



# Contract for Probation Scoping Report between the Probation Service and Unlocked Graduates

**THIS CONTRACT** is made on 11th November 2021

## **BETWEEN:**

**THE SECRETARY OF STATE FOR JUSTICE** of 102 Petty France, London, SW1H 9AJ acting through HER MAJESTY'S PRISON AND PROBATION SERVICE an executive agency, sponsored by the Ministry of Justice, ("HMPPS"); and the PROBATION SERVICE ("PS") (collectively, the "**Authority**" and/or "**Buyer**"); and

[**Unlocked Graduates**] (registered in England under number [REDACTED]), whose registered office is at [REDACTED] (the "**Supplier**"),

each a **party** and together the **Parties**.

## **BACKGROUND:**

The Authority wishes to appoint the Supplier to provide certain services ("Services") in relation to Probation Services on the terms set out in this Contract.

### **1. Definitions used in the Contract**

1.1 In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

**"Central Government Body"**

means a body listed in one of the following subcategories 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 at clause 17;

**"Commencement Date"**

means the date upon which the Supplier begins to deliver the Services.

**"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;

<b>"Controller"</b>	has the meaning given to it in the UKGDPR;
<b>"Buyer Cause"</b>	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
<b>"Data Protection Legislation"</b>	<ul style="list-style-type: none"><li>(i) the UKGDPR, the LED and any applicable national implementing Laws as amended from time to time</li><li>(ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy;</li><li>(iii) all applicable Law about the processing of personal data and privacy;</li></ul>
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
<b>"Data Protection Officer"</b>	has the meaning given to it in the UKGDPR;
<b>"Data Subject"</b>	has the meaning given to it in the UKGDPR;
<b>"Data Loss Event"</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
<b>"Data Subject Access Request"</b>	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>"Existing IPR"</b>	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
<b>"Expiry Date"</b>	means the date for expiry of the Contract as set out in clause 3.1 of the Contract;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Force Majeure Event"</b>	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding:

- i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;
- ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
- iii) any failure of delay caused by a lack of funds;

**"Good Industry Practice"**

standards, practices, methods and procedures conforming to the law and the exercise of 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 within the relevant industry or business sector;

**"Government Data"**

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, including any of the Buyer's confidential information, and which:  
i) are supplied to the Supplier by or on behalf of the Buyer; or  
ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or  
b) any Personal Data for which the Buyer is the Data Controller;

**"Information"**

has the meaning given under section 84 of the FOIA;

**"Information Commissioner"**

the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;

**"Insolvency Event"**

in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;

**"LED"**

Law Enforcement Directive (Directive (EU) 2016/680);

**"New IPR"**

all and intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;

**"Party"**

the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;

**"Personal Data"**

has the meaning given to it in the UKGDPR;

**"Personal Data Breach"**

has the meaning given to it in the UKGDPR;

<b>"Processor"</b>	has the meaning given to it in the UKGDPR;
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
<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 Buyer under the Contract;
<b>"Specification"</b>	means the specification for the Services to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in Schedule 1;
<b>"Staff"</b>	means all directors, officers, employees, agents, consultants, volunteers 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 Contract;
<b>"Staff Vetting Procedures"</b>	means vetting procedures that accord with good industry practice or, where applicable, the Buyer's procedures for the vetting of personnel as provided to the Supplier from time to time;
<b>"Sub-processor"</b>	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a contract;
<b>"Term"</b>	means the period from the commencement of the Contract to the Expiry Date as such period may be extended in accordance with clause 3.2 <b>[Not Used]</b> or terminated in accordance with the terms and conditions of the Contract;
<b>"UKGDPR"</b>	means the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679), as transposed into UK Law by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;
<b>"US-EU Privacy Shield Register"</b>	<p>a list of companies maintained by the United States of America Department for Commerce that have self-certified their commitment to adhere to the European legislation relating to the processing of personal data to non-EU countries which is available online at:</p> <p><a href="https://www.privacyshield.gov/list">https://www.privacyshield.gov/list</a>;</p>

- "VAT"** means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
- "Workers"** any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (<https://www.gov.uk/government/publications/procurementpolicynote-0815-tax-arrangements-of-appointees>) applies in respect of the Services;
- "Working Day"** means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In this Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) reference to a numbered clause is a reference to the whole of that clause unless stated otherwise;
- (c) references to a person include natural persons, a company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (d) 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";
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (f) the 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 Schedules;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (h) references to re-enactment of any statute or statutory provision (including any subordinate legislation) include references to the preservation, continuation of effect, conversion or incorporation of any of them into the law of England and Wales, Scotland and Northern Ireland, whether by the European Union (Withdrawal) Act 2018 or any other legislation relating to the withdrawal of the United Kingdom from the European Union;
- (i) references to the Contract are references to the Contract as amended from time to time; in accordance with its terms; and

## 2. The Services

2.1. The Supplier is to provide the Services set out in Schedule 1 of this Contract to deliver the high-level strategic directives required by the Buyer. In summary, pursuant to Schedule 1, the Supplier shall:

- (a) Conduct a 3 month, fixed term scoping activity on behalf of the Authority which shall research and review how the Authority could widen the recruitment intake of Probation Practitioners in order to address:
  - i. the urgent challenge of a lack of Frontline staff;

- ii. widen the current demographic (in terms of age/ethnicity and gender) amongst Probation Practitioners
- iii. The results of the aforementioned scoping activity shall be provided to the Authority in the form of a final report at the end of the 3 month Contract period which, through the Suppliers research and expertise in this field, shall identify the methodology and recommendation for any potential cross government scheme;
- iv. The Supplier shall ensure that the scoping activity outputs are both collated and presented to the Authority in an objective manner, to allow the Authority to make an informed, objective approach to recruitment based on the recommendations outline in the final report.

2.2. In consideration of the Supplier's performance of its obligations under the Contract and delivery of the Services in accordance with the Specification, the Buyer shall pay the Supplier the Charges.

2.3. The work under this Contract shall be conducted in a spirit of cooperation in order to achieve the shared aim of expanding workforce diversity amongst probation officers and delivering public services effectively and efficiently. Both Parties agree to act in good faith to support the objectives and principles of this Contract.

### **3. Term**

3.1. The Supplier shall deliver the Services outlined in the Specification at Schedule 1 for the period commencing on 17th November 2021 (the "Commencement Date") which shall end on 17th February 2022 (the "Expiry Date").

3.2. **[Not Used]**

### **4. Change**

4.1. This Contract may not be amended or varied other than in accordance with this clause 4.

4.2. Either Party may from time to time during the term of this Contract, by written notice to the other Party, request a Variation. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).

4.3. If a Variation Notice is issued, the Buyer and the Supplier must enter into good faith negotiations for a period of not more than 30 Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Contract.

4.4. No Variation to this Contract will be valid or of any effect unless agreed in writing. All agreed Variations shall form an addendum to this Contract.

## **5. Service Delivery**

- 5.1. The Supplier shall deliver the Services to the Buyer in accordance with the Specification, to a professional standard, using reasonable skill and care, in accordance with Good Industry Practice and using its own policies and processes for internal quality control, in compliance with all applicable law (see clause 7).
- 5.2. The Supplier shall promptly inform the Buyer if the Services cannot be delivered within at any time during the Term.
- 5.3. If the Supplier fails to provide any of the Services, or is unable to provide them on time, it must immediately:
  - a. inform the Buyer in writing and give reasons;
  - b. propose corrective action; and
  - c. provide a deadline for completing the corrective action.
- 5.4. The Supplier must, at its own risk and expense, provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned in good working condition or equivalent to the Buyer on expiry or termination of the Contract.

## **6. The Buyer's obligations to the Supplier and Indemnities**

- 6.1. If the Supplier fails to comply with the Contract as a result of a Buyer Cause:
  - 6.1.1. the Buyer cannot terminate the Contract under clause [10];
  - 6.1.2. the Supplier is entitled to the payment of its reasonable and proven additional expenses, and to relief from liability under this Contract;
  - 6.1.3. the Supplier is entitled to such reasonable additional time needed to deliver the Services;
  - 6.1.4. the Supplier cannot suspend the ongoing supply of the Services.
- 6.2. Clause 6.1 only applies if:
  - 6.2.1. the Supplier gives notice to the Buyer within 10 Working Days of becoming aware of any Buyer Cause;
  - 6.2.2. demonstrates that the failure only happened because of the Buyer Cause; and
  - 6.2.3. makes best endeavours to mitigate the impact of the Buyer Cause.

## **7. Compliance with Laws and Insurance**

- 7.1. The Supplier agrees to comply with all laws regulating the way it operates, its work practices, the work it carries out and the Staff it engages.
- 7.2. The Supplier must, in connection with provision of the Services, use reasonable endeavours:
  - (a) to comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at

([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf) ) and such other corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;

- (b) to support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010;
- (c) not to use or allow its subcontractors to use modern slavery, child labour or inhumane treatment;
- (d) to meet the applicable Government Buying Standards applicable to Services which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

7.3. The Supplier will have an Equal Opportunities Policy and where the Services involves work with vulnerable adults, children, young people or other vulnerable groups, a Safeguarding Children Policy and or Safeguarding Vulnerable Adults Policy shall be in place to promote good practice and ensure risks to vulnerable people are assessed and mitigated appropriately.

7.4. **[Not used]**

7.5. The Supplier shall comply with the Equality Act 2010 and shall not treat one individual or group of people less favourably than others because of age, disability, gender reassignment, marriage and civil partnership, race religion and belief, pregnancy and maternity, sex and sexual orientation and, further shall seek to promote equality among its employees and generally.

7.6. **[Not used]**

## **8. Confidentiality and IPR**

8.1 Each Party agrees to not disclose, use or exploit any information that could reasonably be considered as the disclosing party's confidential information and shall not disclose any Confidential Information belonging to the other Party without the other Party's prior written consent, except to such extent as may be necessary for the performance of the Party's obligations under this Contract or required by law. The Supplier shall ensure that Staff, professional advisors and consultants are aware of the Supplier's confidentiality obligations under the Contract.

8.2 The Supplier may disclose the Buyer'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. If required by the Buyer, 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 Buyer.

8.3 Nothing in clause 8.1 prevents the Buyer disclosing any Confidential Information obtained from the Supplier:

- a. for the purpose of the examination and certification of the Buyer'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 Buyer has used its resources;



- c. 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 Buyer

provided that in disclosing information under clauses 8.3 (d) and (e) the Buyer 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.

- 8.4 Each party shall retain ownership of their existing intellectual property rights ('IPR'). The Supplier will grant to the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, as needed, any pre-existing IPR required to receive or benefit from the Services under this Contract. Any New IPR created by the Supplier by virtue of this Contract, shall be owned by the Buyer. This scoping activity (and the subsequent draft and final reports) have been commissioned by the Buyer and as such, the Buyer has sole ownership of these reports to do as they see fit, and are not beholden to use what has been defined. Any enactment of the proposed recommendations shall be at the Buyer's sole discretion.

## **9. Monitoring Review and Completion Report**

- 9.1 The Parties will each appoint a single point of contact to act on all matters in relation to the Contract and the Services. For the purposes of this Contract the contact details are given in Schedule 3.
- 9.2 The Supplier is to comply with the management information requirements outlined in the Specification at Schedule 1. The Parties shall meet at the eight (8) week point to present the draft outline report as outlined in Schedule 1, and at the twelve (12) week point (at least 5 Working Days prior to the Expiry Date) to present and discuss the final report as outlined in Schedule 1. The timing, location and attendee list of the aforementioned meetings shall be agreed upon by both Parties at least 5 working days prior to these dates, and the report(s) shall only be issued to those attendees which have been agreed upon by both Parties.
- 9.3 Eight (8) weeks from the date of Contract Commencement, the Supplier shall provide the Buyer with a draft outline report which demonstrates their progress in line with the specification as identified in Schedule 1, with an indication of the proposed recommendations based on the work to date. The format and presentation of this report shall be agreed upon by both Parties prior to the aforementioned date.
- 9.4 Twelve (12) weeks from the date of Contract Commencement, the Supplier shall provide the Buyer with a final report which addresses all the requirements as identified within Schedule 1. The format and presentation of this report shall be upon agreed by both Parties prior to the aforementioned date.

- 9.5 Both the draft and final report shall be presented to the Buyer in an objective manner, which does not overly favour niche recommendations specific to the Supplier, and as such only the Supplier can provide. This is to ensure that there is no bias within the Buyer's department when reviewing/approving/accepting and/or rejecting any proposed recommendations. Where the Buyer feels that elements of the report(s) are not presented in line with the parameters as set out in Schedule 1, the Buyer reserves the right to challenge the report in line with the outcomes required in Schedule 1.
- 9.6 Indicative Attendee List (shall be subject to change and agreed upon by both Parties prior to the meeting(s):

	Buyer Representative (Role and Name)	Supplier Representative (Role and Name)
1	[REDACTED]	[REDACTED]
2	[REDACTED]	
3	[REDACTED]	
4	[REDACTED]	
5	[REDACTED]	

## 10 Termination

- 10.1 The Buyer may terminate this Contract with immediate effect where the Supplier has:
- offered, given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or agreeing not to do or for having done or having agreed not to do any act in relation to this Contract; or
  - committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;
  - given any fee or reward the receipt of which is an offence under Section 117(2) and (3) of the Local Government Act 1972;
  - insolvency proceedings brought against them;
  - been found to be in material breach of any other term of this Contract; or
  - committed any criminal offence referred to in the Public Contracts Regulations 2015, regulations 57(1) and 57(2).

- 10.2 The Buyer has the right to terminate this Contract at any time without reason or liability before the Expiry Date by giving the Supplier not less than 10 days' written notice and in such a case clause 10.3(a) to 10.3(f) applies.

- 10.3 Where the Buyer terminates the Contract under clause 10.1 all of the following apply:

- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement deliverables for the rest of the term of the Contract;
- (b) the Buyer's payment obligations under the terminated Contract shall stop immediately;
- (c) the accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Government Data except where required to retain copies by law;
- (e) the Supplier must promptly return any of the Buyer's property provided under the Contract; the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement;
- (f) the following clauses survive the termination of the Contract: 6 [buyers obligations to supplier], 18.1 [Probation Service Requirements], 10 [termination], 11 [Data Protection], 8 [confidentiality], 8 [info sharing], 25 [invalidity/severability], 22 [entire agreement] and any clauses which are expressly or by implication intended to continue.

#### 10.4 Termination by the Supplier

- (a) The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.
- (b) If a Supplier terminates the Contract under clause 10.4(a):
  - i. the Buyer must promptly pay all outstanding charges incurred to the Supplier;
  - ii. the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;
  - iii. clauses 10.3(d) to 10.3(f) apply.

#### 10.5 Indemnities

- (a) Neither Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) shall be more than 125% of the Charges paid or payable to the Supplier.
- (b) Neither Party shall be liable to the other for:
  - v. any indirect losses;
  - vi. loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- (c) Notwithstanding clause 10.5(a) neither Party limits or excludes any of the following:
  - i. its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
  - ii. its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
  - iii. any liability that cannot be excluded or limited by law.
  - iv. wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract;
  - v. non-payment by the Supplier of any tax or National Insurance.
  - vi. any claim is made against the Buyer 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 (an "IPR Claim"). In this case, the Supplier shall

- indemnify the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
- vii. any and all Losses incurred by the Buyer if the Supplier breaches clause 11 and any Data Protection Legislation; in which case the Supplier shall indemnify the Buyer in full and without limit.

- (d) Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- (e) If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## 11 Data Protection

11.1 The Parties acknowledge that for the purposes of Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor. It is not anticipated that the Supplier will be processing Personal Data as part of its performance of the Services provided under the Contract, and as such Schedule 2 shall not apply for the purposes of this Contract.

11.2 Notwithstanding clause 11.1, the Supplier shall:

- (a) notify the Authority immediately if it considers any Buyer instructions infringe the Data Protection Legislation;
- (b) at its own cost, provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to starting any processing. Such assistance may, at the Buyer's discretion, include:
- a systematic description of the envisaged processing operations and the purpose of the processing;
  - an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - an assessment of the risks to the rights and freedoms of Data Subjects; and
  - the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- (c) in relation to any Personal Data processed in connection with its obligations under the Contract:
- process that Personal Data only in accordance with Schedule 2 unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Buyer before processing the Personal Data unless prohibited by Law;
  - ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event having taken account of the nature of the data to be protected, harm that might result from a Data Loss Event, the state of technological development and the cost of implementing any measures;
- (d) ensure that:
- Staff do not process Personal Data except in accordance with the Agreement (and in particular Schedule 2);
  - it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to Personal Data and ensure that they:

- a. are aware of and comply with the Supplier's duties under this clause 11;
    - b. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor; 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 Buyer or as otherwise allowed under the Contract;
    - c. have undergone adequate training in the use, care, protection and handling of the Personal Data
  - (e) not transfer Personal Data outside the EU unless Approved and:
    - i. the Buyer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with UKGDPR Article 46 or s.75 of the DPA) as determined by the Buyer;
    - ii. the Data Subject has enforceable rights and effective legal remedies;
      - a. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Buyer in meeting its obligations); and
      - b. the Supplier complies with any reasonable instructions notified to it in advance by the Buyer with respect to the processing of the Personal Data
  - (f) at the written direction of the Buyer, delete or return Personal Data (and any copies of it) to the Buyer on termination of the Contract unless the Supplier is required by Law to retain the Personal Data;
  - (g) subject to clause 11.3, notify the Buyer immediately if it:
    - i. receives a Data Subject Request (or purported Data Subject Request);
    - ii. receives a request to rectify, block or erase any Personal Data;
    - iii. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
    - iv. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
    - v. 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
    - vi. becomes aware of a Data Loss Event.
  - (h) The Supplier's obligation to notify under clause 11.2 (g) includes the provision of further information to the Buyer in phases as details become available.
- 11.3 Taking into account the nature of the processing, the Supplier shall provide the Buyer with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under clause 11.2 (g) (and insofar as possible within the timescales reasonably required by the Buyer) including by promptly providing:
- (a) the Buyer with full details and copies of the complaint, communication or request;

- (b) such assistance as is reasonably requested by the Buyer to enable the Buyer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Buyer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Buyer following any Data Loss Event; and
- (e) assistance as requested by the Buyer with respect to any request from the Information Commissioner's Office or any consultation by the Buyer with the Information Commissioner's Office.

11.4 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 11. This requirement does not apply if the Supplier employs fewer than 250 people unless the Authority determines that the processing:

- (a) is not occasional;
- (b) includes special categories of data as referred to in Article 9(1) of the UKGDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UKGDPR; and
- (c) is likely to result in a risk to the rights and freedoms of Data Subjects.

11.5 The Supplier shall allow audits of its Data Processing activity by the Buyer or the Buyer's designated auditor.

11.6 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

11.7 Before allowing any Sub-processor to process any Personal Data in connection with the Contract, the Supplier shall:

- (a) notify the Buyer in writing of the intended Sub-processor and processing;
- (b) obtain Approval;
- (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 11 such that they apply to the Sub-processor; and
- (d) provide the Buyer with such information regarding the Sub-processor as the Buyer reasonably requires.

11.8 The Supplier remains fully liable for the acts and omissions of any Sub-processor.

11.9 Notwithstanding the provisions of clause 4 [variations], the Buyer may, at any time on not less than 30 Working Days' notice, revise this clause 11 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 the Agreement).

11.10 The Parties shall take account of any guidance published by the Information Commissioner's Office and, notwithstanding the provisions of clause 14, the Buyer may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance published by the Information Commissioner's Office.

11.11 In relation to Personal Data processed for Law Enforcement Purposes, the Supplier shall:

- (a) maintain logs for its automated processing operations in respect of:
  - i. collection;
  - ii. alteration;

- iii. consultation;
- iv. disclosure (including transfers);
- v. combination; and
- vi. erasure.

(together the “**Logs**”).

(b) ensure that:

- i. the Logs of consultation make it possible to establish the justification for, and date and time of, the consultation; and as far as possible, the identity of the person who consulted the data;
- ii. the Logs of disclosure make it possible to establish the justification for, and date and time of, the disclosure; and the identity of the recipients of the data; and
- iii. the Logs are made available to the Information Commissioner’s Office on request

(c) use the Logs only to:

- i. verify the lawfulness of processing;
- ii. assist with self-monitoring by the Buyer or (as the case may be) the Supplier, including the conduct of internal disciplinary proceedings;
- iii. ensure the integrity of Personal Data; and assist with criminal proceedings

(d) as far as possible, distinguish between Personal Data based on fact and Personal Data based on personal assessments; and

(e) **[Not Used]** where relevant and as far as possible, maintain a clear distinction between Personal Data relating to different categories of Data Subject, for example:

- i. persons suspected of having committed or being about to commit a criminal offence;
- ii. persons convicted of a criminal offence;
- iii. persons who are or maybe victims of a criminal offence; and
- iv. witnesses or other persons with information about offences.

11.12 This clause 11 applies during the Term and indefinitely after its expiry.

## 12 Freedom of Information

12.1 The Supplier acknowledges that the Buyer is subject to the requirements of the FOIA and the EIR.

12.2 The Supplier shall transfer to the Buyer 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 Buyer a copy of all Information requested in the Request for Information in its possession or control in the form that the Buyer requires within 5 Working Days (or such other period as the Buyer may specify) of the Buyer’s request;
- (b) provide all necessary assistance as reasonably requested by the Buyer to enable the Buyer to comply with its obligations under the FOIA and EIR; and
- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Buyer.

- 12.3 The Supplier acknowledges that the Buyer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier.
- 12.4 The Buyer 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.

### **13 Communication and Notices**

- 13.1 All notices and communications under this agreement shall only be deemed served if made in writing to the single point of contact as outlined in Schedule 3 and are considered effective on the working day of delivery as long as sent via email (without an error message or out of office being received) before 5:00pm on that working day, otherwise the notice is effective on the next Working Day.
- 13.2 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

### **14 Publicity**

- 14.1 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer (not to be unreasonably withheld) and must take all reasonable steps to ensure that Supplier Staff do not either. The Authority will communicate with the Supplier if there is an intention to conduct any publicity regarding this Contract, within a reasonable timeframe.

### **15 Complaints**

- 15.1 The Supplier shall deal with any complaints about the Services, received from whatever source, in accordance with its complaints procedure, which shall be made available to the Buyer on request.
- 15.2 The Supplier shall keep a written record of all complaints received in respect of the Services. A summary in writing of all complaints received about the Services shall be provided to the Buyer at regular intervals.

### **16 Dispute Resolution**

- 16.1 The Parties shall consult each other in good faith to reach an agreement to resolve any dispute which may arise with respect to any matter relating to this Contract.
- 16.2 If the dispute is not resolved in accordance with clause 16.1 above, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to



use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 16.3 to 16.5.

16.3 Unless the Buyer refers the dispute to arbitration using clause 16.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- (a) determine the dispute;
- (b) grant interim remedies;
- (c) grant any other provisional or protective relief.

16.4 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

16.5 The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 16.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 16.4.

16.6 The Supplier cannot suspend the performance of the Contract during any dispute.

## 17 Pricing and Payment (Charges)

17.1 In exchange for the Services the Supplier shall be entitled to invoice the Buyer for the Charges as outlined below:

Payment Milestones	Amount
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

17.2 All Charges:

- (a) exclude VAT, which is payable on provision of a valid VAT invoice;
- (b) include all costs connected with the supply of Services.

17.3 All invoices must be sent, quoting a valid purchase order number (PO Number), to:

[REDACTED].

The Supplier must send an invoice to the Buyer within 10 Working Days of [the month end the Charges apply to OR receipt of your countersigned copy of this Contract].

17.4 A Supplier invoice is only valid if it:

- (a) includes all appropriate references including the purchase order number and other details reasonably requested by the Buyer;
  - (b) includes a detailed breakdown of Services which have been delivered in accordance with the Specification (if any).
- 17.5 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account (which is to be duly notified to the Buyer upon contract award).
- 17.6 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Services unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 17.5. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 16.
- 17.7 The Buyer may retain or set off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 17.8 The Supplier must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non payment.

## **18 Probation Service Requirements**

- 18.1 The Buyer has various requirements which must be met as part of this Contract. The Supplier commits to ensuring that they and any sub-contractor involved in the delivery of the services, satisfy these requirements:
  - (a) The Supplier must allow any auditor appointed by the Buyer access to their premises (on reasonable notice) to verify contract accounts, records and performance of everything to do with the Contract and provide information to the auditor and reasonable co-operation at their request.
  - (b) Any sub-contracts entered into by the Supplier in relation to the provision of these services must have been procured in line with the Public Contracts Regulations 2015 (PCR 2015) or any subsequent applicable legislation, with special regard given to the mandatory exclusion grounds set out in regulation 57.

## **19 Assignment.**

Neither party shall assign, transfer or otherwise dispose of any of its rights or transfer (including by way of novation) or otherwise dispose of any of its obligations under this Contract, without the prior written consent of the other party and any such purported assignment, transfer or disposal shall be void.

## **20 Third Party Rights**

A person who is not a party to this Contract may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999. This clause does not affect any right or remedy

of a third party which exists or is available independently from the Contracts (Rights of Third Parties) Act 1999.

## **21 Waiver**

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party. A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

## **22 Entire Agreement**

(a) This Contract (and the documents referred to in it) contain the whole agreement between the parties relating to the transactions contemplated by this Contract and supersede all previous agreements between the parties relating to these transactions. Except as required by statute, no terms shall be implied (whether by custom, usage or otherwise) into this Contract.

(b) The Supplier acknowledges that, in agreeing to enter into this Contract, it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those set out in this Contract and the documents referred to in it) made by or on behalf of the Authority at any time before the signature of this Contract.

## **23. Force Majeure**

- 23.1 Subject to compliance with clause 23.2, neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure.
- 23.2 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 23.1 it shall:
- immediately notify the other by the most expeditious method then available;
  - inform the other of the period for which it is estimated that such failure or delay shall continue;
  - use its best endeavours to resume performance of its obligations as quickly as possible and minimise the duration and impact of such failure or delay.
- 23.3 For the avoidance of doubt, the Buyer shall not be required to pay the Supplier in respect of any period during which (and to the extent that) the Supplier is prevented or delayed in performing its obligations due to Force Majeure. In these circumstances, the Charge shall be adjusted and any necessary refund or credit effected in accordance with the Buyer's reasonable instructions.

## **24. No partnership or agency**

The Supplier shall at all times be an independent contractor and nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Buyer and the Supplier and, accordingly, the Supplier shall not be authorised to act in the name of, or on behalf of, or otherwise bind the other party or the Buyer save as expressly permitted by the terms of this Contract.

## 25. Severability

The provisions contained in each clause and paragraph of this Contract shall be enforceable independently of each of the others and their validity shall not be affected if any of the others is invalid. If any provision is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.

## 26 Counterparts

This Contract may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this Contract by executing a counterpart.

## 27. Governing Law and Jurisdiction

27.1 This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

27.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute, claim or controversy arising out of or in connection with this Contract (including a dispute, claim or controversy relating to any non-contractual obligations arising out of or in connection with this Contract) and the parties accordingly submit to the exclusive jurisdiction of the English courts.

THIS CONTRACT has been signed on behalf of the Parties by their duly authorised representatives on the date which appears on page 1.

**Signature on behalf of HMPPS/PS:**

**Signature on behalf of Unlocked Graduates:**

<b>Signature</b>		<b>Signature</b>	
<b>Print Name</b>		<b>Print Name</b>	
<b>Position</b>		<b>Position</b>	
<b>Date</b>		<b>Date</b>	



Ministry  
of Justice

Official



HM Prison &  
Probation Service

## **SCHEDULE 1**

### **Service Specification**

#### **1. BACKGROUND**

Within the current Probation Service landscape there is a persistent gap in terms of required staffing levels (inclusive of a diverse skillset and demographic) on the frontline which is an urgent challenge the Buyer seeks to proactively resolve.

In order to address this challenge, the Buyer seeks to re-professionalise Probation Service careers focusing on recruiting high achieving talent from both wider disciplines, and a wider demographic displaying a workforce which is more representative of People on Probation.

#### **2. PURPOSE (OVERALL AIMS)**

The overall aims of this service are:

- The Supplier shall conduct a 3 month, fixed term scoping activity on behalf of the Authority which shall research and review how the Authority could widen the recruitment intake of Probation Practitioners in order to address the lack of frontline staff, which is considered an urgent challenge by the Authority;
- To research and review how to widen the current demographic (in terms of age/ethnicity and gender) amongst Probation Practitioners, specifically targeting career changers.

#### **3. THE SERVICE**

In line with the overall aims of the Service as stipulated above and below, at the end of the 3 month Contract Period the Supplier shall produce one (1) final report on its findings with both methodology and recommendations clearly identified.

This report shall:

- Clearly set out next steps that the Probation Service could take to address the challenge of recruiting and retaining those embarking on second (and subsequent) careers, including the potential for a pilot marketing scheme. The anticipated costs and benefits of any potential solutions shall be identified in the report, with a preferred recommendation clearly identified based on evidence and rationale;
- The report should pay particular attention to attracting candidates with protected characteristics that are under-represented in the service (including but not limited to men and people from ethnic minority groups);
- The report should pay particular attention to the challenges faced by 'hard to fill sites' (e.g. London), ensuring alignment with steps the service is already taking to address recruitment and retention difficulties in certain Probation Delivery Units (PDU), with any unique or additional measures for these PDUs clearly identified;
- There should be explicit consideration of how the recommendations align with existing and planned activity for **Professional Qualification in Probation (PQiP)** recruitment &

retention within the service, ensuring that duplication is avoided and that opportunities for efficiencies are highlighted;

- There should be explicit consideration of how the Probation Service can connect with other Civil Service approaches to the recruitment (examples including but not limited to into teaching, healthcare, etc) and retention of those embarking on second (and subsequent) careers, whilst acknowledging the particular specialism of a career in the Probation Service;
- The report shall be presented in an objective manner with sound rationale and its recommendations shall not consist of excessively niche recommendation(s) which could potentially preclude other potential Suppliers, in any way, in relation to any subsequent future tender activities;
- The report should take into account the particular challenges (and opportunities) to recruiting and retaining career changers in the context of the Covid-19 pandemic and recovery;
- The Supplier shall conduct this scoping activity utilising information which can be found within the public domain. As such, the Supplier shall not be required to access any internal data and/or systems for the purposes of the scoping activity under this Contract;
- A draft version of the report shall be shared with the Buyer representative(s) as outlined under clause 9.6 of this Contract, eight (8) weeks post Contract Commencement to allow time for fact checking and clarification of any findings & recommendation(s) before a final report is submitted by the end of the contract period, which shall be twelve (12) weeks post Contract Commencement date;
- Be collated and presented to the Authority in an objective manner, to allow the Authority to make an informed approach to recruitment based on the recommendations outlined in the final report, and to preserve the integrity of any future competition(s) which may arise as a result of this report;
- Within 5 Working Days prior to the Contract Expiry date, the Supplier shall issue the final report to the Buyer attendees as identified in clause 9.6 of this Contract. The Buyer shall reserve the right to accept/approve/enact/or reject any of the recommendation(s) and/or methodologies presented by the Supplier in both the draft and/or final report. This shall be at the Buyer's sole discretion and shall be considered internally in terms of the most suitable approach(es) before a final consensus is made prior to the Contract Expiry date;
- Upon review of both the draft and/or final report, the Buyer shall review the report and feedback any comments by way of email within 3 Working Days to allow the Supplier to address these.

#### 4. SERVICE OBJECTIVES (DESIRED OUTCOMES)

This results of this scoping activity shall be provided to the Authority in the form of one (1) final report at the end of the 3 month Contract period. This report shall:

- Through the Suppliers research and expertise in this field, shall identify both the **methodology** and **recommendation** for any potential cross government scheme (including the identification of a preferred recommendation).

## SCHEDULE 2 – [Not Used]

1. The contact details of the Authority's Data Protection Officer are: [data.compliance@justice.gov.uk](mailto:data.compliance@justice.gov.uk) or Data Protection Officer, 102 Petty France, London, SW1H 9AJ.
2. The contact details of the Supplier's Data Protection Officer are: [Insert contact details].
3. The Supplier shall comply with any further written instructions with respect to processing by the Authority.
4. Any such further instructions shall be incorporated into this Schedule 2.

<b>Agreement:</b>	[enter title of agreement from title page]
<b>Description Of Authorised Processing</b>	<b>Details</b>
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract. Example: The processing is needed in order to ensure that the Supplier can effectively deliver the contract to provide a service to members of the public]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data being processed	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>





Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete Unless requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

**Information Sharing Agreement**

[To be appended here]

**SCHEDULE 3**  
**Nominated Single Points of Contact**

In accordance with clause 9.1 of the Contract, the contact details for nominated single points of contact of the Parties are: -

<b>Name of Organisation</b>	<b>Link Officers Name &amp; Contact Details</b>
Ministry of Justice: People Services Category	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
Unlocked Graduates	[REDACTED] [REDACTED] [REDACTED] [REDACTED]



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Probation Service

**SCHEDULE 4**  
**[Not Used]**