



**SUPPLIER**

Attn: **[REDACTED]**

By email to: **[REDACTED]**

Date: 13th March 2019

Reference: con\_16327

Dear **[REDACTED]**

**Award of contract for the Provision of Restorative Justice Intervention**

We are pleased to award this contract to you for the Provision of Restorative Justice Interventions Services to The Secretary of State for Justice

This letter (Award Letter) and its Annexes set out the terms of the contract between The Secretary of State for Justice as the Customer and SUPPLIER as the SUPPLIER for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the "**Conditions**"). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any SUPPLIER terms and conditions to this Award Letter as they will not be accepted by the Customer and may delay the conclusion of the Agreement.

For the purposes of the Agreement, the Customer and the SUPPLIER agree as follows:

- 1) The Services shall be performed at HMP & YOI Isis, Western Way Thamesmead, SE28 0NZ (the Customer's premises)
- 2) The charges for the Services shall be as set out in Annex 2
- 3) The specification of the Services to be supplied is as set out in Annex 3.
- 4) The Term shall commence on 1st April 2019 and the Expiry Date shall be 31st March 2020
- 5) The address for notices of the Parties are:

**Customer**

Ministry of Justice

Manchester Civil Justice Centre,

1 Bridge Street West, Manchester. M60 9DJ

Email: **[REDACTED]**

## SUPPLIER

**Address:** [REDACTED]

**Email:** [REDACTED]

6) The following persons are Key Personnel for the purposes of the Agreement:

Name: [REDACTED]

Title: Safer Custody Manager

Name: [REDACTED]

Title: Head of Safer Prisons and Equalities

7) For the purposes of the Agreement the Staff Vetting Procedures, data security requirements, equality and diversity policy, environmental policy are those which are provided by the Customer

8) The Customer may require the SUPPLIER to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The SUPPLIER shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a “**Relevant Conviction**”), or is found by the SUPPLIER to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

### Payment

All invoices must be sent, quoting a valid purchase order number (PO Number), to: APinvoices-NMS-U@sscl.gse.gov.uk (the Customer’s preferred option); or Newport SSCL – National Offender Management Service, PO Box 741, Newport, NP10 8FZ. Within [10] working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to APinvoices-NMS-U@sscl.gse.gov.uk

### Liaison

For general liaison your contact will continue to [REDACTED], contact details [REDACTED] or, in their absence, [REDACTED], contact details [REDACTED]

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to Nicola Charlton at the above address within 7 days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours faithfully,

Signed for and on behalf of The Secretary of State for Justice

Name: [REDACTED]

Title: [REDACTED]

Signature:

Date:

We accept the terms set out in this letter and its Annexes, including the Conditions.

Signed for and on behalf of SUPPLIER

Name: [REDACTED]

Title: [REDACTED]

Signature:

Date:



Date: 13<sup>th</sup> March 2019

## Contract

Between

**THE SECRETARY OF STATE FOR JUSTICE**

And

**BELONG: MAKING JUSTICE HAPPEN**

(A Company registered in England and Wales with Registered Charity  
Number [REDACTED])

The Provision of Restorative Justice Interventions

Contract Reference: Con 16327

## Annex 1

### Terms and Conditions of Contract for Services

#### 1 Interpretation

1.1 In these terms and conditions:

- “Agreement”** means the contract between (i) the Customer acting as part of the Crown and (ii) the SUPPLIER constituted by the SUPPLIER’s countersignature of the Award Letter and includes the Award Letter and Annexes;
- “Authority”** means the Secretary of State for Justice acting through the purchaser named in the PO;
- “Award Letter”** means the letter from the Customer to the SUPPLIER printed above these terms and conditions;
- “Central Government Body”** means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
- a) Government Department;
  - b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
  - c) Non-Ministerial Department; or
  - d) Executive Agency;
- “Charges”** means the charges for the Services as specified in the Award Letter;
- “Controller”** means, where Personal Data is being processed for Law Enforcement Purposes, as it is defined in the LED; and in all other circumstances, as it is defined in GDPR;
- “Confidential Information”** means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
- “Customer”** means the person named as Customer in the Award Letter;
- “Data Loss Event”** means any event which results, or may result, in unauthorised access to Personal Data held by the SUPPLIER under the Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data;
- “Data Protection Impact Assessment”** means as assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

<b>“Data Protection Legislation”</b>	means the GDPR, the LED, DPA 2018 (subject to Royal assent) and all applicable Laws relating to the processing of Personal Data;
<b>“Data Protection Officer”</b>	means as it is defined in the GDPR;
<b>“Data Subject”</b>	means as it is defined in the GDPR;
<b>“Data Subject Access Request”</b>	means a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>“DPA 2018”</b>	means the Data Protection Act 2018;
<b>“EIR”</b>	means the Environmental Information Regulations 2004;
<b>“Expiry Date”</b>	means the date for expiry of the Agreement as set out in the Award Letter;
<b>“FOIA”</b>	means the Freedom of Information Act 2000;
<b>“GDPR”</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>“Information”</b>	has the meaning given under section 84 of the FOIA;
<b>“Key Personnel”</b>	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the SUPPLIER in writing;
<b>“Law”</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;
<b>“Law Enforcement Purposes”</b>	means as it is defined in DPA 2018;
<b>“LED”</b>	means the Law Enforcement Directive (Directive (EU) 2016/680);
<b>“Partial Termination”</b>	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services;
<b>“Party”</b>	means the SUPPLIER or the Customer (as appropriate) and “Parties” shall mean both of them;
<b>“Personal Data”</b>	means personal data (as defined in the DPA) which is processed by the SUPPLIER or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;

<b>“Purchase Order Number”</b>	means the Customer’s unique number relating to the supply of the Services;
<b>“Processor”</b>	means, where Personal Data is being processed for Law Enforcement Purposes, as it is defined in the LED; and in all other circumstances, as it is defined in GDPR;
<b>“Processor Personnel”</b>	means, where Personal Data is being processed for Law Enforcement Purposes, as it is defined in the LED; and in all other circumstances, as it is defined in GDPR;
<b>“Protective Measures”</b>	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted;
<b>“Replacement Services”</b>	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination, or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party.
<b>“Replacement Sub-contractor”</b>	a sub-contractor of the Replacement SUPPLIER to whom Transferring SUPPLIER Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>“Replacement SUPPLIER ”</b>	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing Replacement Services for its own account, the Authority);
<b>“Request for Information”</b>	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
<b>“Services”</b>	means the services to be supplied by the SUPPLIER to the Customer under the Agreement;
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the SUPPLIER or any Sub-contractor to a Replacement SUPPLIER or a Replacement Sub-contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>“Specification”</b>	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;
<b>“Staff”</b>	means all directors, officers, employees, agents, consultants and contractors of the SUPPLIER and/or of any sub-contractor of the SUPPLIER engaged in the performance of the SUPPLIER ’s obligations under the Agreement;

<b>“Staff Vetting Procedures”</b>	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the SUPPLIER from time to time;
<b>“Sub-contract”</b>	any contract or agreement (or proposed contract or agreement) between the SUPPLIER (or a Sub-contractor) and any third party whereby that third party agrees to provide to the SUPPLIER (or the Sub-Contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
<b>“Sub-contractor”</b>	any third party with whom: <ul style="list-style-type: none"><li>(a) the SUPPLIER enters into a Sub-contract; or</li><li>(b) a third party under (a) above enters into a Sub-Contract</li></ul> or servants or agents of that third party;
<b>“Sub-processor”</b>	means any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement;
<b>“SUPPLIER ”</b>	means the person named as SUPPLIER in the Award Letter;
<b>“SUPPLIER ’s Final List of Transferring SUPPLIER Employees”</b>	the final list of Transferring SUPPLIER Employees in scope under TUPE to transfer to the Authority and/or a Replacement SUPPLIER and/or a Replacement Sub-contractor 28 days before the Service Transfer Date;
<b>“Term”</b>	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
<b>“Transferring SUPPLIER Employees”</b>	those employees of the SUPPLIER and/or the SUPPLIER ’s Sub-Contractors to whom TUPE will apply on the Service Transfer Date;
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
<b>“TUPE Information”</b>	means the information set out in clause 23.1;
<b>“VAT”</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
<b>“Working Day”</b>	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

- 1.2 In these terms and conditions, unless the context otherwise requires:
- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
  - 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
  - 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
  - 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
  - 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

## **2 Basis of Agreement**

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the SUPPLIER on receipt by the Customer of a copy of the Award Letter countersigned by the SUPPLIER within 7 days of the date of the Award Letter.

## **3 Supply of Services**

- 3.1 In consideration of the Customer's agreement to pay the Charges, the SUPPLIER shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the SUPPLIER shall:
  - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the SUPPLIER's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the SUPPLIER's obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and
  - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the SUPPLIER at any time request a variation to the scope of the Services. In the event that the SUPPLIER agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the SUPPLIER .

## **4 Term**

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the SUPPLIER prior to the Expiry Date. The

terms and conditions of the Agreement shall apply throughout any such extended period.

## **5 Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the SUPPLIER in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the SUPPLIER directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the SUPPLIER a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The SUPPLIER shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the SUPPLIER, the Customer shall pay the SUPPLIER the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The SUPPLIER shall not suspend the supply of the Services unless the SUPPLIER is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the SUPPLIER interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the SUPPLIER enters into a sub-contract, the SUPPLIER shall include in that sub-contract:
  - 5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
  - 5.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
  - 5.8.3 In this clause 5.8, "sub-contract" means a contract between two or more SUPPLIER s, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the SUPPLIER under the Agreement (including any sum which the SUPPLIER is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the SUPPLIER under the Agreement or under any other agreement or contract with the Customer. The SUPPLIER shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6 Premises and equipment**

- 6.1 If necessary, the Customer shall provide the SUPPLIER with reasonable access at

reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the SUPPLIER or the Staff shall be at the SUPPLIER's risk.

- 6.2 If the SUPPLIER supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the SUPPLIER shall vacate the Customer's premises, remove the SUPPLIER's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The SUPPLIER shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the SUPPLIER or any Staff, other than fair wear and tear.
- 6.3 If the SUPPLIER supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the SUPPLIER shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the SUPPLIER's premises, the SUPPLIER shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the SUPPLIER and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The SUPPLIER shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the SUPPLIER or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the SUPPLIER or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

## **7 Staff and Key Personnel**

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the SUPPLIER :
  - 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
  - 7.1.2 direct the SUPPLIER to end the involvement in the provision of the Services of the relevant person(s); and/or
  - 7.1.3 require that the SUPPLIER replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,and the SUPPLIER shall comply with any such notice.
- 7.2 The SUPPLIER shall:
  - 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
  - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8 Assignment and sub-contracting**

- 8.1 The SUPPLIER shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The SUPPLIER shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 Where the Customer has consented to the placing of sub-contracts, the SUPPLIER shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the SUPPLIER provided that such assignment, novation or disposal shall not increase the burden of the SUPPLIER's obligations under the Agreement.

## **9 Intellectual Property Rights**

- 9.1 All intellectual property rights in any materials provided by the Customer to the SUPPLIER for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the SUPPLIER a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the SUPPLIER to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the SUPPLIER pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the SUPPLIER. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the SUPPLIER by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The SUPPLIER hereby grants the Customer:
- 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
  - 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
    - (a) any intellectual property rights vested in or licensed to the SUPPLIER on the date of the Agreement; and
    - (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

- 9.4 The SUPPLIER shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the SUPPLIER or any Staff.

## **10 Governance and Records**

- 10.1 The SUPPLIER shall:

10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

- 10.2 The SUPPLIER shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The SUPPLIER shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

## **11 Confidentiality, Transparency and Publicity**

- 11.1 Subject to clause 11.2, each Party shall:

11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

- 11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

11.2.2 to its auditors or for the purposes of regulatory requirements;

11.2.3 on a confidential basis, to its professional advisers;

11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

11.2.5 where the receiving Party is the SUPPLIER, to the Staff on a need to know basis to enable performance of the SUPPLIER's obligations under the Agreement provided that the SUPPLIER shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the SUPPLIER's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is the Customer:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;

- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

- 11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the SUPPLIER hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the SUPPLIER to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.4 The SUPPLIER shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

## **12 Freedom of Information**

- 12.1 The SUPPLIER acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
  - 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
  - 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 12.2 The SUPPLIER acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the SUPPLIER or the Services (including commercially sensitive information) without consulting or obtaining consent from the SUPPLIER. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the SUPPLIER advance notice, or failing that, to draw the disclosure to the SUPPLIER's attention after any such disclosure.
- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the SUPPLIER or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

## **13 DATA PROTECTION**

- 13.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the

Customer is the Controller and the SUPPLIER is the Processor unless otherwise specified in writing by the Customer to the SUPPLIER . The only processing that the Processor is authorised to do is as notified in writing by the Controller and may not be determined by the Processor.

- 13.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 13.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - 13.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 13.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 13.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 13.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 13.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
  - 13.4.1 process that Personal Data only in accordance with the terms of this Agreement and as notified in writing by the Controller, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - 13.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - 13.4.2.1 nature of the data to be protected;
    - 13.4.2.2 harm that might result from a Data Loss Event;
    - 13.4.2.3 state of technological development; and
    - 13.4.2.4 cost of implementing any measures;
  - 13.4.3 ensure that:
    - 13.4.3.1 the Processor Personnel do not process Personal Data except in accordance with this Agreement (and any written notification by the Controller);
    - 13.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - (a) are aware of and comply with the Processor's duties under this clause;
      - (b) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

(c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

(d) have undergone adequate training in the use, care, protection and handling of Personal Data; and

13.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

13.4.4.1 the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;

13.4.4.2 the Data Subject has enforceable rights and effective legal remedies;

13.4.4.3 the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

13.4.4.4 the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

13.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

13.5 Subject to clause 13.6, the Processor shall notify the Controller immediately if it:

13.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

13.5.2 receives a request to rectify, block or erase any Personal Data;

13.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

13.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

13.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

13.5.6 becomes aware of a Data Loss Event.

13.6 The Processor's obligation to notify under clause 13.5 shall include the provision of further information to the Controller in phases, as details become available.

13.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 13.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

13.7.1 the Controller with full details and copies of the complaint, communication or request;

- 13.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- 13.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- 13.7.4 assistance as requested by the Controller following any Data Loss Event;
- 13.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 13.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - 13.8.1 the Controller determines that the processing is not occasional;
  - 13.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - 13.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 13.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 13.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
  - 13.11.1 notify the Controller in writing of the intended Sub-processor and processing;
  - 13.11.2 obtain the written consent of the Controller;
  - 13.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13.11 such that they apply to the Sub-processor; and
  - 13.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 13.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 13.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 13.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **14 Liability**

- 14.1 The SUPPLIER shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

14.2 Subject always to clauses 14.3 and 14.4:

14.2.1 the aggregate liability of the SUPPLIER in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the SUPPLIER ; and

14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the SUPPLIER be liable to the Customer for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The SUPPLIER 's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

## 15 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

## 16 Termination

16.1 The Customer may terminate the Agreement at any time by notice in writing to the SUPPLIER to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the SUPPLIER with immediate effect if the SUPPLIER :

16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the SUPPLIER receiving notice specifying the breach and requiring it to be remedied;

16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, **Error! Reference source**

- not found.** and 17;
- 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the SUPPLIER (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the SUPPLIER's assets or business, or if the SUPPLIER makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
- 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.3 The SUPPLIER shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The SUPPLIER may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, **Error! Reference source not found.**, 13, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the SUPPLIER shall:
- 16.6.1 give all reasonable assistance to the Customer and any incoming SUPPLIER of the Services; and
- 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## 17 Compliance

- 17.1 The SUPPLIER shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the SUPPLIER of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the SUPPLIER in the performance of its obligations under the Agreement.
- 17.2 The SUPPLIER shall:
- 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
- 17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.3 The SUPPLIER shall:
- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the SUPPLIER from time to time; and
- 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
- 17.4 The SUPPLIER shall supply the Services in accordance with the Customer's environmental policy as provided to the SUPPLIER from time to time.
- 17.5 The SUPPLIER shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
- 17.5.1 the Official Secrets Acts 1911 to 1989; and

17.5.2 section 182 of the Finance Act 1989.

## **18 Prevention of Fraud and Corruption**

- 18.1 The SUPPLIER shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 The SUPPLIER shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the SUPPLIER (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the SUPPLIER or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
- 18.3.1 terminate the Agreement and recover from the SUPPLIER the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 18.3.2 recover in full from the SUPPLIER any other loss sustained by the Customer in consequence of any breach of this clause.

## **19 Dispute Resolution**

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **20 General**

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 The provisions of clause 23 (*Employment*), clauses 23.1 – 23.5 confer benefits on the Replacement SUPPLIER and are intended to be enforceable by the Replacement SUPPLIER by virtue of Contracts (Rights of Third Parties) Act 1999. Subject to the previous sentence, a person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of

any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21 Notices**

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

## **22 Governing Law and Jurisdiction**

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## **23 Employment**

- 23.1 At any time during the Term, and within 10 working days of a request by the Authority, the SUPPLIER shall fully and accurately disclose to the Authority and/or Replacement SUPPLIER all information the Authority may reasonably request in relation to the Staff assigned for the purposes of TUPE to the Services including, but not limited to, the following:
- (a) the total number of Staff;
  - (b) their age, gender, salary or other remuneration, future pay settlements, redundancy and pensions entitlement and pension details including in relation to any public sector pension entitlement;

- (c) their terms and conditions of employment/engagement (including copies of their contracts of employment/engagement as appropriate), and their job titles and qualifications
- (d) details of their contractual pay and benefits;
- (e) their immigration status;
- (f) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened;
- (g) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union;
- (h) the percentage of working time dedicated to the provision of the Services under the Contract; and
- (i) all information required by regulation 11 of TUPE or as reasonably requested by the Authority

23.2 28 days before a service Transfer the SUPPLIER shall provide the transferee with a written copy of the SUPPLIER 's Final List of Transferring SUPPLIER Employees. Each time the SUPPLIER supplies TUPE Information to the Authority and/or a Replacement SUPPLIER it warrants its completeness and accuracy..

23.3 The Authority may use TUPE Information it receives from the SUPPLIER for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Term. The SUPPLIER shall provide the Authority or any Replacement SUPPLIER with such assistance as it shall reasonably request and co-operate with the re-tendering of this Contract by allowing the Authority and/or a Replacement SUPPLIER to communicate with and meet the affected employees or their representatives.

23.4 If TUPE applies to the transfer of the Services on termination of the Contract, 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 or the Crown or any Replacement SUPPLIER may suffer or incur as a result of or in connection with:

- (a) the provision of TUPE Information;
- (b) any claim or demand by any Transferring SUPPLIER Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the SUPPLIER or any Sub-Contractor in respect of any Transferring SUPPLIER Employee on or before the end of the Term;
- (c) 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;

- (d) 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 Transferring SUPPLIER Employee 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; and
- (e) any claim by any person who is transferred by the SUPPLIER to the Authority and/or a Replacement SUPPLIER whose name is not included in the SUPPLIER's Final List of Transferring SUPPLIER Employees.

23.5 If the SUPPLIER is aware that TUPE Information has become inaccurate or misleading, it shall immediately, and in any event within 5 working days, notify the Authority and/or Replacement SUPPLIER as appropriate and provide the Authority and/or Replacement SUPPLIER as appropriate with up to date and accurate TUPE Information.

23.6 This clause 23 applies during the Term and indefinitely thereafter.

23.7 The SUPPLIER undertakes to the Authority that, during the Term of the Contract the SUPPLIER shall not (and shall procure that any Sub-Contractor shall not) without the approval of the Authority (such approval not to be unreasonably withheld or delayed):

- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the SUPPLIER and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
- (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the SUPPLIER, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
- (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period;
- (e) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Staff save for fulfilling assignments and projects previously scheduled of agreed;

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement SUPPLIER and any Replacement Sub-contractor of any notice to terminate employment given by the SUPPLIER or relevant Sub-contractor or received from any Staff regardless of when such notice takes effect.

## **Annex 2 - Charges**

**[REDACTED]**

## **Annex 3**

### **Specification**

#### **Service Obligations**

##### **1. Service aims:**

- 1.1. Improve the prison environment at HMP Isis, reducing the re - occurrence of violence and preventing disputes from escalating, by increasing the use of restorative approaches in response to incidents of violence and/or conflict.
- 1.2. Raise awareness amongst staff working at HMP Isis of restorative approaches, their potential benefits and their suitability for use in a range of situations.
- 1.3. Provide restorative justice facilitator training for a maximum of twenty-four participants per course, twice per financial year.

##### **2. Formal Restorative Justice Interventions**

- 2.1. The Service will work with a maximum case load of 15 cases at any one time.
- 2.2. Cases may be referred to the service by HMP Isis staff members via email to SUPPLIER of details of incident(s) and of those involved. SUPPLIER will also generate their own referrals via use of the Daily Briefing sheet as well as attendance at relevant Safer Custody meetings and positive working relationships with relevant internal staff, such as Safer Custody and OMU
- 2.3. On receipt of a referral, SUPPLIER will obtain all relevant information about the incident(s) and the individuals involved in order to decide whether a restorative justice intervention is appropriate. Discussions may be had at this stage with perpetrator(s), victim(s) and prison staff. Restorative justice interventions will not be undertaken in cases where:
  - A participant categorically does not wish to participate. Under no circumstances will a participant be persuaded or compelled to take part in a restorative justice intervention, AND/OR
  - An individual does not acknowledge or admit that they were involved in incident(s), AND/OR
  - The potential risks of a restorative justice intervention outweigh its potential benefits.
- 2.4. Each restorative justice intervention will involve one or more of the following methods being applied to a particular case:
  - A face to face meeting between all parties.
  - Shuttle mediation between all parties.
  - An exchange of information between the parties via letter.
- 2.5. SUPPLIER will liaise with the relevant management staff at HMP Isis in order to agree logistical arrangements appropriate to each case.
- 2.6. Prior to undertaking restorative justice interventions involving prisoners on the National Probation Service caseload, the offender manager of each NPS prisoner must be communicated with in order to gain his/her perspective on the suitability of restorative justice and invite his/her participation in the restorative interventions.
- 2.7. Throughout the duration of each case mandatory updates will be submitted at least fortnightly, via the NOMIS database, to each prisoner participant's case file.

- 2.8. Preparatory work will entail a restorative justice facilitator liaising with all parties to an incident in order to:
- Further explore what happened during the incident, including feelings and attitudes relevant to the incident and its impact.
  - Obtain information about the circumstances of the parties to the incident since the incident took place.
  - Ascertain the extent to which individuals are vulnerable due to substance abuse, mental health issues, language or communication difficulties, physical or learning disabilities, ill health or intimidation by a third party.
  - Provide all parties with further information about the restorative justice interventions
  - Confirm the extent to which the parties would like to take part in a restorative justice intervention.
  - Inform individuals of what will happen if he/she chooses not to participate in a restorative justice intervention.
  - Support any individual who decides not to proceed, in exercising their rights to opt out, and support any others who would have participated to cope with any disappointment.
  - Undertake a thorough risk assessment in relation to each participant taking part in a restorative justice intervention and specify what measures will be taken to manage identified risks.
- 2.9. Each restorative justice intervention will be completed within 12 weeks of the relevant referral, with sufficient time devoted to completing appropriate preparatory work all parties before shuttle mediation or a face to face conference takes place.
- 2.10. Each intervention will be delivered in line with the Restorative Justice Council's best practice guidelines.
- 2.11. During interventions SUPPLIER staff will communicate with individuals, and encourage them to communicate with one another, in a manner which:
- acknowledges their situation and their needs within the process
  - treats them fairly, with dignity and with respect, whilst recognising the harm that has been caused
  - is appropriate to those involved
  - encourages an open exchange of views
  - minimises any constraints on communication
  - is free from discrimination and oppression
- 2.12. SUPPLIER staff will, throughout the delivery of restorative justice interventions, pay particular attention to risk of harm, safeguarding and security matters and take appropriate, immediate action to protect participants and uphold prison security as necessary, for example utilising security alarms to call for officer assistance; submitting mercury intelligence reports.
- 2.13. Where participants have chosen not to meet or the risk assessment shows that it is unsafe for them to do so, shuttle mediation may be beneficial. This may be particularly suitable in particularly sensitive and complex cases and may be part of preparation for a face-to-face meeting at a later stage.
- 2.14. Where appropriate, a restorative justice facilitator will assist the parties to a case with the planning, preparation and writing of a letter, taking into consideration:
- their literacy skills, and possible need for support
  - the possibility of enlisting their supporters or others to assist them

- the need for letters to address the concerns of the victim(s)
- the need to manage expectations about the contents and style of the letter
- the need for letters to be both honest and respectful
- the need to risk assess letters for any hidden messages

2.15. All letters will be checked for risk of further harm and never handed over in a sealed envelope. Letters will be given to the victim/person harmed only when they have agreed that they are willing to receive it.

2.16. During follow up support, a restorative justice facilitator will liaise with the participants in the restorative justice intervention in order to:

- Provide all participants with the opportunity to discuss openly and honestly their thoughts and feelings about the restorative justice intervention and its outcomes.
- Provide participants with the opportunity to discuss openly any problems, difficult thoughts and feelings that have arisen as a result of the restorative justice intervention and/or that have not been resolved by the restorative justice intervention.
- Refer participants in each case to bodies who can provide them with long term support where necessary.
- Assist and/or supervise participants to complete their outcome agreement as agreed when it was formulated.
- If participants do not complete the agreement, assess whether any further support could realistically be given that would enable them to do so.
- Provide parties to the intervention with information, as appropriate, on how far participants have completed the outcome agreement.

2.17. Once a restorative justice intervention has concluded SUPPLIER will provide HMP Isis with a summary regarding the engagement of each participant, feedback about the process from each participant and the outcomes achieved by the intervention.

### **3. Staff and Prisoner Awareness Raising and Training**

3.1. Awareness Raising and Training will be delivered to prison staff and prisoners as part of this service in accordance with the Restorative Justice Council's best practice guidelines and approved trainer standards.

3.2. Awareness Raising may be delivered to HMP Isis's complete staff team. Full restorative justice practitioner training will be delivered to a team of 20 – 30 selected staff members.

3.3. PROPOSED VARIATION: Awareness Raising may be delivered to HMP Isis's complete staff team. Full restorative justice practitioner training will be delivered to up to 24 individuals per course. Individuals taking part in training may include prisoner violence reduction representatives, operational prison staff and non-operational prison staff.

3.4. Whilst practitioner training will comprise three days, each day may be delivered at weekly intervals so as to cohere with prison staffing arrangements.

3.5. Where the availability of prison staff permits, SUPPLIER staff will work alongside restorative justice trained officers to provide support and guidance as restorative justice trained officers begin to facilitate restorative interventions at the prison.

3.6. Where restorative justice trained officers facilitate one or more formal restorative justice intervention per month, case supervision sessions with a senior restorative practitioner will be provided by SUPPLIER on a quarterly basis. Minutes of case supervision sessions will be kept and shared with the officer receiving supervision, as well as their line manager.

3.7. Information on practitioner accreditation and achieving the restorative justice quality service mark will be provided to staff members and for the prison as a whole.

#### 4. Evaluation

4.1. Throughout the service, evaluation work will take place in order to provide an assessment of the outcomes of the service for individuals and the prison as a whole. This evaluation will involve the completion of a quantitative questionnaires by service users at the start and end of interventions. The questionnaire will include the following externally validated, quantitative measures:

- **The Conflict Resolution, Impulsivity and Aggression Questionnaire (CRAIQ)**, containing 26 items, which will focus on measuring levels of changing aggression.
- **The Belief About Aggression Scale** (Farrell, Meyer and White, 2001), which has previously been used during interventions with young adults to reduce violence. The scale will measure individual belief about using aggressive behaviour and actions in hypothetical situations.
- **CRIME PICS II**, a psychometric measure, commonly used during evaluations of offender interventions. This questionnaire is made up of 35 items and designed to measure changing attitudes towards offending, with participants rating their level of agreement with each statement along a five-point scale. The questionnaire will seek to measure participant's response along four scales: The General Attitude to Offending Scale; The Anticipation of Reoffending Scale; The Victim Hurt Denial Scale and The Evaluation of Crime as Worthwhile Scale.
- **Self Esteem Measure**, drawn from the Weinberger and Schwartz adjustment inventory (1990), will be used to create a self-esteem score in order to measure individual self-value.

4.2. Data from questionnaires will be analysed to form a detailed picture of how interventions have impacted prisoner's behaviour and their attitudes to violence. Individual's behaviour within custody before and after the restorative justice interventions will be monitored in order to demonstrate whether involvement in violence after interventions decreases, increases or stays the same. The Violence Diagnostic Tool will be used quarterly throughout the programme to monitor whether the service contributes to reductions in violence at the prison as a whole.

4.3. Monthly Reports will be submitted to the prison detailing caseload worked with, work completed with each individual and outcomes achieved. This report should also detail any unallocated cases with explanation, as well as barriers to work. A summary evaluation report reflecting on the service outcomes should also be submitted July 2019