Date: [REDACTED]

A Contract for Services

Between

The Secretary of State for Justice

And

Open College Network London Region

relating to

the provision of Qualifications for Lot 4 Textiles to Education Providers and/or His Majesty's Prison and Probation Service

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**This contract is dated:** [REDACTED]

**PARTIES:**

(1) THE SECRETARY OF STATE FOR JUSTICE of 102 Petty France, London, SW1H 9AJ (the “**Authority**");

**AND**

(2) OPEN COLLEGE NETWORK LONDON REGION with registered company number 02876147 whose registered office is OCN London 24 Angel Gate, City Road, EC1V 2PT (the “**Supplier**”)

(each a “**Party**” and together the “**Parties**”).

**WHEREAS**

1. The Authority published the PIN Notice setting out its intention to establish a services contract granting an exclusive right to supply Qualifications to Education Providers.
2. The Authority intends that the services will be divided into five Lots covering the Curriculum Areas.
3. The Authority intends that Education Providers will purchase Qualifications from the suppliers who are appointed as service providers for the five Lots, so that the Qualifications can be used by Education Providers to accredit learning by prisoners completing courses in the respective Curriculum Areas.
4. The Supplier represented to the Authority that it is capable of delivering the Services as detailed in the Specification in accordance with the Authority's requirements.
5. Following a competitive tender process, the Authority wishes to appoint the Supplier to provide the common awarding organisation requirements (the Qualifications) for Lot 4 – Textiles; and the Supplier agrees to provide those services in accordance with these terms and conditions.

**NOW IT IS HEREBY AGREED:**

**A GENERAL**

**A1 Definitions and Interpretation**

Unless the context otherwise requires the following terms shall have the meanings given to them below:

“**Affected Party**” means the Party seeking to claim relief in respect of a Force Majeure Event.

“**Affiliate**” means 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.

“**Approval**” and “**Approved**” means the prior written consent of the Authority.

“**Assessment Tool**” means the modern slavery risk identification and management tool which can be found at:

[*https://supplierregistration.cabinetoffice.gov.uk/msat*](https://supplierregistration.cabinetoffice.gov.uk/msat)

“**Associated Person**” means as it is defined in section 44(4) of the Criminal Finances Act 2017.

“**Authorised Representative**” means the Authority representative named in a CCN who is authorised to approve Changes.

“**Authority Data**” means:

(a) 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: (i) supplied to the Supplier by or on behalf of the Authority; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to the Contract; or

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

“**Authority Premises**” means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Supplier or its Sub-Contractors for provision of the Services.

“**Authority Software**” means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) 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 the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services.

“**Authority Technical Security Guidance**” means the technical security guidance published by the Authority at:

[*https://security-guidance.service.justice.gov.uk/#cyber-and-technical-security-guidance*](https://security-guidance.service.justice.gov.uk/#cyber-and-technical-security-guidance)

**“Awarded Lot(s)**” means [Lot 1 – English] [Lot 2 – Mathematics] [Lot 3 – Hospitality and Catering] [Lot 4 - Textiles] [Lot 5 – Engineering] awarded to the Supplier for which it will deliver the Services;

“**BPSS**” means the Government’s Baseline Personnel Security Standard for Government employees.

“**Breach of Security**” means an event which results in or could result in:

1. any unauthorised access to or use of the Authority Data, the Services and/or the Information Management System; and/or
2. the loss, corruption and/or unauthorised disclosure of any information or data (including Confidential Information and Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with the Contract.

“**BS 8555**” means the standard published to help organisations improve their environmental performance by the British Standards Institution.

“**CCN**” means a contract change notice in the form set out in Schedule 3.

“**Change**” means a change in any of the terms or conditions of the Contract.

“**Change in Law**” means any change in Law which affects the performance of the Services which comes into force after the Commencement Date.

“**Commencement Date**” means the date specified in clauses A5.1 and A5.2.

“**Commercially Sensitive Information**” means the information listed in Schedule 4 comprising the information of a commercially sensitive nature relating to:

1. the Fees; and/or
2. the Supplier’s business and investment plans

which the Supplier has informed the Authority would cause the Supplier significant commercial disadvantage or material financial loss if it was disclosed.

“**Comparable Supply**” means the supply of services to another customer of the Supplier which are the same or similar to any of the Services.

“**Comptroller and Auditor General**” means the officer of the House of Commons with statutory authority to:

1. audit and report on the financial accounts of all government departments and other public bodies
2. examine and report on the value for money of how public money has been spent. ​

“**Confidential Information**” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all Personal Data . Confidential Information shall not include information which:

1. was public knowledge at the time of disclosure otherwise than by breach of clause E4;
2. was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
3. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
4. is independently developed without access to the Confidential Information.

“**Contract**” means these terms and conditions, the attached Schedules and any other provisions the Parties expressly agree are included.

“**Contracting Authority**” means any contracting authority (other than the Authority) as defined in regulation 2 of the Regulations.

“**Contracts Finder**” means the Government’s portal for public sector procurement opportunities.

“**Control**” means that a person possesses, directly or indirectly, 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**" are interpreted accordingly.

“**Controller**” means as it is defined in the UK GDPR.

“**Copyright**” means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“**Crown**” means the government of the UK (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, Government ministers, Government departments, Government offices and Government agencies and “**Crown Body**” is an emanation of the foregoing.

“**Curriculum Area**” means one of the five commonly taught curriculum areas across the HMPPS adult prison estate as detailed in the Specification, and “Curriculum Areas” shall be construed accordingly.

“**Cyber Essentials**” means the Cyber Essentials certificate issued under the Cyber Essentials Scheme.

“**Cyber Essentials Plus**” means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme.

“**Cyber Essentials Scheme**” means the Cyber Essentials scheme operated by the NCSC.

“**Data Protection Law**” means:

1. all applicable UK Law relating to the processing of Personal Data and privacy; including the UK GDPR and the DPA to the extent it relates to Processing of Personal Data and privacy; and
2. (to the extent that it applies) the EU GDPR.

“**Data Protection Officer**” means as it is defined in the UK GDPR.

“**Database Rights**” means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“**Default**” means any breach of the obligations or warranties of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

“**DOTAS**” means the Disclosure of Tax Avoidance Schemes rules which require a promotor 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 and as extended to NICs by the National Insurance (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.

“**Education Providers”** means an education provider appointed by the Authority to provide education services to prisoners across the in-scope prison estate in England as set out in the Specification. For the avoidance of doubt, this definition shall include providers offering Careers Information, Advice and Guidance services.

“**EEA**” means the European Economic Area.

“**EIR**” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the ICO or relevant Government department in relation to such regulations.

“**End Date**” means the date specified in clause A5.1.

“**Equipment**” means the Supplier’s equipment, consumables, plant, materials and such other items supplied and used by the Supplier in the delivery of the Services.

“**EU**” means the European Union.

“**EU GDPR**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of Personal Data (General Data Protection Regulation) as it has effect in EU law.

“**Exit Day**” means as it is defined in the Withdrawal Act.

“**Extension**” means as it is defined in clause A5.2.

**“Fees”** means the Fees referenced in Schedule 2 that the Supplier will charge the Education Providers

“**Financial Year**” means the period from 1st April each year to the 31st March the following year.

“**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 ICO in relation to such legislation.

“**Force Majeure Event**” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract 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, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Staff or any other failure in the Supplier’s supply chain caused by the Covid 19 pandemic or the UK’s exit from the EU.

“**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 NICs.

“**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 Industry Practice**” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“**Government**” means the government of the UK.

“**Government Buying Standards**” means the standards published here:

[*https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs*](https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs)

“**Greening Government Commitments**” means the Government’s policy to reduce its effects on the environment, the details of which are published here:

[*https://www.gov.uk/government/collections/greening-government-commitments*](https://www.gov.uk/government/collections/greening-government-commitments)

“**Halifax Abuse Principle**” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“**HMRC**” means HM Revenue & Customs.

“**House of Commons**” means the elected body of members of Parliament.

“**ICO**” means the Information Commissioner’s Office.

“**ICT Environment**” means the Authority System and the Supplier System.

“**Incident Management Process**” means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse effect on the Authority Data, the Authority, the Services and/or users of the Services**Error! Reference source not found.Error! Reference source not found.**.

“**Information**” has the meaning given under section 84 of the FOIA.

“**Information Assets**” means definable pieces of information stored in any manner which are determined by the Authority to be valuable and relevant to the Services.

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“**Information Management System**” means:

1. those parts of the Supplier System, and those of the Authority Premises, which the Supplier or its Sub-contractors use to provide any parts of the Service which require Processing Authority Data; and
2. the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources).

“**Initial Term**” means the period from the Commencement Date to the End Date.

“**Intellectual Property Rights**” means:

1. patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), Database Rights, domain names, semi-conductor topography rights, rights in Internet domain names, Know-How, trade or business names, moral rights, the right to sue for passing off, trade secrets and other rights in Confidential Information, in each whether registrable or not in any country;
2. applications for registration, and the right to apply for registration, for any of the rights listed in (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.

“**ISO**” means the International Organisation for Standardisation.

“**ISO/IEC 14001**” means the family of standards related to environmental management published by the ISO.

“**ISO/IEC 27001**” means the family of standards related to information security management published by the ISO.

“**ISO/IEC 27002**” meansthe family of standards related to information security, cyber security and privacy protection published by the ISO.

“**ITEPA**” means the Income Tax (Earnings and Pensions) Act 2003.

“**Key Personnel**” mean the people named in the Specification as key personnel, if any.

“**Know-How**” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

“**Law**” means any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply*.*

“**Law Enforcement Purposes**” means as it is defined in the DPA.

“**LED**” means the Law Enforcement Directive (Directive (EU) 2016/680).

“**Losses**” means losses, liabilities, damages, costs, fines 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.

**“Lots”** means the Lots set out in the Specification for the provision of Qualifications to Education Providers.

“**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.

“**Material Breach**” means a breach (including an anticipatory breach):

1. which has a material effect on the benefit which the Authority would otherwise derive from a substantial or material portion of the Contract; or
2. of any of the obligations set out in clauses D1, D2, D3, D4, G3, I4 or paragraph 9 of Schedule 7.

“**Modern Slavery Helpline**” means the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available by telephone on 08000 121 700 or online at:

*https://www.modernslaveryhelpline.org/report*

“**Month**” means calendar month.

“**MSA**” means the Modern Slavery Act 2015.

“**NCSC**” means the National Cyber Security Centre.

“**New Fair Deal**” means 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, as amended.

“**NICs**” means National Insurance Contributions.

“**Occasion of Tax Non-Compliance**” means:

1. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which 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;
   2. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
2. 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 Commencement Date or to a civil penalty for fraud or evasion.

"**Open Book Data**" means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify:

1. the Fees already paid or payable in respect of the Services and the Fees forecast to be paid during the remainder of the Term;
2. the Supplier’s costs and manpower resources broken down against each element of the Services;
3. the cost to the Supplier of engaging the Staff, including base salary, tax and pension contributions and other contractual employment benefits; and
4. operational costs which are not included within the above, to the extent that such costs are necessary and properly incurred by the Service Provider in the delivery of the Services;
5. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services; and
6. the profit achieved over the Term and annually.

“**Personal Data**” means as it is defined in the UK GDPR.

“**PIN Notice**” means the prior information notice dated 20 February 2024, published on the UK’s e-notification service in accordance with regulation 48 of the Public Contracts Regulations 2015:

[*HMPPS Common Awarding Organisations – Contracts Finder*](https://www.contractsfinder.service.gov.uk/Notice/ad8a0a99-3ebd-4790-9547-00ea09e3d67c)

“**Processing**” means as it is defined in Article 4 of the UK GDPR and “**Process**” is construed accordingly.

“**Processor**” means as it is defined in the UK GDPR.

“**Prohibited Act**” means:

1. 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 improperly a relevant function or activity; or
   2. reward that person for improper performance of a relevant function or activity;
2. 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 the Contract;
3. 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. the defrauding, attempting to defraud or conspiring to defraud the Authority;
4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“**Property**” means the property, other than real property, made available to the Supplier by the Authority in connection with the Contract.

“**PSI 07/2016**” is the Prison Service Instruction published on 26th October 2016 relating to the searching of the person as amended from time to time and available at[:](C:\\Users\\vdo40f\\AppData\\Local\\Microsoft\\Windows\\INetCache\\Content.Outlook\\AK3H0OZS\\https\\www.gov.uk\\government\\publications\\procedures-for-searching-people-psi-072)

[https://www.gov.uk/government/publications/procedures-for-searching-people-psi-072](C:\\Users\\vdo40f\\AppData\\Local\\Microsoft\\Windows\\INetCache\\Content.Outlook\\AK3H0OZS\\https\\www.gov.uk\\government\\publications\\procedures-for-searching-people-psi-072)016

“**PSI 10/2012**” is the Prison Service Instruction published on 26 March 2012 relating to the Conveyance and Possession of Prohibited Items and other Related Offences as amended from time to time and available at:

<https://www.gov.uk/government/publications/controlling-banned-prohibited-items-psi-102012>

“**PSI 07/2014**” is the Prison Service Instruction published on 2nd June 2014 relating to security vetting as amended from time to time and available a

[t:](t:https://www.gov.uk/government/publications/security-vetting-psi-072014-pi-032)

[https://www.gov.uk/government/publications/security-vetting-psi-072014-pi-032](t:https://www.gov.uk/government/publications/security-vetting-psi-072014-pi-032)014

“**Qualifications**” means accredited qualifications regulated by the Office of Qualifications and Examinations Regulation (Ofqual), provided by the Supplier in line with the Curriculum Areas.

“**Quality Standards**” means the quality standards published by BSI British Standards, the National Standards Body of the UK, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

“**Rebate**” means the Qualifications volume discount rebate calculated in accordance with clause C4 and Schedule 2 of this Contract, payable from the Supplier to the Authority.

“**Regulations**” means the Public Contracts Regulations 2015 (SI 2015/102).

“**Regulator Correspondence**” means any correspondence from the ICO or any successor body in relation to the processing of Personal Data under the Contract.

“**Regulatory Body**” means a Government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority“

"**Relevant Conviction**" means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority.

“**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**” means a transfer of employment to which TUPE applies.

“**Replacement Supplier**” means any third-party supplier appointed by the Authority to supply any services which are the same or substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract or the cessation of the Services or any part of the Services, including the Authority where such services are provided by the Authority on its own behalf.

“**Request for Information**” means a request for information under the FOIA or the EIR.

“**Results**” means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

(a) prepared by or for the Supplier for use in relation to the performance of its obligations under the Contract; and/or

(b) the result of any work done by the Supplier or any Staff in relation to the provision of the Services.

“**Security Policy Framework**” means the Government’s security policy framework (available from the Cabinet Office’s Government Security Secretariat) as updated from time to time.

“**Services**” means the services set out in the Specification in Schedule 1 (including any modified or alternative services) that the Supplier is required to provide in respect of the Awarded Lot(s).

“**SME**” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the European Commission’s Recommendation of 6 May 2003 available at:

*http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF*

“**Specific Change in Law**” means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply.

“**Specification**” means the description of the services to be supplied under the Contract as set out in Schedule 1 including the Quality Standards.

“**SSCBA**” means the Social Security Contributions and Benefits Act 1992.

“**Staff**” means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any of its Sub-Contractors engaged in the performance of the Supplier’s obligations under the Contract.

“**Sub–Contract**” means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and “**Sub-Contractor**” shall be construed accordingly.

“**Supplier Software**” means software which is proprietary to the Supplier, including software which is or will be used by the Supplier for the purposes of providing the Services and which is set out in Schedule 5.

“**Supplier System**” means the information and communications technology system used by the Supplier in performing the Services including the Software, the Equipment and related cabling (but excluding the Authority System).

“**Tender**” means the Supplier’s tender submitted in response to the Authority’s invitation to suppliers for offers to supply the Services.

“**Term**” means the period from the Commencement Date to:

1. the End Date; or
2. following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

“**Third Party IP Claim**” has the meaning given to it in clause E1.5.

“**Third Party Software**” means software which is proprietary to any third party which is or will be used by the Supplier to provide the Services including the software and which is specified as such in Schedule 5.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or replaced).

“**TUPE Information**” means the information set out in clause B10.3.

“**UK**” means United Kingdom.

“**UK GDPR**” means the UK General Data Protection Regulation.

“**VAT**” means value added tax charged or regulated in accordance with 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.

“**Withdrawal Act**” means the European Union (Withdrawal) Act 2018.

“**Working Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

In the Contract, unless the context implies otherwise:

1. the singular includes the plural and vice versa unless the context requires otherwise;
2. words importing the masculine include the feminine and the neuter;
3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
4. references to a person include natural persons, a company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
5. the words “other”, “in particular”, “for example”, “including” 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”;
6. headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
7. the annexes and Schedules form an integral part of the Contract and have effect as if set out in full in the body of the Contract. A reference to the Contract includes the annexes and Schedules;
8. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
9. references to the Contract are references to the Contract as amended from time to time; and
10. any reference in the Contract 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 Withdrawal Act shall be read as a reference to the EU References as they form part of domestic law by virtue of section 3 of the Withdrawal Act as modified by domestic law from time to time; and
          2. any EU institution or EU authority or other such EU body shall be read as a reference to the UK institution, authority or body to which its functions were transferred.

**A2 Authority Obligations**

Save as otherwise expressly provided, the Authority’s obligations under the Contract are the Authority’s obligations in its capacity as a contracting counterparty and nothing in the Contract operates as an obligation upon, or in any other way fetters or constrains, the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Supplier.

**A3 Supplier’s Status**

A3.1 The Supplier is an independent contractor and nothing in the Contract creates a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the Contract.

A3.2 The Supplier shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead another person to believe that the Supplier is acting as the agent or employee of the Authority.

**A4 Mistakes in Information**

The Supplier is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Supplier in connection with the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

**A5 Term**

A5.1 The Contract starts on [1st October 2025] (the “**Commencement Date**”) and ends on the date which is 4 (four) years after the Commencement Date (“**End Date**”) unless it is terminated early or extended in accordance with the Contract.

A5.2 The Authority reserves the right to delay the Commencement Date set out in clause A5.1. In the event that the Commencement Date is delayed, the Authority will inform the Supplier as soon as is reasonably possible.

A5.3 The Authority may extend the term of the Contract by up to 3 (three) years after the End Date. (“**Extension**”). The terms of the Contract will apply throughout the period of any Extension.

**B. THE SERVICES**

**B1 Basis of the Contract**

B1.1 In consideration of the Supplier being granted an exclusive right by the Authority to supply Qualifications to Education Providers in respect of the Awarded Lot(s), the Supplier shall supply the Services and perform its obligations under the Contract.

B1.2 The terms and conditions in the Contract apply to the exclusion of any other terms and conditions the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

B1.3 In accordance with clause B1.1 above, from the Commencement Date until the End Date:

1. Education Providers **will be mandated** to purchase Qualifications In respect of all prisoners who newly commence a course in a Curriculum Area or Curriculum Areas covered by the Awarded Lot(s), (unless the Supplier does not offer an appropriate Qualification for a specific course within that Curriculum Area, in which case the Authority reserves the right to utilise another awarding organisation to obtain the Qualification) in accordance with the Fees;
2. from the Commencement Date until the End Date, where the Authority is delivering in-house education in prisons in England, the Authority will purchase Qualifications in respect of all prisoners who newly commence a course in a Curriculum Area or Curriculum Areas covered by the Awarded Lot(s) (unless the Supplier does not offer an appropriate Qualification for a specific course within that Curriculum Area in which case the Authority reserves the right to utilise another awarding organisation to obtain the Qualification), in accordance with the Fees.

B1.4 For the avoidance of doubt, the Authority shall not be a party to nor have any liability under or in connection to any contract entered into between an Education Provider and the Supplier pertaining to this Contract, nor act as an agent or employee of the Supplier in relation to such contract.

**B2 Delivery of the Services**

B2.1 The Supplier shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Supplier shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B2.2 The Supplier acknowledges that the Authority relies on the skill and judgment of the Supplier in the supply of the Services and the performance of the Supplier’s obligations under the Contract.

B2.3 The Supplier shall:

(a) ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services;

(b) ensure that all Staff are properly managed and supervised; and

(c) comply with the standards and requirements set out in Schedule 7.

B2.4 If the Specification includes installation of equipment the Supplier shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Supplier:

1. accept the installation; or
2. reject the installation and inform the Supplier why, in the Authority’s reasonable opinion, the installation does not satisfy the Specification.

B2.5 If the Authority rejects the installation pursuant to clause B2.4 (b), the Supplier shall immediately rectify or remedy any defects and if, in the Authority’s reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, comply with the Specification, the Authority may terminate the Contract with immediate effect.

B2.6 The installation is complete when the Supplier receives a notice issued by the Authority in accordance with clause B2.4 (a). Notwithstanding acceptance of any installation in accordance with clause B2.4 (a), the Supplier is solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.

B2.7 During the Term, the Supplier shall:

1. at all times have all licences, approvals and consents necessary to enable the Supplier and Staff to carry out the installation;
2. provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation;
3. not, in delivering the Services, in any manner endanger the safety or convenience of the public.

B2.8 The Authority may inspect the manner in which the Supplier supplies any Services at the Authority Premises during normal business hours on reasonable notice. The Supplier shall provide at its own cost all such facilities as the Authority may reasonably require for such inspection. In this clause B2, Services include planning or preliminary work in connection with the supply of the Services.

B2.9 If reasonably requested to do so by the Authority, the Supplier shall co-ordinate its activities in supplying the Services with those of the Authority and other contractors engaged by the Authority.

B2.10 Timely supply of the Services is of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date. If the Supplier fails to supply the Services within the time promised or specified in the Specification, the Authority may terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.

B2.11 If the Authority informs the Supplier in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

B2.12 If, in delivering the Services, the Supplier is required to visit Authority Premises which are prisons, the Supplier shall comply with Schedule 6.

**B3 Equipment**

B3.1 The Supplier shall provide all the Equipment and resource necessary for the supply of the Services.

B3.2 The Supplier shall not deliver any Equipment to, or begin any work on, Authority Premises without Approval.

B3.3 All Equipment brought onto Authority Premises is at the Supplier’s own risk and the Authority has no liability for any loss of or damage to any Equipment unless the Supplier demonstrates that such loss or damage was caused or contributed to by the Authority’s Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.

B3.4 Equipment brought onto Authority Premises remains the property of the Supplier.

B3.5 If the Authority reimburses the cost of any Equipment to the Supplier the Equipment shall become the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Supplier shall keep a full and accurate inventory of such Equipment and deliver that inventory to the Authority on request and on completion of the Services.

B3.6 The Supplier shall maintain all Equipment in a safe, serviceable and clean condition.

B3.7 The Supplier shall, at the Authority’s written request, at its own cost and as soon as reasonably practicable:

1. remove immediately from Authority Premises Equipment which is, in the Authority’s opinion, hazardous, noxious or not supplied in accordance with the Contract; and
2. replace such item with a suitable substitute item of Equipment.

B3.8 Within 20 Working Days of the end of the Term, the Supplier shall remove any Equipment together with any other materials used by the Supplier to supply the Services at Authority Premises and shall leave the Authority Premises in a clean, safe and tidy condition. The Supplier shall make good any damage to those Authority Premises and any fixtures and fitting in the Authority Premises which is caused by the Supplier or Staff.

**B4 Key Personnel (Not Used)**

**B5 Staff**

B5.1 The Authority may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Authority Premises:

1. any member of the Staff; or
2. any person employed or engaged by any member of the Staff

whose admission or continued presence would, in the Authority’s reasonable opinion, be undesirable.

B5.2 The Authority shall maintain the security of the Authority Premises in accordance with its standard security requirements, including Prison Rules 1999 Part III, the Prison (Amendment) Rules 2005, the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008, available to the Supplier on request. The Supplier shall comply with all security requirements of the Authority while on the Authority Premises, and ensure that all Staff comply with such requirements.

B5.3 The Authority may search any persons or vehicles engaged or used by the Supplier at the Authority Premises.

B5.4 At the Authority’s written request, the Supplier shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all people who may require admission to the Authority Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B5.5 The Supplier shall ensure that all Staff who have access to the Authority Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

B5.6 The Supplier shall co-operate with any investigation relating to security carried out by the Authority or on behalf of the Authority and, at the Authority’s request:

1. use reasonable endeavours to make available any Staff requested by the Authority to attend an interview for the purpose of an investigation; and
2. provide documents, records or other material in whatever form which the Authority may reasonably request or which may be requested on the Authority’s behalf, for the purposes of an investigation.

B5.7 The Supplier shall comply with PSI 10/2012 as amended from time to time and available from the Authority on request.

**B6 Due Diligence**

Save as the Authority may otherwise direct, the Supplier is deemed to have completed due diligence in relation to all matters connected with the performance of its obligations under the Contract before submitting its Tender.

**B7 Licence to Occupy**

B7.1 Any land or Authority Premises made available from time to time to the Supplier by the Authority in connection with the Contract 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 the Contract. The Supplier has the use of such land or Authority Premises as licensee and shall vacate the same on termination of the Contract.

B7.2 The Supplier shall limit access to the land or Authority Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with other persons working concurrently on such land or Authority Premises as the Authority may reasonably request.

B7.3 If the Supplier requires modifications to Authority Premises such modifications are subject to Approval and shall be carried out by the Authority at the Supplier’s cost.

B7.4 The Supplier shall (and shall ensure that any Staff 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.

B7.5 The Contract does not create a tenancy of any nature in favour of the Supplier or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority may use the Authority Premises owned or occupied by it in any manner it sees fit.

**B8 Property**

B8.1 All Property is and remains the property of the Authority and the Supplier irrevocably licenses the Authority and its agents to enter any Authority Premises of the Supplier during normal business hours on reasonable notice to recover any such Property.

B8.2 The Supplier does not have a lien or any other interest on the Property and the Supplier at all times possesses the Property as fiduciary agent and bailee of the Authority. The Supplier shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority’s request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

B8.3 The Property is deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within 5 Working Days of receipt.

B8.4 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without Approval.

B8.5 The Supplier shall ensure the security of all the Property whilst in its possession, either on Authority Premises or elsewhere during the supply of the Services, in accordance with the Authority’s reasonable security requirements as required from time to time.

B8.6 The Supplier is liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority’s negligence. The Supplier shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

**B9 Offers of Employment**

B9.1 Neither Party shall, directly or indirectly, solicit or procure (otherwise than by general advertising or under TUPE, any employees or contractors (including the Staff) of the other Party who are directly employed or engaged in connection with the provision of the Services while such persons are employed or engaged and for a period of 6 Months thereafter.

B9.2 If either Party breaches the clause B9.1, it shall pay the other Party a sum equivalent to 20% of the annual base salary payable by the Party in breach in respect of the first year of person’s employment.

B9.3 The Parties hereby agree that the sum specified in clause B9.2 is a reasonable pre-estimate of the loss and damage which the Party not in breach would suffer if there was a breach of clause B9.1.

**B10 Employment**

B10.1 The Parties agree that the commencement of the Services or of any part of the Services is not expected to be a Relevant Transfer.

B10.2 The Parties agree that if TUPE applies on the expiry or termination or partial termination of this Contract or on the cessation of the Services or any part of the Services:

1. the Supplier shall comply, and shall procure that any Sub-Contractor complies, with its obligations arising under TUPE and (if applicable) New Fair Deal and the Supplier shall indemnify the Authority and any Replacement Supplier for any loss (including legal costs properly and reasonably incurred) arising from any failure so to comply, to the extent only that the Authority or the Replacement Supplier (as the case may be) is unable using reasonable endeavours to mitigate that loss; and
2. the Authority shall use reasonable endeavours to procure that any Replacement Supplier complies with its obligations arising under TUPE and (if applicable) New Fair Deal and the Authority shall, or shall procure that the Replacement Supplier shall, indemnify the Supplier on its own behalf and on behalf of any Sub-Contractor for any loss (including any legal costs properly and reasonably incurred) arising from any failure so to comply, to the extent only that the Supplier or the Sub-Contractor (as the case may be) is unable using reasonable endeavours to mitigate that loss.

B10.3 No later than 12 Months prior to the end of the Term or after the Authority has given notice to terminate the Contract wholly or in part, and within 28 days of being so requested by the Authority, the Supplier shall fully and accurately disclose to the Authority all such information as the Authority may from time to time reasonably request in relation to all and any Staff engaged in providing the Services including but not limited to the following:

1. the total number of Staff assigned for the purposes of TUPE to the Services or the relevant part of the Services; and
2. for each person identified under clause B10.3(a) above, details of: the activities they perform, their ages, dates of commencement of employment, place of work, notice period, gender, employment status, identity of the employer, working arrangements, outstanding liabilities, sickness absence, their job titles and qualifications, their immigration status, salary or other remuneration, benefits, future pay settlements, redundancy and pensions entitlements, copies of the terms and conditions of employment/engagement and all other related documents and all information required to be provided pursuant to Regulation 11 of TUPE.

B10.4 At intervals determined by the Authority (which shall not be more frequent than once every 30 days) the Supplier shall give the Authority updated TUPE Information.

B10.5 Each time the Supplier supplies TUPE Information to the Authority it warrants its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Supplier.

B10.6 If the Supplier is aware that TUPE Information has become inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date and accurate TUPE Information as soon as reasonably practicable.

B10.7 The Authority may use and disclose the TUPE Information it receives from the Supplier for the purposes of informing any prospective Replacement Supplier about the provision of the Services by the Supplier.

B10.8 The Supplier shall, and shall procure that any Sub-Contractor shall, co-operate fully with the re-tendering of the Contract, including by, providing the Replacement Supplier with such assistance as it shall reasonably request and allowing the Replacement Supplier reasonable access to, and facilities to communicate with and meet, the affected employees and their representatives.

B10.9 The Supplier indemnifies and keeps indemnified the Authority, the Crown and any Replacement Supplier against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority, the Crown and/or any Replacement Supplier may suffer or incur as a result of or in connection with:

1. the provision of TUPE Information;
2. any claim or demand by any employee or person claiming to be an employee (or their employee representative) of the Supplier or any Sub-Contractor, whether in contract, tort or under statute, in each case arising directly or indirectly from any act, fault or omission of the Supplier or any Sub-Contractor on or before the date of the Relevant Transfer;
3. any failure by the Supplier or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Supplier to comply with its duties under regulation 13 of TUPE;
4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person;
5. any claim by any person whose name is not included in the list of employees provided by the Supplier under clause B10.3 above as a member of staff engaged by the Supplier or any Sub-Contractor in providing the Services, or any determination made in respect of any such person, that their employment has been transferred from the Supplier (or any Sub-Contractor) to the Authority and/or a Replacement Supplier pursuant to TUPE; and
6. any failure by the Supplier to comply with the provisions of this clause B10.

B10.10 This clause B10 applies during the Term and indefinitely thereafter.

B10.11 The Supplier undertakes to the Authority that, during the 12 Months preceding the end of the Term or after the Authority has given notice to terminate this Contract wholly or in part, the Supplier shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed) change the identity and number of staff assigned to the Services (or in event of partial termination) assigned to the relevant part or parts of the Services or the terms and conditions of employment or engagement of those staff, unless any such change has been reasonably requested by the Authority or is otherwise in the normal course of business and is not in any way related to the transfer of the Services.

**C. PAYMENT**

**C1 Fees**

C1.1 The Supplier shall charge the Fees to Education Providers and the Authority in accordance with this clause C1, clause B1 and Schedule 2.

C1.2 The Supplier may at any time, in relation to the Contract, agree prices for Qualifications for the relevant Curriculum Areas with Education Providers which result in a net cost lower than the Fees for these Qualifications under the Contract (when taking into account the Rebate provided to the Authority). Such arrangements shall be promptly disclosed to the Authority. For the avoidance of doubt, any such Qualifications purchased at reduced prices by Education Providers from the Supplier will remain subject to the Rebate under this Contract.

**C2 Recovery of Sums Due**

C2.1 If under the Contract any sum of money is recoverable from or payable by the Supplier to the Authority (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier from the Authority under the Contract or under any other agreement with the Authority or the Crown.

C2.2 Any overpayment by either Party is a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C2.3 The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

C2.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**C3**  **Fees During Extension**

Subject to Schedule 2 and clause F4 (Change), the Fees apply for the Initial Term and until the end of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

**C4 Volume discount rebate payable by the Supplier to the Authority**

The Supplier will pay the Rebate to the Authority. The Rebate will be calculated as a percentage of the aggregated annual spend on Qualifications purchased by Education Providers and/or His Majesty's Prison and Probation Service, in accordance with clause B1, clause C1 and Schedule 2 of this Contract. The Rebate will be calculated annually on the anniversary of the Commencement Date and will be paid annually to the Authority within 30 days of the anniversary of the Commencement Date, for the duration of the Term.

**D. PROTECTION OF INFORMATION**

**D1 Authority Data**

D1.1 The Supplier shall:

1. not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under the Contract or as otherwise Approved;
2. preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data;
3. not delete or remove any proprietary notices contained within or relating to the Authority Data;
4. to the extent that Authority Data is held and/or processed by the Supplier, supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification;
5. perform secure back-ups of all Authority Data and ensure that up-to-date back-ups are stored securely off-site. The Supplier shall ensure that such back-ups are made available to the Authority immediately upon request;
6. 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 Policy Framework;
7. identify, and disclose to the Authority on request those members of Staff with access to or who are involved in handling Authority Data;
8. on request, give the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of Personal Data, and its procedures for reducing risk; and
9. notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take if it has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason.

D1.2 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

(a) require the Supplier (at the Supplier's cost) to restore or procure the restoration of Authority Data and the Supplier shall do so promptly; and/or

(b) itself restore or procure the restoration of Authority Data and be repaid by the Supplier any reasonable costs incurred in doing so.

**D2 Data Protection and Privacy**

D2.1 The Parties shall comply with their respective obligations under Data Protection Law and the Supplier shall comply with its data protection and privacy obligations under this Contract and its obligations under any relevant data processing agreements that it shall be party to with an Education Provider.

**D3 Official Secrets Acts and Finance Act**

D3.1 The Supplier shall comply with:

(a) the Official Secrets Acts 1911 to 1989; and

(b) section 182 of the Finance Act 1989.

**D4 Confidential Information**

D4.1 Except to the extent set out in clause D4 or if disclosure or publication is expressly allowed elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party’s consent, except to such persons and to such extent as may be necessary for the performance of the Party’s obligations under the Contract.

D4.2 The Supplier hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.

D4.3 If required by the Authority, the Supplier shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in a form approved by the Authority. The Supplier shall maintain a list of the non-disclosure agreements completed in accordance with this clause.

D4.4 If requested by the Authority, the Supplier shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Supplier shall ensure that Staff, professional advisors and consultants are aware of the Supplier’s confidentiality obligations under the Contract.

D4.5 The Supplier may disclose the Authority's Confidential Information only to Staff who are directly involved in providing the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

D4.6 The Supplier shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.

D4.7 Clause D4.1 shall not apply to the extent that:

(a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;

(b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

(e) it is independently developed without access to the other Party's Confidential Information.

D4.8 Nothing in clause D4.1 prevents the Authority disclosing any Confidential Information obtained from the Supplier:

(a) for the purpose of the examination and certification of the Authority’s accounts;

(b) for the purpose of any 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;

1. to Parliament and Parliamentary committees;

(d) to any Crown Body or any Contracting Authority and the Supplier hereby acknowledges that all Government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other Government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Government department or any Contracting Authority; or

(e) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses D4.8 (d) and (e) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

D4.9 Nothing in clauses D4.1 to D4.6 prevents either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party’s Confidential Information or an infringement of the other Party’s Intellectual Property Rights.

D4.10 The Authority shall use reasonable endeavours to ensure that any Government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause D4.8 is made aware of the Authority's obligations of confidentiality.

D4.11 If the Supplier does not comply with clauses D4.1 to D4.8 the Authority may terminate the Contract immediately on notice.

D4.12To ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Supplier shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

D4.13 The Supplier shall:

(a) immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches;

(b) use best endeavours to recover such Confidential Information or data however it may be recorded;

(c) co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data; and

(d) at its own expense, alter any security systems at any time during the Term at the Authority’s request if the Authority reasonably believes the Supplier has failed to comply with clause D4.12.

**D5 Freedom of Information**

D5.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.

D5.2 The Supplier shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and shall:

(a) give the Authority a copy of all Information in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;

(b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and

(c) not respond directly to a Request for Information unless authorised to do so in writing by the Authority.

D5.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the FOIA and/or the EIR.

**D6 Publicity, Media and Official Enquiries**

D6.1 The Supplier shall not:

1. make any press announcements or publicise the Contract or its contents in any way;
2. use the Authority’s name, brand or logo in any publicity, promotion, marketing or announcement of order; or
3. use the name, brand or logo of any of the Authority’s agencies or arms-length bodies in any publicity, promotion, marketing or announcement of orders without Approval.

D6.2 Each Party acknowledges that nothing in the Contract either expressly or impliedly constitutes an endorsement of any products or services of the other Party (including the Services and the ICT Environment) and each Party shall not conduct itself in such a way as to imply or express any such approval or endorsement.

D6.3 The Supplier shall use reasonable endeavours to ensure that its Staff and professional advisors comply with clause D6.1.

**D7 Security**

D7.1 The Authority may give the Supplier copies of its written security procedures.

D7.2 The Supplier shall, as an enduring obligation during the Term, use the latest versions of anti-virus programs available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

D7.3 Notwithstanding clause D7.2, if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.

D7.4 Any cost arising out of the actions of the Parties taken in compliance with clause D7.3 shall be borne by the Parties as follows:

1. by the Supplier where the Malicious Software originates from the Supplier Software, the Third-Party Software or the Authority Data (whilst the Authority Data was under the control of the Supplier); and
2. by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

D7.5 The Supplier shall be certified compliant with:

1. the prevailing version of ISO/IEC 27001 by a UK Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013). Stage 1 must be achieved within 6 months of contract commencement and stage 2 within 12 months of contract commencement

1. and Cyber Essentials PLUS

D7.6 If either Party becomes aware of a Breach of Security it must notify the other in accordance with the Incident Management Process.

D7.7 The Incident Management Process must, as a minimum, require the Supplier to do the following when it becomes aware of a Breach of Security or attempted Breach of Security:

(a) immediately take all reasonable steps necessary to:

1. minimise the extent of actual or potential harm caused by such Breach of Security;
2. remedy such Breach of Security to the extent possible;
3. apply a tested mitigation against any such Breach of Security; and
4. prevent a further Breach of Security in the future which exploits the same root cause failure;

(b) as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

D7.8 If any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Information Management System with the Contract, then such remedial action must be completed at no additional cost to the Authority.

**E. INTELLECTUAL PROPERTY**

**E1 Intellectual Property Rights**

E1.1 All Intellectual Property Rights in:

(a) the Results; or

(b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Supplier by or on behalf of the Authority (together with the Results, the "**IP Materials**") shall vest in the Authority (save for Copyright and Database Rights which shall vest in His Majesty the King) and the Supplier shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Supplier of its obligations under the Contract.

E1.2 The Supplier hereby assigns:

1. to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials. This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier; and
2. to His Majesty the King, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials

and shall execute all documents and do all acts as are necessary to execute these assignments.

E1.3 The Supplier shall:

1. waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;
2. ensure that the third-party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Supplier or to any other third-party supplying goods and/or services to the Authority (“**Indemnified Persons**”);
3. not infringe any Intellectual Property Rights of any third party in supplying the Services; and
4. during and after the Term, indemnify and keep indemnified the Authority and Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority and Indemnified Persons may suffer or incur as a result of or in connection with any breach of clause E1.3, except to the extent that any such claim results directly from:
   1. items or materials based upon designs supplied by the Authority; or
   2. the use of data supplied by the Authority which is not required to be verified by the Supplier under any provision of the Contract.

E1.4 The Authority shall notify the Supplier in writing of any claim or demand brought against the Authority or Indemnified Person for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Supplier to the Authority.

E1.5 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third-party Intellectual Property Rights (whether by the Authority, the Supplier or Indemnified Person) arising from the performance of the Supplier’s obligations under the Contract (**“Third Party IP Claim**”), provided that the Supplier shall at all times:

(a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;

(b) take due and proper account of the interests of the Authority; and

(c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E1.6 The Authority shall, at the request of the Supplier, afford to the Supplier all reasonable assistance for the purpose of contesting any Third-Party IP Claim and the Supplier shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier is not required to indemnify the Authority under this clause in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E1.3 (d) i) and ii).

E1.7 The Authority shall not, without the Supplier’s consent, make any admissions which may be prejudicial to the defence or settlement of any Third-Party IP Claim.

E1.8 If any Third-Party IP Claim is made or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E1.3 (b) and G2.1 (g)) use its best endeavours to:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or

(b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Supplier is unable to comply with clauses E1.8 (a) or (b) within 20 Working Days of receipt by the Authority of the Supplier’s notification the Authority may terminate the Contract immediately by notice to the Supplier.

E1.9 The Supplier grants to the Authority and, if requested by the Authority, to a Replacement Supplier, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Commencement Date and which the Authority (or the Replacement Supplier) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

**F. CONTROL OF THE CONTRACT**

**F1 Contract Performance**

F1.1 The Supplier shall immediately inform the Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.

F1.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter,the Authority may carry out a review of the performance of the Supplier (a **“Review”**). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to):

1. the Supplier’s delivery of the Services;
2. the Supplier’s contribution to innovation in the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services;
3. a review of future requirements in relation to the Services; and
4. progress against key milestones.

F1.3 The Supplier shall provide at its own cost any assistance reasonably required by the Authority to perform Reviews including the provision of data and information.

F1.4 The Authority may produce a report (a "**Review Report**") of the results of each Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority’s expectations and the Supplier’s obligations under the Contract.

F1.5 The Authority shall give the Supplier a copy of the Review Report (if applicable). The Authority shall consider any Supplier comments and may produce a revised Review Report.

F1.6 The Supplier shall, within 10 Working Days of receipt of the Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Review Report.

F1.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Supplier’s failure to meet its obligations under the Contract identified by the Review Report, or those which result from the Supplier’s failure to meet the Authority's expectations notified to the Supplier or of which the Supplier ought reasonably to have been aware) shall be implemented at no extra cost to the Authority.

**F2 Remedies**

F2.1 If the Authority reasonably believes the Supplier has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

1. without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier has demonstrated to the Authority’s reasonable satisfaction that the Supplier will be able to supply the Services in accordance with the Specification.
2. without terminating the whole of the Contract, terminate theContract in respect of part of the Services only and thereafter itself supply or procure a third party to supply such part of the Services;

(c) terminate the Contract in accordance with clause H2.

F2.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party.

F2.3If the Authority reasonably believes the Supplier has failed to supply all or any part of the Services in accordance with the Contract, professional or Good Industry Practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Supplier notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

F2.4If the Supplier has been notified of a failure in accordance with clause F2.3 the Authority may direct the Supplier to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale.

F2.5 If the Supplier has been notified of a failure in accordance with clause F2.3, it shall:

1. use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and

(b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in clause F2.5 and the progress of those measures until resolved to the satisfaction of the Authority.

F2.6 If, having been notified of any failure, the Supplier does not remedy it in accordance with clause F2.5 in the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Supplier.

**F3 Transfer and Sub-Contracting**

F3.1 Except where both clauses F3.9 and F3.10 apply, the Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such actions shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract does not relieve the Supplier of any of its obligations or duties under the Contract.

F3.2 The Supplier is responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Supplier shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.

F3.3 The Supplier shall ensure that Sub-Contractors retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with clause F5 (Audit). If any Sub-Contractor does not allow the Authority access to the records the Authority has no obligation to pay any claim or invoice made by the Supplier on the basis of such documents or work carried out by the Sub-Contractor.

F3.4 If the Authority has consented to the award of a Sub-Contract, the Supplier shall ensure that:

(a) the Sub-Contract contains:

i) a right for the Supplier to terminate if the Sub-Contractor does not comply with its legal obligations in connection with Data Protection Law, environmental, social or labour law; and

ii) obligations no less onerous on the Sub-Contractor than those on the Supplier under the Contract in respect of data protection in clauses D1 and D2

(b) the Sub-Contractor includes a provision having the same effect as set out in this clause F3.4 (a) in any Sub-Contract which it awards; and

(c) copies of each Sub-Contract are sent to the Authority immediately after their execution.

F3.5 Unless Approved otherwise, if the total value of the Contract over the Term is, or is likely to be, in excess of £5,000,000, the Supplier shall, in respect of Sub-Contract opportunities arising during the Term from or in connection with the provision of the Services:

1. advertise on Contracts Finder those that have a value in excess of £25,000;
2. within 90 days of awarding a Sub-Contract, update the notice on Contracts Finder with details of the Sub-Contractor;
3. monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder and awarded during the Term;
4. provide reports on the information in clause F3.5 (c) to the Authority in the format and frequency reasonably specified by the Authority;
5. promote Contracts Finder to its suppliers and encourage them to register on Contracts Finder; and
6. ensure that each advertisement placed pursuant to F3.5 (a) includes a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder.

F3.6 The Supplier shall, at its own cost, supply to the Authority by the end of April each year for the previous Financial Year:

1. the total revenue received from the Authority pursuant to the Contract;
2. the total value of all its Sub-Contracts;
3. the total value of its Sub-Contracts with SMEs; and
4. the total value of its Sub-Contracts with VCSEs.

F3.7 The Authority may from time to time change the format and the content of the information required pursuant to clause F3.6.

F3.8 If the Authority believes there are:

1. compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Supplier shall replace or not appoint the Sub-Contractor; or
2. non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Supplier to replace or not appoint the Sub-Contractor and the Supplier shall comply with such requirement.

F3.9 Notwithstanding clause F3.1, the Supplier may assign to a third party (the “**Assignee**”) the right to receive payment of the Fees or any part thereof due to the Supplier (including any interest which the Authority incurs under clause C1 (Payment and VAT)). Any assignment under clause F3.9 is subject to:

(a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C2 (Recovery of Sums Due);

(b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and

(c) the Authority receiving notification under both clauses F3.10 and F3.11.

F3.10 If the Supplier assigns the right to receive the Fees under clause F3.9, the Supplier or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

F3.11 Clause C1 continues to apply in all other respects after the assignment and shall not be amended without Approval.

F3.12 Subject to clause F3.13, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any Contracting Authority;

(b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

(c) any private sector body which substantially performs the functions of the Authority

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier’s obligations under the Contract.

F3.13 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F3.14, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.

F3.14 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F3.12 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **“Transferee”**):

(a) the rights of termination of the Authority in clauses H1 and H2 are available to the Supplier in respect of the Transferee; and

(b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Supplier.

F3.15 The Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier’s obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F3.16 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the Contract.

**F4**  **Change**

F4.1After the Commencement Date, the Authority may request a Change subject to the terms of this clause F4.

F4.2 The Authority may request a Change by notifying the Supplier in writing of the Change.

F4.3 If the Supplier is unable to accept a Change requested by the Authority, the Authority may:

(a) allow the Supplier to fulfil its obligations under the Contract without the Change; or

(b) terminate the Contract immediately except where the Supplier has already delivered all or part of the Services or where the Supplier can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

F4.4 A Change takes effect only when it is recorded in a CCN validly executed by both Parties.

F4.5 The Supplier is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Supplier in addition to the warranties and representations set out in clause G2.

F4.6 Clauses F4.4 and F4.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative’s approval within the time necessary to make the Change in order to address the emergency. In an emergency, Changes may be approved by a different representative of the Authority. However, the Authorised Representative may review such a Change and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Change.

**F5** **Audit**

F5.1 The Supplier shall:

1. keep and maintain for 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of its compliance with, and discharge of its obligations under the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority;
2. on request afford the Authority or the Authority’s representatives such access to those records and processes as may be requested by the Authority in connection with the Contract; and
3. make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Services.

F5.2 The Authority, acting by itself or through its duly authorised representatives and/or the National Audit Office, may, during the Term and for a period of 18 Months thereafter, assess compliance by the Supplier of the Supplier’s obligations under the Contract, including to:

1. verify the accuracy of the Price and any other amounts payable by the Authority under the Contract;
2. verify the Open Book Data;
3. verify the Supplier's compliance with the Contract and applicable Law;
4. 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 has no obligation to inform the Supplier of the purpose or objective of its investigations;
5. identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any guarantor or their ability to perform the Services;
6. obtain such information as is necessary to fulfil the Authority’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes;
7. 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. 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. verify the accuracy and completeness of any management information or reports delivered or required by the Contract;
10. review the Supplier’s compliance with the Authority’s policies and standards; and/or
11. review the integrity, confidentiality and security of the Authority Data  
    and the Supplier (and its agents) shall permit access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Authority (or those acting on its behalf) may reasonably require for the purposes of conducting such an audit;
12. review the integrity, confidentiality and security of the Authority Data and the Supplier (and its agents) shall permit access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Authority (or those acting on its behalf) may reasonably require for the purposes of conducting such an audit.

F5.3 The Supplier (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of conducting a financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Supplier shall provide such explanations as are reasonably required for these purposes.

F5.4 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. The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days’ notice of its intention to conduct an audit.

F5.5 The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under clause F5, 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.

**G. LIABILITIES**

**G1 Liability, Indemnity and Insurance**

G1.1 Neither Party limits its liability for:

(a) death or personal injury caused by its negligence;

(b) fraud or fraudulent misrepresentation;

(c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

(d) any breach of clauses D1, D2 or D4 or Schedule 7; or

(e) any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.5, the Supplier indemnifies the Authority fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Authority Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly by any act or omission of the Supplier.

G1.3 Subject to clause G1.1 the Supplier’s annual aggregate liability in respect of the Contract does not exceed the annual total turnover of the Supplier (net value of added tax) in consideration for the Services.

G1.4 Subject to clause G1.1 the Authority’s annual aggregate liability in respect of the Contract does not exceed the total spend by prison education suppliers with the Supplier in the previous 12 months.

G1.5 The Supplier is not responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

G1.6 The Authority may recover from the Supplier the following losses incurred by the Authority to the extent they arise as a result of a Default by the Supplier:

(a) 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;

(b) any wasted expenditure or charges;

(c) the additional costs of procuring a Replacement Supplier for the remainder of the Term and or replacement deliverables which shall include any incremental costs associated with the Replacement Supplier and/or replacement deliverables above those which would have been payable under the Contract;

(d) any compensation or interest paid to a third party by the Authority; and

(e) 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.

G1.7 Subject to clauses G1.1 and G1.6, neither Party is liable to the other for any:

(a) loss of profits, turnover, business opportunities or damage to goodwill; or

(b) indirect, special or consequential loss.

G1.8 Unless otherwise specified by the Authority, the Supplier shall, with effect from the Commencement Date for such period as necessary to enable the Supplier to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier’s performance of its obligations under the Contract including:

(a) if required by the Authority, appropriate, professional indemnity insurance in the sum of not less than £5,000,000 (five million pounds) for any advice given by the Supplier to the Authority;

(b) cover for death or personal injury, loss of or damage to property or any other loss; and

(c) employer’s liability insurance in respect of Staff.

Such insurance policies shall be maintained for the duration of the Term and for a minimum of 6 years following the end of the Term.

G1.9 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If the Supplier does not have and maintain the insurances required by the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

G1.12 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

**G2 Warranties and Representations**

G2.1 The Supplier warrants and represents on the Commencement Date and for the Term that:

1. it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Supplier;
2. in entering the Contract, it has not committed any fraud;

(c) as at the Commencement Date, all information contained in the Tender or other offer made by the Supplier to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;

(d) no claim is being asserted and no litigation, arbitration or administrative proceeding is in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;

(e) 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 the Contract;

(f) no proceedings or other steps have been taken and not discharged (or, 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;

(g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

(h) any person engaged by the Supplier shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;

(i) in the 3 years (or period of existence if the Supplier has not been in existence for 3 years) prior to the date of the Contract:

i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

(j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and

1. 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: and
2. the Qualifications supplied by the Supplier as part of the Services shall at all times be accredited qualifications that satisfy the relevant regulatory requirements of the Office of Qualifications and Examinations Regulation.

G2.2 The Supplier confirms that in entering into the Contract it is not relying on any statements, warranties or representations given or made (whether negligently or innocently or whether express or implied), or any acts or omissions by or on behalf of the Authority in connection with the subject matter of the Contract except those expressly set out in the Contract and the Supplier hereby waives and releases the Authority in respect thereof absolutely.

**G3**  **Tax Compliance**

G3.1 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

1. notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
2. promptly give the Authority:
3. details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and

1. such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

G3.2 If the Supplier or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Supplier shall:

1. at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
2. indemnify the Authority against any income tax, NICs 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 Staff.

**H. DEFAULT, DISRUPTION AND TERMINATION**

**H1 Insolvency and Change of Control**

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is a company and in respect of the Supplier:

(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

(b) a shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

(c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator

(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

(g) any event similar to those listed in H1.1 (a)-(f) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is an individual and:

(a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier’s creditors;

(b) a petition is presented and not dismissed within 14 days or order made for the Supplier’s bankruptcy;

(c) a receiver, or similar officer is appointed over the whole or any part of the Supplier’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;

(d) he is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;

(e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier’s assets and such attachment or process is not discharged within 14 days;

(f) he dies or is adjudged incapable of managing his affairs within the meaning of section 2 of the Mental Capacity Act 2005;

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

(h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Supplier shall notify the Authority immediately following a merger, take-over, change of control, change of name or status including where the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**“Change of Control”**). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier within 6 Months of:

1. being notified that a Change of Control has occurred; or
2. where no notification has been made, the date that the Authority becomes aware of the Change of Control

but is not permitted to terminate where Approval was granted prior to the Change of Control.

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is a partnership and:

(a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or

(b) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or

(c) a receiver, or similar officer is appointed over the whole or any part of its assets; or

(d) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

(e) any of the following occurs in relation to any of its partners:

i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;

ii) a petition is presented for his bankruptcy; or

iii) a receiver, or similar officer is appointed over the whole or any part of his assets;

(f) any event similar to those listed in clauses H1.4 (a) to (e) occurs under the law of any other jurisdiction.

H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is a limited liability partnership and:

(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

(b) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;

(c) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;

(d) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;

(e) a receiver, or similar officer is appointed over the whole or any part of its assets;

(f) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(g) any event similar to those listed in clauses H1.5 (a) to (f) occurs under the law of any other jurisdiction.

H1.6 References to the Insolvency Act 1986 in clause H1.5 (a) are references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

**H2 Default**

H2.1 The Authority may terminate the Contract with immediate effect by notice if the Supplier commits a Default and:

(a) the Supplier has not remedied the Default to the satisfaction of the Authority within 20 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;

(b) the Default is not, in the opinion of the Authority, capable of remedy; or

(c) the Default is a Material Breach.

H2.2 If, through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier is liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

**H3 Termination on Notice**

H3.1 The Authority may terminate the Contract (in whole or in part) without compensation to the Supplier, at any time by giving 90 days' notice to the Supplier.

**H4** **Other Grounds**

H4.1 The Authority may terminate the Contract if:

(a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;

(b) the Supplier was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract; or

(c) the Supplier has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

**H5 Consequences of Expiry or Termination**

H5.1 If the Authority terminates the Contract under clause H2 and makes other arrangements for the supply of the Services the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term.

H5.2 Save as otherwise expressly provided in the Contract:

(a) termination (including partial termination) or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination (including partial termination) of the Contract does not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D2 (Data Protection and Privacy), D3 (Official Secrets Acts and Finance Act), D4 (Confidential Information), D5 (Freedom of Information), E1 (Intellectual Property Rights), F5 (Audit), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery), H8 (Retendering and Handover), H9 (Exit Management), H10 (Knowledge Retention), I6 (Remedies Cumulative), I12 (Governing Law and Jurisdiction).

**H6 Disruption**

H6.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

H6.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H6.3 If there is industrial action by Staff, the Supplier shall seek Approval for its proposals to continue to perform its obligations under the Contract.

H6.4 If the Supplier’s proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, the Contract may be terminated with immediate effect by the Authority.

H6.5 If the Supplier is unable to deliver the Services owing to disruption of the Authority’s normal business, the Supplier may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

**H7 Recovery**

N On termination of the Contract for any reason, the Supplier shall at its cost:

(a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;

(b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Supplier in good working order;

(c) immediately vacate any Authority Premises occupied by the Supplier;

(d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress; and

N(e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Supplier to conduct due diligence.

H7.2 If the Supplier does not comply with clauses H7.1 (a) and (b), the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its suppliers or Sub-Contractors where any such items may be held.

**H8 Retendering and Handover**

H8.1 Within 21 days of being requested by the Authority, the Supplier shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.

H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.

H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.

H8.4 The Supplier indemnifies the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Supplier is required to provide under clause H8.1.

H8.6 The Supplier shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation includes allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

H8.7 Within 10 Working Days of being requested by the Authority, the Supplier shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

**H9 Exit Management**

H9.1 On termination of the Contract the Supplier shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Supplier in accordance with the procedure set out in clauses H9.2 to H9.4.

H9.2 If the Authority requires a continuation of all or any of the Services on expiry or termination of the Contract, either by performing them itself or by engaging a third party to perform them, the Supplier shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

H9.3 When requested to do so by the Authority, the Supplier shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.

H9.4 Within one Month of receiving the software licence information described in clause H9.3, the Authority shall notify the Supplier of the licences it wishes to be transferred and the Supplier shall provide for the approval of the Authority a plan for licence transfer.

**H10 Knowledge Retention**

The Supplier shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Supplier to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Supplier shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Supplier shall comply with the Authority’s request for information no later than 15 Working Days from the date that that request was made.

**I GENERAL**

**I1 Dispute Resolution**

I1.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Supplier and the commercial director of the Authority.

I1.2 Nothing in this dispute resolution procedure prevents the Parties seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I1.3 If the dispute cannot be resolved by the Parties pursuant to clause I1.1 either Party may refer it to mediation pursuant to the procedure set out in clause I1.5.

I1.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.

I1.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (the **“Mediator”**) shall be chosen by agreement of the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;

(b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolutionto provide guidance on a suitable procedure;

(c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

(d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

(e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

(f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I1.6.

I1.6 Subject to clause I1.2, the Parties shall not start court proceedings until the procedures set out in clauses I1.1 and I1.3 have been completed save that:

(a) the Authority may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7;

(b) if the Supplier intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority has 21 days following receipt of such notice to serve a reply on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7; and

(c) the Supplier may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I1.7, to which the Authority may consent as it sees fit.

I1.7 If any arbitration proceedings are commenced pursuant to clause I1.6:

(a) the arbitration is governed by the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Supplier (the “**Arbitration Notice**”) stating:

i) that the dispute is referred to arbitration; and

ii) providing details of the issues to be resolved;

(b) the London Court of International Arbitration (**“LCIA”**) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I1.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator is binding on the Parties in the absence of any material failure to comply with such rules;

(c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

(d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause I1.7 (a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(e) the arbitration proceedings shall take place in London and in the English language; and

(f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

**I2 Force Majeure**

I2.1 Subject to this clause I2, a Party may claim relief under this clause I2 from liability for failure to meet its obligations under the Contract 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 the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier is 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.

I2.2 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.

I2.3 If the Supplier is the Affected Party, it is not entitled to claim relief under this clause I2 to the extent that consequences of the relevant Force Majeure Event:

1. are capable of being mitigated by any of the Services, but the Supplier has failed to do so; and/or
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 the Contract.

I2.4 Subject to clause I2.5, 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.

I2.5 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 or minimise the consequences of the Force Majeure Event.

I2.6 If, as a result of a Force Majeure Even, an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:

(a) the other Party is not entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1; and

(b) neither Party is liable for any Default arising as a result of such failure;

I2.7 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 the Contract.

I2.8 Relief from liability for the Affected Party under this clause I2 ends as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and is not dependent on the serving of a notice under clause I2.7.

**I3 Notices and Communications**

I3.1Subject to clause I3.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.

I3.2 If it is not returned as undelivered a notice served in:

(a) a letter is deemed to have been received 2 Working Days after the day it was sent; and

(b) an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

I3.3 Notices pursuant to clauses I1, I2 or I7 or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

I3.4 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 the Contract:

(a) For the Authority:

Contact Name: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]

(b) For the Supplier:

Contact Name: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]

**I4 Conflicts of Interest**

I4.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the Contract. The Supplier will notify the Authority immediately giving full particulars of any such conflict of interest which may arise.

I4.2 The Authority may terminate the Contract immediately by notice and/or take or require the Supplier to take such other steps it deems necessary if, in the Authority’s reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the Contract. The actions of the Authority pursuant to this clause I4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

**I5 Rights of Third Parties**

I5.1 Clauses B10.5 and E1.3 confer benefits on persons named in them (together “**Third Party Provisions**” and each person a “**Third Party Beneficiary**”) other than the Parties and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”).

I5.2 Subject to clause I5.1, a person who is not a Party has no right under the CRTPA to enforce the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.

I5.3 No Third-Party Beneficiary may enforce or take steps to enforce any Third-Party Provision without Approval.

I5.4 Any amendments to the Contract may be made by the Parties without the consent of any Third-Party Beneficiary.

**I6 Remedies Cumulative**

Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy are not an election of such remedy to the exclusion of other remedies.

**I7 Waiver**

I7.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy do not constitute a waiver of that right or remedy and do not cause a diminution of the obligations established by the Contract.

I7.2 No waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause I3 (Notices and Communications).

I7.3 A waiver of any right or remedy arising from a breach of the Contract does not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

**I8 Severability**

If any part of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such part shall be severed and the remainder of the Contract shall continue in full effect as if the Contract had been executed with the invalid, illegal or unenforceable part eliminated.

**I9 Entire Agreement**

The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

**I10 Change in Law**

I10.1 The Supplier is not relieved of its obligations to supply the Services in accordance with the terms and conditions of the Contract as the result of:

1. a General Change in Law; or
2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

I10.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause I10.1(b)), the Supplier shall:

1. notify the Authority as soon as reasonably practicable of the likely effects of that change, including whether any:

i) Change is required to the Services and

ii) relief from compliance with the Supplier's obligations is required;

I10.3 Any relief from the Supplier's obligations resulting from a Specific Change in Law that is agreed between the Parties shall be implemented in accordance with clause F4.

**I11 Counterparts**

The Contract may be executed in counterparts, each of which when executed and delivered constitute an original but all counterparts together constitute one and the same instrument.

**I12 Governing Law and Jurisdiction**

Subject to clause I1 (Dispute Resolution) the Contract, including any matters arising out of or in connection with it, are governed by and interpreted in accordance with English Law and are subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction does not limit the right of the Authority to take proceedings against the Supplier in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction does not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

**SCHEDULE 1 – SPECIFICATION**

**HMPPS Common Awarding Organisations – Specification**

**Definitions**

For the avoidance of doubt, where terms are capitalised within this Specification, they should be deemed as meaning the same as the definition given to them (if applicable) in part A1 (Definitions and Interpretation) of the Contract. Other terms which have not been defined in the Contract are listed below:

|  |  |
| --- | --- |
| “**Prisons Strategy White Paper**” | Means a strategy white paper that sets out the authority’s strategy for prisons over the next two years, as well as its longer-term 10-year vision. |
| **“Privately Managed Prisons”** | Means Prisons managed by private contractors, where the contracts are managed by HMPPS. |
| **“Public Sector Prisons”** | Means Prisons managed by HMPPS |
| **“Over 18s Youth Offender Institutions (YOI)”** | Means a YOI, used wholly or mainly for those aged over 18. |

**Background and Context**

Across the prison estate, HMPPS and Education Providers (procured by HMPPS) deliver Qualifications as part of education, skills, and work provision. The aim is to ensure that prisoners can develop key knowledge, skills, and behaviours through the delivery of Qualifications that are recognised by industry experts and the wider community, enabling them to progress towards meaningful outcomes on release, with the long-term aim of reducing reoffending.

In 2016, Dame Sally Coates undertook a review of Prison Education and recommended mandating the use of single awarding organisations to deliver services in key subject areas to drive consistency of learning and ensure that prisoners can continue Qualifications if they transfer establishments. The Government committed to this in the Prison Safety and Reform White Paper in 2016.

* In 2019, the Prisoner Education Framework (PEF) was introduced to deliver core education services across the prison estate. Common Awarding Organisations qualifications
* increase prospects of work or further education upon release

Prisoner Education Service contracts are currently anticipated to commence in October 2025. To ensure consistency in learning, HMPPS will be mandated to use Ofqual Registered common awarding organisations for the following Curriculum Areas:

1. English
2. Mathematics
3. Hospitality and Catering
4. Textiles
5. Engineering

**Scope of HMPPS establishments subject to this Specification**

In Scope: Privately Managed Prisons, Public Sector Prisons and Over 18s Youth Offender Institutions in England are in scope of this Specification. A list of establishments in scope is contained at Annex A.

Out of Scope: Prisons not listed in Annex A. Welsh and Scottish Education is devolved and does not form part of this specification.A

**High Level Specification (applicable to all Awarded Lot(s))**

All Qualifications provided by the Supplier must be approved for funding by the Department for Education (DfE).

Qualifications must be well sequenced to ensure that prison learners acquire knowledge and skills incrementally. Qualifications should enable progression routes in education and employment.

Qualification claims should be processed in a timeframe agreed with the Authority to meet the needs of Qualification delivery in the prison environment.

Direct claims status (DCS) claims should be processed in a timeframe agreed with the Authority, where the Authority and/or Education Provider has met the necessary requirements for the DCS claim, to meet the needs of Qualification delivery in the prison environment.

External quality assurance (EQA) claims should be processed in a timeframe agreed with the Authority to meet the needs of Qualification delivery in the prison environment.

Suppliers should work with the Authority to adapt and/or change its Qualification offer as necessary to ensure prisoners leave custody with a meaningful Qualification. This could include but is not limited to changes to the Authority’s policy, changes to Qualifications by the Department for Education and/or Ofqual, and to enable opportunities to innovate provision, e.g. through the use of technology and in green industries.

As a minimum, the Supplier must provide the following to enable the effective delivery of its Qualifications which must be accessible online and should be in the form of a Qualification handbook and centre manual;

* Course information
  + an overview of all Qualifications available
  + Qualification level
  + Qualification structure and credit values, including unit credit values and total credit value
  + an outline of which units can be achieved/claimed separately
  + entry requirements
  + learning aims and outcomes
  + course and unit overviews
  + content progression information that outlines the sequence of learning aims and outcomes within each Qualification
  + progression routes with other relevant pre and post learning
  + guided learning hours
  + total Qualification time
  + access arrangements and exemptions to support learners with additional learning needs and/or disabilities
  + sample assessment materials
  + additional supporting resources for teachers/learners where applicable
* Management requirements
  + Ofqual Qualification number
  + Qualification age group
  + key Qualification dates
  + assessment requirements, including certification requirements
  + pass marks and rates, including credits/units needed to achieve a full Qualification
  + centre requirements, including registration and approval
  + education staff requirements, including staff Qualification, experience and continuous professional development requirements
  + delivery requirements
  + administration requirements
  + quality assurance requirements and processes
  + inclusion information, including access arrangements and exemptions
  + specific digital requirements for the Qualification
  + support, guidance and/or training materials that enable staff to deliver Qualifications effectively
  + physical resource requirements
  + work-based experience requirements
  + Assessor guide and assessment ranges, where applicable.
  + Complaints procedure
  + Appeals procedure
  + Equal opportunities information
  + Data protection policy
  + Management systems
  + Maintaining records
  + Internal quality assurance processes
  + External quality assurance processes and how sanctions are administered
  + Examination administration requirements
  + Mark schemes
  + Process to become an approved centre
  + Process to offer an approved Qualification
  + Process for recognition of prior learning
  + Process for DCS
  + Process for EQA
  + Technical requirements for delivering online assessments/exams
* Information for learners interested in the course that outlines course expectations, content, and requirements that enable learners to make an informed choice

**Management Requirements (applicable to all Awarded Lot(s))**

The Supplier must deliver the following management requirements in respect of the Contract:

* A centre monitoring compliance visit should be completed once each year.
* The following quality sampling activity should be completed.
  + EQA to be scheduled within 3 working days of receipt of portfolio
  + EQA visit to be conducted within 10 working days from receipt of portfolio
  + EQA report to be sent to PEF provider within 5 working days of the EQA activity.
* The outcome of the Qualification award should uploaded to an assured portal, such as QuartzWeb, that meets the requirements for ISO27001 and Cyber Essentials Plus and is hosted within the UK. A data privacy impact assessment around the data held on the platform must be supplied to the Authority. This should be uploaded within 10 working days of centre monitoring or EQA activity.
* Qualification certification issued should be issued within 10 working days of centre monitoring or EQA activity.
* Reporting must be provided to the Authority annually detailing total spend by all Education Providers with the Supplier as part of this Contract. This must be provided within 30 days of the anniversary of the Commencement Date.   
  Where payment has been less than list price, due to a separate agreement between Education Providers and the Supplier this must be shown in the report. The report must specify what the spend would have been had a discount not been applied.
* The Supplier must within 20 days of contract start, provide the Authority with a security management plan.

**Digital Requirements (Applicable to all Awarded Lot(s))**

Full ISO 27001 certification is not a requirement to bid. However the Supplier must be working towards full certification. Furthermore it is a contractual requirement that

* Stage 1 of ISO 27001 ish achieved within 6 months of contract commencement.
* Stage 2 ISO 27001 is achieved within 12 months of contract commencement.

For digital exams provided by the Supplier for the Authority, the Authority will adopt a digital solution that:

* Is fully managed from the cloud, utilising an online solution preferably HTML5 that requires no on-premise software, or applications (for enrolment, taking exams and invigilation).
* The online environment in which the exams are taken in must be secure. The Authority will need to test the environment prior to being assured for usage in a custodial environment.
* Has the capability to upload documentation from cloud-based storage to evidence coursework if needed.
* The Supplier should particate in or undertake an annual IT Health Check (ITHC) including an independent NCSC CHECK Certified Penetration Test and share recommendations and remediations with the Authority within two weeks of receiving the report

To achieve this, the Authority will deliver into the education areas within each prison: A secure environment, based on a standardised Wi-Fi network that connects to a cloud-based learning platform and Windows 11 desktop devices.

The new service will be fully cloud-based, and the design will meet the security requirements of HMPPS from point of deployment.

This will become the foundation for the provision of the new **Prison Education Service currently anticipated to be delivered as a** **national model by 1 October 2025.**

The new IT infrastructure will deliver:

* An Inhouse education IT infrastructure/platform currently anticipated to be implemented by 1 October 2025.
* A better consistent experience for prisoners as they move through their journey in prisons, taking their learning and experience with them between prisons and beyond.
* Provide greater flexibility in the Digital Learning Environments to support a broader curriculum.
* Remove legacy systems from the estate and provide managed, secure and evergreen systems that can be maintained.

This will be achieved by:

* Utilising technologies that are based on existing, proven Authority capabilities: including secure managed devices, secure managed networks, security monitoring and a full-service wrap and support model for the end-to-end solution.
* The solution will utilise cloud-based technologies such as our secure prisoner tenant, Azure Active Directory (AAD) and a Virtual Learning Environment (VLE) and is looking to leverage the latest in security and other technologies.

Where digital delivery is not achievable or if the digital infrastructure fails, a paper-based solution must be available to the Authority.

**Lot 4 requirements**

**Textiles**

The Supplier must ensure that its Qualifications in textiles are built on the standards required by workplaces to undertake job roles in textiles, developing the knowledge, skills and understanding that enables progression routes to employment in textiles.

The Supplier must ensure that its Qualifications in textiles enable opportunities to use and apply theoretical knowledge, skills and understanding in a practical work environment.

As a minimum, the Supplier must offer a suite of Qualifications in textiles at level 1 and level 2. The Supplier could offer Qualifications in textiles at other levels however, this is not a mandatory requirement.

The Supplier must offer a breadth of Qualifications within textiles of varying breadth and complexity or specialism, which could include, textiles Qualifications related to the following areas:

* introduction to textiles
* manufacturing sewn and textile products, including cutting, sewing, repair and inspection
* industrial textile machinery use, repair and maintenance
* fashion design and development

Note: the above examples are for illustrative purposes only, The Supplier does not need to provide all the above to be eligible to bid for/deliver this Contract.

The Supplier will be used as the preferred awarding organisation in textiles. If the Supplier is unable to provide a Qualification in textiles required by the Authority, the Authority reserves the right to utilise another awarding organisation to obtain the Qualification.

**Annex A**

|  |  |
| --- | --- |
| Altcourse Prison | Lancaster Farms Prison |
| Ashfield Prison | Leeds Prison |
| Askham Grange Prison and Young Offender Institution | Leicester Prison |
| Aylesbury Prison | Lewes Prison |
| Bedford Prison | Leyhill Prison |
| Belmarsh Prison | Lincoln Prison |
| Birmingham Prison | Lindholme Prison |
| Brinsford Prison | Littlehey Prison |
| Bristol Prison | Liverpool Prison |
| Bronzefield Prison | Long Lartin Prison |
| Buckley Hall Prison | Low Newton Prison and Young Offender Institution |
| Bullingdon Prison | Lowdham Grange Prison |
| Bure Prison | Maidstone Prison |
| Channings Wood Prison | Manchester Prison |
| Chelmsford Prison | Moorland Prison |
| Coldingley Prison | Morton Hall Prison |
| Cookham wood | New Hall Prison and Young Offender Institution |
| Dartmoor Prison | North Sea Camp Prison |
| Deerbolt Prison | Northumberland Prison |
| Doncaster Prison | Norwich Prison |
| Dovegate Prison | Nottingham Prison |
| Downview Prison and Young Offender Institution | Oakwood Prison |
| Drake Hall Prison and Young Offender Institution | Onley Prison |
| Durham Prison | Pentonville Prison |
| East Sutton Park Prison and Young Offender Institution | Peterborough Prison |
| Eastwood Park Prison and Young Offender Institution | Portland Prison and Young Offender Institution |
| Elmley Prison | Preston Prison |
| Erlestoke Prison | Ranby Prison |
| Exeter Prison | Risley Prison |
| Featherstone Prison | Rochester Prison |
| Feltham Prison and Young Offender Institution | Rye Hill Prison |
| Five Wells Prison | Send Prison |
| Ford Prison | Spring Hill Prison |
| Forest Bank Prison | Stafford Prison |
| Fosse Way Prison | Standford Hill Prison |
| Foston Hall Prison and Young Offender Institution | Stocken Prison |
| Frankland Prison | Stoke Heath Prison |
| Full Sutton Prison | Styal Prison and Young Offender Institution |
| Garth Prison | Sudbury Prison |
| Gartree Prison | Swaleside Prison |
| Grendon Prison | Swinfen Hall Prison |
| Guys Marsh Prison | Thameside Prison |
| Hatfield Prison | The Mount Prison |
| Haverigg Prison | The Verne Prison |
| Hewell Prison | Thorn Cross Prison |
| High Down Prison | Wakefield Prison |
| Highpoint Prison | Wandsworth Prison |
| Hindley Prison | Warren Hill Prison |
| Hollesley Bay Prison | Wayland Prison |
| Holme House Prison | Wealstun Prison |
| Hull Prison | Whatton Prison |
| Humber Prison | Whitemoor prison |
| Huntercombe Prison | Winchester Prison |
| Isis Prison | Woodhill Prison |
| Isle of Wight Prison | Wormwood Scrubs Prison |
| Kirkham Prison | Wymott Prison |
| Kirklevington Grange Prison |  |

**SCHEDULE 2 – FEES**

[REDACTED]

**Authority Rebate**

[REDACTED]

**SCHEDULE 3 - CHANGE CONTROL**

# Change Request Form

|  |  |
| --- | --- |
| **Contract Title:** | **Authority Change requested:** |
| **Name of Supplier:** | |
| **Change Request Number:** | **Proposed Change implementation date:** |
| **Full description of requested Change (including proposed changes to wording of the Contract where possible):** | |
| **Reasons for requested Change:** | |
| **Effect of requested Change** | |
| **Assumptions, dependencies, risks and mitigation (if any):** | |
| **Change Request Form prepared by (name):** | |
| **Signature:** | |
| **Date of Change Request:** | |

**Contract Change Notice (“CCN”)**

(For completion by the Authority once the Change has been agreed in principle by both Parties. Changes do not become effective until this form has been signed by both Parties.)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Contract Title:** | |  | | |
| **Name of Supplier:** | | | | |
| **Change Number:** | | | | |
| **Date on which Change takes effect:** | | | | |
| **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 for and on behalf of [the Secretary of State for Justice]/[the Lord Chancellor]** | | | **Signed for and on behalf of [insert name of Supplier]** | |
| **Signature** |  | **Signature** | |  |
| **Name** |  | **Name** | |  |
| **Title** |  | **Title** | |  |
| **Date** |  | **Date** | |  |

**SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION**

1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause D5 (Freedom of Information).

2 In this Schedule 4 the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.

3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule 4 applies.

4 Without prejudice to the Authority’s obligation to disclose Information in accordance with the FOIA and the EIR, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

|  |  |  |
| --- | --- | --- |
| SUPPLIER’S COMMERCIALLY SENSITIVE INFORMATION | DATE | DURATION OF CONFIDENTIALITY |
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**SCHEDULE 5 - SUPPLIER AND THIRD-PARTY SOFTWARE**

**Supplier Software comprises the following:**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Software | Supplier (if Affiliate of the Supplier) | Purpose | No. of Licences | Restrictions | No. of copies | Other | To be deposited in escrow? |
|  |  |  |  |  |  |  |  |
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**Third Party Software comprises the following:**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Third Party Software | Supplier | Purpose | No. of Licences | Restrictions | No. of copies | Other | To be deposited in escrow? |
| **Quartz** | **Portico Consulting Ltd** | **Database for registering learners onto courses and awarding/ certificating** | **Unlimited** | **Users set up as required by OCN London** | **1 SAAS with web front end.** |  | **Can be deposited in escrow if required.** |
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**SCHEDULE 6 - PRISONS**

**ACCESS** **TO PRISONS**

1 If Staff are required to have a pass for admission to an Authority Premises which is a prison, (a “**Prison**”) the Authority shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued. Any member of the Staff who cannot produce a proper pass when required to do so by any member of the Authority’s personnel, or who contravenes any conditions on the basis of which a pass was issued, may be refused admission to a Prison or be required to leave a Prison if already there.

2 Staff shall promptly return any pass if at any time the Authority so requires or if the person to whom the pass was issued ceases to be involved in the performance of the Services. The Supplier shall promptly return all passes on expiry or termination of the Contract.

3 Staff attending a Prison may be subject to search at any time. Strip searches shall be carried out only on the specific authority of the Authority under the same rules and conditions applying to the Authority’s personnel. The Supplier is referred to Rule 71 of Part IV of the Prison Rules 1999 as amended by the Prison (Amendment) Rules 2005 and Rule 75 of Part IV of the Young Offender Institution Rules 2000 as amended by the Young Offender Institution (Amendment) Rules 2005.

4 Searches shall be conducted only on the specific authority of the Authority under the same rules and conditions applying to the Authority’s personnel and/or visitors. The Supplier is referred to Section 8 of the Prison Act 1952, Rule 64 of the Prison Rules 1999 and PSI 07/2016.

**SECURITY**

5 Whilst at Prisons Staff shall comply with all security measures implemented by the Authority in respect of staff and other persons attending Prisons. The Authority shall provide copies of its written security procedures to Staff on request. The Supplier and all Staff are prohibited from taking any photographs at Prisons unless they have Approval and the Authority’s representative is present so as to have full control over the subject matter of each photograph to be taken. No such photograph shall be published or otherwise circulated without Approval.

6 The Authority may search vehicles used by the Supplier or Staff at Prisons.

7 The Supplier and Staff shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible for security matters on the Authority’s behalf, and when required by the Authority shall:

7.1 take all reasonable measures to make available for interview by the Authority any members of Staff identified by the Authority, or by a person who is responsible for security matters, for the purposes of the investigation. Staff may be accompanied by and be advised or represented by another person whose attendance at the interview is acceptable to the Authority; and

7.2 subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind and in whatever form which may be reasonably required by the Authority, or by a person who is responsible for security matters on the Authority’s behalf, for the purposes of investigation as long as the provision of that material does not prevent the Supplier from performing the Services. The Authority may retain any such material for use in connection with the investigation and, as far as possible, may provide the Supplier with a copy of any material retained.

**OFFE****NCES AND AUTHORISATION**

8 In providing the Services the Supplier shall comply with PSI 10/2012 (Conveyance and Possession of Prohibited Items and Other Related Offences) and other applicable provisions relating to security as published by the Authority from time to time.

9 Nothing in the Contract is deemed to provide any “authorisation” to the Supplier in respect of any provision of the Prison Act 1952, Offender Management Act 2007, Crime and Security Act 2010, Serious Crime Act 2015 or other relevant legislation.

**SCHEDULE 7 – STATUTORY OBLIGATIONS AND CORPORATE SOCIAL RESPONSIBILITY**

## 1 What the Authority expects from the Supplier

1.1 His Majesty’s Government’s Supplier Code of Conduct (the “**Code**”) sets out the standards and behaviours expected of suppliers who work with government. The Code can be found online at:

[Supplier Code of Conduct - v2 (publishing.service.gov.uk)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)

* 1. The Supplier shall, and shall procure that its Sub-Contractors shall:
     + 1. comply with its legal obligations, in particular those in Part 1 of this Schedule 7, and meet the standards set out in the Code as a minimum; and
       2. use reasonable endeavours to comply with the standards in Part 2 of this Schedule 7.

**PART 1 Statutory Obligations**

## 2 Equality and Accessibility

2.1 The Supplier shall:

(a) perform its obligations under the Contract in accordance with:

i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);

ii) the Authority’s equality, diversity and inclusion policy as given to the Supplier from time to time; and

iii) any other requirements and instructions which the Authority reasonably imposes regarding any equality obligations imposed on the Authority at any time under applicable equality law

(b) take all necessary steps and inform the Authority 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).

## 3 Modern Slavery

3.1 The Supplier shall:

* + 1. not use, or allow Sub-Contractors to use, forced, bonded or involuntary prison labour;
    2. not require any Staff to lodge deposits or identity papers with their employer;
    3. allow, and ensure that any Sub-Contractors allow, Staff to leave their employer after reasonable notice;
    4. make reasonable enquiries to ensure that its Staff and Sub-Contractors have not been convicted of slavery or human trafficking offences anywhere in the world;
    5. have and maintain throughout the Term its own policies and procedures to ensure its compliance with the MSA and include in its Sub-Contracts anti-slavery and human trafficking provisions;
    6. not use, or allow its Staff to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its Staff and Sub-Contractors;
    7. not use or allow to be used child or slave labour to be used by its Sub-Contractors;
    8. if either Party identifies any occurrence of modern slavery in connection with the Contract, comply with the rectification process set out in clauses F2.4 to F2.6;
    9. 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;
    10. maintain a complete set of records to trace the supply chain of all Services provided to the Authority in connection with the Contract;
    11. 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 other relevant national or local law enforcement agencies; and
    12. implement a system of training for its employees to ensure compliance with the MSA.

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

(a) it has not been convicted of any slavery or human trafficking offences anywhere in the world; and

(b) to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere in the world.

3.3 If the Supplier notifies the Authority pursuant to paragraph 3.1(i) of this Schedule 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 Contract.

3.4 If the Supplier is in Default under paragraphs 3.1 or 3.2 of this Schedule 7 the Authority may by notice:

* + 1. require the Supplier to remove from performance of the Contract any Sub-Contractor, Staff or other persons associated with it whose acts or omissions have caused the Default; or
    2. immediately terminate the Contract.

## 4 Income Security

4.1 The Supplier shall:

(a) ensure that all pay and benefits paid for a standard working week meet, at least, national legal standards in the country of employment;

(b) provide all Staff with written and readily understandable information about their employment conditions in respect of pay before they enter employment and about their pay for the pay period concerned each time that they are paid;

(c) not make deductions from pay:

(i) as a disciplinary measure;

(ii) except where permitted by Law and the terms of the employment contract; and

(iii) without express permission of the person concerned

(d) record all disciplinary measures taken against Staff.

## 5 Working Hours

5.1 The Supplier shall ensure that:

(a) the working hours of Staff comply with the Law, and any collective agreements;

(b) the working hours of Staff, excluding overtime, is defined by contract, do not exceed 48 hours per week unless the individual has agreed in writing, and that any such agreement is in accordance with the Law;

(c) overtime is used responsibly, considering:

(i) the extent;

(ii) frequency; and

(iii) hours worked;

1. the total hours worked in any seven-day period shall not exceed 60 hours, except where covered by paragraph 5.1 (e);

(e) working hours do not exceed 60 hours in any seven-day period unless:

(i) it is allowed by Law;

(ii) it is allowed by a collective agreement freely negotiated with a worker’s organisation representing a significant portion of the workforce;

(iii) appropriate safeguards are taken to protect the workers’ health and safety; and

(iv) the Supplier can demonstrate that exceptional circumstances apply such as during unexpected production peaks, accidents or emergencies;

(f) all Supplier Staff are provided with at least:

(i) 1 day off in every 7-day period; or

(ii) where allowed by Law, 2 days off in every 14-day period.

**6 Right to Work**

6.1 The Supplier shall:

* 1. ensure that all Staff, are employed on the condition that they are permitted to work in the UK, and;
  2. notify the authority immediately if an employee is not permitted to work in the UK.

**7 Health and Safety**

7.1 The Supplier shall perform its obligations under the Contract in accordance with:

* 1. all applicable Law regarding health and safety; and
  2. the Authority’s Health and Safety Policy while at the Authority Premises.

7.2 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 the Contract. The Supplier shall instruct Staff to adopt any necessary safety measures in order to manage the risk.

**8.**  **Welsh Language Requirements**

NOT USED

**9 Fraud and Bribery**

9.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:

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
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.

9.2 The Supplier shall not during the Term:

1. commit a Prohibited Act; and/or
2. do or suffer anything to be done which would cause the Authority or any of its 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.

9.3 The Supplier shall, during the Term:

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;
2. have in place reasonable prevention measures (as defined in section 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;
3. keep appropriate records of its compliance with its obligations under paragraph 9.3 (a) and 9.3 (b) and make such records available to the Authority on request; and
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

9.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of paragraphs 9.1 and/or 9.2, or has reason to believe that it has or any of the Staff have:

1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
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
3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

9.5 If the Supplier notifies the Authority pursuant to paragraph 9.4, 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.

9.6 If the Supplier is in Default under paragraphs 9.1 and/or 9.2, the Authority may by notice:

1. require the Supplier to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
2. immediately terminate the Contract.

9.7 Any notice served by the Authority under paragraph 9.6 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 taken (including, where relevant, the date on which the Contract terminates).

**PART 2 Corporate Social Responsibility**

## 10 Zero Hours Contracts

10.1 Any reference to zero hours contracts, for the purposes of this Contract, means as they relate to employees or workers and not those who are genuinely self-employed and undertaking work on a zero hours arrangement.

10.2 When offering zero hours contracts, the Supplier shall consider and be clear in its communications with its employees and workers about:

1. whether an individual is an employee or worker and what statutory and other rights they have;
2. the process by which work will be offered and assurance that they are not obliged to accept work on every occasion; and
3. how the individual’s contract will terminate, for example, at the end of each work task or with notice given by either party.

## 11 Sustainability

11.1 The Supplier shall:

1. comply with the applicable Government Buying Standards;
2. provide, from time to time, in a format reasonably required by the Authority, reports on the environmental effects of providing the Goods and Services;
3. maintain ISO 14001 or BS 8555 or an equivalent standard intended to manage its environmental responsibilities; and

(d) perform its obligations under the Contract in a way that:

* + - 1. supports the Authority’s achievement of the Greening Government Commitments;
      2. conserves energy, water, wood, paper and other resources;
      3. reduces waste and avoids the use of ozone depleting substances; and
      4. minimises the release of greenhouse gases, volatile organic compounds and substances damaging to health and the environment.

**IN WITNESS** of which the Contract is duly executed by the Parties on the date which appears at the head of page 1.

|  |  |
| --- | --- |
| **SIGNED** for and on behalf of the Secretary of State for Justice  Signature:  Name (block capitals):  Position:  Date: |  |

|  |  |
| --- | --- |
| **SIGNED** for and on behalf of the Open College Network London Region  Signature:  Name (block capitals):  Position:  Date: |  |