

## **A Contract for Services**

Between

(1) **The Secretary of State for Justice**

and

(2) **Reed in Partnership**

Dated

November 2020

**relating to HMPPS Co-Financing Organisation  
(CFO) provision for the European Social Fund  
(ESF) 2020-2023 Activity Hubs in the London  
region**

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**This contract** is dated:

**Parties:**

- (1) The Secretary of State for Justice of 102 Petty France, London, SW1H 9AJ acting as part of the Crown (the **Authority**); and
- (2) Reed in Partnership with registered company number 0851645 whose registered office is 31 Amelia Street, Greater London, SE17 3PY (the **Supplier**)

(Each a **Party** and together the **Parties**).

**Whereas:**

- (A) Reduction of re-offending is a key objective for the Authority. The Authority was granted status by the European Social Fund (ESF) as a national co-financing organisation (CFO) in January 2009 and requires suppliers to support in its national programme, subject to compliance with ESF Requirements.
- (B) Following a competitive tender process, the Authority wishes to appoint the Supplier to provide services supporting an Activity Hub programme intended to increase effective engagement by Participants with mainstream or core services and to encourage participation in activities to assist Participants to lead law abiding lives and the Supplier agrees to provide those services in accordance with these terms and conditions;
- (C) The Activity Hub(s) in the ESF Contract Area provided under the Services shall form part of a national framework across England and the Supplier shall be expected to collaborate with other Hub Providers and agencies to support the Authority objectives.

**Now it is hereby agreed:**

**A General**

**1 Definitions and Interpretation**

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

**Accepted**

shall mean:

- (a) in relation to any Activity;
  - (i) that the Minimum Activity Baseline for that Activity has been delivered to the reasonable satisfaction of the Authority and in accordance with the terms of this Contract; and
  - (ii) that the Supplier has completed an HCAT in respect of that Activity and submitted it to the Authority for Approval using the Authority Case Management System and the Authority has Approved such HCAT;
- (b) in relation to any Enrolment:
  - (i) that the Enrolment has been delivered in accordance with the terms of this Contract; and

|                                  |                                                                                                                                                                                                                                                                                                   |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                  | <p>(ii) that the Supplier has completed an Enrolment Form in respect of that Enrolment and submitted it to the Authority for Approval using the Authority Case Management System and this has been Approved by the Authority.</p> <p>and Acceptance and Accept shall be construed accordingly</p> |
| <b>Action Plan</b>               | means the rectification process described as such in Schedule 11 (Performance Management/PIP Action Plan Process)                                                                                                                                                                                 |
| <b>Activity</b>                  | means each activity forming part of the Services which are summarised in sections 3.55 - 3.71 of the Specification (or such other activities that the parties may agree from time to time in writing) in relation to any Activity Type                                                            |
| <b>Activity Fee</b>              | means the fee element of the Price further described in Schedule 2 (Prices and Invoicing)                                                                                                                                                                                                         |
| <b>Activity Hub</b>              | means the hub(s) to be provided by the Supplier and other Hub Providers across England, as further described in section 2 of the Specification and which for the Supplier are those described in the "Hub Location Model Form" which forms part of the Tender                                     |
| <b>Activity Type</b>             | <p>means the categorisation of Activities as set out in sections 3.55 to 3.67 of the Specification as follows:</p> <p>(a) Human/Citizenship (Service Level 2);</p> <p>(b) Community and Social Factors (Service Level 3);</p> <p>(c) Interventions and Services (Service Level 4)</p>             |
| <b>Affected Party</b>            | means the Party seeking to claim relief in respect of a Force Majeure Event                                                                                                                                                                                                                       |
| <b>Affiliate</b>                 | means in relation to a body corporate, any other entity which directly or indirectly Controls is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time                                                                                         |
| <b>Approval and Approved</b>     | means the prior written consent of the Authority, or in the case of Acceptance, the written confirmation of approval provided by the Authority in such form as it determines from time to time                                                                                                    |
| <b>Associated Person</b>         | means as it is defined in section 44(4) of the Criminal Finances Act 2017                                                                                                                                                                                                                         |
| <b>Authorised Representative</b> | means the Authority representative named in a Variation Form as authorised to approve Changes                                                                                                                                                                                                     |

|                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <b>Authority Case Management System</b> | means the case management system licensed and used by the Authority from time to time to monitor activities under the Services                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Authority Data</b>                   | means: <ul style="list-style-type: none"> <li>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> <li>(i) supplied to the Supplier by or on behalf of the Authority; or</li> <li>(ii) which the Supplier is required to generate, process, store or transmit pursuant to the Contract; or</li> </ul> </li> <li>(b) any Personal Data for which the Authority is the Controller</li> </ul> |
| <b>Authority Obligations</b>            | shall be as defined in clause 1.2.13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Authority Premises</b>               | means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (where expressly provided in the Regional Annex)                                                                                                                                                                                                                                                                                                                                 |
| <b>Authority Software</b>               | means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Supplier for the purposes of providing the Services (including but not limited to the Authority Case Management System)                                                                                                                                                                                                                                                                                                         |
| <b>Authority System</b>                 | means the Authority's computing environment (consisting of hardware, software (including Authority Software) and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services                                                                                                                                                                |
| <b>BCDR Plan</b>                        | means the business continuity and disaster recovery plan formulated by the Supplier during the Implementation Period and Approved and reviewed annually by the Parties in accordance with clause 41                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Baseline Security Requirements</b>   | means the security requirements in Annex 1 of Schedule 6 (Information Assurance and Security)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>BPSS</b>                             | means the Government's Baseline Personnel Security Standard for Government employees                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Breach of Security</b>               | means an occurrence of:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

|                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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|                                           | <ul style="list-style-type: none"> <li>(a) any unauthorised access to or use of the ICT Environment and/or any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract;</li> <li>(b) the loss (physical or otherwise) and/or unauthorised disclosure of any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract, including copies; and/or</li> <li>(c) any part of the Supplier System ceasing to be compliant with the Certification Requirements</li> </ul> |
| <b>BS 8555</b>                            | means the standard published to help organisations improve their environmental performance by the British Standards Institution                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Business Continuity Event</b>          | means the event of any occurrence which would reasonably prevent the Supplier from accessing the Premises or Authority Premises or otherwise providing the Services in accordance with the Contract                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Certification Requirements</b>         | means the requirements set out in paragraph 5 of Schedule 6 (Information Assurance and Security)                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>CESG</b>                               | means of the Government's Communications Electronics Security Group                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Change in Law</b>                      | means any change in Law which affects the performance of the Services which comes into force after the Commencement Date                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Commencement Date</b>                  | means the date specified in clause 5.1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Commercially Sensitive Information</b> | <p>means the information listed in Schedule 4 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> <li>(a) the Price; and/or</li> <li>(b) the Supplier's business and investment plans which the Supplier has informed the Authority would cause the Supplier significant commercial disadvantage or material financial loss if it was disclosed</li> </ul>                                                                                                                 |
| <b>Comparable Supply</b>                  | means the supply of services to another customer of the Supplier which are the same or similar to any of the Services                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Compliance Fee</b>                     | the fee calculated in accordance with paragraph 1.6 of Schedule 2 (Prices and Invoicing)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Compliance Measures</b>                | means the Fixed Compliance Measures and the Variable Compliance Measures as described in sections 5.22 to 5.41 of the Specification used by the Authority as part of its monitoring of the Supplier's delivery of the Services                                                                                                                                                                                                                                                                                                                                                |

which shall be determined by the Authority from time to time in accordance with the Specification

**Confidential Information**

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

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause 24;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information

**Contract**

means these terms and conditions, the attached Schedules and any other provisions the Parties expressly agree are included

**Contracting Authority**

means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations

**Contracts Finder**

means the Government's portal for public sector procurement opportunities

**Control**

means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and Controls and Controlled are interpreted accordingly

**Controller**

means, 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

**Copyright**

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

**Critical Compliance Measure (or CCM)**

means a Compliance Measure which has been nominated to be a Critical Compliance Measure by the Authority in accordance with section 5.34 of the Specification

**Crown**

means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to,

|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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|                                          | Government ministers, Government departments, Government offices and Government agencies and Crown Body is an emanation of the foregoing                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>DAF Funding</b>                       | means the funding allocated to a discretionary access fund in the Profile, as further described in paragraph 1.5.4 of Schedule 2 (Price and Payment)                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Data Loss Event</b>                   | means any event which results, or may result, in unauthorised access to Personal Data held by the Supplier under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data                                                                                                                                                                                                                                                                 |
| <b>Data Protection Impact Assessment</b> | means an assessment by the Controller of the effect of the envisaged processing on the protection of Personal Data                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Data Protection Legislation</b>       | means: <ul style="list-style-type: none"> <li>(a) the GDPR, the LED and applicable implementing Laws;</li> <li>(b) the DPA to the extent that it relates to the processing of Personal Data and privacy;</li> <li>(c) all applicable Laws relating to the processing of Personal Data and privacy.</li> </ul>                                                                                                                                                                                                             |
| <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 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>Database Rights</b>                   | means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Default</b>                           | means any breach of the obligations or warranties of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other                                                                                                                |
| <b>DOTAS</b>                             | means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI |

2012/1868 made under section 132A of the Social Security Administration Act 1992

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DPA</b>                        | means the Data Protection Act 2018                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>EIR</b>                        | means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Enrolment</b>                  | means the activity forming part of the Services for the enrolment of Participants to the Activity Hub, as is further described in the Specification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Enrolment Fee</b>              | means the fee element of the Price described further at Schedule 2 (Prices and Invoicing)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Enrolment Form</b>             | means the form (in the form and containing the information as the Authority may reasonably require from time to time) to be completed by the Supplier and submitted to the Authority evidencing that the Enrolment has Accepted. (an example of the Enrolment Form at the Commencement Date is set out at Schedule 14 (Sample Forms) (Part A)                                                                                                                                                                                                                                                                                                                                    |
| <b>ESF Contract Area</b>          | means the geographical area serviced by one or more Activity Hub's as further described in section 2.5 of the Specification and which for the Supplier is the London Region                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>ESF Funding Cap</b>            | £6,625,000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>ESF Publicity Requirements</b> | means the requirements set out by the European Social Fund and as may be amended from time to time and which (as at the Commencement Date) can be found at Schedule 15 (ESF Publicity Requirements)                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>ESF Requirements</b>           | <p>means the European Social Funding requirements (including but not limited to the ESF Publicity Requirements) as set out by the European Social Fund and notified by the Authority to the Supplier during the procurement process, and as may be amended from time to time and which (as at the Commencement Date) can be found at:</p> <p><a href="https://www.gov.uk/guidance/england-2014-to-2020-european-structural-and-investment-funds#programme-guidance-forms-publicity-and-performance-information">https://www.gov.uk/guidance/england-2014-to-2020-european-structural-and-investment-funds#programme-guidance-forms-publicity-and-performance-information</a></p> |
| <b>Equipment</b>                  | means the Supplier's equipment, consumables, plant, materials and such other items supplied and used by the Supplier in the delivery of the Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Exit Day</b>                   | means as it is defined in the European Union (Withdrawal) Act 2018                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

|                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <b>Expected Standards</b>                  | <b>means the overall standards for the delivery of the Services which are further described in sections 5.13 to 5.21 of the Specification</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Expected Standards Failure Period</b>   | means the period immediately following a failure by the Supplier of any or all Expected Standards until such failure is resolved in accordance with the Specification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Extension</b>                           | means as it is defined in clause 5.2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Financial Distress Event</b>            | means the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 20 (Financial Distress)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Financial Distress Remediation Plan</b> | means a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Financial Year</b>                      | means the period from 1st April each year to the 31st March the following year                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Fixed Compliance Measures</b>           | means the fixed compliance measures which are further described in section 5.26 of the Specification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Fixed Delivery Fee</b>                  | means the fee element further described in Schedule 2 (Price and Invoicing)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>FOIA</b>                                | means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Force Majeure Event</b>                 | means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of Government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Staff or any other failure in the Supplier's supply chain |
| <b>GDPR</b>                                | means the General Data Protection Regulation (Regulation (EU) 2016/679)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>General Anti-Abuse Rule</b>             | means: <ul style="list-style-type: none"> <li>(a) the legislation in Part 5 of the Finance Act 2013; and</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.

|                                               |                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>General Change in Law</b>                  | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply                                                                                                                                |
| <b>Good Industry Practice</b>                 | means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances |
| <b>Government</b>                             | means the government of the United Kingdom                                                                                                                                                                                                                                                                                    |
| <b>Government Buying Standards</b>            | means the standards published here:<br><a href="https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs">https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs</a>                                                              |
| <b>Greening Government Commitments</b>        | means the Government's policy to reduce its effects on the environment, the details of which are published here:<br><a href="https://www.gov.uk/government/collections/greening-government-commitments">https://www.gov.uk/government/collections/greening-government-commitments</a>                                         |
| <b>Halifax Abuse Principle</b>                | means the principle explained in the CJEU Case C-255/02 Halifax and others                                                                                                                                                                                                                                                    |
| <b>HCAT</b>                                   | the Hub Claimed Activity Template in the form reasonably required by the Authority from time to time                                                                                                                                                                                                                          |
| <b>HMRC</b>                                   | means HM Revenue & Customs                                                                                                                                                                                                                                                                                                    |
| <b>Hub Provider</b>                           | means a third party supplier to the Authority who is responsible for the provision of services at another Activity Hub in England                                                                                                                                                                                             |
| <b>ICT Environment</b>                        | means the Authority System and the Supplier System                                                                                                                                                                                                                                                                            |
| <b>Industry Standard Partnering Agreement</b> | means a standard form of sub-contract which shall be made available by the Authority to the Supplier from time to time and which at the Commencement Date, is in the form set out at Schedule 18 (ISPA)                                                                                                                       |
| <b>Implementation Period</b>                  | means the first 3 months of the Term or such other period as the parties may agree                                                                                                                                                                                                                                            |
| <b>Implementation Plan</b>                    | means the plan submitted by the Supplier as part of its Tender and Approved to be followed by the Supplier during the Implementation Period                                                                                                                                                                                   |

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <b>Implementation Services</b>      | means the implementation services required to prepare the Activity Hub for the provision of Operational Services which shall be further described in the Implementation Plan                                                                                                                                                                                                                                                                                   |
| <b>Information</b>                  | has the meaning given under section 84 of the FOIA                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Information Assets</b>           | means definable pieces of information stored in any manner which are determined by the Authority to be valuable and relevant to the Services                                                                                                                                                                                                                                                                                                                   |
| <b>Initial Term</b>                 | means the period from the Commencement Date to 31 October 2023                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Intellectual Property Rights</b> | means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off |
| <b>ISMS</b>                         | means the Supplier's information and management system and processes to manage information security as set out in paragraph 2.3 of Schedule 6 (Information Assurance and Security)                                                                                                                                                                                                                                                                             |
| <b>ISO 14001</b>                    | means the family of standards related to environmental management published by the International Organisation for Standardisation                                                                                                                                                                                                                                                                                                                              |
| <b>IT Health Check</b>              | means penetration testing of systems under the Supplier's control on which Information Assets and/or Authority Data are held which are carried out by third parties in accordance with the CHECK scheme operated by CESG or to an equivalent standard                                                                                                                                                                                                          |
| <b>ITEPA</b>                        | means the Income Tax (Earnings and Pensions) Act 2003                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Key Personnel</b>                | means the personnel of the Supplier named in Schedule 12 (Key Personnel and Key Sub-Contractors)                                                                                                                                                                                                                                                                                                                                                               |
| <b>Key Sub-Contractors</b>          | means the Sub-Contractors that are to provide 25% or more of the Services on behalf of the Supplier and who are listed in Schedule 12 (Key Personnel and Key Sub-Contractors)                                                                                                                                                                                                                                                                                  |
| <b>Know-How</b>                     | means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods)                                                                  |

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <b>Law</b>                           | means law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply |
| <b>Law Enforcement Purposes</b>      | means as it is defined in the DPA                                                                                                                                                                                                                                                                                                                                                                            |
| <b>LED</b>                           | means the Law Enforcement Directive (Directive (EU) 2016/680)                                                                                                                                                                                                                                                                                                                                                |
| <b>Losses</b>                        | means losses, liabilities, damages, costs, fines and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise                                                                                       |
| <b>Malicious Software</b>            | means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence                                  |
| <b>Market Stewardship Principles</b> | means the principles as set out in Schedule 19 which the Supplier must follow when sub-contracting any part of the Services                                                                                                                                                                                                                                                                                  |
| <b>Minimum Activity Baseline</b>     | the minimum activities required for each Activity as set out in the Specification (or where no such Minimum Activity Baseline is set out, such minimum activities as the Authority shall, acting reasonably and after discussion with the Supplier, determine)                                                                                                                                               |
| <b>Modern Slavery Helpline</b>       | means the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available by telephone on 08000 121 700 or online at:<br><br><a href="https://www.modernslaveryhelpline.org/report">https://www.modernslaveryhelpline.org/report</a>                                                                                                             |
| <b>Month</b>                         | means calendar month                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Monthly Enrolment Target</b>      | shall be as described in the Profile                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Monthly Activity Target</b>       | shall be as described in the Profile                                                                                                                                                                                                                                                                                                                                                                         |
| <b>MSA</b>                           | means the Modern Slavery Act 2015                                                                                                                                                                                                                                                                                                                                                                            |
| <b>NICs</b>                          | means National Insurance Contributions                                                                                                                                                                                                                                                                                                                                                                       |

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| <b>Occasion of Tax Non-Compliance</b> | <p>means:</p> <ul style="list-style-type: none"> <li>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</li> </ul> </li> <li>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion</li> </ul> |
| <b>Open Book Data</b>                 | means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the charges already paid or payable and charges forecast to be paid or payable during the remainder of the Term.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Operational Services</b>           | means the operational services required to deliver the Activities at the Activity Hub to commence on the Service Start Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Participant</b>                    | means the end user of the Activity Hub and/or any Services or Activities delivered by the Supplier who has been Enrolled by the Supplier and meets the eligibility criteria set out in section 3.16 of the Specification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Performance Improvement Plan</b>   | means the plan as described as defined and further described in Schedule 11 (Performance Management/PIP and Action Plan Process)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Performance Meetings</b>           | shall be as defined in clause 28.3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Personal Data</b>                  | means as it is defined in the GDPR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Personal Data Breach</b>           | means as it is defined in the GDPR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Premises</b>                       | means the location where the Services are to be delivered, which shall (unless otherwise specified in the                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

Regional Annex) be premises owned or licensed by the Supplier

**Price**

means the price (excluding any applicable VAT) payable to the Supplier by the Authority under the Contract, as set out in Schedule 2 (Pricing and Invoicing) for the full and proper performance by the Supplier of its obligations under the Contract including the following fee elements:

- (a) Fixed Delivery Fee;
- (b) Compliance Fee;
- (c) Enrolment Fee;
- (d) Activity Fees;
- (e) any Profile Payment payable in respect of Enrolment Fees and Activity Fees

**Processor**

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

**Profile**

means the document submitted by the Supplier as part of its Tender and Approved detailing:

- (a) the target number of Enrolments to be Accepted in any Month of the Term (the **Monthly Enrolment Target**) and the cumulative total target number of Enrolments across the Term; and
- (b) the target numbers of Activities to be Accepted in the Month (the **Monthly Activity Target(s)**) and the cumulative total target number of Activities across the Term; and
- (c) the level of DAF Funding

**Profile Payment**

means the bonus payment available to the Supplier as further described in Schedule 2 (Pricing and Invoicing)

**Prohibited Act**

means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;

- (c) an offence:
  - (i) under the Bribery Act 2010 or any legislation repealed or revoked by such Act;
  - (ii) under legislation or common law concerning fraudulent acts (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
  - (iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <b>Property</b>            | means the property, other than real property, made available to the Supplier by the Authority in connection with the Contract                                                                                                                                                                                                                                                                                      |
| <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>PSI 2016/07</b>         | <p>is the Prison Service Instruction effective from 26 October 2016 relating to the searching of the person as amended from time to time and available at:</p> <p><a href="https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2016">https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2016</a></p>                                                                          |
| <b>PSI 2012/10</b>         | <p>is the Prison Service Instruction effective from 26 October 2016 relating to the Conveyance and Possession of Prohibited Items and other Related Offences as amended from time to time and available at:</p> <p><a href="https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2012">https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2012</a></p>                         |
| <b>PSI 07/2014</b>         | <p>is the Prison Service Instruction published on 1st June 2014 relating to security vetting as amended from time to time and available at:</p> <p><a href="https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2014">https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2014</a></p>                                                                                         |
| <b>PSI 24/2014</b>         | <p>is the Prison Service Instruction published on 1st May 2014 relating to information assurance as amended from time to time and available at:</p>                                                                                                                                                                                                                                                                |

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2014>

|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <b>Purchase Order</b>         | means the Authority's order for the supply of the Services                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Quality Standards</b>      | means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification |
| <b>Receipt</b>                | means the physical or electronic arrival of the invoice at the address in clause 18.11 or at any other address given by the Authority to the Supplier for the submission of invoices from time to time                                                                                                                                                                                                                                                           |
| <b>Records</b>                | means the records to be kept in accordance with Schedule 5 (Reports and Record Retention) and as required by the Authority from time to time                                                                                                                                                                                                                                                                                                                     |
| <b>Regional Annex</b>         | means the additional terms applicable to the Activity Hub(s) in the ESF Contract Area under the Services as further set out in Schedule 13 (Regional Annex)                                                                                                                                                                                                                                                                                                      |
| <b>Regulations</b>            | means the Public Contract Regulations 2015 (SI 2015/102)                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Regulatory Body</b>        | means a Government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority                                                                                                                                  |
| <b>Relevant Conviction</b>    | means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority                                                                                                                                                                                                                                                                                                                     |
| <b>Relevant Requirements</b>  | means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010                                                                                                                                                                                                                                                   |
| <b>Relevant Tax Authority</b> | means HMRC or, if applicable, a tax authority in the jurisdiction in which the Supplier is established                                                                                                                                                                                                                                                                                                                                                           |
| <b>Replacement Supplier</b>   | means any third-party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract                                                                                                                                                                                                         |

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| <b>Reports</b>                   | means the reports required to be delivered by the Supplier from time to time as more particularly described in Schedule 5 (Reports and Record Retention) or otherwise described in the Specification or elsewhere in this Contract, and any other report as required by the ESF Requirements or that the Authority may reasonably request relating to the performance of the Contract                                                                                    |
| <b>Request for Information</b>   | means a request for information under the FOIA or the EIR                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Results</b>                   | means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is: <ul style="list-style-type: none"> <li>(a) prepared by or for the Supplier for use in relation to the performance of its obligations under the Contract; or</li> <li>(b) the result of any work done by the Supplier or any Staff in relation to the provision of the Services</li> </ul> |
| <b>Returning Employees</b>       | means the Staff employed or engaged by the Supplier (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Term                                                                                                                                                                                                                                                                                                    |
| <b>Security Plan</b>             | means the plan prepared by the Supplier which includes the matters in paragraph 3.2 of Schedule 6 (Information Assurance and Security)                                                                                                                                                                                                                                                                                                                                   |
| <b>Security Policy Framework</b> | means the Government's Security Policy Framework (available from the Cabinet Office's Government Security Secretariat) as updated from time to time                                                                                                                                                                                                                                                                                                                      |
| <b>Security Test</b>             | means a test carried out by the Supplier, the Authority or a third party to validate the ISMS and the security of all relevant processes and systems on which Information Assets and/or Authority Data are held                                                                                                                                                                                                                                                          |
| <b>Services</b>                  | means the Operational Services set out in Schedule 1 (Specification) (including any modified or alternative services) and any Implementation Services set out in Schedule 1 (Specification) or in any Implementation Plan                                                                                                                                                                                                                                                |
| <b>Service Start Date</b>        | means the 1 March 2021 being the date on which the Operational Services are to be commenced following the completion of the Implementation Services in accordance with clause 7 (or if earlier such date as the Authority Approves for commencement of Operational Services in whole or in part)                                                                                                                                                                         |
| <b>SME</b>                       | means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the European Commission's Recommendation of 6 May 2003 available at:                                                                                                                                                                                                                                                                                             |

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| <b>Specific Change in Law</b> | means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply                                                                                                                                                                                                                   |
| <b>Specification</b>          | means the description of the Services to be supplied under the Contract as set out in Schedule 1 including, where appropriate, Compliance Measures, Expected Standards and the Quality Standards and any further specification requirements set out in the Regional Annex and any Variations or amendments to the Specification from time to time |
| <b>SSCBA</b>                  | means the Social Security Contributions and Benefits Act 1992                                                                                                                                                                                                                                                                                     |
| <b>Staff</b>                  | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any of its Sub-Contractors engaged in the performance of the Supplier's obligations under the Contract including the Key Personnel and CFO Support Workers, as the same are described in the Specification                                |
| <b>Sub-Contract</b>           | means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and Sub-Contractor shall be construed accordingly.                             |
| <b>Sub-processor</b>          | means any third party appointed to process Personal Data on behalf of the Supplier related to the Contract                                                                                                                                                                                                                                        |
| <b>Supplier Failure</b>       | shall have the meaning set out in clause 28.9                                                                                                                                                                                                                                                                                                     |
| <b>Supplier Guidance</b>      | means the guidance for the provision of the Services provided by the Authority to the Supplier from time to time                                                                                                                                                                                                                                  |
| <b>Supplier System</b>        | means the information and communications technology system used by the Supplier in performing the Services including any software, the Equipment and related cabling (but excluding the Authority System)                                                                                                                                         |
| <b>Tender</b>                 | means the Supplier's tender submitted in response to the Authority's invitation to suppliers for offers to supply the Services                                                                                                                                                                                                                    |
| <b>Term</b>                   | means: <ul style="list-style-type: none"> <li>(a) the Initial Term; or</li> <li>(b) (if earlier) the period from the Commencement Date to the date on which the Supplier</li> </ul>                                                                                                                                                               |

|                                      |                                                                                                                                                                                                                                                                                                 |
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|                                      | successfully completes its Profile in accordance with the terms of this Contract; or                                                                                                                                                                                                            |
|                                      | (c) following an Extension, the end date of the Extension                                                                                                                                                                                                                                       |
|                                      | or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract                                                                                                                                                                           |
| <b>TFEU</b>                          | means the Treaty on the Functioning of the European Union                                                                                                                                                                                                                                       |
| <b>Third Party IP Claim</b>          | has the meaning given to it in clause 27.5                                                                                                                                                                                                                                                      |
| <b>Transferring Employees</b>        | means all those individuals whose employment or engagement transfer to the Supplier or a Sub-Contractor by operation of TUPE on the Commencement Date                                                                                                                                           |
| <b>Treaties</b>                      | means the TFEU and the Treaty on European Union                                                                                                                                                                                                                                                 |
| <b>TUPE</b>                          | means the Transfer of Undertakings (Protection of Employment) Regulations 2006                                                                                                                                                                                                                  |
| <b>TUPE Information</b>              | means the information set out in clause 17.1                                                                                                                                                                                                                                                    |
| <b>Valid Invoice</b>                 | means an invoice containing the information set out in clause 18.3                                                                                                                                                                                                                              |
| <b>VAT</b>                           | means value added tax charged or regulated in accordance with the Value-Added Tax Act 1994                                                                                                                                                                                                      |
| <b>Variable Compliance Measures</b>  | means the variable compliance measures which are set out in section 5.28 of the Specification                                                                                                                                                                                                   |
| <b>Variation</b>                     | means a change in any of the terms or conditions of the Contract or save where expressly provided otherwise or otherwise agreed between the parties to the Specification or any of the other terms and conditions                                                                               |
| <b>VCSE</b>                          | means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives                                                                                                                                |
| <b>Vulnerability Correction Plan</b> | means a remedial plan prepared by the Supplier to address vulnerabilities identified in an IT Health Check report                                                                                                                                                                               |
| <b>Welsh Language Scheme</b>         | means the Authority's Welsh language scheme as amended from time to time and available at:<br><br><a href="http://www.justice.gov.uk/publications/corporate-reports/moj/2010/welsh-language-scheme">http://www.justice.gov.uk/publications/corporate-reports/moj/2010/welsh-language-scheme</a> |
| <b>Working Day</b>                   | means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London                                                                                                                                                                                |

- 1.2 In the Contract, unless the context implies otherwise:
- 1.2.1 the singular includes the plural and vice versa unless the context requires otherwise;
  - 1.2.2 words importing the masculine include the feminine and the neuter;
  - 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
  - 1.2.4 references to a person include natural persons, a company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
  - 1.2.5 the words **other, in particular, for example, including** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
  - 1.2.6 headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
  - 1.2.7 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 (as amended from time to time in accordance with the terms of this Contract);
  - 1.2.8 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.2.9 references to the Contract are references to the Contract as amended from time to time;
  - 1.2.10 any reference in the Contract which immediately before Exit Day is a reference to (as it has effect from time to time);
  - 1.2.11 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (**EU References**) which is to form part of domestic law by the application of s.3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of s.3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - 1.2.12 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.
  - 1.2.13 where a standard, policy or document is referred to in this Contract and/or the Schedules by reference to a hyperlink or embedded object, then if such hyperlink or embedded object is changed or no longer provides access to the relevant standard, policy or document, the parties agree that the intended reference is to the document provided by the Authority to the Supplier on or around the Commencement Date unless otherwise updated by the Authority, with the Authority's Approval or otherwise in accordance with this Contract.

## 2 Authority Obligations

- 2.1 Save as otherwise expressly provided, the Authority's obligations under the Contract are the Authority's obligations in its capacity as a contracting counterparty and nothing in the Contract operates as an obligation upon, or in any other way fetters or constrains, the Authority in any other capacity.

- 2.2 Subject to reasonable notification by the Supplier of its requirements, the Authority shall give the Supplier such instructions and/or decisions as pursuant to the Contract are required to be given by the Authority at such time and in such a manner as shall enable the Supplier to properly perform the Contract.
- 2.3 The Authority shall supply or make available to the Supplier such information, as it is required to provide in accordance with the Specification in such time so as not to delay or disrupt the performance of the Supplier's obligations under the Contract.
- 2.4 The Authority shall use reasonable endeavours to comply with any of its obligations set out in the Regional Annex.
- 2.5 For the avoidance of doubt, any obligation on the Authority set out in the Specification or in Schedule 10 (Tender) shall not be Authority Obligations and the Authority shall have no obligation to perform any such obligations unless expressly referenced to this clause 1.2.13.

### **3 Supplier's Status**

- 3.1 The Supplier is an independent contractor and nothing in the Contract creates a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the Contract.
- 3.2 The Supplier shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead another person to believe that the Supplier is acting as the agent or employee of the Authority.

### **4 Mistakes in Information**

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

### **5 Term**

- 5.1 The Contract starts on 9 November 2020 (the **Commencement Date**) and will continue for the Initial Term unless it is terminated early or extended in accordance with the Contract.
- 5.2 Subject to clause 20 below, the Authority may extend the term of the Contract on one or more occasions by periods determined by the Authority which shall together not exceed a total period of 24 months (**Extension**). The terms of the Contract will apply throughout the period of any Extension.

### **B The Services**

#### **6 Basis of the Contract**

- 6.1 In consideration of the Supplier's performance of its obligations under the Contract the Authority shall pay the Supplier the Price in accordance with clause 18.
- 6.2 The Supplier shall deliver the Implementation Services from the Commencement Date, and shall deliver the Operational Services from the Service Start Date.
- 6.3 The terms and conditions in the Contract apply to the exclusion of any other terms and conditions the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing.
- 6.4 The Supplier shall comply with any additional obligations set out in the Regional Annex.

- 6.5 In the event of any conflict or inconsistency between the provisions of this Contract, the Schedules and the provisions of any other documents referred to in this Contract the following order of precedence shall apply:
- 6.5.1 the clauses of this Contract;
  - 6.5.2 the Schedules to this Contract (except for Schedule 1 (Specification) and Schedule 10 (Tender));
  - 6.5.3 Schedule 1 (Specification) and any Regional Annex and the Supplier Guidance;
  - 6.5.4 any other documents referred to in this Contract;
  - 6.5.5 Schedule 10 (Tender).

## **7 Implementation Services**

- 7.1 The Supplier shall mobilise itself in order to be able to deliver the Implementation Services in accordance with the Implementation Plan during the Implementation Period. At the end of the Implementation Period (which is intended to be no later than the Service Start Date), the Supplier shall be able to fully deliver the Operational Services in accordance with the Specification.
- 7.2 The Supplier shall comply with the requirements of the Implementation Plan and ensure that any deliverables or other outputs required under the Implementation Plan are delivered to the reasonable satisfaction of the Authority by any deadlines specified for such activity in the Implementation Plan.
- 7.3 If the Supplier becomes aware that there is, or is reasonably likely to be a delay in delivering any of the outputs required by the Implementation Plan, it shall (at its own cost):
- 7.3.1 notify the Authority of the delay and the reasons for the delay;
  - 7.3.2 use all reasonable endeavours to eliminate or mitigate the consequences of any delay or anticipated delay.
- 7.4 The Supplier agrees and acknowledges that in the event that the Operational Services are delayed beyond the scheduled Service Start Date in the Implementation Plan, then the Supplier shall not be entitled to invoice for and the Authority shall not be obliged to pay any Enrolment Fees, Compliance Fees or Activity Fees (or any associated Profile Payments) in accordance with Schedule 2 (Pricing and Invoicing) until the Implementation Plan has been fully delivered to the reasonable satisfaction of the Authority and the Operational Services have commenced
- 7.5 Time is of the essence in relation to the Implementation Services set out in the Implementation Plan.
- 7.6 If the Supplier is delayed in completing the Implementation Services as set out in the Implementation Plan or is delayed in commencing the Operational Services on the scheduled Service Start Date, the Authority shall be entitled to place the Supplier on an Action Plan in accordance with Schedule 11 (Performance Management/PIP and Action Plan Process).

## **8 Profile**

- 8.1 A Profile may be changed as requested by the Authority from time to time. For the avoidance of doubt, the final content of the Profile shall be for the determination of the Authority (acting reasonably).
- 8.2 Following the achievement of the Minimum Baseline Activity in respect of any Activity, the Supplier shall promptly (as defined in the Supplier Guidance) submit a completed HCAT to the

Authority using the Authority Case Management System in accordance with Schedule 17 (Access to Authority Case Management System).

- 8.3 The Supplier shall use its best endeavours to deliver Accepted Enrolments and Activities to meet the Monthly Enrolment Target and the Monthly Activity Target(s).
- 8.4 Without prejudice to any other rights or remedies of the Authority under this Contract, or otherwise, in the event that the Supplier fails to meet the Monthly Enrolment Target or the Monthly Activity Target(s) then the provisions of paragraphs 1.6 or 1.7 (as applicable) of Schedule 2 (Price and Invoicing), shall apply.
- 8.5 The Supplier shall comply with the provisions of Schedule 17 (Access to Authority Case Management System).

## **8A TUPE**

- 8A.1 The Authority and the Supplier agree that it is their understanding that there are no Transferring Employees on the Commencement Date.
- 8A.2 In the event that there are any Transferring Employees on the Commencement Date the Supplier shall with effect from and including the Commencement Date assume and discharge all obligations and liabilities in respect of the Transferring Employees.
- 8A.3 The Supplier will indemnify the Authority and keep the Authority indemnified in full from and against all costs, claims, liabilities, expenses or demands (including all legal costs) whether direct, indirect or consequential awarded against or incurred or paid by the Authority as a result of or in connection with any claims arising from any act, fault or omission of the Supplier or its Sub-Contractor(s) in connection with the Transferring Employees or any representative thereof.

## **9 Delivery of the Services**

- 9.1 The Supplier shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Supplier shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 9.2 The Supplier acknowledges that the Authority relies on the skill and judgment of the Supplier in the supply of the Services and the performance of the Supplier's obligations under the Contract.
- 9.3 The Supplier shall:
  - 9.3.1 ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services;
  - 9.3.2 ensure that all Staff are properly managed and supervised;
  - 9.3.3 comply with the standards and requirements set out in Schedule 8 (Statutory Obligations and Corporate Social Responsibility); and
  - 9.3.4 comply with the ESF Requirements and with all reasonable instructions of the Authority from time to time;
  - 9.3.5 ensure that all Services comply in all respects with the Specification;
  - 9.3.6 comply with the Supplier Guidance at all times in delivering the Services;

- 9.3.7 comply (to the reasonable satisfaction of the Authority) with both:
  - (a) the Compliance Measures (as reasonably determined by the Authority from time to time following consultation with the Supplier and in accordance with the Specification); and
  - (b) the Expected Standards;
- 9.3.8 not in delivering the Services or at any time do anything that would embarrass the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority whether or not such act or omission is related to the Supplier's obligations under this Contract;
- 9.3.9 provide the Authority with such assistance as the Authority may reasonably require in respect of the supply of the Services;
- 9.3.10 immediately notify the Authority of any circumstance which may adversely affect the ability of the Supplier to provide the Services.
- 9.4 During the Term, the Supplier shall:
  - 9.4.1 at all times have all licences, approvals and consents necessary to enable the Supplier and Staff to carry out the Services;
  - 9.4.2 provide all tools and equipment (or procure the provision of all tools and equipment) necessary for the provision of the Services;
  - 9.4.3 use its best endeavours at all times to ensure the safety and wellbeing of any Participants;
  - 9.4.4 not, in delivering the Services, in any manner endanger the safety or convenience of the public (including any Participants).
- 9.5 The Authority may inspect the manner in which the Supplier supplies the Services at the Premises during normal business hours on reasonable notice. The Supplier shall provide at its own cost all such facilities as the Authority may reasonably require for such inspection.
- 9.6 If the Authority informs the Supplier in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- 9.7 If, in delivering the Services, the Supplier is required to visit Authority Premises which are prisons, the Supplier shall comply with Schedule 7 (Prisons).

## **10 Co-operation and Collaboration**

- 10.1 The Supplier agrees and acknowledges that the Services delivered to Participants form part of a larger strategic offering by the Authority across multiple ESF Contract Areas, multiple Activity Hubs and multiple providers and agencies (including the provision aims which are further described in section 3.1 of the Specification). The Supplier shall be focussed on the strategic goals and provision aims of the Authority in delivering the best possible outcomes for the Participants.
- 10.2 If reasonably requested to do so by the Authority, the Supplier shall co-ordinate its activities in supplying the Services with those activities of the Authority, its agents and/or any other contractors engaged by the Authority or other Government agencies (**Third Party Providers**).

- 10.3 The Supplier shall be open and inclusive at all levels with the Authority and Third Party Providers and shall where it is requested to do so enter into confidentiality and data processing undertakings with any Third Party Providers to enable collaboration and co-operation in accordance with this clause 10.

## **11 Equipment and Premises**

- 11.1 Save where and to the extent that expressly provided for in the Regional Annex, the Supplier shall at its own cost:
- 11.1.1 locate and secure suitable premises for the location of the Activity Hub(s);
  - 11.1.2 carry out any fit out activity required in accordance with the Implementation Plan;
  - 11.1.3 at all times from the Service Start Date to the end of the Term ensure that the Premises are maintained in a good state of repair and condition, and in accordance with:
    - (a) any Laws (including without limitation the Disability Discrimination Act and the Equality Act);
    - (b) Good Industry Practice;
    - (c) the environmental and cultural requirements set out in sections 3.46 to 3.54 of the Specification and any Expected Standards set out in the Specification; and
    - (d) any other requirements for the Premises set out in the Specification.
- 11.2 The Supplier shall provide all the Equipment and resource necessary for the supply of the Services.
- 11.3 All Equipment is at the Supplier's own risk and the Authority has no liability for any loss of or damage to any Equipment unless the Supplier demonstrates that such loss or damage was caused or contributed to by the Authority's Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- 11.4 Equipment remains the property of the Supplier and shall be procured entirely at the Supplier's own cost.
- 11.5 The Supplier shall maintain all Equipment in a safe, serviceable, and clean condition.
- 11.6 The Supplier shall, at the Authority's written request, at its own cost and as soon as reasonably practicable:
- 11.6.1 remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
  - 11.6.2 replace such item with a suitable substitute item of Equipment.
- 11.7 The Authority shall have no liability or responsibility whatsoever in connection with any lease or licence entered into by the Supplier in relation to the Equipment or Premises and the Supplier shall indemnify and keep indemnified the Authority against any Losses it may incur resulting out of any claim made against the Authority by any licensor, landlord or other third party in connection with the Equipment or Premises.
- 11.8 The Authority reserves the right, on reasonable notice, to inspect any Premises intended to be used by the Supplier in the delivery of the Services during the Term and the Supplier shall provide all necessary assistance to the Authority in relation to any such inspection. For the avoidance of doubt, the obligations of the Supplier in this Contract or under any Laws in relation to any Premises shall in no way be relieved or waived by approval or other notification by the Authority following any such inspection.

## **12 Key Personnel**

- 12.1 The Supplier acknowledges that Key Personnel are essential to the proper provision of the Services.
- 12.2 Key Personnel shall not be released from supplying the Services without Approval except by reason of long-term sickness, maternity leave, paternity leave, or termination of employment or other similar extenuating circumstances.
- 12.3 The Authority may interview and assess any proposed replacement for Key Personnel and any replacements to Key Personnel are subject to Approval. Such replacements shall be of at least equal status, experience, and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 12.4 The Authority shall not unreasonably withhold Approval under clauses 12.2 or 12.3 and such approval is conditional on appropriate arrangements being made by the Supplier to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.

## **12A Key Sub-Contractors**

- 12A.1 The Supplier shall provide details of any Key Sub-Contractors to the Authority at the commencement of the Contract and at any time throughout the Term.
- 12A.2 The appointment, change and/or replacement of a Key Sub-Contractor shall be subject to Approval in accordance with clause 30 (Transfer and sub-contracting).

## **13 Staff**

- 13.1 The Supplier shall employ at all times a sufficient number of Staff to fulfil its obligations under the Contract. All Staff shall possess the qualifications and competence appropriate to the tasks for which they are employed and in any event the qualifications as set out in the Specification. If and when so directed in writing by the Authority the Supplier shall within seven (7) days provide details of the qualifications and competence of any person employed or proposed to be employed by the Supplier in connection with the Contract and shall provide a copy of any certificate or qualification or competence that has been issued in respect of any such person. The Supplier shall, if required by the Authority, provide its Staff with a copy of the Cabinet Office Joint Statement on access to skills, trade unions and advice in government contracting.
- 13.2 The Authority may, by notice to the Supplier either require removal from the provision of the Services or refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:
  - 13.2.1 any member of the Staff; or
  - 13.2.2 any person employed or engaged by any member of the Staffwhose admission or continued presence at the Premises or involvement in the Services would, in the Authority's reasonable opinion, be undesirable.
- 13.3 In the event that a member of Staff is removed from the delivery of the Services in accordance with clause 13.2, the Supplier shall promptly appoint a replacement member of Staff meeting the requirements of and in compliance with this clause 13 (and clause 12 in the case of Key Personnel).
- 13.4 The Authority shall maintain the security of the Authority's Premises in accordance with its standard security requirements, including where applicable, Prison Rules 1999 Part III, the Prison (Amendment) Rules 2005, the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008, available to the Supplier on request. The Supplier shall comply with all security requirements of the Authority while on the Authority's Premises, and ensure that all Staff comply with such requirements.

- 13.5 The Authority may search any persons or vehicles engaged or used by the Supplier at the Authority's Premises.
- 13.6 The Supplier shall co-operate with any investigation relating to security carried out by the Authority or on behalf of the Authority and, at the Authority's request:
- 13.6.1 use reasonable endeavours to make available any Staff requested by the Authority to attend an interview for the purpose of an investigation; and
  - 13.6.2 provide documents, records or other material in whatever form which the Authority may reasonably request or which may be requested on the Authority's behalf, for the purposes of an investigation.
- 13.7 The Supplier shall comply with PSI 10/2012 as amended from time to time and available from the Authority on request.
- 13.8 The Supplier shall promptly inform and keep informed the Authority in writing of any industrial relations problems or other matters relating to the Supplier Staff which may affect the performance of the Contract.
- 13.9 The Supplier shall not employ any person where the Supplier knows or by reason of the circumstances might reasonably be expected to know, that the person concerned is involved in any unlawful activity.
- 13.10 The Supplier shall comply with the Authority's procedures for the vetting of Supplier Staff in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Authority's vetting procedures.
- 13.11 The Authority may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a criminal records check by means of a basic BPSS check.
- 13.12 Notwithstanding the Supplier's compliance with the Authority's vetting procedures and clause 13.11 above, the parties acknowledge that the Supplier may employ persons with certain criminal convictions in certain roles with prior Approval.
- 13.13 Where the Authority deems it necessary the Supplier shall provide a list of Staff who will be undertaking regulated activity according to the Protection of Freedoms Act 2012. The Authority may in its sole discretion refuse access to the Authority Premises by any member of the Supplier's Staff who has not been subjected to the necessary checks by BPSS.
- 13.14 Subject to the remainder of this clause 13, the Supplier shall comply with the additional requirements of Schedule 16 (Training and Apprenticeships).

#### **14 Due Diligence**

- 14.1 The Supplier acknowledges that:
- 14.1.1 it has satisfied itself as to the issue of whether TUPE applies on the commencement of the Contract;
  - 14.1.2 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of the Contract;
  - 14.1.3 it has made its own enquiries to satisfy itself of all relevant details relating to the Specification and its obligations in connection with the Services;
  - 14.1.4 it has identified and inspected any Premises before submitting its Tender; and
  - 14.1.5 it has completed due diligence in relation to all matters connected with the performance of its obligations under the Contract.

- 14.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of any misinterpretation of the Specification or failure by the Supplier to satisfy itself as to any of any relevant details relating to the performance of the Contract.

## **15 Property**

- 15.1 All Property is and remains the property of the Authority and the Supplier irrevocably licenses the Authority and its agents to enter any Premises of the Supplier during normal business hours on reasonable notice to recover any such Property.
- 15.2 The Supplier does not have a lien or any other interest on the Property and the Supplier at all times possesses the Property as fiduciary agent and bailee of the Authority. The Supplier shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- 15.3 The Property is deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within 5 Working Days of receipt.
- 15.4 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- 15.5 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- 15.6 The Supplier is liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Supplier shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **16 Offers of Employment**

- 16.1 Neither Party shall, directly or indirectly, solicit or procure (otherwise than by general advertising or under TUPE, any employees or contractors (including the Staff) of the other Party who are directly employed or engaged in connection with the provision of the Services while such persons are employed or engaged and for a period of 6 Months thereafter.
- 16.2 If either Party breaches the clause 16.1, it shall pay the other Party a sum equivalent to 20% of the annual base salary payable by the Party in breach in respect of the first year of person's employment.
- 16.3 The Parties agree that the sum specified in clause 16.2 is a reasonable pre-estimate of the loss and damage, which the Party not in breach would suffer if there was a breach of clause 16.1.

## **17 Employment Exit Provisions**

- 17.1 This Contract envisages that subsequent to the commencement of this Contract, the identity of the Supplier may change (whether as a result of novation or termination of this Contract, in part, or otherwise) resulting in a transfer of the Services in whole or in part.
- 17.2 No later than 12 Months prior to the end of the Term, or within 20 days of notice of termination pursuant this Contract and in any event on receipt of a written request by the Authority, the Supplier shall (subject to compliance with Data Protection Legislation) fully and accurately disclose to the Authority all information the Authority may reasonably request in relation to the Staff including, but not limited to, the following:

- 17.2.1 the total number of Staff (with details of whether they are employees, agents, consultants or contractors etc.);
  - 17.2.2 the age, gender, salary or other remuneration, (including any profit sharing or bonus or incentive arrangements) future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 17.2.1;
  - 17.2.3 the terms and conditions of employment/engagement of the Staff referred to in clause 17.2.1, (including their job titles and qualifications);
  - 17.2.4 their immigration status;
  - 17.2.5 details of any Staff on long-term sickness absence, maternity or other statutory leave or otherwise absent from work;
  - 17.2.6 details of any current disciplinary or grievance proceedings ongoing in relation to the Staff or circumstances likely to give rise to such proceedings and details of any claims current or threatened;
  - 17.2.7 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; and
  - 17.2.8 copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).
- 17.3 At intervals determined by the Authority (which shall not be more frequent than once every 30 days) the Supplier shall give the Authority updated TUPE Information.
- 17.4 Each time the Supplier supplies TUPE Information to the Authority it warrants its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Supplier.
- 17.5 The Authority may use the 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 Replacement Supplier with such assistance as it shall reasonably request.
- 17.6 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:
- 17.6.1 the provision of TUPE Information;
  - 17.6.2 any claim or demand by any Returning 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 Returning Employee on or before the end of the Term;
  - 17.6.3 any failure by the Supplier or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Supplier to comply with its duties under regulation 13 of TUPE;
  - 17.6.4 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Supplier or

any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and

- 17.6.5 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 list of Returning Employees.
- 17.7 If the Supplier is aware that TUPE Information has become inaccurate or misleading, it shall immediately notify the Authority and provide the Authority with up to date and accurate TUPE Information. The Supplier will also promptly notify the Authority, or at the direction of the Authority, any Replacement Supplier of any notice to terminate employment received from any of the Staff regardless of when such notice takes effect.
- 17.8 This clause 17 applies during the Term and indefinitely thereafter.
- 17.9 From the date of the earliest event referred to in clause 17.2 above, the Supplier undertakes to the Authority that, the Supplier shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):
- 17.9.1 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);
- 17.9.2 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);
- 17.9.3 transfer away, remove, reduce or vary the involvement of any 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
- 17.9.4 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 event.

## **C. PAYMENT**

### **18 Payment and VAT**

- 18.1 In consideration of the performance by the Supplier of its obligations under this Contract and subject to the specific provisions relating to payment set out in Schedule 2 (Price and Invoicing), the Authority shall pay the Price calculated in accordance with Schedule 2 (Price and Invoicing).
- 18.2 The Supplier shall submit invoices to the Authority in accordance with this clause 18 and Schedule 2 (Price and Invoicing).
- 18.3 A Valid Invoice is an invoice which includes the information and complies with any requirements set out in Schedule 2 (Price and Invoicing) and, any further information as reasonably requested by the Authority from time to time.
- 18.4 The Authority shall not pay an invoice which is not a Valid Invoice.
- 18.5 The Supplier acknowledges that all recoverable overhead costs (including without limitation: facilities, utilities, insurance, tax, head office overheads, staff costs and other costs and expenses related to the provision of the Services) are included in the Fixed Delivery Fee and

the Authority shall have no responsibility whatsoever to pay any costs in the delivery of the Services other than the Price.

- 18.6 The Supplier may claim expenses only if they are clearly identified, supported by original receipts and Approved.
- 18.7 If the Authority pays the Supplier prior to the submission of a Valid Invoice this payment is on account of and deductible from the next payment to be made.
- 18.8 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised, or recover this payment directly from the Supplier. All payments made by the Authority to the Supplier are on an interim basis pending final resolution of an account with the Supplier in accordance with the terms of this clause 18.
- 18.9 Supplier shall:
- 18.9.1 add VAT to the Price at the prevailing rate as applicable and show the amount of VAT payable separately on all invoices as an extra charge. If the Supplier fails to show VAT on an invoice, the Authority is not, at any later date, liable to pay the Supplier any additional VAT;
  - 18.9.2 ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice; and
  - 18.9.3 not suspend the Services unless the Supplier is entitled to terminate the Contract under clause 37.3 for failure to pay undisputed sums of money.
- 18.10 The Supplier indemnifies the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded, or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause 18.10 shall be paid by the Supplier to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- 18.11 The Authority shall:
- 18.11.1 in addition to the Price and following Receipt of an undisputed Valid Invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract;
  - 18.11.2 pay all sums due to the Supplier within 30 days of Receipt of an undisputed Valid Invoice. Valid Invoices should be submitted for payment to the following address: **[REDACTED]** (the Authority's preferred option); or Shared Services Connected Limited, PO Box 741, Phoenix House, Celtic Springs Business Park, Newport, Gwent, NP10 8FZ; and
  - 18.11.3 accept and process for payment Valid Invoices submitted for payment electronically if they comply with the standard on electronic invoicing.
- 18.12 For the purposes of clause 18.11.3 an electronic invoice complies with the standard on electronic invoicing if it complies with the European standard and any of the syntaxes published in Commission Implementing decision (EU) 2017/1870.
- 18.13 Any late payment of undisputed invoices by the Authority will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank.

## **19 Recovery of Sums Due**

- 19.1 If under the Contract any sum of money is recoverable from or payable by the Supplier to the Authority (including any sum which the Supplier is liable to pay to the Authority in respect of

any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier from the Authority under the Contract or under any other agreement with the Authority or the Crown.

- 19.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, is a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 19.3 The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 19.4 All payments due under this clause 19 shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **20 Extension**

- 20.1 The parties acknowledge that any Extension is subject to the Authority receiving further funding from ESF and/or any other available funding which is capable and which the Authority deems suitable to be allocated to the provision of the Services.
- 20.2 Subject clause 20.1, Schedule 2 (Price and Invoicing) and clause 31(Change), the Price applies for the Initial Term and until the end of any Extension (as may be adjusted on a pro-rata basis by the Authority further to the receipt of any future funding from ESF) or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.
- 20.3 The Supplier agrees to provide the Services to the same quality and capacity as is provided for in its Profile and Tender on a pro rata basis dependent upon the funding received.
- 20.4 The Authority reserves the right to amend the Specification, the Profile and/or the Tender to align with any future funding received in respect of an Extension.
- 20.5 Any amendments to the Specification, the Profile and/or the Tender shall be in accordance with the appropriate provisions set out in the Regulations.

## **D. Protection of information**

### **21 Authority Data**

- 21.1 The Supplier shall:
  - 21.1.1 not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under the Contract or as otherwise Approved;
  - 21.1.2 preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data;
  - 21.1.3 not delete or remove any proprietary notices contained within or relating to the Authority Data;
  - 21.1.4 to the extent that Authority Data is held and/or processed by the Supplier, supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification;
  - 21.1.5 perform secure back-ups of all Authority Data and ensure that up-to-date back-ups are stored securely off-site. The Supplier shall ensure that such back-ups are made available to the Authority immediately upon request;

- 21.1.6 ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework;
  - 21.1.7 identify, and disclose to the Authority on request those members of Staff with access to or who are involved in handling Authority Data;
  - 21.1.8 on request, give the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of Personal Data, and its procedures for reducing risk;
  - 21.1.9 notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take if it has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason; and
  - 21.1.10 comply with Schedule 6 (Security Requirements and Policy).
- 21.2 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- 21.2.1 require the Supplier (at the Supplier's cost) to restore or procure the restoration of Authority Data and the Supplier shall do so promptly; and/or
  - 21.2.2 itself restore or procure the restoration of Authority Data, and be repaid by the Supplier any reasonable costs incurred in doing so.

## **22 Data Protection and Privacy**

- 22.1 The Parties acknowledge that for the purposes of Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only processing which the Authority has authorised the Supplier to do is described in Schedule 9 (Data Processing) and may not be determined by the Supplier.
- 22.2 The Supplier shall:
- 22.2.1 notify the Authority immediately if it considers any Authority instructions infringe the Data Protection Legislation;
  - 22.2.2 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 Authority's discretion, include:
    - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
    - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
    - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
    - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
  - 22.2.3 in relation to any Personal Data processed in connection with its obligations under the Contract:
    - (a) process that Personal Data only in accordance with Schedule 9 (Data Processing) and any guidance or instructions notified to the Supplier by the Authority from time to time, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

- (b) 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
- 22.2.4 ensure that:
- (a) Staff do not process Personal Data except in accordance with the Contract (and in particular Schedule 9 (Data Processing)) and any guidance or instructions notified to the Supplier by the Authority from time to time;
  - (b) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to Personal Data and ensure that they:
    - (i) are aware of and comply with the Supplier's duties under this clause 22;
    - (ii) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
    - (iii) 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 Authority or as permitted by the Contract;
    - (iv) have undergone adequate training in the use, care, protection and handling of the Personal Data
- 22.2.5 not transfer Personal Data outside the EU unless Approved and:
- (a) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or s.75 of the DPA) as determined by the Authority;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) 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 Authority in meeting its obligations); and
  - (d) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data
- 22.2.6 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Supplier is required by Law to retain the Personal Data;
- 22.2.7 subject to clause 22.3, notify the Authority immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
  - (e) 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

- (f) becomes aware of a Data Loss Event.
- 22.3 The Supplier's obligation to notify under clause 22.2.7 includes the provision of further information to the Authority in phases as details become available.
- 22.4 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under clause 22.2.7 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
  - 22.4.1 the Authority with full details and copies of the complaint, communication or request;
  - 22.4.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 22.4.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 22.4.4 assistance as requested by the Authority following any Data Loss Event; and
  - 22.4.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office or any consultation by the Authority with the Information Commissioner's Office.
- 22.5 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 22. This requirement does not apply if the Supplier employs fewer than 250 people unless the Authority determines that the processing:
  - 22.5.1 is not occasional;
  - 22.5.2 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; and
  - 22.5.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 22.6 The Supplier shall allow audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 22.7 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 22.8 Before allowing any Sub-processor to process any Personal Data in connection with the Contract, the Supplier shall:
  - 22.8.1 notify the Authority in writing of the intended Sub-processor and processing;
  - 22.8.2 obtain Approval;
  - 22.8.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 22 such that they apply to the Sub-processor; and
  - 22.8.4 provide the Authority with such information regarding the Sub-processor as the Authority reasonably requires.
- 22.9 The Supplier remains fully liable for the acts and omissions of any Sub-processor.
- 22.10 As part of the Services, the Supplier may be required to share the Personal Data with third parties (including, without limitation, third parties acting as controllers) on behalf of the

Authority. Where, as part of the Services, the Supplier is required to evaluate which third parties to share Personal Data with, the Supplier shall:

- 22.10.1 carry out such evaluation in accordance with the criteria and guidance notified by the Authority to the Supplier, from time to time;
- 22.10.2 notify the Authority in writing, immediately on identifying a third party to share Personal Data with, such notice to include:
  - (a) the identity of the third party;
  - (b) the contact details of the third party;
  - (c) what Personal Data will be shared;
  - (d) the basis on which the Personal Data will be shared, including without limitation, the evaluation matrix carried out in accordance with 22.10.1; and
  - (e) the opportunity to object (which shall be no less than 5 Working Days from receipt of the notice) to such sharing of Personal Data if the Authority notifies the Supplier of its objection in writing;
- 22.10.3 only share the Personal Data if no objection is received on expiry of the period notified in accordance with clause 22.10.2(d);
- 22.10.4 be responsible for obtaining consents from the Data Subjects for the sharing of the Personal Data, such consent to be obtained in the form of consent set out Appendix B;
- 22.10.5 if the Authority makes a request in writing for the Supplier to do so, immediately cease the sharing of Personal Data with named (or if the notice specifies, all) third parties and use all reasonable endeavours to secure the return or destruction of all Personal Data in the possession or control of such third parties;
- 22.10.6 indemnify, and keep indemnified the Authority from and against all action, suits, claims, demands, losses, charges, damages, fines, sanctions, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause 22.10 by the Supplier.
- 22.11 Notwithstanding the provisions of clause 31, the Authority 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 the Contract).
- 22.12 The Parties shall take account of any guidance published by the Information Commissioner's Office and, notwithstanding the provisions of clause 31; the Authority 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.
- 22.13 In relation to Personal Data processed for Law Enforcement Purposes, the Supplier shall:
  - 22.13.1 maintain logs for its automated processing operations in respect of:
    - (a) collection;
    - (b) alteration;
    - (c) consultation;
    - (d) disclosure (including transfers);
    - (e) combination; and

(f) erasure.

(together the "Logs").

22.13.2 ensure that:

- (a) 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;
- (b) 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
- (c) the Logs are made available to the Information Commissioner's Office on request

22.13.3 use the Logs only to:

- (a) verify the lawfulness of processing;
- (b) assist with self-monitoring by the Authority or (as the case may be) the Supplier, including the conduct of internal disciplinary proceedings;
- (c) ensure the integrity of Personal Data; and
- (d) assist with criminal proceedings

22.13.4 as far as possible, distinguish between Personal Data based on fact and Personal Data based on personal assessments; and

22.13.5 where relevant and as far as possible, maintain a clear distinction between Personal Data relating to different categories of Data Subject, for example:

- (a) persons suspected of having committed or being about to commit a criminal offence;
- (b) persons convicted of a criminal offence;
- (c) persons who are or maybe victims of a criminal offence; and
- (d) witnesses or other persons with information about offences.

22.14 This clause 22 applies during the Term and indefinitely after its expiry.

## **23 Official Secrets Acts and Finance Act**

23.1 The Supplier shall comply with:

23.1.1 the Official Secrets Acts 1911 to 1989; and

23.1.2 section 182 of the Finance Act 1989.

## **24 Confidential Information**

24.1 Except to the extent set out in this clause 24 or if disclosure or publication is expressly allowed elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

- 24.2 The Supplier hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.
- 24.3 If required by the Authority, the Supplier shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in a form approved by the Authority. The Supplier shall maintain a list of the non-disclosure agreements completed in accordance with this clause 24.3.
- 24.4 If requested by the Authority, the Supplier shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Supplier shall ensure that Staff, professional advisors and consultants are aware of the Supplier's confidentiality obligations under the Contract.
- 24.5 The Supplier may disclose the Authority's Confidential Information only to Staff who are directly involved in providing the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 24.6 The Supplier shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.
- 24.7 Clause 24.1 shall not apply to the extent that:
- 24.7.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
  - 24.7.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 24.7.3 such information was obtained from a third party without obligation of confidentiality;
  - 24.7.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 24.7.5 it is independently developed without access to the other Party's Confidential Information.
- 24.8 Nothing in clause 24.1 prevents the Authority disclosing any Confidential Information obtained from the Supplier:
- 24.8.1 for the purpose of the examination and certification of the Authority's accounts;
  - 24.8.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - 24.8.3 to Parliament and Parliamentary committees;
  - 24.8.4 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
  - 24.8.5 to any consultant, contractor or other person engaged by the Authority
- provided that in disclosing information under clauses 24.8.4 and 24.8.5 the Authority discloses only the information which is necessary for the purpose concerned and requests that the

information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 24.9 Nothing in clauses 24.1 to 24.6 prevents either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 24.10 The Authority shall use reasonable endeavours to ensure that any Government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause 24.8 is made aware of the Authority's obligations of confidentiality.
- 24.11 If the Supplier does not comply with clauses 24.1 to 24.8 the Authority may terminate the Contract immediately on notice.
- 24.12 To ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Supplier shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 24.13 The Supplier shall:
  - 24.13.1 immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches;
  - 24.13.2 use best endeavours to recover such Confidential Information or data however it may be recorded;
  - 24.13.3 co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data; and
  - 24.13.4 at its own expense, alter any security systems at any time during the Term at the Authority's request if the Authority reasonably believes the Supplier has failed to comply with clause 24.12.

## **25 Freedom of Information**

- 25.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- 25.2 The Supplier shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and shall:
  - 25.2.1 give the Authority a copy of all Information in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
  - 25.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and
  - 25.2.3 not respond directly to a Request for Information unless authorised to do so in writing by the Authority.
- 25.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the FOIA and/or the EIR.

## **26 Publicity, Media and Official Enquiries**

- 26.1 The Supplier shall not:
- 26.1.1 make any press announcements or publicise the Contract or its contents in any way;
  - 26.1.2 use the Authority's name, brand or logo in any publicity, promotion, marketing or announcement of order; or
  - 26.1.3 use the name, brand or logo of any of the Authority's agencies or arms-length bodies in any publicity, promotion, marketing or announcement of orders
- without Approval.
- 26.2 Each Party acknowledges that nothing in the Contract either expressly or impliedly constitutes an endorsement of any products or services of the other Party (including the Services and the ICT Environment) and each Party shall not conduct itself in such a way as to imply or express any such approval or endorsement.
- 26.3 The Supplier shall use all reasonable endeavours to ensure that its Staff and professional advisors comply with clause 26.1.
- 26.4 ESF Publicity Requirements
- 26.4.1 The Supplier shall ensure that it complies with the ESF Publicity Requirements and Annex 2 of the Specification in respect of publicity.
  - 26.4.2 The Supplier shall give due regard to the "Guidance for providers and subcontractors for Publicity requirements for HMPPS/ESF Funded Projects" issued by HMPPS from time to time, and shall make this guidance available to its Sub-Contractors.
  - 26.4.3 The Supplier shall observe the European Commission's and the Authority's publicity requirements and regulations regarding ESF projects, as amended from time to time and available from the Authority. The Supplier shall ensure that sufficient publicity is given to all ESF supported activity so that Participants and the general public are made aware of ESF and what it has achieved. The Supplier shall also make equivalent reference to the Authority and HMPPS in all relevant materials.
  - 26.4.4 The Supplier shall comply with European Commission Regulations 1083/2006, 1080/2006 and 1828/2006 where applicable and as may be amended, updated or superseded from time to time.
  - 26.4.5 Upon request by the Authority, the Supplier shall provide a copy of its formal publicity policy clearly setting out the publicity arrangements used by the Supplier and its Sub-Contractors (if any). Whether or not a copy of the foregoing policy is requested by the Authority, the Supplier shall retain copies of its policy (as revised from time to time) as part of the Supplier's record keeping obligations in accordance with clause 32 (Audit). The Supplier shall be required to adhere to the Publicity Regulations for HMPPS/ESF Funded Projects, as amended from time to time, which can be found in the link at Schedule 15 (ESF Publicity Requirements).
  - 26.4.6 The Supplier shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of the Supplier's failure to comply with this clause 26.4.

## **E. Intellectual property**

### **27 Intellectual Property Rights**

- 27.1 All Intellectual Property Rights in the Results shall vest in the Supplier and the Supplier hereby grants to the Authority, a full exclusive, perpetual, irrevocable, royalty-free, worldwide licence, to use reproduce, modify, develop and maintain for any reason all Intellectual Property Rights which may subsist in the Results. This licence shall take effect on the Commencement Date or (in the case of rights arising after the Commencement Date) will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier and shall cease on the date of expiry or termination of the Contract.
- 27.2 All Intellectual Property Rights in any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Supplier by or on behalf of the Authority (the "**IP Materials**"), shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Supplier shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Supplier of its obligations under the Contract.
- 27.3 The Supplier shall:
- 27.3.1 waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;
  - 27.3.2 ensure that the third-party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Supplier or to any other third party supplying goods and/or services to the Authority ("**Indemnified Persons**");
  - 27.3.3 not infringe any Intellectual Property Rights of any third party in supplying the Services; and
  - 27.3.4 during and after the Term, indemnify and keep indemnified the Authority and Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority and Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause 27.3 and/or as a result of any use by the Authority of the Results or third party Intellectual Property Rights licensed in accordance with clause 27.3.2.
- 27.4 The Authority shall notify the Supplier in writing of any claim or demand brought against the Authority or Indemnified Person for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Supplier to the Authority.
- 27.5 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Supplier or Indemnified Person) arising from the performance of the Supplier's obligations under the Contract ("**Third Party IP Claim**"), provided that the Supplier shall at all times:
- 27.5.1 consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
  - 27.5.2 take due and proper account of the interests of the Authority; and
  - 27.5.3 not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

- 27.6 The Authority shall, at the request of the Supplier, afford to the Supplier all reasonable assistance for the purpose of contesting any Third-Party IP Claim and the Supplier shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier is not required to indemnify the Authority under this clause 27.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clause 27.3.4.
- 27.7 The Authority shall not, without the Supplier's consent, make any admissions which may be prejudicial to the defence or settlement of any Third-Party IP Claim.
- 27.8 If any Third-Party IP Claim is made or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to any other rights or remedies under this Contract including without limitation the rights of the Authority under clauses 27.3.2 and 34.1.7) use its best endeavours to:
- 27.8.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
  - 27.8.2 procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority
- and if the Supplier is unable to comply with clauses 27.8.1 or 27.8.2 within 20 Working Days of receipt by the Authority of the Supplier's notification the Authority may terminate the Contract immediately by notice to the Supplier.
- 27.9 The Supplier grants to the Authority and, if requested by the Authority, to a Replacement Supplier, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Commencement Date and which the Authority (or the Replacement Supplier) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services) for the Term and any exit or transition period following the Term.
- 27.10 The Authority hereby grants to the Supplier a royalty free, non-exclusive, non-transferable licence during the Term to use:
- 27.10.1 the Authority Software;
  - 27.10.2 the Authority Data; and
  - 27.10.3 any other materials (including the IP Materials) provided by the Authority to the Supplier for the purposes of delivering the Services (**Authority Materials**)
- solely to the extent necessary for performing the Services in accordance with this Agreement and in all cases subject to any applicable restrictions or conditions set out in Schedule 17 (Access to Authority Case Management System), including (but not limited to) the right to grant sub-licenses to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking on terms no less onerous than those set out in clauses 24 to 26 (inclusive).
- 27.11 Any Authority Materials are provided solely on an as is basis, and the Authority offers no warranty or guarantee that the Authority Materials shall be available uninterrupted or error-free.
- 27.12 In the event of the termination or expiry of the Contract, the licence granted pursuant to clause 27.10 and any sub-licence granted by the Supplier in accordance with clause 27.10 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

- 27.12.1 immediately cease all use of the Authority Software, Authority Data and any other Authority Materials (as the case may be);
- 27.12.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, Authority Data and any other Authority Material;
- 27.12.3 ensure, so far as reasonable practicable that any Authority Software, Authority Data and any other Authority Materials that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, IT system or other Supplier device containing such Authority Software, Authority Data and any other Authority Materials.

## **F. Control of the contract**

### **28 Contract Performance**

- 28.1 Within 10 Working Days of the Commencement Date, the Supplier shall implement a structure to efficiently manage this Contract in accordance with the Specification and the Compliance Measures, such structure to be Approved.
- 28.2 The Supplier shall immediately inform the Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.
- 28.3 Following the Service Start Date, the Authority shall conduct Monthly contract management meetings ("**Performance Meetings**") where the Supplier shall provide details of its performance in the immediately preceding Month and the parties shall consider matters including but not limited to:
  - 28.3.1 Key Personnel changes;
  - 28.3.2 Incidents, data breaches and/or health and safety concerns;
  - 28.3.3 Participant feedback;
  - 28.3.4 Acceptance of Enrolments and Activities against Monthly Enrolment Target and Monthly Activity Target(s);
  - 28.3.5 Supplier's performance against Compliance Measures;
  - 28.3.6 Authority allocation of RAG Status to Compliance Measures (in accordance with the Specification);
  - 28.3.7 Supplier's performance against Expected Standards;
  - 28.3.8 Implementation of Performance Improvement Plans and/or Action Plans (in accordance with Schedule 11 (Performance Improvement));
  - 28.3.9 Results of any quality evaluation and performance management review undertaken by the Authority in accordance with section 6 of the Specification/Schedule 6 (Information Assurance and Security).
- 28.4 The Supplier shall provide a Report to the Authority at least 7 calendar days prior to any Performance Meeting.
- 28.5 During the Implementation Period the Supplier and the Authority shall have regular contract management meetings (as stipulated and formatted by the Authority) and shall agree the dates, the format and the location(s) of the Performance Meetings. The Performance Meetings may also include a site visit if the Authority deems this to be beneficial.

- 28.6 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter, the Authority may carry out a review of the performance of the Supplier (a "**Review**"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to):
- 28.6.1 the Supplier's delivery of the Services;
  - 28.6.2 the Supplier's contribution to innovation in the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services;
  - 28.6.3 a review of future requirements in relation to the Services; and
  - 28.6.4 progress against key milestones.
- 28.7 The Supplier shall provide at its own cost any assistance reasonably required by the Authority to perform the Performance Meetings and the Reviews including the provision of data and information.
- 28.8 The Authority may (or may require the Supplier to) produce a report (a "**Contract Report**") of the results of any Performance Meeting or Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Supplier's obligations under the Contract.
- 28.9 The Authority shall notify the Supplier where in the Authority's reasonable opinion, the Supplier fails:
- 28.9.1 to comply with the Supplier Guidance, Compliance Measures, Expected Standards or any Quality Standards;
  - 28.9.2 to meet the Monthly Enrolment Target or the Monthly Activity Target (or where the Supplier exceeds such targets by more than 115%);
  - 28.9.3 to deliver the Services in accordance with the Specification and to the reasonable satisfaction of the Authority following any quality evaluation undertaken by the Authority and/or the Supplier in accordance with the Specification; or
  - 28.9.4 to comply with the Contract in any other manner (including any failure to supply all or any part of the Services in accordance with the Contract, professional or Good Industry Practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement);
- or has otherwise committed a Default (a **Supplier Failure**).
- 28.10 If the Supplier has been notified of a Supplier Failure in accordance with clause 28.9, it shall:
- 28.10.1 use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such Supplier Failure from recurring; and
  - 28.10.2 immediately give the Authority such information as the Authority may request regarding the failure and any mitigation actions taken in accordance with clause 28.10.1.
- 28.11 The Authority may, in the event of a Supplier Failure (and without prejudice to any of its other rights or remedies under this Contract (including without limitation under clauses 29, 37, 38, and 39)):
- 28.11.1 require the Supplier to suspend invoices in accordance with the provisions of Schedule 2 (Price and Invoicing); and/or
  - 28.11.2 take any of the steps referred to in Schedule 11 (Performance Management/PIP and Action Plan Process).

- 28.12 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Supplier Failure, in relation to compliance with Schedule 11 (Performance Management/PIP and Action Plan Process) or those which result from the Supplier's failure to meet the Authority's expectations notified to the Supplier or of which the Supplier ought reasonably to have been aware) shall be implemented at no extra cost to the Authority.
- 28.13 The Supplier shall provide all access to information, Staff or Premises as the Authority may reasonably require for its Contract Support Officers for the purposes of contract performance monitoring, each as further described in section 6 of the Specification.
- 28.14 The Supplier shall ensure that it implements a complaints procedure for use by Participants within 10 Working Days of the Commencement Date (or such other date as the parties may agree prior to the Services Start Date) which shall be Approved prior to implementation. The Supplier shall be responsible for managing such complaints procedure and reporting to the Authority as reasonably requested by the Authority.
- 28.15 The Supplier shall ensure that it complies with the Authority's requirements in respect of any internal Authority audit and any audit arising under any ESF Requirements and shall in any event, comply with the procedure for keeping Records as set out in Schedule 5 (Information Assurance and Security).

## **29 Remedies**

- 29.1 If the Authority reasonably believes the Supplier has committed a material Default or the Supplier has committed repeated Defaults which, taken together, constitute a material Default (in the reasonable opinion of the Authority) of the Contract, or where otherwise permitted in Schedule 11 (Performance Management/PIP and Action Plan Process) it may, without prejudice to its rights and remedies under the Contract (including without limitation under clause 37 (Termination on Default) or any of its rights under Schedule 2 (Price and Invoicing)), do any one or more of the following:
  - 29.1.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier has demonstrated to the Authority's reasonable satisfaction that the Supplier will be able to supply the Services in accordance with the Specification;
  - 29.1.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - 29.1.3 withhold or reduce payments to the Supplier in such amount as the Authority reasonably deems appropriate in each particular case;
  - 29.1.4 novate the Contract to such Replacement Supplier or other supplier as the Authority may determine from time to time on terms reasonably acceptable to the Authority; and/or
  - 29.1.5 terminate the Contract in accordance with clause 37.
- 29.2 Without prejudice to its right under clause 20 (Recovery of Sums Due), the Authority may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services.

## **30 Transfer and Sub-Contracting**

- 30.1 Except where both clauses 30.11 and 30.12 apply, the Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without

Approval. All such actions shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract does not relieve the Supplier of any of its obligations or duties under the Contract.

30.2 The Supplier shall only be permitted to sub-contract to:

30.2.1 the extent permitted by the ESF Requirements; and

30.2.2 an Approved list of Sub-Contractors.

30.3 The Supplier:

30.3.1 as directed by the Authority and where appropriate, should ensure that the terms of a Sub-Contract reflect the provisions of the Industry Standard Partnering Agreement and in addition shall include:

- (a) provisions which reflect the principles and legal requirements set out in Schedule 8 of this Contract;
- (b) provisions which will enable the Supplier to discharge its obligations under this Contract;
- (c) a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce any provisions under the Sub-Contract which are capable of conferring a benefit upon the Authority;
- (d) a provision enabling the Authority to enforce the Sub-Contract as if it were the Supplier;
- (e) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- (f) obligations no less onerous on the Sub-Contractor than those imposed on the Supplier under this Contract in respect of:
  - (i) data protection requirements set out in clauses 21 (Authority Data) and 22 (Data Protection and Privacy);
  - (ii) FOIA requirements set out in clause 25 (Freedom of Information);
  - (iii) the keeping of records in respect of the services being provided under the Sub-Contract, including the maintenance of Open Book Data;
  - (iv) force majeure events as set out in clause 47 (Force Majeure);
  - (v) change provisions as detailed in clause 31 (Change);
  - (vi) provisions in relation to Sub-Contractor personnel as set out in clause 12 (Key Personnel);
  - (vii) confidentiality requirements set out in clause 24 (Confidentiality);
  - (viii) exit management requirements set out in clause 44 (exit management);
  - (ix) publicity and media requirement set out in clause 26 (publicity, media and official enquiries);
  - (x) intellectual property requirements set out in clause 27 (Intellectual Property); and
  - (xi) the conduct of audits set out in 32 (Monitoring and Audit);

- (g) provisions ensuring that Sub-Contractors produce and maintain a BCDR Plan and ensure that such BCDR Plan can be implemented within similar timescales to those set out in this Contract;
  - (h) provisions enabling the Supplier to terminate the Sub-Contract on notice on terms no more onerous on the Sub-Contractor than those imposed on the Supplier by the Authority under this Contract
  - (i) a provision restricting the ability of the Sub-Contractor to sub-contract all or any part of the services provided to the Supplier under the Sub-Contract;
  - (j) a provision requiring the Sub-Contractor to participate in, and if required by the Authority in the relevant dispute resolution procedure, to procure the participation of all or any of its Sub-Contractors in, the dispute resolution procedure; and
  - (k) a provision requiring the Sub-Contractor to promptly notify the Supplier and the Authority in writing of any Financial Distress Event or any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Sub-Contractor.
- 30.3.2 should ensure that the terms of a Sub-Contract do not contain any terms which conflict with the terms of the Industry Standard Partnering Agreement;
- 30.3.3 agrees that the Authority shall have no liability to the Supplier with respect to the use of all or part of the Industry Standard Partnering Agreement and shall indemnify the Authority on demand from and against all losses suffered or incurred by the Authority arising out of or in connection with the use of the Supplier of all or part of the Industry Standard Partnering Agreement.
- 30.4 The Supplier is responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Supplier shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- 30.5 The Supplier shall ensure that Sub-Contractors retain all records relating to the Services for at least 12 years from the date of their creation and make them available to the Authority on request in accordance with clause 32 (Audit). If any Sub-Contractor does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Supplier on the basis of such documents or work carried out by the Sub-Contractor.
- 30.6 If the Authority has consented to the award of a Sub-Contract, the Supplier shall ensure that:
- 30.6.1 the Sub-Contract contains the following (without limitation):
    - (a) a prohibition on further sub-contracting without the Approval of the Supplier and the Authority;
    - (b) a right for the Supplier to terminate the if the Sub-Contractor does not comply with its legal obligations in connection with Data Protection Legislation, environmental, social or labour law;
    - (c) obligations no less onerous on the Sub-Contractor than those on the Supplier under the Contract in respect of data protection in clauses 21 and 22;
    - (d) a provision which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice;
    - (e) provisions to ensure compliance with the ESF Requirements;
    - (f) provisions to ensure compliance with the confidentiality provisions as set out in this Contract;

- (g) provisions to ensure compliance with the insurance provisions as set out in this Contract; and
- (h) provisions to ensure that any Sub-Contractor complies with all applicable laws.
- 30.6.2 the Sub-Contractor includes a provision having the same effect as set out in this clause 30.6.1 in any Sub-Contract which it awards;
- 30.6.3 copies of each Sub-Contract are sent to the Authority immediately after their execution; and
- 30.6.4 it follows the Market Stewardship Principles as set out in Schedule 19.
- 30.7 Unless Approved otherwise, if the total value of the Contract over the Term is, or is likely to be, in excess of £5,000,000, the Supplier shall, in respect of Sub-Contract opportunities arising during the Term from or in connection with the provision of the Services:
  - 30.7.1 advertise on Contracts Finder those that have a value in excess of £25,000;
  - 30.7.2 within 90 days of awarding a Sub-Contract, update the notice on Contracts Finder with details of the Sub-Contractor;
  - 30.7.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder and awarded during the Term;
  - 30.7.4 provide reports on the information in clause 30.7.3 to the Authority in the format and frequency reasonably specified by the Authority;
  - 30.7.5 promote Contracts Finder to its suppliers and encourage them to register on Contracts Finder; and
  - 30.7.6 ensure that each advertisement placed pursuant to 30.7.1 includes a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder.
- 30.8 The Supplier shall, at its own cost, supply to the Authority by the end of April each year for the previous Financial Year:
  - 30.8.1 total revenue received from the Authority pursuant to the Contract;
  - 30.8.2 the total value of all its Sub-Contracts;
  - 30.8.3 the total value of its Sub-Contracts with SMEs; and
  - 30.8.4 the total value of its Sub-Contracts with VCSEs.
- 30.9 The Authority may from time to time change the format and the content of the information required pursuant to clause 30.8.
- 30.10 If the Authority believes there are:
  - 30.10.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Supplier shall replace or not appoint the Sub-Contractor; or
  - 30.10.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Supplier to replace or not appoint the Sub-Contractor and the Supplier shall comply with such requirement.
- 30.11 Notwithstanding clause 30.1, the Supplier may assign to a third party (the "**Assignee**") the right to receive payment of the Price or any part thereof due to the Supplier (including any interest which the Authority incurs under clause 18 (Payment and VAT)). Any assignment under this clause 30.11 is subject to:

- 30.11.1 reduction of any sums in respect of which the Authority exercises its right of recovery under clause 19 (Recovery of Sums Due);
  - 30.11.2 all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - 30.11.3 the Authority receiving notification under both clauses 30.12 and 30.13.
- 30.12 If the Supplier assigns the right to receive the Price under clause 30.11, the Supplier or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 30.13 The Supplier shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority can make payment.
- 30.14 Clause 16 continues to apply in all other respects after the assignment and shall not be amended without Approval.
- 30.15 Subject to clause 30.16, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 30.15.1 any Contracting Authority;
  - 30.15.2 any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - 30.15.3 any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.
- 30.16 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 30.17, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- 30.17 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 30.15 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
  - 30.17.1 the rights of termination of the Authority in clauses 36 and 37 are available to the Supplier in respect of the Transferee; and
  - 30.17.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Supplier.
- 30.18 The Authority may disclose to any Transferee any Confidential Information of the Supplier, which relates to the performance of the Supplier's obligations under the Contract. In such circumstances, the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 30.19 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the Contract.

## 31 Change

- 31.1 After the Commencement Date, either Party may request a Change subject to the terms of this clause 31.
- 31.2 Either Party may request a Change by notifying the other Party in writing of the Change by completing the Change Notice in the form set out in Schedule 3 (Change Control). The Party requesting the Change shall give the other Party sufficient information and time to assess the extent and effect of the requested Change. If the receiving Party accepts the Change it shall confirm it in writing to the other Party.
- 31.3 If the Supplier is unable to accept a Change requested by the Authority or if the Parties are unable to agree a change to the Price, the Authority may:
- 31.3.1 allow the Supplier to fulfil its obligations under the Contract without the Change; or
  - 31.3.2 terminate the Contract immediately except where the Supplier has already delivered all or part of the Services or where the Supplier can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause 47 (Dispute Resolution).
- 31.4 A Change takes effect only when it is recorded in a Variation Form (as set out in Schedule 3: Change Control) validly executed by both Parties.
- 31.5 The Supplier is deemed to warrant and represent that the Variation Form has been executed by a duly authorised representative of the Supplier in addition to the warranties and representations set out in clause 34.
- 31.6 Clauses 31.4 and 31.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Change in order to address the emergency. In an emergency, Changes may be approved by a different representative of the Authority. However, the Authorised Representative may review such a Change and require a Variation Form to be entered into on a retrospective basis which may itself vary the emergency Change.
- 31.7 Nothing in this clause 31 shall prohibit the parties from agreeing in writing from time to time any changes to the Activities available at the Activity Hub(s), or any changes to the Supplier Guidance documentation in place from time to time.

## **32 Monitoring and Audit**

- 32.1 The Supplier shall (and shall procure that its Sub-Contractors shall) comply with the requirements of Schedule 5 (Reports and Record Retention).
- 32.2 The Supplier shall (and shall procure that its Sub-Contractors shall):
- 32.2.1 Comply with Articles 8 and 9 of the European Commission Regulation number 1828/2006 and found at <http://www.legislation.gov.uk/eur/2006/1828> (the EC Regulation). The Supplier shall include equivalent reference to the Ministry of Justice and Her Majesty's Prison and Probation Service as that given to the European Social Fund in all materials relevant to compliance with those Articles;
  - 32.2.2 keep and maintain in accordance with the requirements of the National Archives and Good Industry Practice until 12 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including:
    - (a) any records, reports or other documents which this Contract (including without limitation any records required under the Specification or Schedule 11 (Performance Management/PIP and Action Plan Process)) expressly requires are prepared or are required to be prepared by Law;

- (b) records relating to the appointment and succession of any Key Personnel or any Key Sub-Contractor;
- (c) any operations manuals or other materials created in the delivery of the Services;
- (d) any certificates, licences, registrations, accreditations, qualifications obtained by the Supplier or its Staff in connection with the provision of the Services;
- (e) invoices and financial records including audited and unaudited accounts of the Supplier (and where applicable any guarantor)
- (f) any documents or certificates relating to insurances under this Contract and any claims made under them;
- (g) any records required under Article 15 of the EC Regulation;
- (h) any other records as the Authority may reasonably require;

**the Records.**

32.2.3 on request afford the Authority or the Authority's representatives access to:

- (a) those Records as may be requested by the Authority in connection with the Contract;

32.2.4 make available to the Authority, free of charge, whenever requested, copies of Records including audit reports that are/have been obtained by the Supplier in relation to the Services; Records relating to the Supplier's compliance with the ESF Requirements; allocation of DAF Funding; Records relating to the management of Sub-Contractors; and Records relating to the general compliance with the terms of this Contract;

32.2.5 allow authorised representatives of the Authority and/or the National Audit Office, or any other body conducting an audit in compliance with Article 15 of the EC Regulation, during normal business hours on reasonable notice to examine the Supplier's Records, access to the Premises, Staff and any IT systems of the Supplier and provide such copies and oral or written explanations as may reasonably be required to review and examine the Services; compliance with the ESF Requirements; allocation of DAF Funding; management of Sub-Contractors; and general compliance with the terms of this Contract; and

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

32.2.7 allow authorised representatives of the Authority during normal business hours on reasonable notice such access to the Premises, Staff Records and any IT systems of the Supplier for the purposes of carrying out any quality monitoring further described in the Specification.

32.2.8 provide sufficient relevant information to the Authority to allow it to comply with Article 7.2(d) of the EC Regulation when demanded with reasonable notice.

32.3 The Supplier shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of the Supplier's failure to comply with this clause 32.

## **G. Liabilities**

### **33 Liability, Indemnity and Insurance**

- 33.1 Neither Party limits its liability for:
- 33.1.1 death or personal injury caused by its negligence;
  - 33.1.2 fraud or fraudulent misrepresentation;
  - 33.1.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
  - 33.1.4 in the case of the Supplier only, any breach of clauses 15, 21, 22, 24 or 25 or Schedule 6 (Information Assurance and Security) or Schedule 8 (Statutory Obligations and Corporate Social Responsibility) or paragraph 6.4 of Schedule 17 (Access to Authority Case Management System); or
  - 33.1.5 any liability to the extent it cannot be limited or excluded by Law.
- 33.2 Subject to clause 33.3, the Supplier indemnifies the Authority fully against all Losses which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss, third party claim arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly by any act or omission of the Supplier.
- 33.3 Subject to clause 33.1 the Supplier's aggregate liability in respect of the Contract (save in relation to Property) does not exceed the ESF Funding Cap.
- 33.4 Subject to clause 31.1 the Supplier's aggregate liability in respect of Property does not exceed £5,000,000 (five million pounds).
- 33.5 Subject to clause 33.1 the Authority's aggregate liability in respect of the Contract does not exceed the Price payable in first twelve Months of the Contract.
- 33.6 The Authority may recover from the Supplier the following losses as direct recoverable losses (without limitation):
- 33.6.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - 33.6.2 any wasted expenditure or charges;
  - 33.6.3 the additional costs of procuring a Replacement Supplier for the remainder of the Term and or replacement deliverables which shall include any incremental costs associated with the Replacement Supplier and/or replacement deliverables above those which would have been payable under the Contract;
  - 33.6.4 any compensation or interest paid to a third party by the Authority; and
  - 33.6.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- 33.7 Subject to clauses 33.1 and 33.6, neither Party is liable to the other for any:
- 33.7.1 loss of profits, turnover, business opportunities; or
  - 33.7.2 indirect, special or consequential loss.

- 33.8 Unless otherwise specified by the Authority, the Supplier shall, with effect from the Commencement Date for such period as necessary to enable the Supplier to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract including but not limited to:
- 33.8.1 professional indemnity insurance in the sum of not less than £5,000,000 (five million pounds) for each and every claim;
  - 33.8.2 public liability insurance in the sum of not less than £10,000,000 (ten million pounds) for each and every claim;
  - 33.8.3 cover for death or personal injury, loss of or damage to property or any other loss in the sum of not less than £10,000,000 (ten million pounds) for each and every claim; and
  - 33.8.4 employer's liability insurance in respect of Staff of not less than £5,000,000 (five million pounds) for each and every claim.

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

- 33.9 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 33.10 If the Supplier does not have and maintain the insurances required by the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 33.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 33.12 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

## **34 Warranties and Representations**

- 34.1 The Supplier warrants and represents on the Commencement Date and for the Term that:
- 34.1.1 It (and where applicable its Staff) has full capacity and authority and all necessary consents, accreditations, qualifications and licenses to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Supplier;
  - 34.1.2 in entering the Contract, it has not committed any fraud;
  - 34.1.3 as at the Commencement Date, all information contained in the Tender or other offer made by the Supplier to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
  - 34.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is in progress or, to the best of its knowledge and belief, pending or

threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;

- 34.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
  - 34.1.6 no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
  - 34.1.7 it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
  - 34.1.8 any person employed or engaged by the Supplier shall be suitably qualified and shall have all necessary licences, qualifications and accreditations to perform the Services;
  - 34.1.9 any person employed or engaged by the Supplier shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
  - 34.1.10 in the 3 years (or period of existence if the Supplier has not been in existence for 3 years) prior to the date of the Contract:
    - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
    - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
    - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
  - 34.1.11 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
  - 34.1.12 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.
- 34.2 The Supplier confirms that in entering into the Contract it is not relying on any statements, warranties or representations given or made (whether negligently or innocently or whether express or implied), or any acts or omissions by or on behalf of the Authority in connection with the subject matter of the Contract except those expressly set out in the Contract and the Supplier hereby waives and releases the Authority in respect thereof absolutely.

## **35 Tax Compliance**

- 35.1 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 35.1.1 notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
  - 35.1.2 promptly give the Authority:

- (a) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
  - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 35.2 If the Supplier or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Supplier shall:
- 35.2.1 at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
  - 35.2.2 indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Staff.

## **H. Default, disruption and termination**

### **36 Insolvency and Change of Control**

- 36.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier, where the Supplier experiences a Financial Distress Event which is not remedied in accordance with Schedule 20 (Financial Distress).
- 36.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is a company and in respect of the Supplier:
- 36.2.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 36.2.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - 36.2.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
  - 36.2.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 36.2.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - 36.2.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - 36.2.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 36.2.8 any event similar to those listed in 36.2.1 - 36.2.7 occurs under the law of any other jurisdiction.

- 36.3 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is an individual and:
- 36.3.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors;
  - 36.3.2 a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy;
  - 36.3.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
  - 36.3.4 he is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
  - 36.3.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
  - 36.3.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
  - 36.3.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
  - 36.3.8 any event similar to those listed in clauses 36.3.1 to 36.3.7 occurs under the law of any other jurisdiction.
- 36.4 The Supplier shall notify the Authority immediately following a merger, take-over, change of control, change of name or status including where the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier within 6 Months of:
- 36.4.1 being notified that a Change of Control has occurred; or
  - 36.4.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control
- but is not permitted to terminate where Approval was granted prior to the Change of Control.
- 36.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is a partnership and:
- 36.5.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - 36.5.2 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
  - 36.5.3 a receiver, or similar officer is appointed over the whole or any part of its assets; or
  - 36.5.4 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
  - 36.5.5 any of the following occurs in relation to any of its partners:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
- (b) a petition is presented for his bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of his assets;
- 36.5.6 any event similar to those listed in clauses 36.5.1 to 36.5.5 occurs under the law of any other jurisdiction in respect of the Supplier or any guarantor of the Supplier.
- 36.6 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is a limited liability partnership and:
  - 36.6.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 36.6.2 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
  - 36.6.3 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
  - 36.6.4 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
  - 36.6.5 a receiver, or similar officer is appointed over the whole or any part of its assets; or
  - 36.6.6 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 36.6.7 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 36.6.8 any event similar to those listed in clauses 36.6.1 to 36.6.7 occurs under the law of any other jurisdiction.
- 36.7 References to the Insolvency Act 1986 in clause 36.6.1 are references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

## **37 Default**

- 37.1 The Authority may terminate the Contract with immediate effect by notice if the Supplier commits a Default and:
  - 37.1.1 the Supplier has not remedied the Default to the satisfaction of the Authority within 20 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied; or
  - 37.1.2 the Default is a material breach which is incapable of remedy;
  - 37.1.3 the Supplier has committed repeated Defaults which, taken together, constitute a material breach in the reasonable opinion of the Authority.
- 37.2 If, through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier is liable for the

cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

- 37.3 If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Supplier may terminate the Contract with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 19 or to a Force Majeure Event.

### **38 Termination on Notice**

The Authority may terminate the Contract at any time by giving 6 Months' notice to the Supplier.

### **39 Other Grounds**

- 39.1 The Authority may terminate the Contract with immediate effect, if:
- 39.1.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
  - 39.1.2 the Supplier was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;
  - 39.1.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;
  - 39.1.4 the Supplier has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law;
  - 39.1.5 the Supplier has failed to comply with the ESF Requirements;
  - 39.1.6 the European Commission has withdrawn funding under the European Social Fund;
  - 39.1.7 any of the grounds for termination set out in Schedule 11 (Performance Management/PIP and Action Plan Process) are met.

### **40 Consequences of Expiry or Termination**

- 40.1 If the Authority terminates the Contract under clauses 9.6, 24.11, 27.8, 29.1, 31.3, 36, 37, 39.1, 41.1, 50.2, Schedule 8 (Statutory Obligations and Corporate Social Responsibility) or Schedule 11 (Performance Management/PIP and Action Plan Process) and makes other arrangements for the supply of the Services the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term.
- 40.2 If the Contract is terminated under clauses 9.6, 24.11, 27.8, 29.1, 31.3, 36, 37, 39.1, 41.1, 50.2, Schedule 8 (Statutory Obligations and Corporate Social Responsibility) or Schedule 11 (Performance Management/PIP and Action Plan Process) the Authority shall make no further payments to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause 40.

- 40.3 If the Authority terminates the Contract under clauses 38 or 39 the Authority shall make no further payments to the Supplier except for Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.
- 40.4 Save as otherwise expressly provided in the Contract:
- 40.4.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry; and
  - 40.4.2 termination of the Contract does not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses 198 (Payment and VAT), 19 (Recovery of Sums Due), 22 (Data Protection and Privacy), 23 (Official Secrets Acts and Finance Act), 24 (Confidential Information), 25 (Freedom of Information), 27 (Intellectual Property Rights), 32 (Audit), 33 (Liability, Indemnity and Insurance), 40 (Consequences of Expiry or Termination), 42 (Recovery), 43 (Retendering and Handover), 44 (Exit Management), 45 (Knowledge Retention), 52 (Remedies Cumulative), 58 (Governing Law and Jurisdiction) and paragraph 9 of Schedule 8 (Statutory Obligations and Corporate Social Responsibility) or any other clauses which by intent or construction are intended to survive the termination or expiry of the Contract.

## **41 Disruption**

- 41.1 The Supplier shall formulate a BCDR Plan by no later than 12 weeks from the Commencement Date, which shall be reviewed by the Authority. The BCDR Plan shall include, without limitation, the Supplier's mitigation plan in the event of an epidemic, pandemic, COVID-19 related occurrence and any other such government action, which would have a similar disruptive impact.
- 41.2 Any amendments suggested by the Authority shall be incorporated into the BCDR Plan which must be Approved in order for the Supplier to have satisfied its obligation under this clause 41.
- 41.3 The Supplier shall ensure that it is able to implement the BCDR Plan at any time in accordance with its terms.
- 41.4 The Supplier shall test the BCDR Plan on a regular basis and in any event not less than every 12 Months during the Term. The Supplier shall give the Authority at least 7 days' notice of the tests and allow the Authority to participate in them.
- 41.5 The Supplier shall implement the BCDR Plan if:
- 41.5.1 notified to do so by the Authority;
  - 41.5.2 where a Business Continuity Event occurs; and/or
  - 41.5.3 if the Services are unavailable for more than 7 calendar days.
- 41.6 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 41.7 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 41.8 If there is industrial action by Staff, the Supplier shall seek Approval for its proposals to continue to perform its obligations under the Contract.

- 41.9 If the Supplier's proposals referred to in clause 41.8 are considered insufficient or unacceptable by the Authority acting reasonably, the Authority may terminate the Contract with immediate effect.
- 41.10 If the Supplier is unable to deliver the Services owing to disruption of the Authority's normal business, the Supplier may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **42 Recovery**

- 42.1 On termination of the Contract for any reason, the Supplier shall at its cost:
- 42.1.1 immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
  - 42.1.2 immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Supplier in good working order;
  - 42.1.3 immediately vacate any Authority Premises occupied by the Supplier;
  - 42.1.4 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress; and
  - 42.1.5 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Supplier to conduct due diligence.
- 42.2 If the Supplier does not comply with clauses 42.1.1 and 42.1.2, the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its suppliers or Sub-Contractors where any such items may be held.

## **43 Retendering and Handover**

- 43.1 Within 21 days of being requested by the Authority, the Supplier shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.
- 43.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause 43.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- 43.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- 43.4 The Supplier indemnifies the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Supplier is required to provide under clause 43.1.
- 43.5 The Supplier shall allow access to the Premises in the presence of an authorised representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.

- 43.6 If access is required to the Supplier's Premises for the purposes of clause 43.5, the Authority shall give the Supplier 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Supplier's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- 43.7 The Supplier shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation includes allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 43.8 Within 10 Working Days of being requested by the Authority, the Supplier shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

#### **44 Exit Management**

- 44.1 The Supplier shall, within one Month of the Commencement Date, submit an exit plan (hereinafter referred to as the **Exit Plan**) to the Authority which complies with the requirement of this clause 44.
- 44.2 The parties shall use their reasonable endeavours to agree the contents of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan within 10 Working Days of its submission, the Authority will have final say over its content.
- 44.3 The Exit Plan shall:
- (a) address how the Supplier will facilitate the transition of the Services from the Supplier to the Authority and/or a Replacement Supplier as applicable) and ensure that there is no disruption in the Services and no deterioration in the quality of the delivery of the Services.
  - (b) detail how the Services will transfer to the Replacement Supplier or the Authority including, to the extent applicable, details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components run by the Supplier or any of its Sub-Contractors;
  - (c) provide a detailed timetable for exit and compliance with the requirements of the Contract;
  - (d) where applicable, detail any of the Services that shall remain in operation and how any partial termination of the Services shall be dealt with between the parties;
  - (e) detail a process for notification of the Participants of the termination and/or transition of the Services;
  - (f) ensure that a plan is formulated to ensure that the Supplier continues to provide, all applicable Participants continue with a high quality service in accordance with the Contract, for the final 6 Months of the Term.
- 44.4 On termination of the Contract, the Supplier shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Supplier in accordance with the procedure set out in clauses 44.5 to 44.6.
- 44.5 If the Authority requires a continuation of all or any of the Services on expiry or termination of the Contract, either by performing them itself or by engaging a third party to perform them, the Supplier shall co-operate fully with the Authority and any such third party and shall take all

reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

- 44.6 The following commercial approach shall apply to the transfer of the Services if the Supplier:
- 44.6.1 does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
  - 44.6.2 reasonably incurs additional costs, the Parties shall agree a Change to the Price based on the Supplier's rates either set out in Schedule 2 (Price and Invoicing) or forming the basis for the Price.

## **45 Knowledge Retention**

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

## **I General**

## **46 Dispute Resolution**

- 46.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Supplier and the commercial director of the Authority.
- 46.2 Nothing in this dispute resolution procedure prevents the Parties seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 46.3 If the dispute cannot be resolved by the Parties pursuant to clause 46.1 either Party may refer it to mediation pursuant to the procedure set out in clause 46.5.
- 46.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- 46.5 The procedure for mediation and consequential provisions relating to mediation are as follows
  - 46.5.1 a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement of the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
  - 46.5.2 the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;

- 46.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - 46.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
  - 46.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
  - 46.5.6 if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 46.6.
- 46.6 Subject to clause 46.2, the Parties shall not institute court proceedings until the procedures set out in clauses 46.1 and 46.3 have been completed save that:
- 46.6.1 the Authority may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause 46.7;
  - 46.6.2 if the Supplier intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority has 21 days following receipt of such notice to serve a reply on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause 46.7; and
  - 46.6.3 the Supplier may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 46.7, to which the Authority may consent as it sees fit.
- 46.7 If any arbitration proceedings are commenced pursuant to clause 46.6:
- 46.7.1 the arbitration is governed by the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Supplier (the "**Arbitration Notice**") stating:
    - (a) that the dispute is referred to arbitration; and
    - (b) (providing details of the issues to be resolved;
  - 46.7.2 the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 46.7.2 shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator is binding on the Parties in the absence of any material failure to comply with such rules;
  - 46.7.3 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
  - 46.7.4 if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 46.7.1 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - 46.7.5 the arbitration proceedings shall take place in London and in the English language; and
  - 46.7.6 the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

## **47 Force Majeure**

- 47.1 Subject to this clause 47, a Party may claim relief under this clause 47 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier is regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 47.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 47.3 If the Supplier is the Affected Party, it is not entitled to claim relief under this clause 47 to the extent that consequences of the relevant Force Majeure Event:
- 47.3.1 are capable of being mitigated by any of the Services, but the Supplier has failed to do so; and/or
  - 47.3.2 has not complied with the requirements of the BCDR Plan;
  - 47.3.3 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- 47.4 Subject to clause 47.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 47.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 47.6 If, as a result of a Force Majeure Event:
- 47.6.1 an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
    - (a) the other Party is not entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause 37.1 or 37.3; and
    - (b) neither Party is liable for any Default arising as a result of such failure;
  - 47.6.2 the Supplier fails to perform its obligations in accordance with the Contract it is entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the Contract during the occurrence of the Force Majeure Event.
- 47.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- 47.8 Relief from liability for the Affected Party under this clause 47 ends as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and is not dependent on the serving of a notice under clause 47.7.

- 47.9 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 90 calendar days, the party not affected by the Force Majeure Event may terminate this Contract by giving 1 weeks' written notice to the Affected Party and for the avoidance of doubt the exit management provisions set out in clause 44 and the Exit Plan shall apply.

## **48 Guarantee**

- 48.1 The Authority may, at its sole discretion, request that the Supplier provides either a parent company guarantee (PCG) or, where a PCG is not applicable, a bank guarantee.
- 48.2 Any PCG or bank guarantee must be in the form specified by the Authority and must be Approved.

## **49 Notices and Communications**

- 49.1 Subject to clause 49.3, where the Contract states that a notice or communication between the Parties must be "written" or "in writing" it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Jaggaer (the Authority's procurement portal).

- 49.2 If it is not returned as undelivered a notice served in:

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

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

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

- 49.3 Notices pursuant to clauses 46, 47 or 53 or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

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

49.4.1 For the Authority:

Contact Name: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]

For the Supplier:

Contact Name: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]

## **50 Conflicts of Interest**

- 50.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the

Supplier and the duties owed to the Authority under the Contract. The Supplier will notify the Authority immediately giving full particulars of any such conflict of interest which may arise.

- 50.2 The Authority may terminate the Contract immediately by notice and/or take or require the Supplier to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the Contract. The actions of the Authority pursuant to this clause 50 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **51 Rights of Third Parties**

- 51.1 Clauses 17.6 and 27.3 confer benefits on persons named in them (together **Third Party Provisions** and each person a **Third Party Beneficiary**) other than the Parties and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (**CRTPA**).
- 51.2 Subject to clause 51.1, a person who is not a Party has no right under the CRTPA to enforce the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- 51.3 No Third-Party Beneficiary may enforce or take steps to enforce any Third-Party Provision without Approval.
- 51.4 Any amendments to the Contract may be made by the Parties without the consent of any Third-Party Beneficiary.

## **52 Remedies Cumulative**

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

## **53 Waiver**

- 53.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy do not constitute a waiver of that right or remedy and do not cause a diminution of the obligations established by the Contract.
- 53.2 No waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 48 (Notices and Communications).
- 53.3 A waiver of any right or remedy arising from a breach of the Contract does not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **54 Severability**

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

## **55 Entire Agreement**

The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all

representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

## **56 Change in Law**

56.1 The Supplier is neither relieved of its obligations to supply the Services in accordance with the terms and conditions of the Contract nor entitled to an increase in the Price as the result of:

56.1.1 a General Change in Law; or

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

56.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause 56.1.2), the Supplier shall:

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

(a) Change is required to the Services, the Price or the Contract; and

(b) relief from compliance with the Supplier's obligations is required; and

56.2.2 provide the Authority with evidence:

(a) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors; and

(b) as to how the Specific Change in Law has affected the cost of providing the Services.

56.3 Any variation in the Price or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in clause 56.1.2) shall be implemented in accordance with clause 31.

## **57 Counterparts**

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

## **58 Governing Law and Jurisdiction**

Subject to clause 46 (Dispute Resolution) the Contract, including any matters arising out of or in connection with it, are governed by and interpreted in accordance with English Law and are subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction does not limit the right of the Authority to take proceedings against the Supplier in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction does not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.