant salary costs by the percentage increase or changes in the weekly earnings pay figure (with reference KAI7) in the Dataset for the period from the December of the immediately preceding Financial Year to November of the fourth and any subsequent Financial Year (as the case may be) as published by the Office for National Statistics on the adjustment date.
     3. except in relation to the Supplier’s costs for the provision of Goods (which for the avoidance of doubt shall not be subject to the provisions of paragraph 14.6.1) changes in non salary costs using the dataset entitled “CPI Annual Rate 00: All Items 2015=100)” (the “CPI”) published by the Office for National Statistics which shall be applied for the Budget Review for the second Financial Year on the December 2022 publication date for the CPI and on the relevant December publication date in each subsequent year (each such date an “adjustment date”) and determined as follows:
        1. for the Budget Review in the second Financial Year by multiplying the relevant non-salary costs by the percentage increase or changes in the CPI for the period from April 2022 to November 2022 as published by the Office for National Statistics on the adjustment date;
        2. for the Budget Review in the third Financial Year by multiplying the relevant non-salary costs by the percentage increase or changes in the CPI for the period from December 2022 to November 2023 as published by the Office for National Statistics on the adjustment date;
        3. for the Budget Review in the fourth and any subsequent Financial Years by multiplying the relevant non-salary costs by the percentage increase or changes in the CPI for the period from December of the immediately preceding Financial Year to November of the fourth and any subsequent Financial Year (as the case may be) as published by the Office for National Statistics on the adjustment date.
     4. In calculating any percentage increase or change in the weekly earnings pay figure for the Dataset or the CPI (as the case may be), any such percentage increase or change shall be to two decimal places.
     5. any variation to the forecast volume of Goods and Services to be required for the

upcoming Financial Year based on the Management Information collected by the Supplier in accordance with the terms of the Agreement; and

* + 1. any Capital Expenditure anticipated for the upcoming Financial Year based on the Supplier's review of the Asset Register.
  1. If, on reviewing the Budget Review Report and the proposed Operational Budget for the upcoming Financial Year, the Authority has reason to believe that:
     1. the Charges paid and payable in respect of the immediately preceding Financial Year have not been demonstrated to be reasonable and provide value for money in accordance with Paragraph 8 above; or
     2. that the Supplier has not complied with the terms or intent of this Paragraph 14; or
     3. the proposed Operational Budget for the upcoming Financial Year fails to provide

Value For Money, is based on inaccurate or inappropriate assumptions or

otherwise cannot be Approved for any other reason (and the Authority shall promptly notify the Supplier of such reasons);

then the parties shall arrange to meet forthwith to seek to resolve any such concern and agree the proposed Operational Budget for the upcoming Financial Year. If any such concern cannot be resolved within 20 Working Days of such meeting then the dispute shall be referred to the Dispute Resolution Procedure as set out in Schedule 8.3 (Dispute Resolution Procedure) and/or the Authority may trigger a benchmarking exercise in accordance with this Schedule.

* 1. If the parties' fail to agree any proposed Operational Budget, the Operational Budget applicable to the immediately preceding Financial Year shall apply until such time as the new Operational Budget is agreed.
  2. Except as set out in this Paragraph 14 neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.
  3. Any change to tracked commodity prices shall only amend the Charges if the Supplier can demonstrate as part of the Budget Review that the tracked commodity prices have varied by greater than 5% for a period longer than 3 months.

1. **VALUE FOR MONEY** 
   1. The Supplier acknowledges that the Authority is a Central Government Body and accordingly subject to guidance which is issued by Central Government as being applicable to Central Government, as the same may be amended, updated or replaced from time to time, including, but not limited to Treasury's "Managing Public Money" Guidance ("**Applicable Guidance**").
   2. The Supplier shall at its cost take such steps as are as notified by the Authority as being necessary or desirable in order to enable it to comply with Applicable Guidance.
   3. The Supplier shall carry out its own internal value for money review each Financial Year which shall form part of the Budget Review, prior to the Strategic Management Board annual review carried out pursuant to Schedule 8.1 (Governance), to demonstrate that the Supplier's provision of the Services is reasonable and continues to provide value for money in accordance with the provisions of this Agreement.
2. **ONGOING REVIEWS AND REDUCTIONS** 
   1. The Supplier shall, except where the Agreement expressly provides to the contrary, use all reasonable endeavours to plan for, identify and realise opportunities to reduce the Charges and, in so doing, shall advise the Authority of each savings opportunity that is identified together with an estimate of the potential benefits to both parties. Where any such savings are identified the parties shall agree an adjustment to the Operating Budget in accordance with the Change Control Procedure.
   2. The Supplier shall ensure that all Exceptional Charges do not exceed the current market prices for equivalent goods or services.
3. **PROFIT SHARE PAYMENT**

An annual Profit Share arrangement will be operated as part of this Agreement. However, the Authority does not guarantee that any Profit Share Payment will be paid.

* 1. At the end of the First Financial Year and each subsequent Financial Year the Authority shall monitor whether the Sales generated from the Goods has generated any surplus during that Financial Year. The value of the "**Contract Surplus**" will be calculated as follows:

Total Annual Sales – Total Annual Charges = Contract Surplus (where such sum is >nil)

Where:

**Total Annual Sales** means the total revenues received by the Authority from End Users for the Goods in the Financial Year (minus any payments returned to the End User by the Authority for any returned Goods); and

**Total Annual Charges** shall be calculated as follows:

Annual Cost of Goods + Annual Operating Services Costs + Annual Adjusted Supplier Profit;

**Annual Cost of Goods** means the total invoiced Cost of Goods in the relevant Financial Year;

**Annual Operating Services Costs** means the total invoiced Operating Services Costs in the relevant Financial Year;

**Annual Adjusted Supplier Profits** means the total Supplier Profit accrued in the relevant Financial Year minus any Service Credits applicable in that Financial Year;

17.2 At the end of the Financial Year the Authority shall report to the Supplier detailing:

17.2.1 the total Contract Surplus accrued over the Financial Year;

17.2.2 any Rehabilitation Payment due to the Supplier calculated in accordance with Paragraph 18 below; and

17.2.3 any Performance Payment due to the Supplier calculated in accordance with Paragraph 17.4; or

in each case subject to the Overall Cap set out in paragraph 19 below.

17.3 Where at the end of the First Financial Year and each subsequent Financial Year there is a total Contract Surplus the Authority shall (subject to the Overall Cap at Paragraph 19 below) pay a Profit Share Payment calculated in accordance with Paragraph 17.4.

17.4 The calculation of any Profit Share Payment shall be determined by the overall level of performance as monitored against the KPIs over the Financial Year (based on the Year to Date Dashboard Report applicable for the Financial Year and provided in accordance with Schedule 2.2 (Performance Levels)). The Profit Share Payment where due will be proportioned on the basis of 70% to The Authority and 30% to the Supplier.

17.4.1 Table 1 defines

subject to the Overall Cap set out in Paragraph 19 below, the total potential Profit Share Payment available in any Financial Year.

17.4.2 For transparency, all KPI's overall performance will be normalised back to equivalent of 100%. The overall % attainment of the performance will then be measured against the attainment levels in Table 1. For example, where the supplier attains an overall Performance Level of equal to or above 95% the Supplier will be eligible for 30% of any Contract Surplus. Where a Suppliers overall performance Level is equal to or below 69% no Profit Share Payment will be made irrespective of any generated Contract Surplus.

|  |  |
| --- | --- |
| **Table 1** |  |
| **Overall**  **Performance Level**  **(% of KPIs)** | **Profit Share Payment**  **(% to be applied to any Contract Surplus (max 30%))** |
| 95% & above | 30% |
| 90% - 94% | 25% |
| 80% - 89% | 20% |
| 70 - 79%% | 15% |
| <69 | 0% |

17.5 Where any Profit Share Payment is due, the Supplier may with the agreement of the Authority invoice for their share of the Profit Share Payment 30 days following the end the Financial Year, such undisputed invoice to be paid within 30 days of receipt of the invoice.

17.6 The parties agree and acknowledge that the Authority may use up to 70% of any Contract Surplus accrued in any Financial Year at any time for any expenditure it sees fit, provided that any such expenditure shall not be included in the calculation of Contract Surplus in addition to the Total Annual Charges, and the Authority shall always maintain at least 30% of the Contract Surplus in each Financial Year for the purposes of making the Profit Share Payment available to the Supplier.

1. **REHABILIATION SUPPLEMENT** 
   1. At the end of the First Financial Year and each subsequent Financial Year the Authority shall make an additional end of year performance related payment to the Supplier where the Supplier (a) achieves the 100% rehabilitation key performance target as defined in Schedule 2.2 (Performance Levels); (b) and that Supplier achieves overall Performance Level (based on the Year to Date Dashboard Report applicable for the Financial Year and provided in accordance with Schedule 2.2 (Performance Levels)) of greater than 90%.
   2. The value of the Rehabilitation Payment shall be a sum equal to 1% of total Contract Surplus for the relevant Financial Year (subject to the Overall Cap set out at Paragraph 19 below).
2. **OVERALL CAP**

Any Profit Share Payment and Rehabilitation Payment (taken together) shall not exceed the Overall Cap. The Overall Cap shall be a sum equal to 6% of the following:

(Annual Adjusted Supplier Profit + Profit Share Payment + Rehabilitation Payment / Total Annual Charges) \* 100%

Where the Annual Adjusted Supplier Profit and the Total Annual Charges shall bear the meanings set out in Paragraph 17.1 above, and the Profit Share Payment and Rehabilitation Payment shall be calculated in accordance with Paragraphs 17 and 18 above.

1. **BENCHMARKING**

If Benchmarking (carried out in accordance with Schedule 7.3) identifies that the Authority could receive a more economically favourable service elsewhere, then the Supplier will be expected to achieve those benefits and the parties shall agree a Change to amend the Charges and the Operational Budget accordingly.

**ANNEX A**

**FINANCE RESPONSE TEMPLATE**

FRT as submitted as BAFO response 27th July 2021

**ANNEX B**

**TRANSITION BUDGET**

Transition costs as submitted within the Transition cost tab in FRT dated 27th July 2021

**ANNEX C**

**OPERATIONAL BUDGET FOR THE FIRST FINANCIAL YEAR**

Operational budget as defined in the FRT submitted as BAFO 27th July 2021

**ANNEX D**

**PAYMENTS FOR DELAYS DUE TO AUTHORITY CAUSE**

1. If the Supplier is entitled in accordance with Clause 28.1(c)(iii) (Authority Cause) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 23 (Limitations on Liability), such compensation shall be determined in accordance with the following principles:
   1. the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:
      1. can demonstrate it has incurred solely and directly as a result of the Authority Cause;
      2. is, has been, or will be unable to mitigate, having complied with its obligations under Clause 28.1 (Authority Cause); and
      3. are not Excluded Costs.
   2. the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Authority Cause.
2. The Supplier shall provide the Authority with any information the Authority may require in order to assess the validity of the Supplier's claim to compensation.

**Prison Retail Service Project**

**Schedule 7.2**

**Payments on Termination**

**SCHEDULE 7.2**

**PAYMENTS ON TERMINATION**

1. **DEFINITIONS** 
   1. In this Schedule, the following definitions shall apply:

"**Anticipated Contract Life** shall bear the definition as set out in Schedule 1

**Profit Margin**" (Definitions);

"**Applicable Supplier** any Supplier Personnel who: **Personnel**"

(a) at the Termination Date:

are employees of the Supplier;

are Dedicated Supplier Personnel;

have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment

Regulations; and

(b) are dismissed or given notice of dismissal by the Supplier within:

40 Working Days of the Termination Date; or

such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and

have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and

the Supplier can demonstrate to the satisfaction of the Authority:

are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;

are genuinely being dismissed for reasons of redundancy; and

have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under

this provision in respect of such employees;

|  |  |
| --- | --- |
| "**Assumed Performance**  **Level**" | means the average performance of the Supplier against all KIPIs as set out in the most recent Year to Date Dashboard Report (set out in the Performance  Monitoring Report in accordance with Schedule 2.2 (Performance Levels)); |
| "**Breakage Costs Payment**" | means an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the  Termination Date as determined in accordance with Paragraph 3; |
| "**Compensation Payment**" | the payment calculated in accordance with Paragraph 6; |
| "**Contract Breakage Costs**" | the amounts payable by the Supplier to its Key Subcontractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or ThirdParty Contracts as a direct result of the early termination of this Agreement; |
| "**Dedicated Supplier**  **Personnel**" | all Supplier Personnel then assigned to the Services or any part of the Services or the delivery of the  Goods. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services and/or Goods; |
| "**Profit Already Paid**" | the Supplier Profit calculated in accordance with Schedule 7.1 (Charges and Invoicing) and paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date; |
| "**Redundancy Costs**" | the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the  Services as a proportion of the total Service duration: |

any statutory redundancy payment; and

in respect of an employee who was a Transferring Former Supplier Employee any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the

Employment Regulations;

|  |  |  |
| --- | --- | --- |
| "**Request for Estimate**" | a written request sent by the Authority to the  Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the  Authority exercised its right under Clause 30.1  (Termination by the Authority) to terminate this  Agreement for convenience on a specified  Termination Date; | |
| "**Shortfall Period**" | has the meaning given in Paragraph 6.2; | |
| "**Termination Estimate**" | has the meaning given in Paragraph 11.2; | |
| "**Third Party Contract**" | a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the  Services, as listed in Schedule 4.4 (Third Party Contracts); | |
| "**Total Costs Incurred**" | the Costs incurred by the Supplier up to the Termination Date in the performance of this  Agreement and detailed in the Financial Response  Template which would be eligible to accrue Supplier  Profit calculated in accordance with Paragraph 6 of  Schedule 7.1 (Charges and Invoicing) (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions  (other than Service Credits deducted from the  Unrecovered Profit) up to (and including) the Termination Date; | |
| "**Unrecovered Costs**" | the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this  Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (Charges and Invoicing) as such  Charges are forecast in the Operating Budget or Transition Budget; | |
| "**Unrecovered Payment**" | an amount equal to the lower of:   1. the sum of the Unrecovered Costs and the   Unrecovered Profit; and   1. the amount specified in Paragraph 4; | |
| "**Unrecovered Profit**" | (Total Costs Incurred x Anticipated Contract Life Profit Margin) – (Profit Already Paid + Service Credits remaining unpaid at the Termination Date); | |
| "**Unrecovered Profit Share**  **Payment**" | shall be calculated in accordance with Paragraph 18 of Schedule 7.1 (Charges and Invoicing) provided | |
| that: |  |
|  | (a) | the Contract Surplus for the purposes of any such calculation shall be calculated using the Shortfall Period in place of a Financial Year using assumed sales for such Shortfall Period (which shall be determined by the Authority and based on the average Sales during period from the commencement of the applicable Financial Year to the Termination Date); and |
|  | (b) | Where the Contract Surplus is > nil the Performance Payment shall be calculated in accordance with Paragraph 18 of Schedule 7.1 (Charges and Invoicing) using the  Assumed Performance Level in place of the  Overall Performance Level; |
| "**Unrecovered**  **Rehabilitation Payment**" | shall be a sum equal to 1% of any Contract Surplus (as the same is defined in Schedule 7.1 (Charges and Invoicing)), calculated in accordance with Paragraph 18 of Schedule 7.1 (Charges and  Invoicing) using the Shortfall Period in place of a  Financial Year and using assumed sales for such  Shortfall Period (which shall be determined by the Authority and based on the average Sales during period from the commencement of the applicable Financial Year to the Termination Date). | |

1. **TERMINATION PAYMENT**

The Termination Payment payable pursuant to Clause 31.3 (Payments by the Authority) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

1. **BREAKAGE COSTS PAYMENT** 
   1. The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:
      1. would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
      2. are unavoidable, proven, reasonable, and not capable of recovery;
      3. are incurred under arrangements or agreements that are directly associated with this Agreement;
      4. are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
      5. relate directly to the termination of the Services to the Authority (and to no other customer of the Supplier).

**Limitation on Breakage Costs** **Payment**

* 1. The Breakage Costs Payment shall not exceed the lower of:
     1. the relevant limit set out in Annex A; and
     2. 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

**Redundancy** **Costs**

* 1. The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
  2. Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

**Contract Breakage** **Costs**

* 1. The Supplier shall be entitled to Contract Breakage Costs only in respect of Third-Party Contracts or Sub-contracts which:
     1. are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (Exit Management); and
     2. the Supplier can demonstrate:
        1. are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
        2. have been entered into by it in the ordinary course of business.
  2. The Supplier shall seek to negotiate termination of any Third-Party Contracts or Sub- contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
  3. Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
     1. the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
     2. Assets not yet installed at the Termination Date.

1. **UNRECOVERED PAYMENT** 
   1. The Unrecovered Payment shall not exceed the lowest of:
      1. the relevant limit set out in Annex A;
      2. 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
      3. the Charges (excluding any Rehabilitation Payment or Profit Share Payment) that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (Charges and Invoicing) as forecast in the Financial Response Template.
2. **MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS** 
   1. The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs including (without limitation) by:
      1. the appropriation of Assets, employees and resources for other purposes;
      2. at the Authority's request, assigning any Third-Party Contracts and Sub- contracts to the Authority or a third party acting on behalf of the Authority; and
      3. in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.
   2. If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 8.3 (Dispute Resolution Procedure).
3. **COMPENSATION PAYMENT** 
   1. The Compensation Payment payable pursuant to Clause 31.3.2 (Payments by the Authority) shall be the sum of the following elements:
      1. an amount equal to the total forecast Charges (excluding the Rehabilitation

Payment and Profit Share Payment) which would be eligible to accrue Supplier

Profit calculated in accordance with Paragraph 6 of Schedule 7.1 (Charges and Invoicing) over the Shortfall Period (as stated in the then current Financial Model) multiplied by the Anticipated Contract Life Profit Margin;

* + 1. an amount equal to the Unrecovered Profit Share Payment over the Shortfall Period; and
    2. where the Assumed Performance Level at the Termination Date is greater than 90% an amount equal to the Unrecovered Rehabilitation Payment over the Shortfall Period.
  1. For the purposes of Paragraph 6.1, the "**Shortfall Period**" means:
     1. where the Authority terminates this Agreement pursuant to Clause

30.1(Termination by the Authority), a number of days equal to the number of days by which the notice given falls short of 365 days; or

* + 1. where the Supplier terminates this Agreement pursuant to Clause 30.3(a) (Termination by the Supplier), a number of days equal to the number of days by which the period from (and including) the date of the non- payment by the Authority to (and including) the Termination Date falls short of 365 days,

but in each case subject to the limits set out in Paragraphs 6.3 and 6.4.

* 1. Any Unrecovered Profit Share Payment and Unrecovered Rehabilitation Payment (taken together) shall be subject to an overall cap calculated in accordance with Paragraph 20 of Schedule 7.1 (Charges and Invoicing) where:
     1. the Annual Adjusted Supplier Profit and Total Annual Charges shall be calculated in respect of the Shortfall Period; and
     2. the Profit Share Payment and Rehabilitation Payment shall be replaced with the Unrecovered Profit Share Payment and Unrecovered Rehabilitation Payment.
  2. The Compensation Payment shall be no greater than the lower of:
     1. the relevant limit set out in Annex A; and
     2. 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

1. **FULL AND FINAL SETTLEMENT**

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 30.1(a) (Termination by the Authority) or termination by the Supplier pursuant to Clause 30.3(a) (Termination by the Supplier) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

1. **INVOICING FOR THE PAYMENTS ON TERMINATION** 
   1. All sums due under this Schedule shall be payable by the Authority to the Supplier:
      1. where such sums due under this Schedule are in respect of Goods received but not yet paid for within 7 days of receipt of a correct and undisputed invoice;
      2. for all other sums due under this Schedule within 30 days of receipt of a correct and undisputed invoice.
2. **SET OFF**

Without prejudice to the generality of Clause 10.6 (Set off and Withholding) of the Agreement, the Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to the Agreement.

1. **NO DOUBLE RECOVERY** 
   1. If any amount payable under this Schedule (in whole or in part) relates to or arises from any

Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (Exit Management) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

* 1. The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.
  2. Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

1. **ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT** 
   1. The Authority may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6-month period.
   2. The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:
      1. be based on the relevant amounts set out in the Financial Response Template;
      2. include:
         1. details of the mechanism by which the Termination Payment is calculated;
         2. full particulars of the estimated Contract Breakage Costs in respect of each Subcontract or Third-Party Contract and appropriate supporting documentation; and
         3. such information as the Authority may reasonably require; and
      3. state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
   3. The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.
   4. If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

**ANNEX A**

**MAXIMUM PAYMENTS ON TERMINATION**

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that the Authority shall be liable to pay to the Supplier pursuant to this Agreement:

|  |  |  |  |
| --- | --- | --- | --- |
| Termination Date | Maximum  Unrecovered Payment **£** | Maximum Breakage  Costs Payment **£m** | Maximum  Compensation  Payment **£m** |
| Anytime in the first Contract Year |  |  |  |
| Anytime in the second Contract Year |  |  |  |
| Anytime in the third Contract Year |  |  |  |
| Anytime in the fourth Contract Year |  |  |  |
| Anytime in the fifth Contract Year |  |  |  |

***Note to Bidders***: the table above will be populated based on the tender responses.

**Prison Retail Service Project**

**Schedule 7.3**

**Benchmarking**

**SCHEDULE 7.3**

**BENCHMARKING**

1. **DEFINITIONS**

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| "**Benchmarked Service**" | a Service or the provision of Goods that the Authority elects to include in a Benchmark Review under Paragraph 2.3; |
| "**Benchmarker**" | the independent third party appointed under Paragraph 3.1; |
| "**Benchmark Report**" | the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5; |
| "**Benchmark Review**" | a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value; |
| "**Comparable Service**" | in relation to a Benchmarked Service, a service or the provision of goods that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance); |
| "**Comparison Group**" | in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom; |
| "**Equivalent Services Data**" | in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8.1 and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker; |
| "**Good Value**" | in relation to a Benchmarked Service, that: |

* + - * 1. having taken into account the Performance Indicators and Target Performance Levels, the value for money of the Charges

attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and

* + - * 1. any Performance Indicators and Target

Performance Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable

Service using Equivalent Services Data; and

"**Upper Quartile**" and the top 25% of instances of provision of a

Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

1. **FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW** 
   1. The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Benchmarked Services listed at Paragraph 2.3 below in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value for Money.
   2. Save for the Goods in the Shopping Basket, the Authority shall not be entitled to carry out a

Benchmark Review of any Benchmarked Services during the 12-month period from the Operational Service Commencement Date for those Goods or Services, nor at intervals of less than 12 months after any previous Benchmark Review relating to the same Goods or Services. Any Benchmarked Service shall be without prejudice to any review of charges in accordance with Schedule 7.1 (Charges and Invoicing) or the Shopping Basket Review in accordance with Schedule 7.3.

* 1. The Goods and Services that are to be the Benchmarked Services are as follows:
     1. Stock Management, which shall include:
        1. Stock movement from Supplier to Authority;
        2. Bulk stock movement from Supplier to Authority;
        3. Cost of Goods on NPL or otherwise in the Financial Model;
        4. Workshop Inventory;
        5. Product Returns;
     2. Distribution from Retail Workshops to Serviced Sites, which shall include:
        1. Network Efficiency;
        2. Express Service;
        3. End User Delivery;
     3. Order Process, which shall include:
        1. Printing of documents (including but not limited to POF, promotional flyers);
        2. Collection of POFs;
        3. Printing of Retail Workshop materials (including but not limited to tilling and dispatch manifest);
     4. Retail Workshop Management, which shall include:
        1. Management costs of running Retail Workshop;
        2. Wastage in Retail Workshop;
     5. Consumables, which shall include:
        1. Totes;
        2. Product Bags;
     6. Operational Support, which shall include:
        1. Asset maintenance;
        2. IT equipment;
        3. Software (including licences);
        4. IT hardware maintenance;
        5. Data Centre; and
        6. Data Communications (internet link).

1. **APPOINTMENT OF BENCHMARKER** 
   1. The Supplier shall propose an independent Benchmarker for the Authority's approval (at its discretion) to carry out the Benchmark Review, which may be either an organisation on the list of organisations set out in Annex A or such other organisation as may be agreed in writing between the Parties.
   2. The Supplier shall, at the written request of the Authority, require the Benchmarker to enter into a confidentiality agreement with the Parties in, or substantially in, the form set out in Annex B.
   3. Save as set out in Paragraph 3.4 below the costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Supplier shall procure that the Benchmarker shall not be compensated on a contingency fee or incentive basis.
   4. Where the Benchmarker assesses or identifies in the Benchmark Report. that the Benchmarked Services or any other costs levied by the Supplier are too high, should be reduced or are not Good Value, the Supplier shall bear the costs and expenses in full of the Benchmark Review.
2. **BENCHMARK REVIEW** 
   1. The Supplier shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
      1. a proposed timetable for the Benchmark Review;
      2. a description of the information that the Benchmarker requires each Party to provide;
      3. a description of the benchmarking methodology to be used;
      4. a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
      5. an estimate of the resources required from each Party to underpin the delivery of the plan;
      6. a description of how the Benchmarker will scope and identify the Comparison Group;
      7. details of any entities which the Benchmarker proposes to include within the Comparison Group; and
      8. if in the Benchmarker's professional opinion there are no Comparable Services or

the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.

* 1. The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
  2. Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
  3. Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.
  4. Once the plan is approved by both Parties or prescribed by the Benchmarker, the

Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the

Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 25.1.3 (Rectification Plan Process).

* 1. Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
  2. Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
  3. Once it has received the information it requires, the Benchmarker shall:
     1. finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
     2. derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
     3. derive the relative value for money of the charges payable for the Comparable

Services using the Equivalent Services Data and from that derive the Upper Quartile;

* + 1. derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
    2. compare the value for money of the Charges attributable to the Benchmarked

Services (having regard in particular to the applicable Performance Indicators and

Target Performance Levels) to the value for money of the Upper Quartile;

* + 1. compare the Performance Indicators and Target Performance Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
    2. determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
  1. The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:
     1. the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
     2. any front-end investment and development costs of the Supplier;
     3. the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
     4. the extent of the Supplier's management and contract governance responsibilities;
     5. any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear noncompetitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

1. **BENCHMARK REPORT** 
   1. The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
      1. include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
      2. include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
      3. if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
      4. illustrate the method used for any normalisation of the Equivalent Services Data.
   2. The Benchmarker shall act as an expert and not as an arbitrator.
   3. If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than 3 months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
   4. The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.
   5. The Authority shall be entitled to reject any Benchmark Report if the Authority reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
   6. If the implementation of any Benchmark Report causes the Supplier to provide the Services at a loss (as determined, by reference to the Financial Response Template), or should the Supplier be unable technically implement the recommended changes then the Supplier shall inform the Authority of the same. The Parties shall then seek to negotiate such a change that would not cause the Supplier to provide the Services at a loss or in such a way that the Supplier would be technically able to implement the changes (as applicable). Should the Parties be unable to negotiate such a change within 20 Working Days then the matter shall be referred to the Dispute Resolution Procedure in accordance with Paragraph 5.7 below.
   7. In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in

Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.

* 1. On conclusion of the Expert Determination:
     1. if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
     2. if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
        1. the Supplier shall immediately implement the relevant changes;
        2. the Supplier shall immediately pay an amount equal to any Service Credits which

would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998; and

* + - 1. the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.
  1. Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

**ANNEX A**

**AUTHORITY APPROVED BENCHMARKERS**

KPMG

PA Consulting

British Food Industries

Gartner Services

AT Kearney

Deloitte

Accenture

Plus any jointly agreed Benchmarking Company for any Benchmarked Service not covered by any of the above.

**ANNEX B**

**CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made on [date]

**BETWEEN:**

(1) [insert name] or [insert address] (the "**Authority**"); (2) [insert name] of [insert address] (the "**Supplier**"); each a "**Disclosing Party**"

(3) [insert name] of [insert address] (the "**Benchmarker**") each a Party, together the "**Parties**".

**WHEREAS:**

1. The Authority and the Supplier are party to a contract dated [insert date] (the "**Contract**") for the provision by the Supplier of [insert brief description of services] to the Authority.
2. The Benchmarker is to receive Confidential Information from the Disclosing Party for the purpose of carrying out a benchmarking review for the Authority of one or more of such services pursuant to the terms of the Contract (the "**Permitted Purpose**").

**IT IS AGREED as follows:**

1. **Interpretation** 
   1. In this Agreement, unless the context otherwise requires:

"**Confidential Information**" means:

(a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Disclosing Party to the Benchmarker pursuant to this Agreement that relates to: (i) the Disclosing Party; or

(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party;

* + - * 1. other Information provided by the Disclosing Party pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker's attention or into the Benchmarker's possession in connection with the Permitted Purpose;
        2. discussions, negotiations, and correspondence between the Disclosing

Party or any of its directors, officers, employees, consultants or professional advisers, the Benchmarker or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

* + - * 1. Information derived from any of the above, but not including any Information that:

|  |  |  |
| --- | --- | --- |
|  | (i) | was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Disclosing Party; |
|  | (ii) | the Benchmarker obtained on a nonconfidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Benchmarker; |
|  | (iii) | was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or |
|  | (iv) | was independently developed without access to the Confidential Information; |
| "**Information**" | Means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and | |
| "**Permitted Purpose**" | has the meaning given to that expression in recital (B) to this Agreement. | |

* 1. In this Agreement:
     1. a reference to any gender includes a reference to other genders;
     2. the singular includes the plural and vice versa;
     3. the words "**include**" and cognate expressions shall be construed as if they were immediately followed by the words "without limitation";
     4. references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
     5. headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
     6. references to Clauses are to clauses of this Agreement.

1. **Confidentiality Obligations** 
   1. In consideration of the Disclosing Party providing Confidential Information to the Benchmarker, the Benchmarker shall:
      1. treat all Confidential Information as secret and confidential;
      2. have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
      3. not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Disclosing Party or, if relevant, other owner or except as expressly set out in this Agreement;
      4. not transfer any of the Confidential Information outside the United Kingdom;
      5. not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
      6. immediately notify the Disclosing Party in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
      7. once the Permitted Purpose has been fulfilled:
         1. destroy or return to the Disclosing Party all documents and other tangible materials that contain any of the Confidential Information;
         2. ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device; and (c) make no further use of any Confidential Information.
2. **Permitted Disclosures** 
   1. The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
      1. reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
      2. have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
      3. have agreed to terms similar to those in this Agreement.
   2. The Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in Paragraph 5.7 of Schedule 7.3 (Benchmarking) to the Contract.
   3. The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
   4. Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
      1. Notify the Disclosing Party in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
      2. ask the court or other public body to treat the Confidential Information as confidential.
3. **General** 
   1. The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Disclosing Party shall remain with and be vested in the Disclosing Party.
   2. This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
      1. to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
      2. to require the Disclosing Party to disclose, continue disclosing or update any Confidential Information; or
      3. as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
   3. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
   4. Without prejudice to any other rights or remedies that the Disclosing Party may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Disclosing Party shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
   5. The maximum liability of the Benchmarker to the Disclosing Party for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
   6. For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
   7. Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
   8. This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.
4. **Notices** 
   1. Any notice to be given under this Agreement (each a "**Notice**") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
   2. Any Notice:
      1. if to be given to the Authority shall be sent to:
      2. if to be given to the Supplier shall be sent to:
      3. if to be given to the Benchmarker shall be sent to:

[Name of Organisation]

[Address]

Attention: [ ]

1. **Governing law** 
   1. This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
   2. Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of the Authority

Signature: Date:

Name: Position:

For and on behalf of [name of Supplier]

Signature: Date:

Name Position:

For and on behalf of [name of Benchmarker]

Signature: Date:

Name: Position:

**Prison Retail Service Project**

**Schedule 7.4**

**Financial Distress**

**SCHEDULE 7.4**

**FINANCIAL DISTRESS**

1. **DEFINITIONS**

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| "**Applicable Financial**  **Indicators**" | means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored  Suppliers as set out in Paragraph 5.2 of this Schedule; |
| "**Bidder Annual Revenue**" | Revenue shown on the face of the Supplier's / Bidder's Income Statement in a standard set of financial statements for each accounting year. It should exclude the entity's share of the revenue of associates, joint ventures and any other group entities which are not fully consolidated; |
| "**Board**" | shall be as defined in Schedule 1 (Definitions); |
| "**Board Confirmation**" | shall be as defined in Schedule 1 (Definitions); |
| "**Credit Rating Level**" | a credit rating level as specified in Annex A of this  Schedule; |
| "**Credit Rating Threshold**" | the minimum Credit Rating Level for each entity in the FDE Group as set out in Annex C of this Schedule; |
| "**Expected Annual Contract**  **Value**" | the annual monetary value of the Agreement, which shall be [TBC] in the first Financial Year and thereafter shall be the total contract value as set out in the Operating Budget applicable to the relevant Financial Year; |
| "**FDE Group**" | means the Supplier, Relevant Parent Company, Guarantor, and Key Sub-contractors; |
| "**Financial Distress Event**" | shall bear the meaning as set out in Schedule 1 (Definitions); |
| "**Financial Distress**  **Remediation Plan**" | shall bear the meaning as set out in Schedule 1 (Definitions); |
| "**Financial Indicators**" | in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at Paragraph 5.1 of this Schedule; and in respect of each Monitored Supplier, means those  Applicable Financial Indicators; |
| "**Financial Target**  **Thresholds**" | means the target thresholds for each of the Financial Indicators set out at Paragraph 5.1 of this Schedule; |

"**Monitored Suppliers**" means those entities specified at Paragraph 5.2 of this Schedule;

"**Rating Agencies**" the rating agencies listed in Annex A of this Schedule.

1. **WARRANTIES AND DUTY TO NOTIFY** 
   1. The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:
      1. the long-term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex C of this Schedule; and
      2. the financial position or, as appropriate, the financial performance of each entity in the FDE Group satisfies the Financial Target Thresholds.
   2. The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within 5 Working Days of the occurrence of the downgrade).
   3. The Supplier shall:
      1. regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
      2. monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Paragraph 5.1 (where specified) and in any event, on a regular basis and no less than once a year within 120 days after the Accounting Reference Date; and
      3. promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 5 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
   4. For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1.1, and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:
      1. any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or
      2. a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Annex C of this Schedule ceases to hold a Credit Rating for that entity.
   5. Each report submitted by the Supplier pursuant to Paragraph 2.3.2 shall:
      1. be a single report with separate sections for each of the FDE Group entities;
      2. contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
      3. include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
      4. be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
      5. include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.
2. **FINANCIAL DISTRESS EVENTS** 
   1. The following shall be Financial Distress Events:
      1. the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
      2. an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
      3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
      4. an FDE Group entity committing a material breach of covenant to its lenders;
      5. a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
      6. any of the following:
         1. commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £1m or obligations under a service contract with a total contract value greater than £3m;
         2. non-payment by an FDE Group entity of any financial indebtedness;
         3. any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
         4. the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
         5. the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement; and

* + 1. any one of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

1. **CONSEQUENCES OF FINANCIAL DISTRESS EVENTS** 
   1. Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.
   2. In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1.5, the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 5 Working Days to:
      1. rectify such late or non-payment; or
      2. demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
   3. The Supplier shall (and shall procure that any Monitored Supplier, the Guarantor and/or any relevant Key Sub-contractor shall):
      1. at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
      2. where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
         1. submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
         2. to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier, any Monitored Supplier, Key Sub-contractors and/or the Guarantor as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.
   4. The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 4.5.
   5. If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.
   6. Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:
      1. on a regular basis (which shall not be less than fortnightly):
         1. review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and
         2. provide a written report to the Authority setting out its progress against the

Financial Distress Remediation Plan, the reasons for any changes made to the

Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;

* + 1. where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6.1, submit an updated Financial Distress

Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and

* + 1. comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
  1. Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.
  2. The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Paragraph 4.3.2(b) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:
     1. obtaining in advance written authority from Key Sub-contractors, the Guarantor

and/or Monitored Suppliers authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;

* + 1. agreeing in advance with the Authority, Key Sub-contractors, the Guarantor and/or Monitored Suppliers a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;
    2. putting in place any other reasonable arrangements to enable the information to

be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and

* + 1. disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymization and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

1. **FINANCIAL INDICATORS** 
   1. Subject to the calculation methodology set out at Annex D of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as Table 1.

(***Note***. Any costs of a Supplier having to report Financial Indicators differently will be borne by the Supplier).

**Table 1 Financial Indicators**

|  |  |  |  |
| --- | --- | --- | --- |
| **Financial Indicator** | **Calculation 1** | **Financial Target Threshold** | **Monitoring and**  **Reporting Frequency** |
| 1  Operating Margin  or  The higher of (a) the Operating Margin for the most recent 12month period and (b) the average Operating  Margin for the last two  12-month periods] | Operating Margin =  Operating Profit / Revenue | **> (10%)** | Tested and reported yearly  in arrears within 90 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date. |
| 2  (Net Debt to EBITDA  Ratio) | (Net Debt to EBITDA ratio  = Net Debt / EBITDA) | **< (2.5x) times** | Tested and reported yearly  in arrears within 90 days of each accounting reference date based upon Net Debt and EBITDA, for the 12 months ending on the relevant accounting reference date. |
| 3  Acid Ratio | Acid Ratio = (Current  Assets – inventories) / Current Liabilities | **> (1.0x) times** | Tested and reported yearly  in arrears within 90 days of each accounting reference date based upon figures at the relevant accounting reference date. |
| 4 Gearing | Long Term Liabilities /  Capital Employed (%)  Or  (Debt / Equity) | **< (X) %** | Tested and reported yearly  in arrears within 90 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date. |
| 5 | Turnover Ratio = Bidder Annual | **> (2 times)** | Tested and reported yearly |
| Turnover Ratio | Revenue / Expected Annual Contract Value |  | in arrears within 90 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date. |

Key: 1 – See Annex D of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

* 1. Monitored Suppliers

|  |  |
| --- | --- |
| Monitored Supplier | Applicable Financial Indicators  As defined in Table 1 para 5.1 |

1. **TERMINATION RIGHTS** 
   1. The Authority shall be entitled to terminate this Agreement under Clause 30.1.3 (Termination by the Authority) if:
      1. the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3.3;
      2. the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
      3. the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6.3.
2. **PRIMACY OF CREDIT RATINGS** 
   1. Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1.2 to 3.1(g), the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in Annex C of this Schedule, then:
      1. the Supplier shall be relieved automatically of its obligations under Paragraphs

4.3 to 4.6; and

* + 1. the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).

1. **BOARD CONFIRMATION** 
   1. If this Agreement has been specified as a Critical Service Contract under Paragraph 1.1 of Part B to Schedule 8.6 (Service Continuity and Corporate Resolution Planning) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within 120 days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Authority in the form set out at Annex E of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:
      1. that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
      2. of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
   2. The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.
   3. In respect of the first Board Confirmation to be provided under this Agreement, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.
   4. Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Authority (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

**ANNEX A**

**RATING AGENCIES AND THEIR STANDARD RATING SYSTEM**

**Note**  that this Schedule is based on long-term credit ratings issued by credit ratings agencies such as Standard and Poors, Moodys, etc.

The following is an example of standard ratings used by these rating agencies.

* Rating Agency 1 (e.g. Standard and Poors)
* Credit Rating Level 1 = AAA
* Credit Rating Level 2 = AA+
* Credit Rating Level 3 = AA
* Credit Rating Level 4 = AA-
* Credit Rating Level 5 = A+
* Credit Rating Level 6 = A
* Credit Rating Level 7 = A- • Credit Rating Level 8 = BBB+
* Credit Rating Level 9 = BBB • Credit Rating Level 10 = BBB-
* Etc.
* Rating Agency 2 (e.g. Moodys)
* Credit Rating Level 1 = Aaa
* Credit Rating Level 2 = Aa1
* Credit Rating Level 3 = Aa2
* Credit Rating Level 4 = Aa3
* Credit Rating Level 5 = A1
* Credit Rating Level 6 = A2
* Credit Rating Level 7 = A3
* Credit Rating Level 8 = Baa1
* Credit Rating Level 9 = Baa2 • Credit Rating Level 10 = Baa3
* Etc.
* Rating Agency 3 (Equifax)

|  |  |  |
| --- | --- | --- |
| • | Credit Rating Level 1 = A+, A, A- | Excellent Risk |
| • | Credit Rating Level 2 = B+, B, B- | Very Good |
| • | Credit Rating Level 3 = C+, C, C- | Above Average | |
| • | Credit Rating Level 4 = D+, D, D- | Average Risk | |
| • | Credit Rating Level 5 = E+, E, E- | Below Risk | |
| • | Credit Rating Level 6 = F+, F, F- | Very High Risk | |
| • | Credit Rating Level 9 = G | Gazette Data Filed | |
| • | Credit Rating Level 10 = I | Insolvent Code | |
| • | Credit Rating Level 11 = O | Out of Date Accounts | |
| • | Credit Rating Level 12 = N/A | No Accounts have been filed | |

* Rating Agency 4 (Dun & Bradsheet). The following tables summarises financials strength and risks based of tangible net worth and assessment of failure.

**Financial Strength Indicator Tangible Net Worth (in £)**

**Net Worth From To**

|  |  |  |
| --- | --- | --- |
| 5A | 35,000,000 | And Above |
| 4A | 15,000,000 | 34,999,999 |
| 3A | 7,000,000 | 14,999,999 |
| 2A | 1,500,000 | 6,999,999 |
| 1A | 700,000 | 1,499,999 |
| A | 350,000 | 699,999 |
| B | 200,000 | 349,999 |
| C | 100,000 | 199,999 |
| D | 70,000 | 99,999 |
| E | 35,000 | 69,999 |
| F | 20,000 | 34,999 |
| G | 8,000 | 19,999 |
| H | 0 | 7999 |

**Alternate Symbols Used**

1. Negative net worth (negative balance of equity after deduction of intangibles)
2. Net worth undetermined (accounts unavailable or older than 2 years)

NB New Business (less than 12 months old)

NQ Out of Business: Business has ceased to trade

**Risk Indicator (Dun & Bradsheet Indicator)**

To generate the Risk Indicator the D&B Failure Score is combined with expert rules such as:

*Minimum Data* – To identify trading activity and provide substance for the score

*High Risk Parent* – High Risk of a parent cascades down through the corporate family tree so that subsidiaries are also marked as High Risk

*Detrimental Legal Events* – In addition to failure events (for example; meeting of creditors, administrator appointed, bankruptcy, etc) Detrimental Auditors Reports will also automatically mark the subject organisation as High Risk

*Possible Fraudulent Activity* – Our team of Severe Risk Specialists identify potential and actual fraudulent businesses and individuals. Customers are then warned and Scores / Risk Indicators are removed or shown as High Risk

*Manual Overrides* – Scores and Risk Indicators can be adjusted by authorised experts to reflect non statistical / catastrophic events

The following table shows the relationship between the Risk Indicator and level of risk, and provides a guide to interpretation:

**D&B Risk Indicator**

**Indicator Meaning Probability of Failure**

1. Minimal risk Proceed with transaction. Offer extended terms if required
2. Low risk Proceed with transaction
3. Slightly greater than Proceed with transaction but monitor closely average risk
4. Significant level of risk Take suitable assurances before extending credit – e.g. personal guarantees

- Insufficient information

to assign a risk indicator.

**ANNEX B**

**NOT USED**

**ANNEX C**

**CREDIT RATINGS AND CREDIT RATING THRESHOLDS**

**Note** The table below has been constructed using Equifax if this is to change to an agreed Credit Rating and Credit Rating Thresholds then the Credit Rating and Credit Rating Threshold has to be agreed before contract signature.

|  |  |  |
| --- | --- | --- |
| **Entity** | **Credit Rating (long term)**  **(insert credit rating issued for the entity at the Effective**  **Date)** | **Credit Rating Threshold**  **(insert the actual rating (e.g.**  **AA-) or the Credit Rating**  **Level (e.g. Credit Rating**  **Level 3))** |
| Supplier | Rating Agency 3 – Credit Rating - C and above | Rating Agency 3 – Credit Rating 3 -C and above |
| Relevant Parent Company | Rating Agency 3 – Credit Rating - C and above | Rating Agency 3 – Credit Rating 3 - C and above |
| Guarantor (if different from Relevant Parent Company) | Rating Agency 3 – Credit Rating - C and above | Rating Agency 3 – Credit Rating 3 - C and above |
| Key Sub-contractors | Rating Agency 3 – Credit Rating 3 - C and above | Rating Agency 3 – Credit Rating 3 - C and above |
| Monitored Suppliers |  |  |

**ANNEX D**

**CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS**

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

**General methodology**

1. Terminology: The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
2. Groups: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. Foreign currency conversion: Figures denominated in foreign currencies should be converted at the exchange rate (Bank of England Spot rate) in force at the relevant date for which the Financial Indicator is being calculated.
4. Treatment of non-underlying items: Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

**Specific Methodology**

|  |  |
| --- | --- |
| **Financial Indicator** | **Specific Methodology** |
| 1  Operating Margin | The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements.  Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates.  Where an entity has an operating loss (that is, where the operating profit is negative), Operating Profit should be taken to be zero. |
| 2  Net Debt to EBITDA  Ratio | The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.  • Net Debt:  The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest-bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.  Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.  Cash and cash equivalents should include short-term financial investments shown in current assets. |
|  | Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.  • EBITDA:  Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).  "Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents  "EBITDA" = Operating profit + Depreciation charge + Amortisation charge |
| 3  (Acid Ratio) | All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements. |
| 4  Gearing %  Also known as  "leverage" | Gearing focuses on the capital structure of the business – that means the proportion of finance that is provided by debt relative to the finance provided by equity (or shareholders). Its focuses on the long-term financial stability of a business.  All elements that are used to calculate Gearing % are available on the face of the Balance Sheet in a standard set of financial statements.  Gearing % = (long term liabilities/Capital employed) \* 100  Long-term liabilities include loans due more than one year + preference shares + mortgages  Capital employed = Share capital + retained earnings + long-term liabilities Or,  Total Debt / Total Equity \* 100% |
| 5  Turnover Ratio | Turnover Ratio = Bidder Annual Revenue / Expected Annual Contract Value  The Turnover Ratio is used to understand how large the contract is compared to the annual revenue of a bidder for the contract. |

**ANNEX E BOARD CONFIRMATION**

Supplier Name:

Contract Reference Number:

The Board of Directors acknowledge the requirements set out at Paragraph 8 of Schedule 7.4 (Financial Distress) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

1. that a Financial Distress Event has occurred since the later of the previous Board

Confirmation and the Effective Date or is subsisting; or

1. of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event On behalf of the Board of Directors:

Chair

Signed

Date

Director

Signed

Date

**Prison Retail Service Project**

**Schedule 7.5**

**Financial Reports and Audit Rights**

**SCHEDULE 7.5**

**FINANCIAL REPORTS AND AUDIT RIGHTS**

**1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| "**Annual Contract Report**" | the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B; |
| "**Contract Amendment**  **Report**" | the contract amendment report to be provided by the  Supplier to the Authority pursuant to Paragraph 1 of Part B; |
| "**Final Reconciliation**  **Report**" | the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B; |
| "**Financial Reports**" | the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B; |
| "**Financial Representative**" | a reasonably skilled and experienced member of the Supplier's staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports; |
| "**Financial Transparency**  **Objective**" | has the meaning given in Paragraph 1 of Part A; |
| "**Material Change**" | a change which:   1. materially changes the profile of the   Charges; or   1. varies the total Charges payable during the   Term as forecast in the latest Financial Response Template by:   * 1. 5% or more; or   2. £1million or more; |
| "**Onerous Contract**" | a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37; |
| "**Onerous Contract Report**" | means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule; |
| "**Open Book Data**" | complete and accurate financial and non- financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and |

Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

1. the Supplier's Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
2. operating expenditure relating to the provision of the Services including an analysis showing:
   1. the unit costs and quantity of consumables and bought-in services;
   2. manpower resources broken down

into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;

* 1. a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and

1. Overheads;
2. all interest, expenses and any other thirdparty financing costs incurred in relation to the provision of the Services;
3. the Supplier Profit achieved over the Term and on an annual basis;
4. confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
5. an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
6. the actual Costs profile for each Service Period.

**PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA**

1. **FINANCIAL TRANSPARENCY OBJECTIVES**

The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

* 1. Understanding the Charges
     1. for the Authority to understand any payment sought from it by the Supplier including an analysis of the any costs, overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit;
     2. for both Parties to be able to understand the Financial Response Template and

any Annual Budget and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

* 1. Agreeing the impact of Change
     1. for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Charges;
     2. for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;
  2. Continuous improvement
     1. for the Parties to challenge each other with ideas for efficiency and improvements; and
     2. to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices, (together the "**Financial Transparency Objectives**").

1. **OPEN BOOK DATA** 
   1. The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.
   2. During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:
      1. maintain and retain the Open Book Data; and
      2. disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.
2. **ONEROUS CONTRACTS** 
   1. If the Supplier publicly designates the Agreement as an Onerous Contract (including where the Supplier has identified the Agreement as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (and in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:
      1. an initial root cause analysis of the issues and circumstances which may have contributed to the Agreement being designated as an Onerous Contract;
      2. an initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Agreement as an Onerous Contract;
      3. the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
      4. details of any other options which could be put in place to remove the designation of the Agreement as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
   2. Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Service Management Board, such final form report to be agreed no later than 1 month following the Authority's receipt of the draft Onerous Contract Report.
   3. The Service Management Board shall meet within 14 Working Days of the final Onerous

Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Relevant Supplier; representatives from any Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).

* 1. The Supplier acknowledges and agrees that the report is submitted to the Authority and

Service Management Board on an information only basis and the Authority and Service Management Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Agreement. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

**PART B: FINANCIAL REPORTS**

1. **PROVISION OF THE FINANCIAL REPORTS** 
   1. The Supplier shall provide:
      1. the Contract Inception Report on or before the Effective Date; and
      2. during the Term the following financial reports to the Authority, in the frequency specified below:

|  |  |
| --- | --- |
| **Financial Report** | **When to be provided** |
| Weekly Finance Report | Weekly reports – Invoice produced with relevant backing document/statement supporting invoice.  Within the last 5 days of the end of the previous week |
| Monthly Finance Report | Minimum Monthly reports – management information covering the following:   * Costs incurred (Cost categories) against Transitional Budget and/or Operational Budget * Delivery/Discrepancy issues. Actions and progress report * Key risks report * Stock take report (including wastage information – this is needed so Authority accounting team can journal costs correctly) * Exceptional Costs/costs report.   Within 5 days of the end of the previous month |
| Quarterly Finance Report | * reconciliation report * stock take reports - summary * ad hoc change request reports * Quarterly Dun & Bradstreet Report   Within 5 days of the end of the previous Quarter. |
| Contract Amendment Report | Within 1 month of a Material Change being agreed between the Supplier and the Authority |
| Quarterly Contract Report | Within 1 month of the end of each Quarter and for the avoidance of doubt this must contain Quarterly Dun & Bradstreet Report |
| Annual Contract Report | Within 1 month of the end of the Financial Year to which that report relates |
| Final Reconciliation Report | Within 3 months after the end of the Term |

* 1. The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.
  2. A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
  3. Each Financial Report shall:
     1. be completed by the Supplier using reasonable skill and care;
     2. incorporate and use the same defined terms as are used in this Agreement;
     3. quote all monetary values in pounds sterling; 1.4.4 quote all Costs as exclusive of any VAT; and

1.4.5 quote all Costs and Charges based on current prices.

* 1. Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
     1. being accurate and not misleading;
     2. having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
     3. being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and 1.5.4 compliant with the requirements of Paragraph 1.6.
  2. The Supplier shall:
     1. prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
     2. ensure that each Annual Contract Report and each Contract Amendment Report

(if any) is a true and fair reflection of the Transition Costs, Operating Costs and Supplier Profit forecast by the Supplier;

* + 1. the Final Reconciliation Report is a true and fair reflection of the Transition Costs and Operating Costs and Supplier Profit; and
    2. not have any other internal financial response template in relation to the Services inconsistent with any Annual Budget.
  1. During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.
  2. If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
     1. the Transition Costs or Operating Costs incurred (or those forecast to be incurred) by the Supplier; and/or
     2. the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

1. **FINANCIAL RESPONSE TEMPLATE (Payment Mechanism)** 
   1. Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:
      1. the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
      2. the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
      3. the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 2.1.1 notify the Supplier that:
         1. the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
         2. the Authority has approved the relevant Financial Report.
   2. Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1.3, that version shall become, with effect from the date of such approval, the current approved version of the Financial Report for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
   3. If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3 (Dispute Resolution Procedure).
   4. **QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION** **REPORT**
      1. Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
      2. Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
   5. **WEEKLY, MONTHLY, AND QUARTERLY FINANCE** **REPORTS**

Following the delivery by the Supplier of each of the above Finance Reports, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

1. **KEY SUB-CONTRACTORS** 
   1. The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.
   2. Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:
      1. be responsible for auditing the financial response templates/reports of its Key Sub- contractors and for any associated costs and expenses incurred or forecast to be incurred; and
      2. on written request by the Authority, provide the Authority or procure that the Authority is provided with:
         1. full copies of Audit Reports for the Key Sub-contractors. The Authority shall be entitled to rely on such Audit Reports; and
         2. further explanation of, and supporting information in relation to, any Audit Reports provided.

**PART C: AUDIT RIGHTS**

1. **AUDIT RIGHTS** 
   1. The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
      1. to verify the integrity and content of any Financial Report;
      2. to verify the accuracy of the Charges and any other amounts payable by the

Authority under this Agreement (and proposed or actual variations to such Charges and payments);

* + 1. to verify the Transition Costs or Operating Cost (including the amounts paid to all

Sub-contractors and any third-party suppliers) or any other element of the

Charges, Profit Share Payment or Rehabilitation Payment as set out in Schedule

7.1;

* + 1. to verify the Open Book Data;
    2. to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
    3. to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
    4. to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub- contractors or their ability to perform the Services;
    5. to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
    6. to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
    7. to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
    8. to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
    9. to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
    10. to review any Performance Monitoring Reports and/or other records relating to the

Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;

* + 1. to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
    2. to review the accuracy and completeness of the Registers;
    3. to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
    4. to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
    5. to review the Supplier's compliance with the Standards;
    6. to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of Assets is up to date; and/or
    7. to review the integrity, confidentiality and security of the Authority Data.
  1. Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
  2. Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

1. **CONDUCT OF AUDITS** 
   1. The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
   2. Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
      1. all information requested by the Authority within the permitted scope of the audit;
      2. reasonable access to any Serviced Sites/Sites and to any equipment used

(whether exclusively or non-exclusively) in the performance of the Services; 2.2.3 access to the Supplier System; and

2.2.4 access to Supplier Personnel.

* 1. The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
  2. The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
  3. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

1. **USE OF SUPPLIER'S INTERNAL AUDIT TEAM** 
   1. As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
   2. Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
      1. the resultant Audit Reports; and
      2. all relevant members of the Supplier's internal audit team for the purpose of understanding such Audit Reports.
2. **RESPONSE TO AUDITS** 
   1. If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
      1. the Supplier has committed a Default, the Authority may (without prejudice to any

rights and remedies the Authority may have) require the Supplier to correct such

Default as soon as reasonably practicable and, if such Default constitutes a

Notifiable Default, to comply with the Rectification Plan Process;

* + 1. there is an error in a Financial Report, the Supplier shall promptly rectify the error;
    2. the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
       1. the amount overpaid;
       2. interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
       3. the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may exercise its right to deduct such amount from the Charges if it prefers;

* + 1. the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority; and
    2. there is an error in either an Annual Budget or the National Product List, the parties shall agree using the Change Control Procedure an adjustment to such Annual Budget or National Product List to rectify such error.

**Prison Retail Service Project**

**Schedule 8.1**

**Governance**

**SCHEDULE 8.1**

**GOVERNANCE**

**1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

"**Annual Review**" as described in Paragraph 1110;

"**Board Member**" the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex A and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;

"**Boards**" the Project Board, Performance Management Board,

Product Review Board, Strategic Management Board and "Board" shall mean any of them;

"**Performance Management** the body described in Paragraph 5

**Board**"

"**Performance Review** the monthly meeting held with the Performance

**Meeting**" Management Board;

"**Product Review Board**" the body described in Paragraph 7;

"**Project Board**" the body described in Paragraph 4;

"**Project Managers**" the individuals appointed as such by the Authority

and the Supplier in accordance with Paragraph 2;

"**Promotional Product** a regular meeting held with the Product Review

**Review**" Board;

"**Promotional Products**" items which are available to the End User as part of a promotional period;

"**Strategic Management** the body described in Paragraph 6. **Board**"

1. **MANAGEMENT OF THE SERVICES** 
   1. The Supplier and the Authority shall each appoint named resource(s) for the purposes of this Agreement through whom the Services shall be managed at a day-to-day level.
   2. Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.
2. **BOARDS**

**Establishment and structure of the** **Boards**

* 1. The Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.
  2. In relation to each Board, the:
     1. Authority Board Members;
     2. Supplier Board Members;
     3. frequency that the Board shall meet (unless otherwise agreed between the Parties);
     4. location of the Board's meetings; and
     5. planned start date by which the Board shall be established, shall be as set out in Annex A.
  3. In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing, one month prior to the proposed change for agreement (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

**Board** **meetings**

* 1. Each Party shall ensure that its Board Members shall make all reasonable efforts to attend all Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
     1. a suitable delegate attends the relevant Board meeting in his/her place who

(wherever possible) is properly briefed and prepared;

* + 1. that he/she is debriefed by such delegate after the Board Meeting; and
    2. provide the relevant Board with sufficient notice that he/she is unable to attend the Board Meeting.
  1. A chairperson shall be appointed by the Authority for each Board as identified in Annex A. The chairperson shall be responsible for:
     1. scheduling Board meetings;
     2. setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
     3. chairing the Board meetings;
     4. monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
     5. ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
     6. facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
  2. Board meetings shall be quorate as long as at least two representatives from each Party are present.
  3. The Parties shall ensure, as far as reasonably practicable, that all Boards shall, as soon as reasonably practicable, resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

1. **ROLE OF THE PROJECT BOARD** 
   1. Throughout Transition Period the Project Board will be the main steering, decision making and approval forum and shall manage transition activities, working with Key Personnel and staff to deliver the Agreement in line with the Services Description. At the Effective Date the Supplier shall be invited to join the Project Board for Transition.
   2. The Supplier's performance against the Transition Management Plan as documented in the Transition Reports as detailed in Schedule 8.4 (Reports and Records Provision) shall be monitored at meetings of the Project Board.
   3. In preparation for such meetings the Supplier shall provide to the Authority not less than 5 Working Days in advance of each meeting of the Project Board:
      1. Management Report; and
      2. Proposed revisions to the Transition Management Plan.
   4. The Project Board will meet monthly during the Transition Period or at such a frequency as the Parties may agree. The Project Board meetings will be held in the Authority Premises, or at such a place as the Parties may agree.
   5. The Project Board shall receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Transition Management Plan and possible future developments.
   6. Upon completion of the Transition Management Plan, governance responsibility for Operational Services will fall to three related boards. Day to day responsibilities and consideration of all Change shall be with the monthly Performance Management Board (Paragraph 5). Product reviews and amendments shall be with the Product Review Board (Paragraph 7), and Quarterly and annual responsibilities shall be with the Strategic Management Board (Paragraph 6).
2. **ROLE OF THE PERFORMANCE MANAGEMENT BOARD** 
   1. Held Monthly to implement required actions in relation to the strategic direction set by the SBO, ensuring that the contract meets its objectives, delivers the required outputs, and holds the supplier to account.
   2. To provide a forum in which to address current retail issues, review supplier performance against contract KPI's and SPI's, and plan ahead.
   3. The Performance Management Board shall be responsible for the management of the Agreement and shall:
      1. be accountable to the Strategic Management Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
      2. report to the Strategic Management Board on any issues requiring decision and resolution by the Strategic Management Board; such as but not limited to:
         1. Implement the strategic direction of Prison retail policy;
         2. Review SPI's and KPI's and agree improvement plans if not being met;
         3. Review Financial performance, and agree improvement plans if not to budget;
         4. Discuss current operational issues, and agree solutions to be implemented to address these;
         5. Review progress on sales plans, projects, improvement plans, and efficiency measures;
         6. Planning for known events, and review of contingency arrangements for unknown ones;
         7. Discuss project proposals and spend requests over and above normal activity, deciding what should be presented to the quarterly Strategic Management Board review for approval;
         8. Invite specialists to report as required;
      3. receive, discuss and agree a rectification plan regarding issued raised from the Serviced Sites on matters such as issues relating to delivery of Services and performance against Performance Indicators, and possible future developments;
      4. review and report to the Strategic Management Board on Service management, co-ordination of individual projects and any integration issues outside of the normal operations, such as but not limited to:
3. Opening of new Retail Workshops;
4. Changes to the network;
5. Changes to Suppliers staff;

5.3.5 deal with the prioritisation of resources;

5.3.6 monitor compliance with Clause 14.4 (Key Personnel) by the Supplier;

5.3.7 ensure the Supplier's contractual commitments and obligations are being delivered;

5.3.8 review the Supplier's performance, including by reference to Schedule 2.2. (Performance Levels) and suggest adjustments to them as appropriate to reflect improved performance capabilities associated with advances in technology, process and methods used to provide the Services;

5.3.9 review and agree any Service Credits due;

5.3.10 review the Suppliers performance against the agreed Transition Budget or Operational Budget;

5.3.11 review opportunities to improve the Services to make it more efficient and effective, resilient and reliable;

5.3.12 consider and resolve Disputes (including Disputes as to the cause of a Delay or

the performance of the Services) in the first instance and if necessary, escalate the Dispute to the Strategic Management Board;

5.3.13 develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same;

5.3.14 annually review the overall financial performance against the agreed Transition

Budget and Operational Budget and review and agree the Transition Budget and

Operational Budget, from the Supplier for the next Financial Year;

5.3.15 provide assurance to the Strategic Management Board that risks are being effectively managed across the Services, including reporting risks to the Strategic Management Board;

5.3.16 accept or reject new risks proposed for inclusion in the Risk Register and ratify or refuse requests to close risks on the Risk Register and agree any Change required to mitigate any risk on the Risk Register;

5.3.17 identify risks relating to or arising out of the performance of the Services and provisional owners of these risks; and

5.3.18 review any other matters reasonably required by the Authority

5.3.19 review any information security issues or risks

**Escalation** **Process**

5.4 In the first instance attempts must be made to resolve issues at a local level, between the Retail Liaison Contact, and Supplier workshop manager. Most issues can be resolved quickly and efficiently in this way.

5.5 Issues that persist, or which are reoccurring must be escalated. The level of response is determined by the criticality of the issue.

5.5.1 duration (how long the problem has been going on);

5.5.2 severity (potential impact of the issue on the function of the prison);

5.5.3 scale (how many people are affected by it);

5.5.4 urgency of the required response (whether resolution can be achieved routinely or is required immediately);

5.5.5 occurrence (whether it is an isolated or recurring event);

5.5.6 effort required to achieve a resolution (whether additional resources are required by prison / supplier);

Level 1 – Routine – resolve at site – Prison contact (RLC) / Supplier workshop manager

Level 2 – Important – resolve at region – Retail Support Manager / Supplier regional manager

Level 3 – Important/critical – resolve at national level – Head of Prison Retail / Supplier General Manager

Level 4 – Critical – resolve at Head of PSPI Group (SBO) – / Supplier Head of Public Sector Prisons Contract.

5.6 The Performance Management Board shall assess the impact and approve or reject all Change Requests and shall:

5.6.1 analyse and record the impact of all Changes, specifically whether the proposed Change:

1. has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;
2. has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;
3. will raise any risks or issues relating to the proposed Change; and
4. will provide value for money in consideration of any changes to the Financial

Response Template, future Charges and/or Performance Indicators;

5.6.2 provide recommendations, seek guidance and authorisation from the Strategic Management Board as required;

5.6.3 approve or reject (close) all proposed Changes; and

5.6.4 ensure Changes which will have a significant impact on the Services are escalated to the Strategic Management Board.

* 1. The Performance Management Board shall meet monthly to conduct a Performance Review Meeting and review the monthly Performance Monitoring Report which shall be produced by the Supplier prior to each Performance Management Board as detailed in Schedule 8.4 (Reports and Records Provisions).
  2. The Supplier shall:
     1. provide other information to the Authority as requested in advance in preparation for the Performance Management Board meetings set out above;
     2. attend all of the Performance Management Board meetings set out above;
     3. liaise with the Authority on all matters relating to the Agreement and the delivery of obligations under it;
     4. report immediately to the Authority the commercial implications of all matters that:

1. may involve action in a court;
2. involve action by any other regulatory body;
3. raise questions of principle or financial policy;
4. possess unusual features or involve particular difficulty;
5. might arouse particular public interest or publicity;
6. concern a matter of particular importance or sensitivity such as to make reference to the Authority desirable;
7. have the potential to cause embarrassment to the Authority or its employees;

5.8.5 consult the Authority before the Performance Management Board considers any change proposals, identifying any anticipated impact on the Supplier Personnel and the Services, in accordance with Schedule 8.2 (Change Control Procedure);

5.8.6 co-ordinate all Changes that have been approved in accordance with Schedule 8.2 (Change Control Procedure) authorised change activity to ensure conflicts and business disruption are minimised;

5.8.7 establish a familiarity with the culture of the Authority and the needs of End Users; and

5.8.8 work with the Authority to develop and maintain good working relationships with End Users.

1. **ROLE OF THE STRATEGIC MANAGEMENT BOARD** 
   1. To provide senior oversight of the management and control of the Agreement.
   2. To provide ownership and strategic direction, ensuring that the contract meets its objectives, delivers the required outputs, and holds the Supplier to account.
   3. To provide a forum in which to raise appropriate retail issues, including efficiency improvements and risk. Act as an authorisation body for Contract Change and project approval.
   4. The Strategic Management Board shall meet quarterly, as a minimum, and shall:
      1. provide senior level guidance, leadership and strategy for the overall delivery of the Services;
      2. be the point of escalation for the Performance Management Board;
      3. ensure that this Agreement is operated throughout the Term in a manner which

optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;

* + 1. receive and review reports from the Performance Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
    2. annually review and agree upon the value of any Profit share, discretionary payment to be made to the Supplier;
    3. determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services;
    4. review the nature and progress of the relationship between the Parties and other stakeholders and alignment with the Authority's strategy and any long-term plans; and
    5. review the provision of the Services at a macro level.
  1. Any developments discussed as part of 6.4, the Supplier shall, within one month of completion of the Strategic Management Board, prepare and submit to the Authority a written report on the findings of the review. Changes proposed as a result of the Strategic Management Board shall, where appropriate, be dealt with in accordance with Schedule 8.2 (Change Control Procedure).
  2. The Strategic Management Board shall meet quarterly to conduct a Strategic Review, prior to each Strategic Management Board the Supplier shall produce and supply to the Authority the Strategic Overview Report as detailed in Schedule 8.4 (Reports and Records Provisions).
  3. Responsibilities:
     1. Own the strategic direction of Prison retail policy;
     2. Identify and manage risk through the risk register;
     3. Authorise contract change through the change request process (may be conducted by correspondence for timeliness);
     4. Review project proposals and spend requests over and above normal activity. Authorise these as agreed;
     5. Require the supplier to provide a quarterly report to the meeting on finance issues and operational performance;
     6. Address any retail issues escalated to this level, and agree corrective action or solutions.

1. **ROLE OF THE PRODUCT REVIEW BOARD** 
   1. To review the content of the National Product List and any agree changes.
   2. Review Supplier suggested Goods to ensure they satisfy End User requirements for any

religious festival and or national event, such as but not limited to a major sporting event.

* 1. Continually review all Promotional Products offered through the Contract to ensure it meets the needs of End Users.
  2. Where required, report changes to the Performance Management Board for authorisation.
  3. Responsibilities:
     1. Regularly review on the content of the National Product List;
     2. Hold a regular review of Promotional Products and their availability;
     3. Make changes to the National Product List;
     4. Agree when promotions will be run throughout the Annual period;
     5. Review End User requests;
     6. Maintain fair product selection for minority groups;
     7. Review sales performance of current products;
     8. Agree an appropriate selling price for all Products and Promotional Products;
     9. Consider any safety and security implications;
     10. Consider any stock holding and delivery practicalities;
     11. Report recommended changes to the monthly Performance Review for authorisation of the changes;
     12. Make available 9 Promotional offers per year to coincide with any Religious festival or national event;
     13. Suggest and agree Promotional Products.
  4. The meetings shall be attended by the Authority's staff set out in Annex A and any other persons considered by the Authority necessary for the review.
  5. The Product Review Board shall:
     1. review the overall performance of the National Product List;
     2. review the suitability of the Product Prices;
     3. the Supplier shall make suggestions to any new products and provide advice and guidance on the sale price and available margin;
     4. the Supplier shall provide advice and guidance with regard to trends in the market;
     5. review any new product requests received from the Authority and assess the suitability on grounds of security and saleability;
     6. review, at least twice a year, the Reception Packs available and rationalise and update the range if required;
     7. the Supplier shall make suggestions for Promotional Products and provide advice

and guidance on the particulars of the products, including but not limited to; sale price, minimum order quantities and available margin;

* + 1. approve adjustments to the National Product List including products listed and their associated sell price;
    2. review any other matters reasonably required by the Authority;
    3. review the overall performance of previous Promotional Products;
    4. meet every 13 weeks as a minimum to conduct a Quarterly Range Review and shall continually review Products offered through the Contract to ensure it meets the needs of End Users. Prior to the Quarterly Range Review, the Supplier shall produce a Product Range Review Pack as detailed in Schedule 8.4 (Reports and Records Provisions);
    5. meet 8/9 weeks prior to a Promotion to conduct a Promotional Products Review and shall continually review the Promotional Products offered through the Contract to ensure it meets the needs of the End Users. Prior to the Promotional

Products Review, the Supplier shall produce a Promotional Products Review

Pack as detailed in Schedule 8.4 (Reports and Records Provisions); and

* + 1. where possible the Quarterly Range Review and Promotional Products Review shall be held simultaneously.
    2. The Product Review Board will escalate any issues to the monthly retail Performance Board,
  1. Within 10 Working Days of completion of the Quarterly Range Review, the Supplier shall prepare and submit to the Authority an updated National Product List, as set out in Schedule 2.1 (Services Description) for approval by the Authority in accordance with the Change Control Procedure and reflecting any updates to the NPL agreed at the Quarterly Range Review.
  2. The Security Working Group shall:
     1. meet monthly to review information security risks and issues
     2. report issues and progress to the Performance Management Board
     3. review the security management plan
     4. The Authority shall chair the Security Working Group and shall be responsible for producing and distribution of the agenda, reports and supporting documents at least 5 business days prior to the meeting and for producing and distributing minutes no later than 5 Business Days following the meeting
     5. The security working group exists in a focus group capacity, until such a time that the terms of reference can be absorbed by the Performance Management Board.

1. **OTHER MEETINGS** 
   1. The Supplier shall be required to attend meetings, as detailed in the Specification, at Serviced Sites/Sites throughout each Annual period. These meetings shall:
      1. be held at least twice during each Annual period;
      2. provide a local level forum in which to address current retail issues, review supplier performance, and future plans;
      3. allow Serviced Sites/Sites to report any issues and discuss directly with the Supplier;
      4. discuss current operational issues and agree solutions to be implemented to address these;
      5. review local lists selections and allow the Supplier to provide expert advice on products;
      6. seek End User feedback and updates from the Retail Liaison Contact on changes.
   2. The outcome of these meetings shall be reported at the next Performance Review meeting for information or escalation.
2. **CONTRACT MANAGEMENT MECHANISMS** 
   1. The Parties shall pro-actively manage risks, issues and opportunities attributed to them under the terms of this Agreement.
   2. The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
      1. the identification and management of risks;
      2. the identification and management of issues, including health and safety and security at each Retail Workshop;
      3. the identification and management of opportunities; and
      4. monitoring and controlling project plans.
3. **ANNUAL REVIEW** 
   1. The Annual Review is an extension of the Strategic Review and is held in April / May (Allowing for the Supplier to provide data from 1st April – 31st March).
   2. Prior to the Annual Review the Supplier shall produce a Strategic Overview Annual Summary as detailed in Schedule 8.4 (Reports and Records Provision).
   3. The Annual Review shall:
      1. Provide senior level overview of the Service for the financial year;
      2. Provide a strategy for the overall delivery of the Services for the coming year;
      3. Highlight and discuss any potential improvements or critical success factors for continuation of the Service;
      4. Review the Service against the agreed Annual Budget and KPIs;
      5. Supplier shall provide an update on any changes to their business that would be of benefit or interest to the Strategic Management Board and the Service;
      6. Review the overall position of the Supplier including credit rating, insurance levels, staff retention etc;
      7. The overall performance of the Agreement and the Services;
      8. Completion of major projects throughout the period; 10.3.9 Changes to both the Authorities and Suppliers strategy;

10.3.10 Focus points for the forthcoming year.

* 1. An Annual Review shall be held throughout the Term on a date to be agreed between the Parties.
  2. The Annual Review shall be attended by the members of the Strategic Management Board and any other persons considered necessary by the Authority for the review.

1. **END USER SATISFACTION REVIEW** 
   1. The Supplier shall take the following steps to monitor, maintain and enhance the satisfaction of End Users and appropriate Authority representatives:
      1. conduct, together with the Authority, a comprehensive satisfaction survey of End Users and appropriate Authority representatives on a six-monthly basis (or as otherwise agreed between the parties) and shall ensure that a full analysis of the

results of that survey is provided to the Authority prior to the following Performance Review Meeting;

* + 1. the Authority shall be entitled, at its own expense, to appoint an independent third party to conduct a survey and shall notify the Supplier accordingly that it is relieved of its obligations under Paragraph 11.1 above;
    2. implement procedures to ensure continuous feedback from End Users in respect of the Services;
    3. as and when requested by the Authority, the Supplier shall attend meetings with

the representatives of End Users and provide a report detailing the views of the End Users group to the Retail Operations team within 10 Working Days of any such meeting (or such other period as may be agreed by the parties);

* + 1. attend, as requested by the Authority, meetings with those involved in providing or receiving information or services to or from the Supplier in connection with the provision of the Services; For example, Private Prisons not utilising the contract.
  1. The Supplier shall monitor End User feedback provided and where:
     1. the End User feedback is material or relates to health and safety, act urgently to rectify the issue; or
     2. where the matter is not material shall submit a proposal to rectify the issue prior to the next Performance Management Board meeting for consideration at that meeting.

**ANNEX A**

**REPRESENTATION AND STRUCTURE OF BOARDS**

**Performance Management Board**

|  |  |
| --- | --- |
| Authority Members of Performance Management Board |  |
| Supplier Members of Performance Management Board |  |
| Start Date for Performance Management Board meetings | 6 weeks post Full Operational Service  Commencement |
| Frequency of Performance Management Board meetings | Monthly |
| Location of Performance Management Board meetings | To be agreed between the parties |

**Security Working Group**

|  |  |
| --- | --- |
| Authority Members of the Security Working Group | Operational Contract Manager (Chair)  Contract Service Support (Minute Taker) Depending on resource availability  HMPPS Information Security Manager  Commercial Contract Manager  MoJ Cyber Team |
| Supplier Members of the Security Working Group | Operations Director  Security Manager  Data Protection Officer  Senior Data Manager  Information Security Advisor  IT Campus Manager  Contract Service Support (Minute Taker) Depending on resource availability |

**Strategic Management Board**

|  |  |
| --- | --- |
| Authority members of Strategic Management Board | Senior Business Owner (Periodic/Optional)  Senior Operational Contract Manager (Chair)  Senior Commercial Manager/Lead  Head of Operational Change (ICRPE)  Operational Contract Manager  Lead Finance Business Partner  Head of Commercial Management (Optional) |
| Supplier members of Strategic Management Board | VP Operations for Public Sector,  General Manager,  Finance Controller  Key Subcontractor for Goods Managing Director (Optional) |
| Start date for Strategic Management Board meetings | 16 weeks post Full Operational Service  Commencement |
| Frequency of Strategic Management Board meetings | Quarterly |
| Location of Strategic Management Board meetings | To be agreed between the parties |

**Product Review Board**

|  |  |
| --- | --- |
| Authority Members for Product Review Board |  |
| Supplier Members for Product Review Board |  |
| Start Date for Product Review Board meetings | 16 weeks post Full Operational Service  Commencement |
| Frequency of Product Review Board meetings | Quarterly |
| Location of Product Review Board meetings | To be agreed between the parties |

**Retail Contract, Retail Local Cluster Meeting**

|  |  |
| --- | --- |
| Authority Members for Local Cluster meetings |  |
|  |  |
| Supplier Members for Local Cluster meeting Board |  |
| Start Date for Local Cluster meetings | 16 weeks post Full Operational Service  Commencement |
| Frequency of Local Cluster meetings | Twice per calendar year |
| Location of Local Cluster meetings | To be agreed between the parties |

**Prison Retail Service Project**

**Schedule 8.2**

**Change Control Procedure**

**SCHEDULE 8.2**

**CHANGE CONTROL PROCEDURE**

**1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

"**Authority Change** the person appointed to that position by the Authority **Manager**" from time to time and notified in writing to the

Supplier or, if no person is notified, the Authority Representative;

"**Budget Change**" a Change to an Annual Budget;

"**Change Request**" a written request for a Change or Budget Change

which shall be substantially in the form of Annex A;

"**Change Communication**" any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;

"**Controlled Document**" means one or any of the documents listed in Annex

C to this Schedule 8.2;

"**Fast-track Change**" any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;

"**Impact Assessment**" an assessment of a Change Request in accordance with Paragraph 5;

"**Impact Assessment** has the meaning given in Paragraph 4.3; **Estimate**"

"**MOU**" a Memorandum of Understanding which forms an

agreement between the Authority and the Supplier;

"**Receiving Party**" the party that receives a Change Request;

"**Supplier Change** the person appointed to that position by the Supplier **Manager**" from time to time and notified in writing to the

Authority or, if no person is notified, the Supplier Representative.

1. **GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE** 
   1. This Schedule sets out the procedure for dealing with Changes.
   2. Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
   3. The Parties shall deal with Contract Change as follows:
      1. either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
      2. unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
      3. the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
      4. the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
      5. save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2;
      6. if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8; and
   4. To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (Workshop Readiness Check), and, where appropriate, the Change Authorisation Note as detailed in Annex B.
   5. Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:
      1. unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
      2. any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
   6. The Supplier shall:
      1. within 5 (five) Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
      2. thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.
2. **COSTS** 
   1. Subject to Paragraph 3.3:
      1. the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
      2. the reasonable costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:
         1. the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
         2. such costs exceed those in the accepted Impact Assessment Estimate;
      3. such reasonable costs shall only be paid by the Party responding to the request upon the requesting party seeking and receiving written approval in advance of incurring such costs.
   2. The cost of any Change Request shall be calculated and charged in accordance with Schedule 7.1 (Charges and Invoicing). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract or Budget Change requires additional resources and, in any event, any change to the Charges resulting from a Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract or Budget Change.
   3. Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.
3. **CHANGE REQUEST** 
   1. Either Party may issue a Change Request to the other Party at any time during the Term. A

Change Request shall be made substantially in the form of Annex A and state whether the Party issuing the Change Request considers the proposed Contract or Budget Change should be a Fast-track Change.

* 1. If the Supplier issues the Change Request, then it shall include an Impact Assessment to the Authority.
  2. If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within 10 working days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within 10 Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.
  3. If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate.
  4. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:
     1. the nature of the request for clarification; and 4.5.2 the reasonable justification for the request,

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

1. **IMPACT ASSESSMENT** 
   1. Each Impact Assessment shall be completed in good faith and shall include:
      1. details of the proposed Contract or Budget Change including the reason for the Contract Change; and
      2. details of the impact of the proposed Contract or Budget Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
      3. any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
         1. the Services Description, the Performance Indicators and/or the Target Performance Levels;
         2. the format of Authority Data, as set out in the Services Description;
         3. the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
         4. other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
      4. details of the cost of implementing the proposed Contract or Budget Change including, where applicable, details of quotations for the completion of any works required;
      5. details of the ongoing costs required by the proposed Contract or Budget Change when implemented, including any increase or decrease in the Annual Budget, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
      6. a timetable for the implementation, together with any proposals for the testing of the Contract or Budget Change;
      7. details of how the proposed Contract or Budget Change will ensure compliance with any applicable Change in Law; and
      8. such other information as the Authority may reasonably request in (or in response to) the Change Request.
   2. If the Contract or Budget Change involves the processing or transfer of any Personal Data outside the United Kingdom, the preparation of the Impact Assessment shall also be subject to Clause 21 (Protection of Personal Data).
   3. Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.
   4. If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract or Budget Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
   5. The calculation of costs for the purposes of Paragraphs 5.1.4 and 5.1.5 shall:
      1. be based on the Financial Response Template;
      2. facilitate the Financial Transparency Objectives;
      3. include estimated volumes of each type of resource to be employed and the applicable rate card;
      4. include full disclosure of any assumptions underlying such Impact Assessment;
      5. include evidence of the cost of any assets required for the Change; and
      6. include details of any new Sub-contracts necessary to accomplish the Change.
2. **AUTHORITY'S RIGHT OF APPROVAL** 
   1. Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10

Working Days of receiving the further information that it may request pursuant to Paragraph 5.4; the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

* + 1. approve the proposed Contract or Budget Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2; or
    2. in its absolute discretion reject the Contract or Budget Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract or Budget Change to the extent that the Contract or Budget Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract or Budget Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
    3. in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract or Budget Change within 10 Working Days.
  1. If the Authority approves the proposed Contract or Budget Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
  2. If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

1. **SUPPLIER'S RIGHT OF APPROVAL** 
   1. Following an Impact Assessment, if:
      1. the Supplier reasonably believes that any proposed Contract or Budget Change, which is requested by the Authority, would:
         1. materially and adversely affect the risks to the health and safety of any person; and/or
         2. contravene reasonable codes of conduct of the Authority or the Supplier's firmwide codes of conduct; and/or
         3. materially and adversely increases the risk of the Supplier or the Authority in delivering or receiving the Services, in a way which cannot be mitigated in agreement between the Parties through Contract Change or Budget Change; and/or
         4. require the Services to be performed in a way that infringes any Law,
      2. the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract or Budget Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract or Budget Change, then the Supplier shall be entitled to reject the proposed Contract or Budget Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.
   2. If Paragraph 7.1.1(b) or (c) is the reason for the rejection of the proposed Contract or Budget

Change then the Parties are required to commence good faith negotiations to revise the Contract Change or Budget Change so that it reflects the requirements of the Authority as much as possible without such contravention.

* 1. If the Parties are unable to agree on the revisions required pursuant to Paragraph 7.2 above, the matter shall be dealt with in accordance with Schedule 8.3 (Dispute Resolution Procedure).
  2. For the avoidance of doubt, this Paragraph 7 shall not apply where the Change Request is necessitated due to a Law or Change in Law.

1. **FAST-TRACK CHANGES** 
   1. The Parties agree that the procedures set out in Paragraphs 4, 5, 6 and 7 shall be the primary means by which Contract or Budget Changes are made. However, the Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above. If:
      1. the total number of Contract or Budget Changes in relation to which this Fasttrack Change procedure has been applied does not exceed 4 in any 12-month period; and
      2. both Parties agree that a proposed Contract Change will be detrimental to the operation of the Contract if not implemented and the proposed Contract Change (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

* 1. The Parties may agree in writing to revise the parameters set out in Paragraph 8.1 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract or Budget Change notwithstanding that the total number of Contract or Budget Changes to which such procedure is applied will then exceed 4 within a financial year.

1. **OPERATIONAL CHANGE PROCEDURE** 
   1. Any Operational Changes identified by the Supplier to improve operational efficiency of the

Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided written approval has been obtained from the Authority Representative and that they do not:

* + 1. have an impact on the business of the Authority;
    2. require a change to this Agreement;
    3. have a direct impact on use of the Services; or
    4. increase the agreed Budget or involve the Authority paying any additional Charges or other costs.
  1. The Authority may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Supplier Representative.
  2. The RFOC shall include the following details:
     1. the proposed Operational Change;
     2. confirm no increase to the agreed Budget and detail any decrease to the agreed Budget or other potential savings;
     3. assess the scale and complexity of change, operational impact or risk (if any) and budgeted cost of change; and
     4. the time-scale for completion of the Operational Change.
  3. The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
  4. The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC and shall promptly notify the Authority when the Operational Change is completed.

1. **DOCUMENT CHANGE CONTROL PROCEDURE** 
   1. Where a Contract or Budget Change necessitates a change to the Controlled Documents then the below process shall be followed. This paragraph sets out the process for incorporating changes to Controlled Documents (the Document Change Control Procedure). As at the Commencement Date, version 1.0 of the Controlled Document Register and the Delivery and Workshop Data – DWIP 101 (as listed in Annex C) are agreed between the Parties.
   2. The Parties agree that the Transition Plan and the Service Continuity Plan and Corporate Resolution Plan shall be agreed in advance of the Service Commencement Date and that version 1.0 of each of these plans shall be the version in existence at the Service Commencement Date.
   3. Changes to Controlled Documents themselves shall only be effective when signed by the authorized representative of each Party listed in the relevant Controlled Document or otherwise agreed and unless and until so approved and given an appropriate version number, shall constitute draft documents only.
   4. Changes to Controlled Documents shall be recorded by issuing a new version of the relevant Controlled Document, signed by the authorized representative referred to in Paragraph 10.3, to all appropriate Personnel of both Parties.
   5. Upon:
      1. a new version of a Controlled Document being agreed, and the version number being incremented and executed;
      2. a new Controlled Document being agreed; and/or
      3. the Parties agreeing that an existing Controlled Document should no longer be classified as a Controlled Document,

the information in Annex C: Controlled Document Register shall be updated accordingly by the Authority.

* 1. Any change to a Controlled Document under this Paragraph 10 may be implemented without following the procedure for making Contract or Budget Changes set out in Paragraphs 4 to 7 provided they do not:
     1. have an adverse impact on the Authority;
     2. require a Contract or Budget Change (excluding a change to a Controlled Document);
     3. have an adverse impact on the delivery of Products or Services; or 10.6.4 involve the Authority paying any additional charges or other costs,

unless otherwise agreed by the Authority.

* 1. Changes to the Delivery and Workshop Data – DWIP 101 which involve the addition or removal of Sites shall be subject to this Paragraph 10 (Document Change Control Procedure) and, if required, shall be made in accordance with the procedure for making Contract or Budget Changes set out in Paragraph 4 to 7.

1. **COMMUNICATIONS**

For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 41 (Notices) shall apply to a Change Communication as if it were a notice.

**ANNEX A CHANGE REQUEST FORM**

|  |  |
| --- | --- |
| **Change Request Number:** | **Party Requesting Change:** |
| **Date Raised:** | **Proposed Change Implementation Date:** |
| **Fast Track Process (delete as appropriate)**  **Yes No**  **Agreed By:**  **Date:** | **Contract Variation Required? (delete as appropriate)**  **Yes No** |
| **Cost of Implementation:** | **Future Budget Impact:** |
| **Full description of requested Change (including proposed changes to wording of the Contract where applicable):** | |
| **Reasons for requested Change:** | |
| **IMPACT ASSESSMENT**  **Effect of requested Change (including costs, savings, benefits, efficiencies and establishments and workshops impacted):** | |
| **Assumptions, dependencies, risks and mitigation (if any):** | |
| **Change Request Form prepared by (name):** | |
| **Signature & Date:** | |
| **AUTHORISATION OF CHANGE** | |
| **Comments from the establishment (where applicable):** | |
| **Signature & Date:** | |
| **Comments from the Operational Contract Team:** | |
| **Signature & Date:** | |
| **Comments from Commercial:** | |
| **Signature & Date:** | |
| **Comments from Finance:** | |
| **Signature & Date:** | |
| **Comments from the Senior Business Owner (where applicable):** | |
| **Signature & Date:** | |

**ANNEX B**

**CHANGE AUTHORISATION NOTE**

|  |  |  |  |
| --- | --- | --- | --- |
| **CR NO.:** | **TITLE:** | | **DATE RAISED:** |
| **CONTRACT:** | **TYPE OF CHANGE:** | | **REQUIRED BY DATE:** |
| **[KEY MILESTONE DATE: [if any] ]** | | | |
| **DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:** | | | |
| **PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:** | | | |
| **DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):** | | | |
| **Contract between:**  The [Secretary of State for Justice]/[The Lord Chancellor] [delete as applicable] and  [insert name of Supplier] | | | |
| **It is agreed that the Contract is amended, in accordance with Regulation 72 of the Public Contracts Regulations 2015, as follows:**  [Insert details of the variation (including any change to the Price and deliverables/obligations) based  on the information provided in the Change Request Form and any subsequent  discussions/negotiations, cross referencing the wording of the original Contract, as previously changed (if applicable), where possible]  **Where significant changes have been made to the Contract, information previously published on Contracts Finder will be updated.** | | | |
| Words and expressions in this CCN shall have the meanings given to them in the Contract.  The Contract, including any previous CCNs, shall remain effective and unaltered except as amended by this CCN. | | | |
| **SIGNED ON BEHALF OF THE AUTHORITY:** | | **SIGNED ON BEHALF OF THE SUPPLIER:** | |
| Signature: | | Signature: | |
| Name: | | Name: | |
| Position: | | Position: | |
| Date: | | Date: | |

**ANNEX C**

**CONTROLLED DOCUMENT REGISTER**

The following is a list of the Controlled Documents

|  |  |  |
| --- | --- | --- |
| **Document Title** | **Document Version** | **Document Date** |
| Controlled Document Register | V 1.0 | Effective Date |
| Delivery and Workshop Data – DWIP 101 | V 1.0 | Service Commencement Date |
| Transition Management Plan | V 1.0 | Effective Date |
| SC&CR Plan | V 1.0 | Effective Date |
| Customer Complaints Procedure | V 1.0 | Service Commencement Date |

**Prison Retail Service Project**

**Schedule 8.3**

**Dispute Resolution Procedure**

**SCHEDULE 8.3**

**DISPUTE RESOLUTION PROCEDURE**

1. **DEFINITIONS**

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| "**CEDR**" | the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet  Street, London, EC4Y 1EU; |
| "**Counter Notice**" | has the meaning given in Paragraph 8.2; |
| "**Dispute Notice**" | means a notice sent by a Party as outlined in Paragraph 2.2; |
| "**Expert**" | in relation to a Dispute, a person appointed in accordance with Paragraph 7.2 to act as an expert in relation to that Dispute; |
| "**Expert Determination**" | determination by an Expert in accordance with Paragraph 7; |
| "**Mediation Notice**" | has the meaning given in Paragraph 5.2; |
| "**Mediator**" | the independent third party appointed in accordance with Paragraph 6.2 to mediate a Dispute; |
| "**Multi-Party Dispute**" | a Dispute which involves the Parties and one or more Related Third Parties; |
| "**Multi-Party Dispute**  **Representatives**" | has the meaning given in Paragraph 10.6; |
| "**Multi-Party Dispute**  **Resolution Board**" | has the meaning given in Paragraph 10.6; |
| "**Related Third Party**" | a party to:   1. another contract with the Authority or the Supplier which is relevant to this Agreement; or 2. a Sub- contract; |
| "**Supplier Request**" | a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute. |

1. **DISPUTE NOTICES** 
   1. If a Dispute arises then:
      1. the Authority Representative and the Supplier Representative shall attempt in

good faith to resolve the Dispute including utilising the Escalation Procedure

("**Escalation Procedure**") set out in Paragraph 3 below; and

* + 1. if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.
  1. A Dispute Notice:
     1. shall set out:
        1. the material particulars of the Dispute;
        2. the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
        3. if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
     2. may specify in accordance with the requirements of Paragraphs 10.2 and 10.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi- Party Dispute, in which case Paragraph 2.3 shall apply.
  2. If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2.2, then:
     1. if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
     2. if it is served by the Supplier it shall be treated as a Supplier Request, and in each case the provisions of Paragraph 10 shall apply.
  3. Subject to Paragraphs 2.5 and 4.2 and so long as the Authority has not served a Multi- Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:
     1. first by commercial negotiation (as prescribed in Paragraph 5);
     2. then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 6); and
     3. lastly by recourse to arbitration (as prescribed in Paragraph 8) or litigation (in accordance with Clause 43 (Governing Law and Jurisdiction)).
  4. Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 7) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 7.1.
  5. Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 9 (Urgent Relief).

1. **ESCALATION PROCEDURE** 
   1. If a Dispute arises between the Parties, each Party will use all reasonable endeavours to resolve the Dispute as quickly as possible at the level at which it originates, whilst maintaining the service levels required by this Agreement. The levels (in order of escalation) are:
      1. the local escalation point at each Site comprising the Local Retail Contract Liaison

for that Site and Workshop Manager, responsible for the day to day running of the relevant Retail Workshop or other Supplier Representative responsible for the provision of Goods and Services to a Serviced Site;

* + 1. the IRCPE operational team, responsible for the day-to day management and running of this Agreement;
    2. the contract management level comprising the Service Management Board and

the relevant persons as referred to in Paragraph 5, Schedule 8.1 (Governance) and/or the persons nominated by the Parties as their appointed managers of this Agreement ("**Contract Management Level**");

* + 1. the Strategic Management Board referred to in Paragraph 6 Schedule 8.1 (Governance) comprising the parties' managers with overall responsibility for management of the relationship between them; and
    2. during the Transition Period, the Project Board referred to in Paragraph 4 Schedule 8.1 (Governance) as directed by the Authority.
  1. The escalation procedure in this Schedule shall be a guide for the parties to resolve Disputes rapidly as they arise. It is not intended that it should be operated inflexibly or to prevent a Dispute being resolved at the most appropriate level as quickly as possible.
  2. Where, at any level, it is decided that the Dispute has been properly escalated, the Parties will use all reasonable endeavours to resolve the Dispute. Where a resolution is agreed, the decision, together with any implementation plan, shall be recorded in writing.
  3. Where a Dispute cannot be resolved at a particular level, either Party may refer it to the next higher level in the escalation process unless one party requests that a particular issue receives consideration more quickly or at a more senior level, in which case the Dispute will be escalated to that level.
  4. Escalation will be by written notification (which for the avoidance of doubt may include email) to the next level of both Parties by the party escalating the Dispute ("**Escalation**"). Escalation shall take place promptly and expediently to ensure minimal disruption is caused to the provisions of Services.
  5. Within 5 Working Days of Escalation, a report ("**Escalation Report**") to the next level will be produced and agreed between the originator and his counterpart to whom a copy of the Escalation Report will be provided. The Escalation Report will contain at least the following information:
     1. name and business address of originator;
     2. date the Dispute was first raised;
     3. description of the Dispute, including any history of similar problems;
     4. the implications of the Dispute, its severity and the degree of urgency involved;
     5. an estimate of the current, and potential, cost of the Dispute; and
     6. names and addresses of others involved who may need to be consulted.
  6. Where the Escalation Report cannot be agreed, any additional comments the other party may require will be appended to the Escalation Report.
  7. This Escalation Procedure will be overseen and managed by the Strategic Management Board.
  8. In addition to the information provided in accordance with Paragraph 3.6 above, the Escalation Report shall include each Parties understanding of the contractual perspective of, and impact of the Dispute on, the other party before escalating to the Strategic Management Board level.
  9. If the Dispute is not resolved by the Escalation Procedure set out in the preceding paragraphs of this Schedule, either party may invoke the following Dispute Resolution process (and the parties shall adhere to the following procedure) by serving a Dispute Notice.

1. **EXPEDITED DISPUTE TIMETABLE** 
   1. In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially

disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

* 1. If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 4.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
     1. in Paragraph 5.2.3, 10 Working Days;
     2. in Paragraph 6.2, 10 Working Days;
     3. in Paragraph 7.2, 5 Working Days; and
     4. in Paragraph 8.2, 10 Working Days.
  2. If at any point it becomes clear that an applicable deadline cannot be met or has passed, the

Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 7.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease, and the normal time periods shall apply from that point onwards.

1. **COMMERCIAL NEGOTIATION** 
   1. Following the service of a Dispute Notice, then, so long as the Authority has not served a

Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Senior Commercial Manager and General Manager

* 1. If:
     1. either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
     2. the Parties have already held discussions of a nature and intent (or otherwise

were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 5; or

* + 1. the Parties have not settled the Dispute in accordance with Paragraph 5.1 within

30 Working Days of service of the Dispute Notice,

* + 1. either Party may serve a written notice to proceed to mediation in accordance with Paragraph 6 (a "**Mediation Notice**").

1. **MEDIATION** 
   1. If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
   2. If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice, then either Party may apply to CEDR to nominate such a person.
   3. If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
   4. Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.
2. **EXPERT DETERMINATION** 
   1. If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 5 or, if applicable, mediation in accordance with Paragraph 6, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
   2. The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph

7.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed

* + 1. if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
    2. if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
    3. if the Dispute relates to a matter of a technical nature not falling within Paragraphs

7.2.1 or 7.2.2, on the instructions of the president (or equivalent) of:

* + - 1. an appropriate body agreed between the Parties; or
      2. if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 7.1, such body as may be specified by the President of the Law Society on application by either Party.
  1. The Expert shall act on the following basis:
     1. he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
     2. the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
     3. the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
     4. any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
     5. the process shall be conducted in private and shall be confidential; and
     6. the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

1. **ARBITRATION** 
   1. Subject to compliance with its obligations under Paragraph 5.1 and to the provisions of Paragraph 7, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 8.5.
   2. Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 8.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
   3. If the Authority serves a Counter Notice, then:
      1. if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 8.5 shall apply; or
      2. if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
   4. If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 8.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 8.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
   5. The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 8.1 to 8.4:
      1. the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to Paragraphs 8.5.2 to 8.5.6);
      2. the arbitration shall be administered by the LCIA;
      3. the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
      4. if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person

appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

* + 1. the arbitration proceedings shall take place in London and in the English language; and
    2. the seat of the arbitration shall be London.

1. **URGENT RELIEF** 
   1. Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
      1. for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
      2. where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.
2. **MULTI-PARTY DISPUTES** 
   1. All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 10 (the "**Multi-Party Dispute Resolution Procedure**").
   2. If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-

Party Dispute and specifies the Related Third Parties which are to be involved in the MultiParty Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".

* 1. If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 8, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
  2. The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
     1. a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
     2. not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 9.
  3. If the Authority has determined, following a Supplier Request, that a Dispute is not a MultiParty Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
  4. Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
     1. the Authority;
     2. the Supplier;
     3. each Related Third Party involved in the Multi-Party Dispute; and
     4. any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary, (together "**Multi-Party Dispute Representatives**").
  5. The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
     1. the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third-Party attend, all meetings of the Multi-

Party Dispute Resolution Board in respect of the Multi-Party Dispute;

* + 1. the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
    2. in seeking to resolve or settle any Multi-Party Dispute, the members of the MultiParty Dispute Resolution Board shall have regard to the principle that a MultiParty Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.
  1. If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:
     1. either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 6 shall apply;
     2. either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 7 shall apply; and/or
     3. subject to Paragraph 10.9, Paragraph 8 shall apply to the Multi-Party Dispute,

and in each case references to the "**Supplier**" or the "**Parties**" in such provisions shall include a reference to all Related Third Parties.

* 1. If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 8 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

**Prison Retail Service Project**

**Schedule 8.4**

**Reports and Records**

**SCHEDULE 8.4**

**REPORTS AND RECORDS PROVISIONS**

1. **TRANSPARENCY REPORTS** 
   1. Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex A (once approved, the "**Transparency Reports**").
   2. If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
   3. The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex A.
   4. Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
   5. The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.
2. **OTHER REPORTS** 
   1. The Authority may require any or all of the following reports:
      1. any of the reports described in Annex A2;
      2. delay reports;
      3. reports relating to Testing and tests carried out under Schedule 2.4 (Security

Management) and Schedule 8.6 (Service Continuity and Corporate Resolution Planning);

* + 1. reports which the Supplier is required to supply as part of the Management Information;
    2. annual reports on the Insurances;
    3. security reports; and
    4. Force Majeure Event reports.

1. **RECORDS** 
   1. The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex B (together "**Records**"):
      1. in accordance with the requirements of The National Archives and Good Industry Practice;
      2. in chronological order;
      3. in a form that is capable of audit; and
      4. at its own expense.
   2. The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
   3. Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
   4. The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
   5. Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.
   6. Without prejudice to the foregoing, the Supplier shall provide the Authority:
      1. as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
      2. as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.
2. **VIRTUAL LIBRARY** 
   1. The Supplier shall, no later than eight (8) weeks prior to the Operational Services

Commencement Date and without charge to the Authority, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Agreement available in accordance with the requirements outlined in this Schedule.

* 1. The Supplier shall ensure that the Virtual Library is:
     1. capable of holding and allowing access to the information described in Annex C of this Schedule and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;
     2. structured so that each document uploaded has a unique identifier which is automatically assigned;
     3. readily accessible by the Authority at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by the Authority from time to time;
     4. structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);
     5. structured and maintained in accordance with the security requirements as set out

in this Agreement including those set out in Schedule 2.4 (Security Management);

* + 1. (f) created and based on open standards in Schedule 2.3 (Standards); and
    2. backed up on a secure off-site system.
  1. For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific Intellectual Property Rights (IPR) which shall be assigned to the Authority pursuant to Clause 16.2 (Project Specific IPR) of this Agreement.
  2. The Supplier shall upload complete and accurate information specified in Annex C by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case by the date at which the Virtual Library is made available in accordance with Paragraph 4.1) onto Virtual Library in the format specified.
  3. Except for notices under Clause 41.4 or items covered under Clause 41.6, where the Supplier is under an obligation to provide information to the Authority in a provision under this Agreement, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Authority with that information provided that the Authority has access in accordance with this Paragraph 4 and the uploaded information meets the requirements more particularly specified in the relevant provision.
  4. Except to the extent that the requirements provide for earlier and more regular Authority access to up-to-date information, Annex C shall not take precedence over any other obligation to provide information in this Agreement and the Supplier shall refer to the applicable clause for further details as to the requirement.
  5. The Suppler shall provide each specified person (as set out in column 6 of the table at Annex C) access to view and download the specified information in the Virtual Library in Annex C subject upon the occurrence of the event specified in the column marked Access Permission in Annex C to this Schedule.
  6. Where Access Permission is not listed (in column 6 of the table at Annex C) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Annex C) from the Initial Upload Date.
  7. Where Access Permission is specified as being granted to the Authority's Third-Party Auditor (prior to the Authority being granted access) it shall:
     1. be entitled to access, view and download information specified in Annex C subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under Paragraph 4.10of this Schedule); and
     2. report to the Authority (at its request) as to the completeness and accuracy of the information but not the substance of the information.
  8. The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified in Annex C. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.
  9. The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Agreement at the date of upload.
  10. Where the Supplier becomes aware that any of the information provided on the Virtual Library

is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within 14 days unless already due to be updated beforehand due to an Update Requirement specified in Annex C.

* 1. In the event of a conflict between any requirement in this Agreement (excluding Annex C) for the Supplier to provide information to the Authority and the requirements set out in Annex C of this Schedule, the requirement elsewhere in this Agreement shall prevail.
  2. The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.
  3. No later than one (1) Month prior to the Operational Services Commencement Date, the Supplier shall provide training manuals to the Authority relating to the use of the Virtual Library.
  4. On request by the Authority the Supplier shall provide the Authority's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
  5. For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense subject to open book and provisions of Schedule 11 ( Data Processing).

**ANNEX A1**

**TRANSPARENCY REPORTS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Title** | **Content** | **Format** | **Frequency** |
| FOI reports | any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority | Same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority | As per agreed timeframe within the request |
| Changes to contract | any information which is exempt from disclosure in accordance with the provisions of commercial sensitive information, which shall be determined by the Authority and  Supplier | Same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority | As per agreed timeframe within the request |
| Financial Reports including Annual Contract Report | any information which is exempt from disclosure in accordance with the provisions of commercially sensitive information, which shall be determined by the Authority and  Supplier | Same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority | As per agreed timeframe within the request |

**ANNEX A2**

**REPORTS TO BE PROVIDED BY THE SUPPLIER**

**Transition Reports**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Management Report**  **Title** | **Report Description** | **Frequency of Report** | **Receipt of Report** | **Format of Report** | **Audience** |
| Workshop Go Live | Progress report of transitioning workshops and their readiness for go live. The report should provide detail of any anticipated issues, resolution plans and timescales.  The report should include for and not be limited to:   * IT system readiness * Stock availability * Distribution network readiness * Asset availability * Supplier Personnel End User Training | Weekly | 10am Monday | Excel | Project  Management Board |
| Transition Budget | Finance report detailing the conformance to the agreed budget forecast for the transition period |
| Provision of POFs | Report detailing the readiness of the NPL, LPL and POFs, detailing volumes provided |

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| **Finance Reports** | | | | | |
| **Management Report**  **Title** | **Report Description** | **Frequency of Report** | **Receipt of Report** | **Format of Report** | **Audience** |
| Contract Amendment Report | This report should detail the reasons for the material change, impact including monetary valuation, and confirmation of agreement between both parties. | Within 1 month of a Material Change being agreed between the Supplier and the Authority | 10am on the 21st working day after material change agreement | Same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority | Strategic  Management Board |
| Quarterly Contract Report | This is the quarterly performance and financial management report detailing data and information at strategic level. This is an enabler for the Senior Business Owner (SBO) to review the contract with the Supplier senior management staff. | Within 1 month of the end of each Quarter | 10am on the 21st working day following the end of that financial Quarter. | Same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority |
| Annual Contract Report | This is the annual performance and financial management report detailing data and information at strategic level. This is an enabler for the Senior Business Owner (SBO) to review the contract with  the Supplier senior management staff | Within 1 month of the end of the Contract Year to which that report relates | 10am on the 21st working day following the contract year end. | Same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority |
| Open Book Review Report | Open Book Review Report as time-scaled and agreed by both parties. | Within 30 days of Open Book Review | 10am on the 21st working day following the Open Book Review. | Excel, to include filters and pivot tables to extract data |
| Final Reconciliation Report | This report compares the  Supplier's and Authority's sets of records to check that figures are correct and in agreement. The final Reconciliation Report after the end of the year allows for any corrections to be made, and final charges / rebates to be agreed by both parties. | Within 3 months after the end of the Authority's financial year end (31st of  March) | 10am on the first working day of July. | Same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority |  |

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| **General Reports** | | | | | |
| **Management Report**  **Title** | **Report Description** | **Frequency of Report** | **Receipt of Report** | **Format of Report** | **Audience** |
| Sales Report | The sales information provided should clearly indicate any new lines or price changes. The information should be a rolling weekly log to allow for continuous review.  Reception Packs   * Number of Reception Packs sold by each   Serviced Site / pack type   * Number of Reception Packs ordered by each Serviced Site / pack type * Remaining available stock of Reception Packs by type / workshop   End User Sales Levels   * Volume of sales (CoGs) by Serviced Site * Volume of sales (CoGs) by workshop * Volume of sales (CoGs) by product • Volume of common products across LPL   Promotion Tracker / Specialised Products (i.e. Vapes)   * Weekly sales volumes * Case size | Weekly | 10 am Monday of each week | Excel, to include filters and pivot  tables to extract data | Performance  Management Board |

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|  | * Pack size * VAT rate * Total number of sales * Cost Forecast * Margin * Stock holding |  |  |  |  |
| Satisfaction Surveys / User Feedback | Completion of End User surveys detailing feedback and response by Serviced Site type | Bi-Annual | 10am Tenth Working Day of the Month following the Survey | Written report with supporting data |
| Productivity | Report detailing:   * The number of End Users present for work for the period by session/shift * The number of End User hours worked for the period by session/shift * The number of hours and End Users   required for the period   * Workshop accuracy * Average time to pick * As above for Contractor Pick and Packing orders * League table of efficiency, cost to operate picks, orders * Recourse (End User) over under hours | Weekly | 4 pm Monday of each week | Tables / graph illustrating information required, RAG rating for  workshop performance. This should be a  rolling log with percentage comparisons against same period for the prior year where applicable. This should allow for at least a sixweek rolling  view to clearly demonstrate any trends. Any issues or |

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|  | * Number of orders picked against number of orders received * Number of items picked including by each Workshop and overall average * Total End User spend by Serviced Site/Site   for the last four weeks, split into categories   * Volume of orders against operational capacity of the Serviced Site/Site |  |  | noticeable issues should be clearly identified |  |
| Changes Log | An updated version of the NPL which include any changes to the products including:   * Additions and removals * Price changes * Pack size changes * Minimum order quantities * Stock summary including any out of stock items | Weekly | 12 noon Friday | Excel |
| PINs & Spends | A detailed list of the PINs and Spends accrued by the End User is to be sent to the appropriate Serviced Site/Site | Weekly | As per DWIP  101. Delivery and Workshop  Data | Excel | Serviced  Site/Site Staff |
| Amends | A detailed list of any amendments which are required to an End User account following delivery of the Service | Weekly | As per DWIP  101. Delivery and Workshop  Data | Excel | Serviced  Site/Site Staff |

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| **Performance Monitoring Reports** | | | | | |
| **Management**  **Report Title** | **Report Description** | **Frequency of Report** | **Receipt of Report** | **Format of Report** | **Audience** |
| KPI Monitoring | A monthly performance report which details (on a rolling basis):   * Performance against KPIs (for the avoidance of doubt includes Transition KPIs and Operational KPIs) * Service Credits for the period (if applicable) * Year on year comparison * Backing data should be provided in electronic format. * YTD dashboard( format to be agreed) * YTD overall performance against Operational KPIs | Monthly | 10am Tenth Working Day of the month | This will form part of the  **Performance**  **Review Meeting**  (monthly) and should be  presented in such a way to allow open  discussion at the meeting. All  backing data  should be provided  where available using tables /  graphs illustrating performance,  where appropriate which allows for  easily extract of specific data | Performance  Management Board |
| Accounting Report | Report detailing the financial data for each month, quarter and annual basis to include:   * Value of each Purchase Order Number, including invoices which have been paid and those pending payment * Current performance against budget * Breakdown of Exceptional Costs, referencing the appropriate Change Request reference * Average sales value against order volume * Transfer report confirming value of any stock transfers within the period |

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|  | * Stock write off summary confirming the value of any write off for the period * Actual operating costs and highlight any under / over spends * Provide the Cost of Goods (CoGs) highlighting any variations as monitory and % (this report will form basis of any Profit Share calculation) * Provide league table of each workshop defined by cost of operation vs pick and pack rate (items and order fulfilment) * Stock snap shot for each workshop including monetary value * Prison returns and amendments including monetary values by Serviced Site * Management account information for period and YTD * Wastage volumes per Workshop, seParating out fresh,   chilled, frozen and ambient and includes percentage of overall spend comparison |  |  |  |  |
| Complaints and Issues | Report detailing the number and detail of any complaints raised for the reporting period and consequential action. Report should include the location of End Users and corresponding workshop and any other issues or matters escalated within the Serviced Site/Site |
| Promotional  Products Tracker | Report detailing the promotional products for the period, suggested amendments if applicable, sales volumes, trends and stock holding |

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| Financial | Forecast of future spend, costs and commercial trends and issues.  Value for money / best value |  |  |  |  |
| Returns | Report detailing the volumes and type of returns and the associated financial value |
| Health and Safety | A report detailing any accidents and injuries incurred within the workshops including (but not limited to)   * Lost time injury rate * Work days lost from injury * Hazard reports * Vehicle accidents (preventable and non-preventable) |
| Security Incidents and Risks | A report providing an overview and summary of any risks, security or health and safety incidents for the reporting period and YTD tracking. Information to include   * Workshop / incident type * Drug related incidents / Behavioural incidents |
| Maintenance Tracker | Report detailing those issues which have been raised on Planet FM for the continuous tracking of maintenance at the workshops. Report should detail the number of open/closed issues and severity impact indicator. |
| Commodity Tracker | Report detailing:   * Key commodity trackers * Fuel surcharge |

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|  | * Oil barrel prices current v's forecast * Coco * Currency * Paper and Pulp |  |  |  |  |
| Profit share | Cost of Goods vs Baseline Cost of Goods.  Actual operating costs vs any underspend on actual |
| Supplier Personnel Information | Report detailing:   * The number of people employed to the contract * By location and function/job title * The number of contracted hours for each individual * The salary of those employed to the contact * The length of time in service * Security vetting clearance and renewal date (where applicable) |
|  | • Operational Budget/Transition Budget for each Retail Workshop vs numbers of items P&P (separate out Ops and back office support teams) |  |  |  |  |
| Network Plan | A report detailing the current delivery and service network including delivery times, the average number of orders and items picked for each Serviced Site/Site |
| Benchmarking | Details of benchmarking activity conducted on RRP check on a basket of goods. Report to include:   * Location * Retailer   Goods details by type | Quarterly |

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| **Strategic Overview Report** | | | | | |
| **Management**  **Report Title** | **Report Description** | **Frequency of Report** | **Receipt of Report** | **Format of Report** | **Audience** |
| Defra Scorecard | The Defra Balanced Scorecard serves two purposes –   1. primarily to assist public sector procures consider and evaluate everything that Defra require 2. secondly to then keep certain aspects of performance under review and monitor as part of contract management.   Contents of the scorecard will include for:   1. Animal Welfare – % of total monetary value of animal derived foods supplied from farm assured sources; 2. Environment – % of total monetary value of food and drink that has been inspected and certified to publicly available integrated production or organic standards; 3. Food Safety and Hygiene – % by value of produce assured through food safety schemes; 4. Authenticity and traceability – % by value of produce procured from chain-of-custody systems; 5. Fair and Ethical Trade – Report on developments to improving labour conditions and other ethical aspects of the Contractor's direct and indirect supply chain; | Quarterly | 10am Tenth working day of the Quarter | Form part of the  **Strategic**  **Review**  (quarterly) and should be  presented in  such a way to allow open  discussion at the meeting.  All backing data should be  provided in electronic  format where available. | Strategic  Management Board |

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|  | 1. Equality and Diversity – Report on workforce composition metrics; 2. Equality and diversity – Report on progress in your organisation's processes for ensuring fair and transparent competition in your supply   chain as per the relevant factors stated in 4.3 of the DEFRA Balanced scorecard;   1. Local and cultural engagement – Report section to cover how your organisation encourages people to understand the value the food you supply including aspects of its production and its local & cultural context; 2. Employment and Skills – Report on how your organisation is creating opportunities throughout this contract for the development of food related skills and opportunities for employment; and 3. Supply production – countries (regions if within the UK) of produce origin, which is not the location of the supplier however where the produce originates |  |  |  |  |
| SCCR Testing | A report detailing the results of annual test of the SCCR plan |
| Development Opportunities | An overview of where the Supplier envisions potential changes and improvements to the Service |
| Stock, Performance & Demand | Snap shot of current stock levels, the value, performance sand demand levels within the Service |
| Market Demand | Insight into current market position, demand and any restrictions |

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| Healthy Eating | Presentation of any initiatives which the Supplier feels would benefit the Service or successfully implemented initiatives |  |  |  |  |
| Financial Results | Overview of:   * Sales * Operating costs * Variances to budget and exceptional costs * Comparison to same period in prior year (where applicable) * Current performance against budget * Average sales value against order volume * Transfer report confirming value of any stock transfers within the period * Stock write off summary confirming the value of any write off for the period * Actual operating costs and highlight any under / over spends * Provide the Cost of Goods (CoGs) |
| KPI Summary | A quarterly performance report which details (on a rolling basis):   * Performance against KPIs (for the avoidance of double includes Transition KPIs and Operational KPIs) * Service Credits for the period (if applicable) |

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|  | • Year on year comparison |  |  |  |  |
| Rehabilitation | Overview of the rehabilitation progress for the period |
| Budget Review | This report analyses actual spend against budgets and forecasts with variance analyses, and proposes appropriate corrective actions for the current year and the following. |
| Exit Planning & Recompetition Data | A review of the validity and state of readiness of the Exit  Plan and Re-competition Data as outlined in Schedule 8.5 (Exit Management) |
| Pick and Pack Productivity | Report detailing:   * The number of End Users present for work for the period by session * The number of End User hours worked for the period by session * The number of hours and End Users required for the period * Workshop accuracy * Average time to pick * As above for Contractor Pick and Packing orders * League table of efficiency, cost to operate picks, orders * Recourse (End User) over under hours |
|  | Number of orders picked against number of orders received |  |  |  |  |
| Profit Share Payment | Cost of Goods vs Baseline Cost of Goods as further described in Schedule 7.1 (Charges and Invoicing).  Actual operating costs vs any underspend on actual |
| Supplier Personnel Information | Report detailing:   * The number of people employed to the contract * By location and function/job title * The number of contracted hours for each individual * The salary of those employed to the contact * The length of time in service * Security vetting clearance and renewal date   (where applicable)   * Financial Model of each work shop vs numbers of items P&P (seParate out workshop costs and back office support teams) |

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|  | | **Strategic Overview Annual Summary** | |  |  |
| **Management Report**  **Title** | **Report Description** | **Frequency of Report** | **Receipt of Report** | **Format of Report** | **Audience** |
| As per the Strategic Overview Report but for full year | | Annual | 10am on 5 Working Days prior to the  Annual Review | Forms part of the  **Strategic Overview Annual Summary** and should be presented in such a way to allow  open discussion at the meeting.  All backing data should be provided where available | Strategic Management Board |

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|  | **Product Range Review Pack** | | |  |  |
| **Management Report**  **Title** | **Report Description** | **Frequency of Report** | **Receipt of Report** | **Format of Report** | **Audience** |
| New Lines | A document which provides an overview of proposed new items to be included on the  NPL including weight, packaging specification and cost | Every 13 Weeks | 10am 5 Working  Days prior to the  Quarterly Range Review | To be presented in a format that allows for  ease of understanding and discussion. | Product Review Board |
| Deletions | A comprehensive list of items which have been removed from the NPL during the period |
| Submissions | A comprehensive list of requests for items which have been submitted by Serviced |
|  | Sites/Sites to be considered for inclusion in the NPL. The Supplier should indicate:   * Availability * Suitable alternatives if the exact product is not available or if another product is available on the NPL which would meet the requirement * Recommendations * Security concerns * Cost * Market trends where applicable * Rejection / Approval   recommendations based on existing trends within the Service |  |  |  |  |

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| **Promotional Product Review Pack** | | | | | |
| **Management Report**  **Title** | **Report Description** | **Frequency of Report** | **Receipt of Report** | **Format of Report** | **Audience** |
| Promotional Plan | A document which:   * Outlines the proposed promotion dates * Provides the deadlines for submissions * Calendar of events * Length of promotion | Annual but reviewed every  at Promotional  Products  Review | 10am 5  Working Days prior to the  Promotional  Products  Review | Excel.  To be presented in a format that  allows for ease of  understanding and discussion. | Product Review Board |
| Promotional Products Tracker | Report detailing the promotional products for the period, suggested amendments if applicable, sales volumes, trends and stock holding | 8/9 Weeks  Prior to  Promotion Period |
| New Items | Suggestions for new items to be included on promotion taking into consideration any major events, religious festivals etc. The Supplier should indicate:   * Availability * Recommendations * Cost * Market trends where applicable * Recommendations based on existing trends within the Service |

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| Sustainability Impact | * the key sustainability impacts identified; * sustainability improvements made; * actions underway or planned to reduce sustainability impacts; * contributions made to the Authority's   sustainability policies and objectives;   * sustainability policies, standards, targets and practices that have been adopted to reduce the environmental impact of the Supplier's operations and evidence of these being actively pursued, indicating arrangements for engagement and achievements. This can also include where positive sustainability impacts have been delivered; and * risks to the Service and Subcontractors of climate change and severe weather events such as flooding and extreme temperatures including mitigation, adaptation and continuity plans employed by the Supplier in response to those risks. | Annually | 10am on 5  Working Days prior to the  Annual Review | To be presented in a format that  allows for ease of  understanding and discussion. | Strategic  Management Board |

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|  |  |  | exemption to  carry, store or dispose waste |  |  |
| Greenhouse Gas Emissions | Indicate greenhouse gas emissions making use of the use of the most recent conversion guidance set out in 'Greenhouse gas reporting – Conversion factors' available online at https://www.gov.uk/guidance/measuring-and-reportingenvironmental-impacts-guidance-for-businesses | Annually | 10am on 5  Working Days prior to the  Annual Review | To be presented in a format that  allows for ease of  understanding and discussion | Strategic  Management Board |

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| Transport Use | • | miles travelled by transport and fuel type, for goods delivered to the Authority's sites; |  |  |  |  |
|  | •  •  • | miles travelled by staff when visiting the Authority's sites from the Supplier's sites or home;  resulting Green House Gas (GHG) emissions using agreed Conversion Factors; and  the number of multi-lateral e-meetings i.e. with more than two attendees, held by type (audio, webinar, v/conferencing, Teams, skype) | Annually | 10am on 5  Working Days prior to the  Annual Review | To be presented in a format that  allows for ease of  understanding and discussion | Strategic  Management Board |

**ANNEX B**

**RECORDS TO BE KEPT BY THE SUPPLIER**

The records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
17. All journals and audit trail data referred to in Schedule 2.4 (Security Management).
18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

**ANNEX C RECORDS TO UPLOAD TO VIRTUAL LIBRARY**

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| **Applicable Clause/ Paragraph** | **Required Data** | **Format of Data** | **Initial Upload Date** | **Update Requirement** | **Access Permission and Access Event (where applicable)** |
| Cl.5.5 (e), (f) 17.1(a),  17.2(a)(ii) | Documentation | As appropriate and agreed by the  Authority | On the same day of issue to the Authority. |  | Authority |
| Cl 14.3 | Key Personnel | Sch 9.2 | Effective Date | On replacement of Key Personnel | Authority |
| Sch 2.2, Part B Para  2.3 | Performance Monitoring Report | Sch 2.2, Part B | Full Operational Service  Commencement | Within 10 Working Days of the end of each Service Period | Authority |
| Sch 2.4, Para 4 | Core Information  Management System  Diagram | Sch 2.4, Annex B | Full Operational Services  Commencement Date | Any update, annually and after any of the events in Para 6.13 | Authority |
| Sch 2.4, Para 6 | Risk Management Documentation | Sch 2.4, Annex C | Full Operational Services  Commencement Date | Any update, annually and after any of the events in Schedule 2.4, Para 6.13 of | Authority |

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| **Applicable Clause/ Paragraph** | **Required Data** | **Format of Data** | **Initial Upload Date** | **Update Requirement** | **Access Permission and Access Event (where applicable)** |
| Sch 2.5, Para 4 | Evidence of Insurances | Sch 2.5 | Effective Date | Within 15 days after policy renewal or replacement | Authority |
| Cl 22 | Commercially Sensitive Information | Sch 4.2 | Effective Date | Upon Agreement by the Authority to vary the information | Authority and Auditor |
| Cl 15.7 | Notified Key  Subcontractors | Sch 4.3 | Effective Date | On replacement of key subcontractor | Authority |
| Cl 15.5 | Third Party Contracts | Sch 4.4 | Effective Date | On appointment of subcontract | Authority |
| Cl 15.6 | Notified Key SubContractors | Sch 4.3 | Effective Date | With each approved appointment or variation | Authority |
| Cl 15.23 | Supply chain  Transparency  Information Reports | Sch 8.4, Annex D | thirty days prior to the of the end of each financial year | Every 12 months | Authority |
| Cl 16,17 | Software | Sch 5 | Full Operational Services  Commencement Date | Upon Agreement by the Authority to vary the information | Authority |
| Cl 6.4 | Detailed Implementation Plan | Sch 6.1 | Within 20 working days of Effective Date | Every 3 months from Effective Date | Authority |

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| **Applicable Clause/ Paragraph** | **Required Data** | **Format of Data** | **Initial Upload Date** | **Update Requirement** | **Access Permission and Access Event (where applicable)** |
| Sch 6.2, Para 4 | Test Strategy | As appropriate and agreed by the Authority | Within 20 working days of Effective Date | Upon update to the test strategy | Authority |
| Sch 6.2, Para 5 | Test Plan | As appropriate and agreed by the Authority | 20 prior working days of relevant test | Upon update to the test plan | Authority |
| Sch 6.2, Para 8 | Test Specification | As appropriate and agreed by the Authority | 10 prior working days of relevant test | Upon update to the test specification | Authority |
| Sch 6.2, Para 8 | Test Report and/or Draft  Workshop Readiness  Checklist | As appropriate and agreed by the  Authority | 2 working days prior to the  date on which the test or  Workshop Readiness Check is planned to end for the Draft Test Report or Draft Workshop Readiness Checklist  5 days for the Final Test  Report or Workshop Readiness Checklist following the relevant test or Workshop Readiness  Check completion | Reissue with each retest | Authority |
| Sch 7.1 | Template Invoice | As appropriate and agreed by the Authority | Within 10 working days of the Effective Date | Upon Agreement by the Authority to vary the template | Authority |

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| **Applicable Clause/ Paragraph** | **Required Data** | **Format of Data** | **Initial Upload Date** | **Update Requirement** | **Access Permission and Access Event (where applicable)** |
| Schedule 8.1 | Risk Register | Schedule 8.1 | Effective Date | Upon Agreement by the Authority to vary  the by the  Performance  Management Board | Authority |
| Sch 7.3, Para 5 | Benchmarking Plan | Sch 7.3 | Upon receipt from Benchmarker | Approval of Plan | Authority and Auditor |
| Sch 7.3, Para 5 | Benchmarking report | Sch 7.3 | Upon receipt from Benchmarker | Any update | Authority and Auditor |
| Sch 7.4 Para 2.3.2 | Financial Indicator Reports | Sch 7.4 Para 2.5 | As specified in Para 2.3.2 of Sch 7.4 | As specified in Para  2.3.2 of Sch 7.4 | Authority |
| Sch 7.4 Para 4.3.2 | Financial Distress Remediation Plan | As appropriate and agreed by the  Authority | As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event | On a regular basis (not less than fortnightly) | Authority |
| Sch 7.5, Part B, Para  1.2 | Contract Amendment Report | Sch 7.5, Part B, Para  1.2 | Within 1 month of a material change being agreed |  | Authority |
| Sch 7.5, Part B, Para  1.2 | Annual Contract Report | Sch 7.5, Part B, Para  1.2 | Within 1 month of the end of the Contract Year to which that report relates |  | Authority |

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| **Applicable Clause/ Paragraph** | **Required Data** | **Format of Data** | **Initial Upload Date** | **Update Requirement** | **Access Permission and Access Event (where applicable)** |
| Sch 7.5 Part B, Para  1.2 | Financial Reconciliation Report | Sch 7.5, Part B, Para  1.2 | Within 6 months after the end of the Term |  | Authority |
| Sch 8.1, Para 3.3 | Representation and Structure of boards | Sch 8.1 Annex A | Within 7 days of receipt of intention, or in the case of a non-Authority board member agreement by the  Authority |  | Authority |
| Sch 8.1, Para 3.5.5 | Minutes of governance meetings (all boards) | As appropriate and agreed by the Authority | Within 7 days of receipt from chairperson |  | Authority |
| Sch 8.2 Para 4.3 | Impact Assessment Estimate | As appropriate and agreed by the Authority | Within 10 working days of date of receiving change request. |  | Authority |
| Sch 8.2 Para 5 | Impact Assessment | As appropriate and agreed by the  Authority | Within the period agreed by the Impact Assessment  Estimate | Within 10 Working  Days of request by the Authority to update under Schedule 8.1  Para 5.7 | Authority |
| Sch 8.2, Para 2.6 | Updated full copy of the Agreement and copy of annotated version illustrating changes | PDF and MS Word  (editable) | Signature of Variation Date | Any variation | Authority |
| Sch 8.2, Para 4 | Change Request | Sch 8.2, Annex A | Within 10 working days of  Authority issuing the  Change Request |  | Authority |

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| **Applicable Clause/ Paragraph** | **Required Data** | **Format of Data** | **Initial Upload Date** | **Update Requirement** | **Access Permission and Access Event (where applicable)** |
| Sch 8.3, Para 2.1 | Dispute Notice | Sch 8.3 Para 2.2 | No longer than 20 working days from an unresolved dispute arising | Any variation | Authority |
| Sch 8.3, Para 2.4 | Mediation Notice | As appropriate | When first served | Any variation | Authority |
| Sch 8.4, Para 1 | Reports and Records Provisions | Sch 8.4, Annex A | Within 3 months of the Effective Date | Frequency specified in Sch 8.4, Annex A | Authority |
| Sch 8.5, Para 3.1.1 | Register of All Assets,  Sub- contracts and  Other Relevant  Agreements | As appropriate and agreed by the  Authority | Within 3 months of the Effective Date | Any variation | Authority |
| Sch 8.5, Para 3.1.2 | Configuration Database  of Technical Infrastructure and  Operating Procedures | As appropriate and agreed by the  Authority | Within 3 months of the Effective Date | Any variation | Authority |
| Sch 8.5, Para 3.1 | Exit Information | As appropriate and agreed by the Authority | On reasonable notice given by the Authority at any point during the Term | Within 10 working days of Authority's written request | Authority and its potential Replacement Suppliers |
| Sch 8.5, Para 4.1 | Exit Plan | Sch 8.5, Para 4.3 | Within 3 months of the Effective Date | In the first month of each contract year; and within 14 days if requested by the Authority following a  Financial Distress Event Within 20 days after service of Termination Notice or | Authority |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Applicable Clause/ Paragraph** | **Required Data** | **Format of Data** | **Initial Upload Date** | **Update Requirement** | **Access Permission and Access Event (where applicable)** |
|  |  |  |  | 6 months prior to expiry of the Agreement. |  |
| Sch 8.5, Annex A, Para 1, Para 1.3 & Para 1.4 | Termination Services supporting documentation and knowledge transfer material | As appropriate and agreed by the  Authority | As specified in the Exit Assistance Notice and in any event prior to the end of the Exit Period | As specified in the Exit Assistance Notice or otherwise requested by the Authority |  |
| Sch 8.6 Service Continuity | Service Continuity Plan | Sch 8.6, Para 2.2 | Within 40 days from the Effective Date | Sch 8.6, Para 7.1 | Authority |
| Sch 8.6, Para 6.2 | Service Continuity Plan Review Report | Sch 8.6, Para 6.2 | Within 20 Working Days of the conclusion of each review of the Service Continuity Plan. |  |  |
| Sch 8.6 | Corporate Resolution Planning Information | Sch 8.6, Para 11.3 | Schedule 8.6 Part B Para  2.2 | Sch 8.6, Para 11.8 | Authority |
| Sch 7.4 Para 8 | Board Confirmation | As set out at Annex E of Sch 7.4 | Within 120 days of the first  Accounting Reference  Date to occur | Within 15 months of the previous Board Confirmation provided or within 120 days after each Accounting  Reference Date (whichever is the earlier) | Authority |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Applicable Clause/ Paragraph** | **Required Data** | **Format of Data** | **Initial Upload Date** | **Update Requirement** | **Access Permission and Access Event (where applicable)** |
| Sch 9.1, Part D, Para  1.1 | Supplier's Provisional Supplier Personnel List and, Staffing Information | As appropriate and agreed by the  Authority | Sch 9.1, Para 1.1 A-D | At such intervals as are reasonably requested by the  Authority | Authority |
| Sch 9.1, Part D, Para  1.2 | Supplier's Final Supplier Personnel List | As appropriate and agreed by the  Authority | At least 20 Working Days prior to the Service  Transfer Date | Upon any material  change to the list of employees | Authority and, at the discretion of the  Authority, the  Replacement Supplier and/or any  Replacement  Subcontractor |
| Sch 9.1, Part D, Para  1.6 | Information relating to the manner in which the services are organised | As appropriate and agreed by the Authority | Effective Date |  | Authority |
| Sch 9.1 | Payroll and benefits information | As appropriate and agreed by the  Authority | Within 5 Working Days following the Service  Transfer Date | - | Authority, any  Replacement Supplier and/or Replacement  Sub-contractor |
| Sch 9.1, Annex | List of Notified Subcontractors | As appropriate and agreed by the Authority | Effective Date | Upon any change | Authority |
| Sch 9.2 | Key Personnel | Sch 9.2 | Effective Date | As amended from time to time | Authority |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Applicable Clause/ Paragraph** | **Required Data** | **Format of Data** | **Initial Upload Date** | **Update Requirement** | **Access Permission and Access Event (where applicable)** |
| Sch 11, Annex Para  2.1 | Reports on Data Subject Access Requests | As appropriate and agreed by the Authority | As agreed with Authority | As agreed with Authority | Authority and Supplier |

**ANNEX D**

**SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Financial Year 20[●]** |  |  |  |
| **Under this Agreement** |  | **Supplier as a whole** |  |
| **£** | **%** | **£** | **%** |
| **Estimated total contract revenue (£) to be received in this Financial Year** | £[●] | 100% | £[●] | 100% |
| **Total value of Sub-contracted revenues (£) in this Financial Year** | £[●] | [●] | £[●] | [●] |
| **Total value of Sub-contracted revenues to SMEs (£) in this Financial Year** | £[●] | [●] | £[●] | [●] |
| **Total value of Sub-contracted revenues to VCSEs (£) in this Financial Year** | £[●] | [●] | £[●] | [●] |

**Prison Retail Service Project**

**Schedule 8.5**

**Exit Management**

**SCHEDULE 8.5**

**EXIT MANAGEMENT**

1. **DEFINITIONS** 
   1. For the purpose of this Schedule 8.5 (Exit Management), unless the context otherwise requires:

|  |  |
| --- | --- |
| "**Asset Refresh Plan**" | a document which details the proposed renewal date of Assets and the plan to replace them where applicable; |
| "**Excluded Equipment**" | means:   1. the hardware comprised within the Supplier's ICT System, save for any ICT hardware or systems for use by the Retail Service within the Retail Workshops, Serviced Sites or Sites; 2. any other equipment or asset which is not dedicated to the provision of the Services to the Authority; |
| "**Exit Assistance**" | means the assistance to be provided as specified in Paragraph 7.1 (General); |
| "**Exit Assistance Notice**" | has the meaning set out in Paragraph 7.4  (Notification of Requirements for Exit Assistance); |
| "**Exit Legacy Equipment**" | means those items of Supplier Equipment that are used on the Sites in the provision of the Services and required to be transferred pursuant to Paragraph  10.2.1 (Exit Legacy Equipment and Exit Legacy Contracts); |
| "**Exit Legacy Contracts**" | means those contracts that are required to be transferred pursuant to Paragraph 10.2.2 (Exit Legacy Equipment and Exit Legacy Contracts); |
| "**Exit Manager**" | means the person appointed by each Party pursuant to Paragraph 5.3 and in default of such appointment shall be the Authority's Representative or, as appropriate, the Supplier's Representative; |
| "**Exit Period**" | means the period during which the Supplier is to provide Exit Assistance at the Prison pursuant to Paragraph 5.1; |
| "**Exit Period**  **Commencement Date**" | has the meaning set out in Paragraph 5.1; |
| "**Exit Plan**" | means the exit plan developed and maintained in accordance with Paragraphs 6.1 and 6.7; |

"**Full Recompetition Data**" has the meaning set out in Paragraph 4.1

(Obligations to Assist on Re-Tendering);

"**Legacy Asset**" an Asset or Supplier Equipment which will survive the Expiry or Termination of this Agreement;

"**Recompetition Data**" has the meaning set out in Paragraph 3.1 (Contract

Life Obligations).

1. **INTRODUCTION** 
   1. The Supplier shall ensure the orderly transition of the Services from the Supplier to any Replacement Supplier in the event of Expiry or Termination (including Partial Termination) of this Agreement for any reason.
   2. This Schedule 8.5 (Exit Management) sets out the principles of the re-tendering, exit and service transfer arrangements that are intended to facilitate re-tendering during the Term and/or to achieve such orderly transition and which shall form the basis of the Exit Plan. For the avoidance of doubt, the Supplier shall be responsible for the overall management of the re-tendering support, exit and service transfer arrangements.
   3. For the avoidance of doubt, this Schedule 8.5 (Exit Management) also applies where a requirement for any part of the Services ceases whether or not the Service is to be replaced or re-provisioned and regardless of whether a recompetition in respect of the ceased Service is to take place. References to a Replacement Supplier shall be deemed to include reference to more than one Replacement Supplier where more than one is appointed to provide the Replacement Service.
2. **CONTRACT LIFE OBLIGATIONS** 
   1. During the Contract Term the Supplier shall maintain:
      1. such information as is required by this Agreement including, but not limited to, the Asset Register, Asset Refresh Plan and the current Workshop System, and a list of those Assets that were transferred as Legacy Assets, a register of all SubContracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services, and a list of those contracts and agreements, if any that were transferred as Legacy Contracts;
      2. in relation to the Supplier's ICT System, copies of documents, reports, summaries, systems and security components and other information necessary to provide an orderly exit transition (updated to reflect any significant change to the ICT infrastructure or architecture);
      3. in relation to the staff of the Supplier and any Sub-Contractors, information that will be needed for the provision of TUPE information on expiry or termination of this Agreement (including, as required, pursuant to Schedule 9.1 (Staff Transfer)); and
      4. such information as is required by this Agreement including the information defined in Annex A Table 1. The Supplier shall upload the information detailed in Table 1 onto the file share aspect of the Authority's e-Sourcing platform (Bravo – now referred to as Jaggaer) at the times and frequencies set out below, and for the avoidance of doubt, if there is any conflict between the Agreement and Table 1, the timings and frequencies set out in the Agreement shall take precedence;
      5. all other information necessary to permit the Authority and/or any potential Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services (or any part of them) with the minimum of disruption,

(collectively, the "**Recompetition Data**").

* 1. The Supplier shall maintain the Recompetition Data in such format as is specified by the

Authority and shall update the Recompetition Data quarterly as part of its review of the Exit Plan (pursuant to Paragraph 6.7 (Updating the Exit Plan)) and in the event that relevant elements are added to, changed or removed from the Services.

* 1. The information to be maintained pursuant to Paragraph 3.1 (Contract Life Obligations) is in addition to the other information to be maintained under the other provisions of this Agreement.
  2. The Supplier shall provide a copy of the Recompetition Data in an updated form within thirty (30) Days of the end of each Contract Year to allow the Authority to assess the Supplier's compliance with this Paragraph 3 (Contract Life Obligations), unless the Authority has confirmed in writing that, for any particular Contract Year, it does not require the Supplier to do so.

1. **OBLIGATIONS TO ASSIST ON RE-TENDERING** 
   1. Subject to Paragraph 4 (Obligations to Assist on Re-Tendering), the Supplier shall, within twelve (12) months following Full Operational Commencement and the start of each Contract Year thereafter, provide to the Authority and/or (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings with the Authority) to its potential Replacement Suppliers, the following material and information in order to facilitate the preparation by the Authority of any request for information, invitation to tender or any other procurement documentation and/or to facilitate any potential Replacement Supplier undertaking due diligence:
      1. details of the Services (or relevant part of the Services); to include but not limited to, delivery schedules, logistics schedules, staffing levels, Retail workshop performance, finance details;
      2. details of the Assets including asset number and details of their condition and physical location;
      3. details of and information relating to the use of the Assets (including technical specifications);
      4. a copy of the Recompetition Data, updated by the Supplier up to the date of delivery of such Recompetition Data;
      5. copies of all Sub-Contracts and supply contracts as described in Paragraph 3.1 (Contract Life Obligations);
      6. all information relating to potential Transferring Supplier Employees required to be provided by the Supplier under Schedule 9.1 (Staff Transfer);
      7. without prejudice to the information to be provided by the Supplier pursuant to Schedule 9.1 (Staff Transfer), details of any claims, demands or other liabilities owed by the Supplier or any Sub-Contractor to any employee of the Supplier or such Sub-Contractor used in delivery of the Services; and
      8. all other requested information relating to the Services or any other aspect of this

Agreement reasonably required by the Authority,

(together the "**Full Recompetition Data**") and shall provide updates of such data on the same basis.

* 1. Notwithstanding Clause 19 (Confidentiality) and Clause 16 (Intellectual Property Rights) and subject to the recipients entering into reasonable confidentiality agreements with the Authority, the Authority may redistribute the Recompetition Data and Full Recompetition Data to its employees, agents, Suppliers and advisers (and to those of any other Government Department) and to any potential Replacement Suppliers and their employees, agents, Suppliers and advisers for the purposes of conducting and participating in a re-tendering exercise.

1. **EXIT PERIOD** 
   1. The Exit Period shall be the period commencing on:
      1. in the case of expiry, twenty-four (24) Months prior to the original Expiry Date;
      2. in the case of early termination by the Authority, the date on which notice was served in accordance with that clause; and
      3. in the case of any other early termination, the date on which either Party serves notice of termination under this Contract,

(the "**Exit Period Commencement Date**") and ending on the Expiry Date, Early Termination Date or Termination Date as extended by the Authority pursuant to Paragraph 7.5 below.

* 1. The Authority's extension notice under Paragraph 7.5 below shall be served:
     1. no later than one hundred and eighty (180) Days following the Exit Period Commencement Date in the case of an expiry;
     2. no later than thirty (30) Days following the Exit Period Commencement Date in the case of early termination by the Authority; and
     3. no later than two (2) Working Days following the Exit Period Commencement Date in the case of any other termination.
  2. Within ten (10) Working Days of the Exit Period Commencement Date, each Party shall appoint an Exit Manager and provide written notification of such appointment to the other Party. The Supplier's Exit Manager will be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Schedule 8.5 (Exit Management). The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule 8.5 (Exit Management). The Parties' Exit Managers shall liaise with one another in relation to all issues relevant to the re-tendering, expiry and termination of this Agreement (in whole or in part) and all matters connected with this Schedule 8.5 (Exit Management) and each Party's compliance with it.

1. **EXIT PLAN** 
   1. Contents of Exit Plan – The Supplier shall as part of the mobilisation Operations agree with the Authority the Supplier's Exit Plan in accordance with Agreement.
   2. The Supplier's Exit Plan will ensure adequate operational support can continue to be provided to the specified Performance Indicators in the event that the Supplier is no longer required or able to provide the Goods or Services specified in the Agreement.
   3. The objective of the Supplier's Exit Plan shall be to demonstrate to the Authority a clear transfer of Goods and Services arrangements. This shall include, without limitation, reference to provision, availability and use of the Supplier's Equipment, Staff, Key Personnel, vehicles

and distribution infrastructure to ensure a smooth transition from the Supplier to a replacement service provider at the termination or expiry of this Agreement.

**Exit** **Planning**

* 1. The Supplier will provide transparency with a personnel handover plan for key staff who will be and will not be transferring to the new contract under TUPE rules (if applicable).
  2. The Supplier shall, within three (3) Months after the Operational Services Commencement Date, deliver to the Authority an outline Exit Plan which sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Replacement Supplier and which complies with the requirements set out in Paragraphs 6.1 and 6.7. Within thirty (30) Days after the submission of the Exit Plan, the Parties shall use their respective reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan then such dispute shall be resolved in accordance with the Dispute Resolution Procedure.
  3. The Exit Plan shall include, but not be limited to:
     1. Recompetition Data in accordance with Paragraph 3.1 (Contract Life Obligations) above;
     2. separate mechanisms for dealing with:
        1. expiry;
        2. an early termination by the Authority pursuant the terms of the Agreement; and
        3. any other early termination;
     3. the management structure to be employed by the Supplier during both transfer and cessation of the Goods and Services;
     4. details of how the Supplier will achieve data transfer, systems migration and full segregation of the Authority's ICT System from the Supplier's ICT System;
     5. procedures to deal with requests made by the Authority and/or potential and actual Replacement Supplier for employee information pursuant to Schedule 9.1 (Staff Transfer); and
     6. in the versions produced during the Exit Period:
        1. a detailed description of both the transfer and cessation processes, including a

timetable for the transfer and cessation of the Services (or relevant part of the Services) on a single date or over a period of time, as required by the Authority; and

* + - 1. a timetable for providing Exit Assistance aligning to the mobilisation and transition plans of the Replacement Supplier (to the extent such plans are notified to the Supplier in writing).
    1. the management structure to be employed by the Supplier during both transfer and cessation of the Goods and Services;
    2. details of how the Supplier will achieve data transfer, systems migration and full segregation of the Authority's System from the Supplier's System;
    3. procedures to deal with requests made by the Authority and/or potential and actual Replacement Supplier for employee information pursuant to Schedule 9.1 (Staff Transfer);
    4. a detailed description of both the transfer and cessation processes, including a timetable for the transfer and cessation of the Goods and Services (or relevant

part of the Goods and Services) on a single date or over a period of time, as such information is reasonably required by the Authority to ensure the transfer and cessation is as agreed in the Exit Methodology; and

* + 1. a timetable for providing Exit Assistance aligning to the mobilisation and transition plans of the Replacement Supplier (to the extent such plans are notified to the Supplier in writing). For the avoidance of doubt, the Supplier's obligations in relation to the provision of Exit Assistance shall be subject to Paragraph 7.5.

**Updating the Exit** **Plan**

* 1. The Supplier shall review and update the Exit Plan on each anniversary of the Operational Services Commencement Date to reflect changes in the Services or any of the components of the Exit Plan. Following such update, the Supplier shall submit the revised Exit Plan to the Authority for review. Within thirty (30) Days following submission of the revised Exit Plan, the

Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in this Schedule 8.5 (Exit Management) and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the contents of the revised Exit Plan within that thirty (30) Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

* 1. Within the relevant periods set out below, and not less than quarterly thereafter (or at such

longer intervals as the Authority shall approve), the Supplier shall submit for the Strategic Management Board, for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The periods for provision of the Exit Plan in final form shall be:

* + 1. in respect of termination for Authority Default or Supplier Termination Event, thirty

(30) Days from the relevant Exit Period Commencement Date provided that for:

* + - 1. any termination for Supplier Termination Event including for (a) Persistent Default, (b) Material Default, (c) rectification Plan failure, (d) IPR, (e) Financial Distress, (f) transfer without Authority Consent, (g) breach of Clause 24 (Insurance) the definition of Supplier Default, the Exit Period shall commence on the issue of the initial Termination Notice and not on any subsequent Termination Notice issued under Clause 25 (Rectification Plan Process) for failure to implement or carry out any rectification programme; and
      2. for any termination for Supplier Termination Event falling within any of the remaining paragraphs of the definition of Supplier Termination Event, the Exit

Period shall commence on the issue of any Termination Notice issued under Clause 25 (Rectification Plan Process);

* + 1. for termination under Clause 30.1.4 (Termination on Force Majeure), 30.1.5 (Termination in accordance with the Regulations), 36.1 and, ten (10) Days from the relevant Exit Period Commencement Date; and
    2. in respect of expiry of this Agreement, or any other termination of this Agreement

(whether whole or in part), thirty (30) Days from the relevant Exit Period Commencement Date.

* 1. The Parties shall use their respective reasonable endeavours to agree the contents of the final forms of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan, then such dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the relevant version of the final form Exit Plan, the Supplier shall provide the Exit Assistance in accordance with the principles set out in this Schedule 8.5 (Exit Management) and the last approved version of the Exit Plan (insofar as this still applies).
  2. The Supplier shall comply with all of its obligations contained in the Exit Plan.

1. **EXIT ASSISTANCE**

**General**

* 1. During the Exit Period, or such shorter period as the Authority may require, the Supplier shall continue to provide the Goods and Services and shall, at the request of the Authority under Paragraph 7.4 (Notification of Requirements for Exit Assistance) provide assistance as required in order to transition the Goods and Services (or relevant part of the Goods and Services) to the Replacement Supplier ("**Exit Assistance**").
  2. During the Exit Period, the Supplier shall, in addition to providing the Services and Exit

Assistance, provide to the Authority any further assistance reasonably requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Goods and Services (or part of the Goods and Services) to the Replacement Supplier.

* 1. The Parties acknowledge that the migration of the all or part of the Goods and Services from the Supplier to the Replacement Supplier may be phased, such that certain elements of the Services are handed over before others. Any such phased migration shall be detailed in the Exit Plan.

**Notification of Requirements for Exit** **Assistance**

* 1. The Authority shall be entitled to require the provision of Exit Assistance by notifying the Supplier in writing ("**Exit Assistance Notice**") at any time (and in any number of such notices) during the Exit Period. The Exit Assistance Notice shall specify: 7.4.1 the date from which Exit Assistance is required;
     1. the nature of the Exit Assistance required; and
     2. the period during which it is anticipated that Exit Assistance will be required which, save as set out in Paragraph 7.5 (Notification of Requirements for Exit Assistance), shall continue no longer than the Exit Period.
  2. Notwithstanding the other provisions of this Schedule 8.5 (Exit Management), the Authority shall have an option to extend the period of Exit Assistance beyond the expiry of the Exit Period provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to such expiry and that the extension is reasonably required to complete the handover of the Goods and Services.

**Handback** **Obligations**

* 1. No later than ninety (90) Days prior to the Expiry Date or, as applicable, the Early Termination Date or as soon as possible following the receipt by the Authority of a Supplier Termination Notice, the Supplier shall obtain direction from the Authority as to which data and documents relating to the delivery of the Goods and Services (or relevant part of the Services) shall be destroyed (and their manner of destruction) and which data and documents shall be retained by the Supplier in accordance with Clause 12 (Records, Reports, Audits & Open Book Data) or returned in accordance with Paragraph 7.6 and 7.7 (Handback Obligations).
  2. The Supplier will ensure:
     1. Develop and provide for each Retail Workshop, Serviced Sites and Sites all information regarding current metrics and operations of service provision in a detailed change plan;
     2. Creation of Implementation approach in conjunction with the Authority;
     3. Ensuring planned business change is delivered in line with HMPPS protocols;
     4. Advise on business change approach and assist Sites / Serviced sites to prepare for planned change;
     5. Creation and delivery of an implementation plan along a timeline agreed at Performance Board level;
     6. Manage confirmation of Implementation approach with HMPPS;
     7. Act as Project Interface with HMPPS and ensure relevant resource is in place;
     8. Act as project interface with Authority's implementation team and provide support throughout delivery.
  3. At the end of the Exit Period (or on such other date as is notified by the Authority) at its own cost and expense and save as directed otherwise under Paragraph 7.6 (Handback Obligations):
     1. the Supplier shall erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Exit Period any software containing Services Data and Personal Data, in accordance with its obligations under Clause 18 (Authority Data and Security Requirements) and Clause 21 (Protection of Personal Data);
     2. the Supplier shall return to the Authority such of the following as is in the Supplier's or a Sub-Contractor's possession or control:
        1. all hardware and software comprised within the Authority's ICT System and any other software licensed by the Authority to the Supplier under this Agreement;
        2. all materials in which the Intellectual Property Rights are owned by or licensed to the Authority;
        3. all computerised filing, recording, documentation, planning and drawings used in the provision of the Services (in a fully indexed and catalogued format that is capable of operating on a software application in use within the Authority's ICT System);
        4. all Authority Assets (including any Authority Assets that are Exit Legacy Assets)

and any other equipment which belongs to the Authority or an Authority Related Party or an End User. All Authority Assets must be in a fully operational state and must not have exceeded the end of their lifecycle; and

* + - 1. any items that have been pass through costs to the Authority, such as but not limited consumables, ICT, software, printed materials;
    1. the Supplier shall transfer all Services Data and Personal Data (in complete, uncorrupted form) in its or its Sub-Contractors' possession or control to the Authority;
    2. the Supplier shall decommission and safely remove all Supplier Assets which the Authority has elected not to acquire under Paragraph 10 (Exit Legacy Equipment and Exit Legacy Contracts), making good the locations from which such Supplier Assets are removed, and vacate the Site; and
    3. the Supplier shall return to the Authority all Confidential Information of the

Authority and will certify that it does not retain any Authority Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Supplier for the purposes of providing the Services or Exit Assistance.

* 1. Except where this Agreement provides otherwise, all licences and authorisations granted by the Authority to the Supplier and the Sub-Contractors in relation to the Services shall be terminated with effect from the end of the Exit Period.

**Scope of Exit** **Assistance**

* 1. The Exit Assistance to be provided by the Supplier shall include (without limitation and without prejudice to the other provisions of this Agreement relating to exit co-operation) such of the following services as the Authority may specify:
     1. notifying the Sub-Contractors of procedures to be followed during the Exit Period and providing management to ensure these procedures are followed;
     2. providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and rewriting and implementing processes and procedures such that they are appropriate for use by the Authority and/or Replacement Supplier after the end of the Exit Period;
     3. providing details of staffing requirements over the twelve (12) Month period immediately prior to the commencement of the Exit Period;
     4. providing an information pack listing and describing the Services (or relevant part of the Services) for use by the Authority in the procurement of the Replacement Services;
     5. answering all reasonable questions from the Authority and/or its Replacement Supplier regarding the Services (or relevant part of the Services);
     6. providing access to the Retail Workshop to the Authority and/or the potential and actual Replacement Suppliers during the Exit Period for the purpose of the smooth transfer of the Services (or relevant part of the Services) to the Replacement Supplier, such access to include access:
        1. to information and documentation relating to the Services (or relevant part of the

Services) that is in the possession or control of the Supplier or its Sub-Contractors (and the Supplier agrees and shall procure that its Sub-Contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

* + - 1. following reasonable notice to members of the Supplier's Staff who have been involved in the provision or management of the Services and who are still employed or engaged by them.

1. **NOT USED**
2. **KNOWLEDGE TRANSFER** 
   1. During the Exit Period upon request the Supplier shall:
      1. provide for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services (or relevant part of the Services); and
      2. provide a detailed explanation of the procedures and operations used to provide the Services (or relevant part of the Services).
3. **EXIT LEGACY EQUIPMENT AND EXIT LEGACY CONTRACTS** 
   1. During the Exit Period, the Supplier will not, without the Authority's prior written consent:
      1. terminate or vary any Sub-Contract; or
      2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any Supplier Equipment or acquire any Replacement Supplier Equipment.
   2. No later than ten (10) Working Days prior to the planned Expiry Date, Early Termination Date or Termination Date, the Authority shall provide written notice to the Supplier setting out:
      1. which Supplier Equipment the Authority requires to be transferred to the Authority or its Replacement Supplier as Exit Legacy Equipment (which shall not include any Excluded Equipment); and
      2. which Sub-Contracts, supply contracts and software licences the Authority requires to be assigned or novated to the Authority or its Replacement Supplier as

Exit Legacy Contracts (save where the Parties' have agreed in Schedule 5.1

(Digital) that any licence is not capable of being assigned or novated to the Authority or its Replacement Supplier as Exit Contracts),

in order for the Replacement Supplier to provide the Goods and Services. Where requested by the Authority or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Supplier Assets and Sub-Contracts, supply contracts or licences the Authority and/or its Replacement Supplier requires in order to provide the Replacement Services.

* 1. With effect from the Expiry Date, Early Termination Date or Termination Date (as the case may be), the Supplier shall assign to the Authority (or its Replacement Supplier), free from all liens, charges, options, encumbrances and third party rights, title to and all rights and interests in those Supplier Equipment identified by the Authority pursuant to Paragraph 10.2 (Exit Legacy Equipment and Exit Legacy Contracts) which shall be acquired by the Authority for a consideration of the lower of the Net Book Value and Market Price of each item of Exit Legacy Equipment.
  2. The Supplier shall procure the assignment or novation of the Exit Legacy Contracts to the Authority or, at the Authority's request, to the Replacement Supplier with effect from the date specified by the Authority or, if none is so specified, with effect from the Expiry Date, Early Termination Date or Termination Date. Such assignment or novation shall be at no cost to the Authority or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this assignment or novation.
  3. The Authority shall or, as appropriate, shall procure that the Replacement Supplier shall:
     1. join with the Supplier in entering into a novation or (where needed) an assignment of each relevant Exit Legacy Contract;
     2. for each Exit Legacy Contract that is novated to the Authority or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Exit Legacy Contract and exercise its rights arising under that Exit Legacy Contract.
  4. The Supplier shall indemnify the Authority (and the Replacement Supplier) against each loss, liability and cost arising out of any claims made by a counterparty to an Exit Legacy Contract which is assigned or novated to the Authority (or Replacement Supplier) pursuant to Paragraph 10.4 (Exit Legacy Equipment and Exit Legacy Contracts) in relation to any matters arising prior to the date of assignment or novation of such Exit Legacy Contract.

1. **CHARGES AND APPORTIONMENTS** 
   1. All outgoings and expenses (including any remuneration due) and all rents, revenues, royalties and other periodical payments receivable in respect of the Exit Legacy Assets and Exit Legacy Contracts transferred to the Authority and/or the Replacement Supplier pursuant to Paragraph 10 (Exit Legacy Equipment and Exit Legacy Contracts), and in respect of the

Prison Industries, shall be apportioned between the Authority and the Supplier (or the Replacement Supplier and the Supplier, as applicable).

* 1. This apportionment shall be carried out as follows:
     1. the payments shall be annualised and divided by three hundred and sixty-five (365) to reach a daily rate;
     2. the Authority shall be responsible for or shall procure that the Replacement Supplier shall be responsible for or entitled to (as the case may be) that part of the value of the invoice or other sum pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
     3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice or other sum.
  2. Each Party shall pay and/or the Authority shall procure that the Replacement Supplier shall pay any monies due under Paragraph 11.2 (Charges and Apportionments) as soon as reasonably practicable.

**ANNEX A CONTRACT LIFE OBLIGATIONS**

During the Contract Term the Supplier shall maintain:

**Table 1:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Ref** | **Area** | **Description** | **Frequency pre-Exit Period** | **Frequency during Exit Period** |
| 1 | Product Ranges | 1. National Product List or NPL including product   European Article Number (EAN)   1. Local Product List or LPL 2. Weekly price information – weekly updates to any cost and/or selling prices of products contained on the NPL | 1 & 2) Quarterly Period -following range reviews meetings, and ad hoc as and when any changes are requested by Serviced Sites  3) weekly by 15:00 Friday | 1 & 2) NPL & LPL – to be provided as and when changes are requested by Serviced Sites  3) weekly by 15:00 Friday |
| 2 | Supply Chain Details | Full supply chain details of each product contained in the NPL, covering the following for each product:   * Supplier name * SME status * Country of Origin * Lead time to Authority * Min. order quantity to Authority   Each product must also have confirmation of which of the following categories it falls under:  NPL Core Range Goods  NPL Non-Core Range Goods/unique product | Quarterly Period -following range reviews meeting, and ad hoc as and when any changes are requested (based on NPL range at the time). | Updated information to be provided by the 10th Working Day of each Month or ad hoc upon reasonable request |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | Common Majority – An NPL Core Range Goods but this contract accounts for the majority of volume (50%+) |  |  |
| 3 | Product Sales (exc. Promotions) | Breakdown of each NPL products sales volume and value including and split out by:  **Pick & pack service information:**   * Overall annual sales volume and value for each product * Breakdown of each products annual sales volume and value by Serviced Site   Breakdown of sales volumes& and values by individual sites / serviced sites  **Bulk drop service information:**   * Overall annual sales volume and value for each product * Breakdown of each product's annual sales volumes and value by Serviced Site | Initial information to be provided  24 months prior to Expiry Date (using previous 12 months total sales figures).  Weekly updated sales information to be provided by 15:00 Friday or ad hoc upon request | Weekly updated sales information to be provided by 15:00 Friday or ad hoc upon reasonable request |
| 4 | Promotions Sales Data | Breakdown of each of the cyclical promotional activities that take place under the Agreement, on top of the NPL sales activity. The data must include:   * Promotion reference * Total sales volume by product * Total sales value by product | Initial report to be provided 24 months prior to Expiry, containing overall sales information  Previous 12 months promotions sales to be broken down by Serviced Site and promotion reference.  Updated reports to be provided following the end of each subsequent promotion activity | Weekly updated promotional sales information to be provided by 15:00 Friday or ad hoc upon reasonable request |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 5 | Product Stock Information | Breakdown of each NPL + promotional items current stock holding position including:   * Current stock volume, value (cost and sales value) and location * Committed stock (ordered with suppliers, but not yet delivered to Retail Workshops or Distribution Centres) * Predicted no. weeks' worth of stock based on previous 12 months sales data (for NPL items only) * Confirmation on which products run the risk of having surplus volume at Expiry Date * Minimum order quantity and lead time for each item | Initial information to be provided 24 months prior to Expiry.  Updated information to be provided weekly, by 15:00 Friday and ad hoc upon request | Updated information to be provided on a weekly basis by 15:00 Friday and ad hoc upon reasonable request |
| 6 | Delivery Information (Logistics Network) | Full overview of the contract's delivery model including:  **Retail Workshops Stock Replenishment**   * Retail Workshops Name * Days of bulk stock deliveries (fresh or ambient) * Distribution Centre where goods are delivered from * Cost per delivery * Tote delivery/circulation | Initial information to be provided 24 months prior to Expiry.  Updated information to be provided by the 10th Working  Day of each Month | Updated information to be provided within two Working Days of the change being agreed by the Parties |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | **Serviced Site Deliveries**   * Serviced Site Name * Retail Workshops they receive service from * Day the relevant Retail Workshops   prepares the Serviced Sites order   * Day and time the Retail Workshops sends   PINS/Spends files to the Serviced Sites Business Hub   * Day and time of collection of completed orders from Retail Workshops and delivery to Serviced Site * Confirmation of whether the order for the Serviced Site is a pick and pack provision or a bulk drop * Cost per delivery |  |  |
| 7 | Serviced Sites  Ordering Schedules | **Serviced Sites who use paper Prisoner Order Forms:**  Overview for each Serviced Site with the days and times in which Prisoner Order Forms are: • Printed in the Retail Workshops   * Delivered to the Serviced Site * Collected from the Serviced Site * Number of Prisoner Order Forms per Serviced Site | Initial information to be provided 24 months prior to Expiry.  Updated information to be provided as and when any changes are incurred | Updated information to be provided within two Working Days of the change being agreed by the Parties |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | **Serviced Sites who use the kiosk systems for ordering:**  Overview for each applicable Serviced Site with details on the days and time in which:   * Product information is sent to Serviced Site for upload * Order information is sent to the Retail Workshops by the Serviced Site |  |  |
| 8 | Retail Workshops Operating Details | For each Retail Workshops the following information must be provided: -   * Average number of orders per week   (broken down by Serviced Site)   * Average number of units per week (broken down by Serviced Site) * Required, agreed and provided number of prisoner labour for each activity * Total number of Supplier staff (broken down by role) * Serviced Site points of contact (including Retail Liaison Contact) * Health and Safety reports and outstanding claim information * Any operating manuals for Authority owned equipment * Details of Workshop operating hours and any lunch time working details | Initial information to be provided 24 months prior to Expiry.  Updated information to be provided as and when any changes are incurred. | Updated information to be provided within two Working Days of the change being agreed by the Parties |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 9 | Asset Register | The following information is required for all assets under the Agreement:   * Asset name * Purchase value * Depreciation value (if applicable) * Location of asset * Owner (Supplier or Authority) | | Initial information to be provided by 24 months prior to Expiry.  Updated information to be provided by the 10th Working Day of each Month or ad hoc upon reasonable request | Updated information to be provided within two Working Days of the change being agreed by the Parties |
| 10 | Lease Register | Full overview of all leases under the Agreement including:   * Asset information * Location of leased asset (if applicable) * Current lease term including termination notice * Monthly lease payment | | Initial information to be provided by 24 months prior to Expiry.  Updated information to be provided as and when any changes are incurred. | Updated information to be provided within two Working Days of the change being agreed by the Parties |
| 11 | Transition Budget and Operational  Budget | Provision of full annual Budget detailing all spend under the Agreement.  The report must include the full general ledger line detail and conversion into MoJ ledger categories  Reports provided must be in the same format as previously submitted and agreed with the Authority. | | Updated reports to be provided by the 10th Working Day of each Month or ad hoc upon reasonable request detailing the previous month's figures | Monthly reports to be provided by the 10th working day of each month, detailing the previous month's figures |
| 12 | Supplier Staff Security Vetting | Full security vetting overview of all Supplier staff working on the Agreement, including: | | Initial overview to be provided 24 months prior to Expiry, with | Updated information to be provided as and when any staff changes or when security vetting |
|  |  | •  •  •  • | Job role  Location  Vetting  Date of expiry of current vetting certificate | updates provided as and when any changes are incurred. | renewed. To be provided within one week of the change or renewal. |

**Prison Retail Service Project**

**Schedule 8.6**

**Service Continuity and Corporate Resolution Planning**

**SCHEDULE 8.6**

**SERVICE CONTINUITY AND CORPORATE RESOLUTION PLANNING**

**PART A: SERVICE CONTINUITY PLAN**

1. **DEFINITIONS** 
   1. In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| "**Business Continuity Plan**" | has the meaning given in Paragraph 2.2.1(b); |
| "**Business Continuity**  **Services**" | has the meaning given in Paragraph 4.2.2; |
| "**Department**" | a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:   1. Government Department; or 2. Non-Ministerial Department; |
| "**Disaster**" | the occurrence of one or more events which, either separately or cumulatively, mean that the Goods and Services, or a material part of the Goods and Services will be unavailable for a period of four (4) hours or which is reasonably anticipated will mean that the Good and Services or a material part of the Goods and Services will be unavailable for that period; |
| "**Disaster Recovery Plan**" | has the meaning given in Paragraph 2.2.1(c); |
| "**Disaster Recovery**  **Services**" | the services embodied in the processes and procedures for restoring the Goods and Services following the occurrence of a Disaster; |
| "**Disaster Recovery**  **System**" | the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services; |
| "**Insolvency Continuity**  **Plan**" | has the meaning given in Paragraph 2.2.1(d); |
| "**Related Service Provider**" | any person who provides services to the Authority in relation to this Agreement from time to time, which persons include as at the Effective Date; |
| "**Review Report**" | has the meaning given in Paragraphs 7.2.1 to 7.2.3; |
| "**Service Continuity Plan**" | means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business |

Continuity Plan, Disaster Recovery Plan and the

Insolvency Continuity Plan;

1. **SERVICE CONTINUITY PLAN** 
   1. Within 20 Working Days from the Effective Date the Supplier shall submit a draft version of the Service Continuity Plan to the Authority for the Authority's written approval. If the Authority rejects the draft plan the Supplier will resubmit an updated draft plan for approval within 20 working days. The plan shall detail the processes and arrangements that the Supplier shall follow to:
      1. 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 Supplier, any Key SubContractor and/or any Supplier Group member); and

* + 1. the recovery of the Goods and Services in the event of a Disaster.
  1. The Service Continuity Plan shall:
     1. be divided into four parts:
        1. Part A which shall set out general principles applicable to the Service Continuity Plan;
        2. Part B which shall relate to business continuity (the "**Business Continuity Plan**");
        3. Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**");
        4. Part D which shall relate to an Insolvency Event of the Supplier, any Key Subcontractors and/or any Supplier Group member (the "**Insolvency Continuity Plan**"); and
     2. unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.
  2. Following receipt of the draft Service Continuity Plan from the Supplier, the Authority shall:
     1. review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
     2. notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 10 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Authority.
  3. If the Authority rejects the draft Service Continuity Plan:
     1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and
     2. the Supplier shall then revise the draft Service Continuity Plan (taking reasonable

account of the Authority's comments) and shall re-submit a revised draft Service Continuity Plan to the Authority for the Authority's approval within 10 Working

Days of the date of the Authority's notice of rejection. The provisions of Paragraph

2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

1. **SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS** 
   1. Part A of the Service Continuity Plan shall:
      1. set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
      2. provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
      3. contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
      4. detail how the Service Continuity Plan links and 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 Service Providers in each case as notified to the Supplier by the Authority from time to time;
      5. contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
      6. contain a risk analysis, including:
         1. failure or disruption scenarios and assessments and estimates of frequency of occurrence;
         2. identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
         3. identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
         4. identification of risks arising from an Insolvency Event of the Supplier, any Key

Sub-Contractors and/or Supplier Group member; and

* + - 1. a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
    1. provide for documentation of processes, including business processes, and procedures;
    2. set out key contact details (including roles and responsibilities) for the Supplier

(and any Sub-contractors) and for the Authority;

* + 1. identify the procedures for reverting to "normal service";
    2. set out method(s) of recovering or updating data collected (or which ought to have

been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;

* + 1. identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
    2. provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.
  1. The Service Continuity Plan shall be designed so as to ensure that:
     1. the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
     2. the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-Contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
     3. it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
     4. there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.
  2. The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.
  3. The Supplier shall not be entitled to any relief from its obligations under the Key Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

1. **SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY PRINCIPLES AND CONTENTS** 
   1. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
      1. the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
      2. the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
   2. The Business Continuity Plan shall:
      1. address the various possible levels of failures of or disruptions to the Services;
      2. 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 (such services and steps, the "**Business Continuity Services**");
      3. specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Goods and Services during any period of invocation of the Business Continuity Plan; and
      4. clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.
2. **SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY PRINCIPLES AND CONTENTS** 
   1. The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier 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.
   2. The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
   3. The Disaster Recovery Plan shall include the following:
      1. the technical design and build specification of the Disaster Recovery System;
      2. details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
         1. data centre and disaster recovery site audits;
         2. backup methodology and details of the Supplier's approach to data back-up and data verification;
         3. identification of all potential disaster scenarios;
         4. risk analysis;
         5. documentation of processes and procedures;
         6. hardware configuration details;
         7. network planning including details of all relevant data networks and communication links;
         8. invocation rules;
         9. Service recovery procedures; and
         10. steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
      3. any applicable Performance Indicators with respect to the provision of the

Disaster Recovery Services and details of any agreed relaxation to the

Performance Indicators in respect of other Goods and Services during any period of invocation of the Disaster Recovery Plan;

* + 1. details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
    2. access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
    3. testing and management arrangements.

1. **SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN PRINCIPLES AND CONTENTS** 
   1. The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Goods and Services following an Insolvency Event of the Supplier, any Key SubContractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
   2. The Insolvency Continuity Plan shall include the following:
      1. 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 Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;

* + 1. identification, explanation, assessment and an impact analysis of risks in respect

of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;

* + 1. plans to manage and mitigate identified risks;
    2. details of the roles and responsibilities of the Supplier, Key Sub-Contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Goods and Services;
    3. details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
    4. sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

1. **REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN** 
   1. The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):
      1. on a regular basis and as a minimum once every 6 months;
      2. within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
      3. within 14 days of a Financial Distress Event;
      4. within 30 days of a Corporate Change Event; and
      5. where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1.1 to 7.1.4) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier 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.
   2. Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their 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 Service Continuity Plan or the last review of the Service Continuity 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 Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a "**Review Report**") setting out:
      1. the findings of the review;
      2. any changes in the risk profile associated with the Services; and
      3. the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
   3. Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:
      1. review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
      2. notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.
   4. If the Authority rejects the Review Report and/or the Supplier's Proposals:
      1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and
      2. the Supplier shall then revise the Review Report and/or the Supplier's Proposals

as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall resubmit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the

Authority's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

* 1. The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier'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.

1. **TESTING OF THE SERVICE CONTINUITY PLAN** 
   1. The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
   2. If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test within 30 days, in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
   3. The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with 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 in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
   4. The Supplier 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.
   5. The Supplier shall, within 10 Working Days of the conclusion of each test, provide to the Authority a report setting out:
      1. the outcome of the test;
      2. any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
      3. the Supplier's proposals for remedying any such failures.
   6. Following each test, the Supplier shall take all measures requested by the Authority, (including

requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.

* 1. For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
  2. The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

1. **INVOCATION OF THE SERVICE CONTINUITY PLAN** 
   1. In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
   2. The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
      1. where an Insolvency Event of a Key Sub-Contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
      2. where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

**PART B: CORPORATE RESOLUTION PLANNING**

1. **SERVICE STATUS AND SUPPLIER STATUS** 
   1. This Agreement is a Critical Service Contract.
   2. The Supplier shall notify the Authority in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.
2. **PROVISION OF CORPORATE RESOLUTION PLANNING (CRP) INFORMATION** 
   1. Paragraphs 2 to 4 of this Part B shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 1.1 of this Part B or the Supplier is or becomes a Public Sector Dependent Supplier.
   2. Subject to Paragraphs 2.6, 2.10 and 2.11 of this Part B:
      1. where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority with the CRP Information within 60 days of the Effective Date; and
      2. except where it has already been provided in accordance with Paragraph 2.2.1 of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority with the CRP Information within 60 days of the date of the Relevant Authority's request.
   3. The Supplier shall ensure that the CRP Information:
      1. is full, comprehensive, accurate and up to date;
      2. is split into two parts:
         1. Group Structure Information and Resolution Commentary;
         2. UK Public Service / CNI Contract Information,

and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook>and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

* + 1. incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority to understand and consider the information for approval;
    2. provides a clear description and explanation of the Supplier Group members that

have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and

* + 1. complies with the requirements set out at Annex A (Group Structure Information and Resolution Commentary) and Annex B (UK Public Sector/CNI Contract Information) respectively.
  1. Following receipt by the Relevant Authority of the CRP Information pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B, the Supplier and the Relevant Authority shall discuss in good faith the contents of the CRP Information and:
     1. where the Authority is the Relevant Authority, the Authority shall; and
     2. where the Cabinet Office Markets and Suppliers Team is the Relevant Authority, the Authority shall use reasonable endeavours to procure that the Cabinet Office Markets and Suppliers Team shall,

no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that it approves the CRP Information or that it rejects it.

* 1. If the Relevant Authority rejects the CRP Information:
     1. the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
     2. the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's comments, and shall re-submit the CRP Information to the

Relevant Authority for approval within 30 days of the date of the Relevant Authority's rejection. The provisions of Paragraph 2.3 to 2.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

* 1. Where the Supplier has already provided CRP Information to a Department(or, in the case of a Strategic Supplier, to the Cabinet Office Markets and Suppliers Team) and has received an

Assurance of its CRP Information from that Department (or, in the case of a Strategic

Supplier, from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid, the Supplier shall not be required to provide the CRP Information or updated CRP Information under Paragraphs 2.2 and 2.8.1 to 2.8.3 of this Part B if it provides a

copy of the Valid Assurance to the Authority on or before the date on which the CRP Information would otherwise have been required.

* 1. An Assurance shall be deemed Valid for the purposes of Paragraph 2.6 of this Part B if:
     1. in respect of the Supplier's obligations under Paragraph 2.2:
        1. the CRP Information on which the Assurance was based was provided to the

Department providing the Assurance (or, in the case of Strategic Suppliers, to the Cabinet Office Markets and Suppliers Team) within the 12 months prior to the deadline by which the CRP Information would otherwise have been required under Paragraph 2.2; and

* + - 1. no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this

Agreement had then been in force) have occurred since the date on which the CRP Information was provided; and

* + 1. in respect of the Supplier's obligations under Paragraphs 2.8.1 to 2.8.3, the CRP Information on which the Assurance was based was provided to the Department providing the Assurance (or, in the case of Strategic Suppliers, to the Cabinet Office Markets and Suppliers Team) after the date of the event triggering the obligation to provide the CRP Information under Paragraphs 2.8.1 to 2.8.3.
  1. Subject to Paragraph 2.6, if this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 2.8.3 of this Part B its initial CRP Information) to the Relevant Authority:
     1. within 14 days of the occurrence of a Financial Distress Event (along with any

additional highly confidential information no longer exempted from disclosure under Paragraph 2.11 of this Part B) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (Financial Distress);

* + 1. within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 2.10;
    2. within 30 days of the date that:
       1. the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 2.10; or
       2. none of the credit rating agencies specified at Paragraph 2.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
    3. in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
       1. updated CRP Information has been provided under any of Paragraphs 2.8.1 2.8.2 or 2.8.3 since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 2.8.4; or (b) unless not required pursuant to Paragraph 2.10.
  1. Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical

Service Contract, then on the occurrence of any of the events specified in Paragraphs 2.8.1 to 2.8.4 of this Part B, the Supplier shall provide at the request of the Relevant Authority and within the applicable timescales for each event as set out in Paragraph 2.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority.

* 1. Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:
     1. Aa3 or better from Moody's;
     2. AA- or better from Standard and Poors;
     3. AA- or better from Fitch;
     4. 3A2 - or better from Dun + Bradstreet

the Supplier will not be required to provide the CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the

Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (Financial Distress)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 2.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 2.8.

* 1. Subject to Paragraph 4, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority to the extent required under Paragraph 2.8.

1. **TERMINATION RIGHTS** 
   1. The Authority shall be entitled to terminate this Agreement under Clause 30.1.2 (Termination by the Authority) if the Supplier is required to provide CRP Information under Paragraph 2 of this Part B and either:
      1. the Supplier fails to provide the CRP Information within 4 months of the Effective

Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Authority's request; or

* + 1. the Supplier fails to obtain an Assurance from the Relevant Authority within 4 months of the date that it was first required to provide the CRP Information under this Agreement.

1. **CONFIDENTIALITY AND USAGE OF CRP INFORMATION** 
   1. The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.
   2. Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the

Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under Paragraph 4.1 of this Part B and Clause 19 (Confidentiality).

* 1. The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority pursuant to Paragraph 2 of this Part B subject, where necessary, to the Relevant Authority entering into an appropriate confidentiality agreement in the form required by the third party.
  2. Where the Supplier is unable to procure consent pursuant to Paragraph 4.3 of this Part B, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
     1. redacting only those parts of the information which are subject to such obligations of confidentiality;
     2. providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
        1. summarising the information;
        2. grouping the information;
        3. anonymising the information; and
        4. presenting the information in general terms.
  3. The Supplier shall provide the Relevant Authority with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

**ANNEX A**

**GROUP STRUCTURE INFORMATION AND RESOLUTION COMMENTARY**

1. The Supplier shall:
   1. provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex B if the Supplier or another member of the Supplier Group is subject to an Insolvency Event;
   2. ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
   3. provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex B and the dependencies between each.

**ANNEX B**

**UK PUBLIC SECTOR / CNI CONTRACT INFORMATION**

1. The Supplier shall:
   1. provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
      1. are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
      2. are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph 1.1.1 of this Annex B and where the member of the Supplier Group is acting as a key sub- contractor under the agreement with the end recipient; or
      3. involve or could reasonably be considered to involve CNI;
   2. provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub- contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

**Prison Retail Service Project**

**Schedule 8.7**

**Conduct of Claims**

**SCHEDULE 8.7**

**CONDUCT OF CLAIMS**

1. **CONDUCT OF CLAIMS** 
   1. This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the "**Indemnifier**"), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the "**Beneficiary"**).
   2. If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a "**Claim**"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
   3. Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
   4. With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
      1. the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
      2. the Indemnifier shall not bring the name of the Beneficiary into disrepute;
      3. the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
      4. the Indemnifier shall conduct the Claim with all due diligence.
   5. The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
      1. the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
      2. the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim;
      3. or the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.
2. **SENSITIVE CLAIMS** 
   1. With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or

appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the

Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.

* 1. The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph

1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

1. **RECOVERY OF SUMS** 
   1. If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
      1. an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of- pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
      2. the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.
2. **MITIGATION**

Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

**Prison Retail Service Project**

**Schedule 9.1**

**Staff Transfer**

**SCHEDULE 9.1**

**STAFF TRANSFER**

1. **DEFINITIONS**

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| "**Former Supplier**" | a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such subcontractor); |
| "**New Fair Deal**" | the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 including:   1. any amendments to that document immediately prior to the Relevant Transfer Date; 2. any similar pension protection in accordance with Annex A: CSPS of this Schedule as notified to the Supplier by the Authority; |
| "**Notified Sub-contractor**" | a Sub-contractor identified in Annex A: CSPS to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date; |
| "**Replacement Subcontractor**" | a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor); |
| "**Relevant Transfer**" | a transfer of employment to which the Employment Regulations applies; |
| "**Relevant Transfer Date**" | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place; |
| "**Service Transfer**" | any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a  Replacement Sub-contractor; |
| "**Service Transfer Date**" | the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires; |
| "**Staffing Information**" | in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably |

request (subject to all applicable provisions of the DPA), but including in an anonymised format:

* 1. their ages, dates of commencement of employment or engagement, gender and place of work;
  2. details of whether they are employed, selfemployed contractors or consultants, agency workers or otherwise;
  3. the identity of the employer or relevant contracting Party;
  4. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
  5. their wages, salaries, bonuses and profit sharing arrangements as applicable;
  6. details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
  7. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
  8. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
  9. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
  10. any other "employee liability information" as such term is defined in regulation 11 of the

Employment Regulations;

|  |  |
| --- | --- |
| "**Statutory Schemes**" | means the CSPS or, as the case may be, any other public service pension scheme into which is either necessary or desirable for any Fair Deal Employee to be admitted as an active member; |
| "**Supplier's Final Supplier**  **Personnel List**" | a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment  Regulations on the Service Transfer Date; |
| "**Supplier's Provisional**  **Supplier Personnel List**" | a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the |

provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

|  |  |
| --- | --- |
| "**Transferring Authority**  **Employees**" | those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date; |
| "**Transferring Former**  **Authority Employees**" | means those Transferring Former Supplier Employees who were previously employed by the Authority and to whom pension protection shall be procured by the Supplier (including by any relevant Sub-Contractor) pursuant to the requirement of New  Fair Deal and Part C and Annex A: CSPS of this Schedule 9.1; |
| "**Transferring Former**  **Supplier Employees**" | in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; |
| "**Transferring Supplier**  **Employees**" | those employees of the Supplier and/or the  Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date. |

1. **INTERPRETATION**

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

**PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES** NOT USED

**PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES**

1. **RELEVANT TRANSFERS** 
   1. The Authority and the Supplier agree that:
      1. the commencement of the provision of the Services or of any relevant part of the

Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

* + 1. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.
  1. The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

1. **FORMER SUPPLIER INDEMNITIES** 
   1. Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:
      1. any act or omission by the Former Supplier in respect of any Transferring Former

Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

* + 1. the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
       1. any collective agreement applicable to the Transferring Former Supplier Employees; and/or
       2. any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
    2. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
       1. in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
       2. in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former

Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

* + 1. a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
    2. any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
    3. any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
  1. The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
     1. arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
     2. arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.
  2. If any person who is not identified by the Authority as a Transferring Former Supplier

Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

* + 1. the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5

Working Days of becoming aware of that fact, give notice in writing to the

Authority and, where required by the Authority, to the Former Supplier; and

* + 1. the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
  1. If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
  2. If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
     1. no such offer of employment has been made;
     2. such offer has been made but not accepted; or 2.5.3 the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in Paragraph 2.6:
     1. shall not apply to:
        1. any claim for:
           1. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
           2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

* + - 1. any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Effective Date.
  1. If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the

Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified

Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

1. **SUPPLIER INDEMNITIES AND OBLIGATIONS** 
   1. Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:
      1. any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring

Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

* + 1. the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
       1. any collective agreement applicable to the Transferring Former Supplier Employee; and/or
       2. any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
    2. any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
    3. any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
    4. any statement communicated to or action undertaken by the Supplier or a Subcontractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
    5. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
       1. in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
       2. in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
    6. a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
    7. any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
    8. a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
  1. The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
  2. The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

1. **INFORMATION**

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

1. **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE** 
   1. The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
      1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
      2. HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" of 1999;
      3. HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
      4. the New Fair Deal.
   2. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.
2. **PROCUREMENT OBLIGATIONS**

Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

1. **PENSIONS** 
   1. The Supplier shall, and shall procure that each Sub-contractor shall, comply with:
      1. the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
      2. Part C and Annex A: CSPS to this Schedule 9.1.

**PART C: PENSIONS**

1. **DEFINITIONS**

In this Part C and Part D, the following words have the following meanings and they shall supplement Schedule 1: Definitions, and shall be deemed to include the definitions set out in Annex A: CSPS:

|  |  |
| --- | --- |
| "**Actuary**" | a Fellow of the Institute and Faculty of Actuaries; |
| "**Admission Agreement**" | the CSPS Admission Agreement (as defined in Annex A: CSPS); |
| "**Broadly Comparable**" | 1. in respect of a pension scheme, a status   satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or   1. in respect of benefits provided for or in   respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,  and "**Broad Comparability**" shall be construed accordingly; |
| "**CSPS**" | the schemes as defined in Annex A to this Part C; |
| "**Fair Deal Employees**" | means any of: |

* + - 1. Transferring Former Authority Employees;
      2. employees who are not Transferring Former

Supplier Employees but to whom the

Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a SubContractor, and whose employment is not terminated in accordance with the provisions of Paragraph 2.3 of Part B of this Schedule 9.1;

* + - 1. employees of the Former Supplier where the Former Supplier becomes the Supplier; and/or
      2. who at the Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any the CSPS as notified by the Authority;

"**Fair Deal Schemes**" the CSPS or a Broadly Comparable pension scheme.

1. **PARTICIPATION** 
   1. In respect of all or any Fair Deal Employees, Annex A: CSPS shall apply.
   2. The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement) as may be required to enable the Supplier to participate in the CSPS in respect of the Fair Deal Employees and shall bear its own costs in such regard.
   3. The Supplier undertakes:
      1. to pay to the CSPS all such amounts as are due under the relevant Admission Agreement or otherwise and shall deduct and pay to the CSPS such employee contributions as are required; and
      2. to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the CSPS, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
2. **PROVISION OF INFORMATION** 
   1. The Supplier undertakes to the Authority:
      1. to provide all information which the Authority may reasonably request concerning matters referred to in this Part C as expeditiously as possible; and
      2. not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part C without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed).
3. **INDEMNITIES** 
   1. The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority and/or any Replacement Supplier and/or any Replacement Sub-Contractor on demand from and against all and any Losses whatsoever:
      1. arising out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part C, and/or the CSPS Admission Agreement; and/ or
      2. which relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
   2. The Supplier hereby indemnifies the Authority and/or any Replacement Supplier and/or Replacement Sub-Contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
      1. relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; and/or
      2. arise out of the failure of the Supplier and/or any relevant Sub-Contractor to comply with the provisions of this Part C before the date of termination or expiry of this Contract.
   3. The indemnities in this Part C and its Annex:
      1. shall survive termination of this Contract; and
      2. shall not be affected by the caps on liability contained in Clause 23 (Limitations on

Liability).

1. **DISPUTES** 
   1. The Dispute Resolution Procedure will not apply to this Part C and any dispute between the Authority and/or the Supplier, or between their respective actuaries, about any of the actuarial matters referred to in this Part C and its Annex shall in the absence of agreement between the Authority and/or the Supplier be referred to an independent Actuary:
      1. who will act as an expert and not as an arbitrator;
      2. whose decision will be final and binding on the Authority and/or the Supplier; and
      3. whose expenses shall be borne equally by the Authority and/or the Supplier unless the independent Actuary shall otherwise direct.
2. **THIRD PARTY RIGHTS** 
   1. The Parties agree Clause 40 (Third Party Rights) does not apply and that the CRTPA applies to this Part C to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her by the Supplier under this Part C, in his or her or its own right under section 1(1) of the CRTPA.
   2. Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-Contractor in his or her own right under section 1(1) of the CRTPA.
3. **BREACH** 
   1. The Supplier agrees to notify the Authority should it breach any obligations it has under this Part C and agrees that the Authority shall be entitled to terminate its Contract for material Default in the event that the Supplier:
      1. commits an irremediable breach of any provision or obligation it has under this Part C; or
      2. commits a breach of any provision or obligation it has under this Part C which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Authority giving particulars of the breach and requiring the Supplier to remedy it.
4. **TRANSFER TO ANOTHER EMPLOYER/ SUB-CONTRACTORS** 
   1. Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall or shall procure that any relevant Sub-Contractor shall:

* + 1. consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
    2. procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this Part C and its Annex provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

1. **PENSION ISSUES ON EXPIRY OR TERMINATION**

The provisions of Part D: Staff Transfer on Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

1. **BROADLY COMPARABLE PENSION SCHEMES** 
   1. If either:
      1. the terms of any of Paragraph 2.2 of Annex A: CSPS; or
      2. the Authority agrees, having considered the exceptional cases provided for in

New Fair Deal, (such agreement not to be unreasonably withheld) that the

Supplier (and/or its Sub-Contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal protection, with access to the CSPS,

the Supplier must (and must, where relevant, procure that each of its Sub-Contractors will) ensure that, with effect from the Relevant Transfer Date or, if later, cessation of participation in the CSPS, until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the CSPS, and then on such terms as may be decided by the Authority.

* 1. Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 10.1, the Supplier shall (and shall procure that any of its SubContractors shall):
     1. supply to the Authority details of its (or its Sub-Contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than twenty eight (28) days before the Relevant Transfer Date;
     2. fully fund any such Broadly Comparable pension scheme on a past service reserve basis which is aligned to the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's

Department and is subject to the underpin for the period ending on the Service Transfer Date;

* + 1. instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or the CSPS and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the CSPS in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection following a Service Transfer;
    2. provide a replacement Broadly Comparable pension scheme with immediate

effect for those Fair Deal Employees who are still employed by the Supplier

and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-Contractor's Broadly Comparable pension scheme is terminated;

* + 1. allow and make all necessary arrangements to effect, in respect of any Fair Deal

Employee that remains eligible for New Fair Deal protection following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the CSPS (or as the case may be any other relevant Statutory Scheme) on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal.

For the avoidance of doubt, should the amount offered by the Broadly

Comparable pension scheme be less than the amount required by the appropriate

Statutory Scheme to fund day for day service ("**Shortfall**"), the Supplier or the Sub-Contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-Contractor, the Shortfall shall be paid by the Supplier; and

10.2.6 indemnify the Authority and/or the CSPS and/or any other relevant Statutory Scheme upon demand for any failure to pay the Shortfall as required under paragraph 10.2.5 above.

**ANNEX A**

**CSPS**

**1 DEFINITIONS**

In this Annex A: CSPS to Part C: Pensions, the following words have the following meanings and they shall supplement Schedule 1: Definitions:

"**CSPS Admission** an admission agreement in the form available on the **Agreement**" Civil Service Pensions website immediately prior to

the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;

"**CSPS Eligible Employee**" any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;

"**CSPS**" the Principal Civil Service Pension Scheme available

to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership

Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

1. **FUTURE SERVICE BENEFITS** 
   1. The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.
   2. The Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

**PART D: EMPLOYMENT EXIT PROVISIONS**

1. **PRE-SERVICE TRANSFER OBLIGATIONS** 
   1. The Supplier agrees that within 20 Working Days of the earliest of:
      1. receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
      2. receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
      3. the date which is 12 months before the end of the Term; and
      4. receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the

Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

* 1. At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
     1. the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
     2. the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
  2. The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
  3. The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
  4. From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
     1. replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
     2. make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
     3. increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
     4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
     5. increase or reduce the total number of employees so engaged, or deploy any

other person to perform the Services (or the relevant part of the Services); or

* + 1. terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Subcontractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

* 1. During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
     1. the numbers of employees engaged in providing the Services;
     2. the percentage of time spent by each employee engaged in providing the Services;
     3. the extent to which each employee qualifies for membership of the CSPS or any Broadly Comparable scheme set up pursuant to the provisions Part C (Pensions) of this Schedule 9.1 (Staff Transfer) and its Annex; and
     4. a description of the nature of the work undertaken by each employee by location.
  2. The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the

Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the

Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

* + 1. the most recent month's copy pay slip data;
    2. details of cumulative pay for tax and pension purposes;
    3. details of cumulative tax paid;
    4. tax code;
    5. details of any voluntary deductions from pay; and
    6. bank/building society account details for payroll purposes.

1. **EMPLOYMENT REGULATIONS EXIT PROVISIONS** 
   1. The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this

Agreement or otherwise) resulting in the Services being undertaken by a Replacement

Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

* 1. The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
  2. Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
     1. any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
     2. the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
        1. any collective agreement applicable to the Transferring Supplier Employees; and/or
        2. any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
     3. any claim by any trade union or other body or person representing any

Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

* + 1. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
       1. in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
       2. in relation to any employee who is not identified in the Supplier's Final Supplier Personnel list, and in respect of whom it is later alleged or determined that the

Employment Regulations applied so as to transfer his/her employment from the

Supplier to the Authority and/or Replacement Supplier and/or any Replacement

Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or

other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

* + 1. a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date;
    2. any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel list for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
    3. any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
  1. The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
     1. arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date; or
     2. arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.
  2. If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
     1. the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
     2. the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
  3. If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
  4. If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
     1. no such offer of employment has been made;
     2. such offer has been made but not accepted; or 2.7.3 the situation has not otherwise been resolved,

the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in Paragraph 2.8:
     1. shall not apply to:
        1. any claim for:
           1. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
           2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

* + - 1. any claim that the termination of employment was unfair because the

Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

* + 1. shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.
  1. If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Subcontractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
  2. The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes and any requirement to set up a Broadly Comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
     1. the Supplier and/or any Sub-contractor; and
     2. the Replacement Supplier and/or the Replacement Sub-contractor.
  3. The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the

Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

* 1. Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
     1. any act or omission of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
     2. the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
        1. any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
        2. any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
     3. any claim by any trade union or other body or person representing any

Transferring Supplier Employees identified in the Supplier's Final Supplier

Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

* + 1. any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any

Transferring Supplier Employees identified in the Supplier's Final Supplier

Personnel List on or after their transfer to the Replacement Supplier or

Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

* + 1. any statement communicated to or action undertaken by the Replacement

Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

* + 1. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
       1. in relation to any Transferring Supplier Employee identified in the Supplier's Final

Supplier Personnel List, to the extent that the proceeding, claim or demand by

HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

* + - 1. in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
    1. a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier

Personnel List in respect of the period from (and including) the Service Transfer Date; and

* + 1. any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such

Transferring Supplier Employee relating to any act or omission of the

Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

* 1. The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations.

**ANNEX B**

**LIST OF NOTIFIED SUB-CONTRACTORS**

|  |  |
| --- | --- |
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**Prison Retail Service Project**

**Schedule 9.2**

**Key Personnel**

**SCHEDULE 9.2**

**KEY PERSONNEL**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| KEY ROLE | Name of  KEY  Personnel | Responsibilities/ Authorities | Phase of the project during which they will be  a MEMBER OF  Key Personnel | MINIMUM  PERIOD in  Key Role |
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**Prison Retail Service Project**

**Schedule 10**

**Guarantee**

**This Schedule is to be marked as "NOT USED" as an alternative to a Guarantee has been accepted by the Authority**

**SCHEDULE 10**

**GUARANTEE**

[Insert the name of the Guarantor]

- and -

[Insert the name of the Beneficiary]

**DEED OF GUARANTEE**

**DEED OF GUARANTEE**

**THIS DEED OF GUARANTEE** is made the day of 20[]

**BETWEEN:**

1. **[Insert the name of the Guarantor]** [a company incorporated in England and Wales with

number [**●**] whose registered office is at [insert details of the Guarantor's registered office here]] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**"); in favour of

1. **[Insert the name of the public sector Party to the Guaranteed Agreement]** whose principal office is at [ ] ("**Beneficiary**")

**WHEREAS:**

1. [It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.]
2. The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed

Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.

1. It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1. **DEFINITIONS AND INTERPRETATION**

In this Deed of Guarantee:

* 1. unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
  2. the words and phrases below shall have the following meanings:

"**Guaranteed Agreement**" means the [insert details of main contract] made between the Beneficiary and the Supplier on [insert date]; and

"**Guaranteed Obligations**" means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.

* 1. references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
  2. unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
  3. references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
  4. the words "**other**" and "**otherwise**" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
  5. unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
  6. unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
  7. unless the context otherwise requires, any phrase introduced by the words "**including**", "**includes**", "**in particular**", "**for example**" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
  8. references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
  9. references to liability are to include any liability whether actual, contingent, present or future.

1. **GUARANTEE AND INDEMNITY** 
   1. The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
   2. The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
   3. If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
      1. fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
      2. as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
   4. As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.
2. **OBLIGATION TO ENTER INTO A NEW CONTRACT**

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

1. **DEMANDS AND NOTICES** 
   1. Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:
      1. [Address of the Guarantor in England and Wales]
      2. [Facsimile Number]
      3. For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

* 1. Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
     1. if delivered by hand, at the time of delivery; or
     2. if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
     3. if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
  2. In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
  3. Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

1. **BENEFICIARY'S PROTECTIONS** 
   1. The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
   2. This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
      1. it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
      2. it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
      3. if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
      4. the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
   3. The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
   4. The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
   5. The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
   6. Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
   7. Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
2. **GUARANTOR INTENT**

Without prejudice to the generality of Clause 5 (Beneficiary's Protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

1. **RIGHTS OF SUBROGATION**

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

* 1. of subrogation and indemnity;
  2. to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
  3. to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Supplier (other than cross- indemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to do take any further security until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

1. **DEFERRAL OF RIGHTS** 
   1. Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
      1. claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement; or
      2. take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.
   2. Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not following the occurrence of a Financial Distress Event or Supplier Termination Event:
      1. exercise any rights it may have to be indemnified by the Supplier;
      2. demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
      3. claim any set-off or counterclaim against the Supplier.
   3. If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.
2. **REPRESENTATIONS AND WARRANTIES**

The Guarantor hereby represents and warrants to the Beneficiary that:

* 1. the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
  2. the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
  3. the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:
     1. the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
     2. any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
     3. the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
  4. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
  5. this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

1. **PAYMENTS AND SET-OFF** 
   1. All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any

set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

* 1. The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
  2. The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

1. **GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

1. **ASSIGNMENT** 
   1. The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
   2. The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.
2. **SEVERANCE**

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

1. **THIRD PARTY RIGHTS**

A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

1. **GOVERNING LAW** 
   1. This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
   2. The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
   3. Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
   4. The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
   5. [Provision dealing with the appointment of English process agent by a non English incorporated Guarantor] [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by )

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

**Prison Retail Service Project**

**Schedule 11**

**Data Protection**

**SCHEDULE 11**

**DATA PROTECTION**

1. **GENERAL** 
   1. The Parties acknowledge that for the purpose of this Agreement, the Authority and each Relevant Prison may be a Data Controller for the purpose of the Data Protection Legislation and the Originating Controller (as defined in Paragraph 2.3 (Data Sharing Obligations)), as applicable in relation to the Personal Data being Processed. For the purpose of this Agreement, the Authority is appointed to act for and on behalf of itself and the Relevant Prisons to provide instructions and to manage the relationship with the Supplier in relation to the provision of the Services and in doing so the Processing of Personal Data. Without prejudice to any other term of this Agreement, the Relevant Prison(s) shall, to the extent applicable, take the benefit of this Schedule 11 (Data Protection) and the Supplier acknowledges and agrees that it shall comply with its obligations set out in this Schedule for the benefit of the Authority and each Relevant Prison. In respect of any obligation(s) which are required to be performed by the Authority, the Authority shall ensure that the Authority or as applicable the Relevant Prison performs such obligation(s). For the avoidance of doubt any Losses suffered or incurred by a Relevant Prison due to a breach of this Schedule shall be considered a Data Loss Event of the Authority and the Authority shall be able to recover the same under and in accordance with the terms of this Agreement.
   2. Each of the Parties including the personnel of each Party (personnel shall include directors, officers, employees, servants, agents, consultants, suppliers and sub-suppliers) will comply with all applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation. This Paragraph 1.2 (General) is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.
   3. The Parties shall each Process Personal Data. The Parties acknowledge that the factual arrangements between them dictate the role of each Party in respect of the Data Protection Legislation. The Parties agree that they may be:
      1. Joint Controllers (Processing the same Personal Data as the other Party (or the Relevant Prison) and determining together with the other Party (or the Relevant Prison) the means and manner of such processing);
      2. Data Controllers (acting independently of the other Party (or the Relevant

Prisons), by way of Processing the Personal Data obtained in the course of this Agreement for its own purpose, and determining itself the means and manner of such Processing); and/or

* + 1. in some circumstances the Supplier shall act as Data Processor for and on behalf of the Authority.

The roles of each Party in relation to the Personal Data being processed under and in accordance with this Agreement is as set out in the data maps contained at Annex A.

* 1. The Parties agree to take account of any guidance issued by the Information Commissioner. The Authority may on not less than thirty (30) Business Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner.
  2. The Parties agree to take account of any data sharing agreement, protocol or Authority Policy

(including without limitation the Prison Service Instructions, Prison Service Orders or Policy Frameworks) issued by the Authority or any Relevant Prison or Government Department which provides for the processing and sharing of Personal Data between the Authority, a Relevant Prison and each other and the Supplier agrees, where required, the Authority may, at any time on not less than thirty (30) Business Days' notice, amend this Agreement to ensure that it complies with any terms of such data sharing agreement, protocol or Authority Policy. If the Supplier reasonably believes it is unable to comply with any protocol or Authority

Policy or any amendments to any protocol or Authority Policy, the Supplier shall notify the Authority and the Authority and the Supplier shall agree any reasonable amendments required.

* 1. By no later than the Operational Commencement Date, the Supplier shall provide to the Authority details of how it plans to comply with its obligations under this Schedule 11 (Data Protection) and its obligations under Data Protection Legislation, including:
     1. subject to any confidentiality obligations placed on the Supplier, copies of any

relevant data sharing agreements to which the Supplier is a party (where the Supplier acts as a Data Processor or a joint Data Controller) and which relate to the Supplier’s performance of its obligations under this Schedule 11 (Data Protection) and an update as to the status of such agreements and arrangements;

* + 1. to the extent required, sufficient information about the Supplier’s Processing of

the Personal Data to enable the Authority and the Supplier to complete, and/or keep up-to-date, Appendix 1 to this Schedule 11 (Data Protection);

* + 1. a copy of any fair processing notices the Supplier (as a Data Controller) is mandated to provide pursuant to Data Protection Legislation and this Schedule 11 (Data Protection),

(the “**Processing Information”**)

* 1. Within ten (10) Business Days of receipt of the Processing Information, the Authority shall, review the Processing Information and may:
     1. request further information; or
     2. request reasonable amendments to the Processing Information.

to the extent required to ensure compliance with the Data Protection Legislation this Schedule 11 (Data Protection). The Supplier shall make any amendments reasonably requested by the Authority to the Processing Information and shall provide the revised Processing Information to the Authority.

* 1. In relation to data processed in data Processor capacity, the Supplier shall be subject to, comply with and give full attention and support to an annual compliance and assurance process, carried out by the Authority. To the extent the Authority is not satisfied with the outcome of such annual compliance and assurance process, the Supplier shall allow for audit by the Authority and/or its designated auditor, in respect of compliance with Data Protection Legislation and this Schedule 11 (Data Protection).

1. **DATA SHARING OBLIGATIONS** 
   1. The Parties each acknowledge and agree that they may need to Process Personal Data relating to each Party's representatives (in their respective capacities as Data Controllers) in order to (as appropriate): (a) administer and provide the Services; (b) request and receive the Services; (c) compile, dispatch and manage the payment of invoices relating to the Services; (d) manage the Agreement and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Service; and (f) comply with their respective obligations.
   2. Each Party shall Process such Personal Data relating to each Party's representatives for the purposes set out in Paragraph 2.1 (Data Sharing Obligations) in accordance with their own privacy policies. The Parties acknowledge that they may be required to share Personal Data with their Affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Paragraph 2.1 (Data Sharing Obligations), and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Legislation.
   3. Save in relation to contact Personal Data processed by the Parties in accordance with

Paragraph 2.1 (Data Sharing Obligations), where and to the extent the Supplier is acting as a

Data Controller (except as a Joint Controller, in which case Paragraph 2.5 shall apply), and Processing Personal Data in its provision of the Services and compliance with its obligations under this Agreement the conditions set out in this Paragraph 2.3 (Data Sharing Obligations) shall apply. For the purpose of this Paragraph 2 (Data Sharing Obligations), the Party from whom the Personal Data originates shall also be referred to as the Originating Controller.

* + 1. The Supplier shall:
       - 1. only Process the Personal Data for the Permitted Data Purpose (as defined in

Part 1 of Annex A to this Schedule 11 (Data Protection));

* + - * 1. make due notification to the Information Commissioner (or other such regulatory authority as required by Data Protection Legislation), including in relation to its use and Processing of the Personal Data and comply at all times with the Data Protection Legislation;
        2. ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) to the relevant Data Subjects, within one (1) month of obtaining the Personal Data and are in accordance with the requirements of the Data Protection Legislation and shall take account of any reasonable requests of the Authority and/or (where applicable) Originating Controller. For the avoidance of doubt, a reasonable request shall not include an instruction to amend the Supplier’s fair processing notices;
        3. maintain complete and accurate records and information to demonstrate its compliance with this Paragraph 2.3 (Data Sharing Obligations). This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

the Originating Controller determines that the Processing is not occasional;

the Originating Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

the Originating Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects;

* + - * 1. where the Supplier is required under Data Protection Legislation to do so, prepare any required Data Protection Impact Assessment relating to the Supplier’s Processing of Personal Data and/or provide information to assist the Originating Controller in preparing any Data Protection Impact Assessment that the Originating Controller prepares, prior to commencing any Processing.
        2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, having taken account of the: (i) nature of the data to be protected;

harm that might result from a Data Loss Event;

state of technological development; and

cost of implementing any measures;

(g) not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Originating Controller has been obtained and the following conditions are fulfilled:

the Supplier has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation) as determined by the Originating Controller;

the Data Subject has enforceable rights and effective legal remedies;

the Supplier complies with its obligations under the Data Protection

Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

the Supplier complies with any reasonable instructions notified to it in advance by the Originating Controller with respect to the Processing of the Personal Data;

subject to Paragraph 2.4 (Data Sharing Obligations), the Supplier shall:

comply with all valid requests it receives from or on behalf of Data

Subjects to exercise their rights under Data Protection Legislation ("**Data Subject Request**");

(ii) keep a record of all such Data Subject Requests and the Supplier's responses to those Data Subject Requests and where legally permitted to do so shall provide such record to the Originating Controller on reasonable request;

(iii) where legally permitted to do notify the Originating Controller immediately if it:

receives a Data Subject Request that relates to Personal Data that is

Processed by the Originating Controller as a Controller;

receives any other request, complaint or communication relating to the Originating Controller’s obligations under the Data Protection Legislation;

receives any communication from the Information Commissioner or any other regulatory authority (including a supervisory authority as defined in the Data Protection Legislation) in connection with Personal Data Processed under this Agreement; or

receives a request from any third party for disclosure of Personal Data under this Agreement where compliance with such request is required or purported to be required by Legislation; or

becomes aware of a Data Loss Event affecting Personal Data Processed under this Agreement;

* 1. The Originating Controller shall be the primary point of contact and responder to any request, complaint or communication received pursuant to Paragraph 2.3.1(h) (Data Sharing Obligations) that relates to the Originating Controller's Processing of Personal Data as a Controller and the Supplier shall be the primary point of contact and responder to any such request, complaint or communication where it relates to the Supplier's Processing of Personal Data as a Controller. Where:
     1. the Supplier is the primary point of contact, the Supplier shall where legally permitted to do provide updates and further information to the Originating Controller, and shall take into account any reasonable comments of the Originating Controller in respect of any response, prior to such response being released to the relevant party (for the avoidance of doubt any reasonable comment shall not include any instruction to amend Supplier’s response);
     2. as the Originating Controller is the primary point of contact, the Supplier shall provide all support as necessary within the timescales directed by the Originating Controller, including providing all Personal Data held by the Supplier in respect of the request, complaint or communication received to the Originating Controller as

soon as practicable and in any event within five (5) days, or as otherwise agreed by the parties acting reasonably and in good faith;

* + 1. the Supplier's obligation to notify under Paragraph 2.3.1(h) (Data Sharing

Obligations) shall include the provision of further information to the Originating Controller in phases, as details become available. The Supplier shall be the primary point of contact for any communication in respect of the Data Loss Event and: (a) the Supplier shall act quickly to remedy a Data Loss Event and minimise the impact(s) of a Data Loss Event; and (b) the Supplier shall consult with the Originating Controller and shall take into account any reasonable comments of the Originating Controller in respect of all responses, notifications and other communications in respect of the Data Loss Event (for the avoidance of doubt any reasonable comment shall not include an instruction to amend any responses, notifications, and the communications in respect of the Data Loss Event);

* + 1. take reasonable steps to ensure the reliability of and adequate training of, any personnel who have access to the Personal Data;
    2. hold the information contained in the Personal Data confidentially; and
    3. not do anything which shall damage the reputation of its (if applicable) or the Originating Controller's (or the Authority, where the Authority is not the Originating Controller) relationship with the Data Subjects.
    4. Where acting as a Data Controller for the purposes of the Personal Data, the Originating Controller shall:
       - 1. ensure that all fair processing notices have been given (and/or, as applicable, consents obtained), and are sufficient in scope to allow the Originating Controller to disclose the Personal Data to the Supplier in accordance with the Data Protection Legislation and for the purposes set out in the Agreement; and
         2. ensure that all Personal Data disclosed or transferred to, or accessed by, the Supplier is accurate and up-to-date, as well as adequate, relevant and not excessive to enable the Supplier to Process the Personal Data, for the Permitted Data Purpose.
    5. For the purposes of Paragraph 2.4.7(a), at the discretion and instruction of the

Authority and/or Originating Controller, the Supplier shall support the Originating Controller and/or provide on the Originating Controller's behalf, all fair processing notices to the relevant Data Subjects (and/or as applicable, obtain the necessary consents of such Data Subjects), where such fair processing notices and relevant consent wording have been provided by the Authority and/or Originating Controller, within a reasonable time frame to be determined by the Authority and/or Originating Controller.

* + 1. Each Party warrants, represents and undertakes that it is not subject to any

prohibition or restriction which would prevent or restrict it from disclosing or transferring the relevant Personal Data (as applicable) to the other party in accordance with the terms of this Agreement.

* 1. Where and to the extent the Supplier is acting as a Joint Controller with another party (being the Authority and/or a Relevant Prison) the conditions set out in this Paragraph 2.5 (Data Sharing Obligations) shall apply.
     1. Each Party shall:
        1. collaboratively ensure that all fair processing notices have been given (and/or, as applicable, consents obtained), and are sufficient in scope to allow the envisaged Processing in accordance with the Data Protection Legislation and for the purposes set out in the Agreement. For the purposes of this Paragraph 2.5.1(a) the Authority and/or Relevant Prison shall have the final approval and oversight as to whether it or the Supplier is to provide any relevant fair processing notice and/or as applicable, obtain necessary consents, on behalf of both parties;
        2. make due notification to the Information Commissioner (or other such regulatory authority as required by Data Protection Legislation), including in relation to its use and Processing of the Personal Data and comply at all times with the Data Protection Legislation;
        3. maintain complete and accurate records and information to demonstrate its compliance with this Paragraph 2.5 (Data Sharing Obligations). This requirement does not apply where the Party employs fewer than 250 staff, unless:

any of the Parties determine that the Processing is not occasional;

any of the Parties determine the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

any of the Parties determine that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects;

1. work together (acting reasonably and in good faith) in the preparation of any Data

Protection Impact Assessment prior to commencing any Processing;

1. where the Personal Data has been transmitted by it, or is in its possession or control, ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, having taken account of the:
   1. nature of the data to be protected;
   2. harm that might result from a Data Loss Event;
   3. state of technological development; and
   4. cost of implementing any measures;
2. subject to Paragraph 2.5.2 (Data Sharing Obligations) notify the other promptly (and in any event within twenty-four (24) hours) if it:
   1. receives a Data Subject Request (or purported Data Subject Request);
   2. receives a request to rectify, block or erase any Personal Data;
   3. receives any other request, complaint or communication relating to either

Party's obligations under the Data Protection Legislation;

* 1. receives any communication from the Information Commissioner or any other regulatory authority (including a supervisory authority as defined in the Data Protection Legislation) in connection with Personal Data Processed under this Agreement; or
  2. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Legislation.

2.5.2 Each Party's obligation to notify under Paragraph 2.5.1(f) (Data Sharing Obligations) shall include the provision of further information in phases, as details become available. The Authority and/or Relevant Prison shall determine and confirm to the Supplier whether it or the Supplier shall be the primary point of contact and responder to the request, complaint or communication received pursuant to Paragraph 2.5.1(f) (Data Sharing Obligations) and the parties shall ensure this is reflected within the relevant fair processing notices provided to Data Subjects. Where the Authority and/or Relevant Prison:

1. designates the Supplier as the primary point of contact, the Supplier shall provide updates and further information to the Authority and/or Relevant Prison, including

(where directed by the Authority and/ or Relevant Prison) allowing the Authority and/or Relevant Prison to have final oversight and approval of any response, prior to such response being released to the relevant party;

1. designates itself as the primary point of contact, the Supplier shall provide all support as necessary within the timescales directed by the Authority and/or Relevant Prison, including providing all Personal Data held by the Supplier in respect of the request, complaint or communication received to the Authority and/or Relevant Prison as soon as practicable and in any event within five (5) days, or as otherwise agreed by the parties acting reasonably and in good faith.

2.5.3 Before further sharing the Personal Data with a third party (including using a Processor or any Sub-processor to Process any Personal Data related to this Agreement), the Supplier must:

* 1. notify the Originating Controller in writing of the intended third party (including any

Processor and/or Sub-processor) and Processing;

* 1. obtain the written consent of the Originating Controller;
  2. enter into a written Agreement with the third party (including any Processor and/or Sub-processor) which give effect to the terms set out in this Schedule (as applicable); and
  3. provide the Originating Controller with such information regarding the third party as the Originating Controller may reasonably require.

2.5.4 The Supplier shall remain fully liable for all acts or omissions of any third party to which it transfers the relevant Personal Data.

1. **PROCESSOR OBLIGATIONS**

For the purposes of this Paragraph 3 (Processor Obligations), a reference to the "**Data Controller**" shall be a reference to the Authority or the Relevant Prison as the context dictates.

* 1. Where and to the extent the Supplier is acting as a Processor, the conditions set out in this Paragraph 3 (Processor Obligations) shall apply.
  2. The only Processing that the Processor is authorised to do is listed in Part 2 of Annex A to this Schedule 11 (Data Protection) by the Data Controller and may not be determined by the Processor.
  3. The Processor shall notify the Data Controller immediately if it considers that any of the Data Controller's instructions infringe the Data Protection Legislation.
  4. The Processor shall provide reasonable assistance to the Data Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the request of the Data Controller, include the provision of information to assist with the Data Controller’s preparation and documentation of;
     1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
     2. an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
     3. an assessment of the risks to the rights and freedoms of Data Subjects; and
     4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
  5. The Processor shall, in relation to any Personal Data Processed as a Processor on behalf of the Data Controller in connection with the Processor’s its obligations under this Agreement:
     1. Process that Personal Data only in accordance with Part 2 of Annex A to this Schedule 11 (Data Protection) unless the Processor is required to do otherwise by Legislation. If it is so required the Processor shall promptly notify the Data Controller before Processing the Personal Data unless prohibited by Legislation;
     2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Data Controller may reasonably reject (but failure to reject shall not amount to approval by the Data Controller of the adequacy of the Protective Measures), having taken account of the:
        1. nature of the data to be protected;
        2. harm that might result from a Data Loss Event;
        3. state of technological development; and
        4. cost of implementing any measures;
     3. ensure that:
        1. the Processor Personnel do not Process Personal Data except in accordance with this Agreement (and in particular Part 2 of Annex A to this Schedule 11 (Data Protection));
        2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
           1. are aware of and comply with the Processor's duties under this Paragraph 3 (Processor Obligations);
           2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
           3. are informed of the confidential nature of the Personal Data and do not

publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Paragraph 3; and

* + - * 1. have undergone adequate training in the use, care, protection and handling of Personal Data; and
      1. not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
         1. the Data Controller or the Processor has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation) as determined by the Data Controller;
         2. the Data Subject has enforceable rights and effective legal remedies;
         3. the Processor complies with its obligations under the Data Protection

Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations);

* + - * 1. the Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the Processing of the Personal Data; and
        2. at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
    1. Subject to Paragraph 3.5.5 (Processor Obligations), the Processor shall notify the Data Controller immediately if it:

1. receives a Data Subject Request (or purported Data Subject Request);
2. receives a request to rectify, block or erase any Personal Data;
3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
4. receives any communication from the Information Commissioner or any other regulatory authority (including a supervisory authority as defined in the Data Protection Legislation) in connection with Personal Data Processed under this Paragraph 3;
5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Legislation; or
6. becomes aware of a Data Loss Event.

3.5.5 The Processor's obligation to notify under Paragraph 3.5.4 (Processor

Obligations) shall include the provision of further information to the Data Controller in phases, as details become available. The Data Controller shall either, at its sole election: (a) assume full control of the responses to the events set out in Paragraph 3.5.4 (Processor Obligations); or (b) direct the Processor in its response, save where the Processor is required to act quickly and solely within its internal business to minimise the impact(s) of a Data Loss Event.

3.5.6 Taking into account the nature of the Processing, the Processor shall provide the

Data Controller with reasonable assistance in relation to the Data Controller’s obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 3.5.4 (Processor Obligations) (and insofar as possible within the timescales reasonably required by the Data Controller) including by promptly providing:

1. the Data Controller with full details and copies of the complaint, communication or request;
2. such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
3. the Data Controller, at its reasonable request, with any Personal Data it holds in relation to a Data Subject;
4. assistance as reasonably requested by the Data Controller following any Data Loss Event; and
5. assistance as reasonably requested by the Data Controller with respect to any request from the Information Commissioner, or any consultation by the Data Controller with the Information Commissioner.

3.5.7 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Paragraph 3 (Processor Obligations). This requirement does not apply where the Processor employs fewer than 250 staff, unless:

* 1. the Data Controller determines that the Processing is not occasional;
  2. the Data Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  3. the Data Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
     1. The Processor shall allow for audits of its Processing activity by the Data Controller or the Data Controller's designated auditor.
     2. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
     3. Before allowing any Sub-processor to Process any Personal Data as a processor in connection with this Agreement, the Processor must:
  4. notify the Data Controller in writing of the intended Sub-processor and processing;
  5. obtain the written consent of the Data Controller;
  6. enter into a written Agreement with the Sub-processor which give effect to the terms set out in this Paragraph 3 (Processor Obligations) such that they apply to the Sub-processor; and
  7. provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require.
     1. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
     2. The Parties may, if requested by the Data Controller and with written agreement of the Processor (not to be unreasonably withheld or delayed), revise this Paragraph 3 (Processor Obligations) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (designated as such pursuant to Data Protection Legislation) (which shall apply when incorporated by attachment to this Agreement).
     3. The Parties agree to take account of any guidance issued by the Information Commissioner and may, if requested by the Data Controller and with the written agreement of the Processor (not to be unreasonably withheld or delayed) amend this Paragraph 3 to ensure that it complies with any guidance issued by the Information Commissioner.
     4. The Parties agree to take account of any data processing agreement or protocol issued by the Authority or any Relevant Prison or Government Department which provides for the Processing of Personal Data between the Authority and/or a Relevant Prison and the Supplier agrees, where required, the Authority may, at any time on not less than thirty (30) Business Days' notice, amend this Paragraph 3 to ensure that it complies with any terms of such data processing agreement or protocol. If the Supplier reasonably believes it is unable to comply with any such agreements or protocols or any amendments to such agreements or protocols, the Supplier shall notify the Authority and the Authority and the Supplier shall agree any reasonable amendments required.

1. **NOT USED**
2. **INDEMNITY**

Notwithstanding any other term of the Agreement, the Supplier shall indemnify and keep indemnified and hold harmless the Authority or the Relevant Prison (as applicable) and from and against all Losses suffered or incurred by the Authority or the Relevant Prison (as applicable) arising out of or in connection with claims and proceedings arising from any breach of the Supplier's obligations under this Schedule 11 (Data Protection).

1. **COMPENSATION** 
   1. To the extent that either Party ("**Claimant Party**") has an entitlement under Data Protection Legislation to claim from the other Party (and for the purpose of this clause where the Party is the Authority this shall mean the Authority and/or a Relevant Prison (as applicable)) ("**Compensating Party**") compensation paid by the Claimant Party to a Data Subject or third party as a result of a breach of Data Protection Legislation (in full or in part) by the

Compensating Party, the Compensating Party shall be liable only for such amount as directly relates to the Compensating Party's responsibility for any damage caused to the relevant Data Subject or third party. For the avoidance of doubt the Compensating Party shall only be liable to make payment to the Claimant Party under this Paragraph 6.1 (Compensation) upon receipt of evidence from the Claimant Party, which shall be to the Compensating Party's (as applicable) reasonable satisfaction and that clearly demonstrates:

* + 1. that the Compensating Party has breached Data Protection Legislation;
    2. that such breach contributed (in part or in full) to the harm caused entitling the relevant Data Subject or third party to receive compensation in accordance with Data Protection Legislation; and
    3. the proportion of responsibility for the harm caused to the relevant Data Subject or third party which is attributable to the Compensating Party.

**ANNEX A**

**DATA PROTECTION PARTICULARS**

**PART 1**

1. **SCHEDULE OF DATA SHARING PARTICULARS**

The Supplier shall work with the Authority in completing this schedule of particulars (including the data mappingannex).Parties are expected to complete Part 1 of Annex A as far as reasonably practicable in accordance with: (i) their designated role(i.e. Data Controller/Data Processor) (ii) their respective obligations under this Schedule 11 and (iii) Data Protection Legislation. For the avoidance of doubt only the relevant Data Controller will be able to determine certain aspects of Annex A, including (but not limited to): the legal basis of processing.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Data mapping | **[Note:** Data mapping annex to be  completed by no later than the Operational Service Commencement Date.] |
| Permitted Data Purpose | [**Note:** This should include the purpose for which the Personal Data will be used] |

**PART 2**

1. **SCHEDULE OF DATA PROCESSING PARTICULARS**

The Supplier shall work with the Authority in completing this schedule of particulars(including the data mapping annex).Parties are expected to complete Part 2 of Annex A as far as reasonably practicable in accordance with: (i) their designated role(i.e. Data Controller/Data Processor) (ii) their respective obligations under this Schedule 11 and (iii) Data Protection Legislation. For the avoidance of doubt only the relevant Data Controller will be able to determine certain aspects of Annex A, including (but not limited to): the legal basis of processing.

This Part 2 to Annex A of Schedule 11 (Data Protection) sets out the data processing particulars to be completed by the Data Controller, who may take account of the view of the Processor(s), however the final decision as to the content of this Schedule shall be with the Data Controller at its absolute discretion.

* 1. The Processor shall comply with any further written instructions with respect to processing by the Data Controller.
  2. Any such further instructions shall be incorporated into this schedule of data processing particulars.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Data mapping | [**Note:** Data mapping annex attached. To be completed by no later than the Operational Service Commencement Date] |

Data mapping annex attached (Note this is a draft format both parties to agree on the final content):