



Ministry of
JUSTICE

OFFICIAL SENSITIVE

Contract for the Provision of Learning and Skills at HMP & YOI Parc

SCHEDULE 19 – EXIT MANAGEMENT



Contract for the Provision of Learning and Skills at HMP & YOI Parc

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Assets"	means all assets and rights used by the Contractor to provide the Services in accordance with this Agreement but excluding the Authority Assets;
"Authority Assets"	the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
"Authority Data"	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (a) supplied to the Contractor by or on behalf of the Authority; and/or (b) which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or any Personal Data for which the Authority is the Controller;
"Authority Materials"	the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Contractor, the Intellectual Property Rights in which: (a) are owned or used by or on behalf of the Authority; and (b) are or may be used in connection with the provision or receipt of the Services, but excluding any Contractor Software and Third Party Software;
"Emergency Exit"	any termination of this Contract which is a: (a) termination of the whole or part of this Contract in accordance with clause H (Default, Disruption and Termination), except where the period of notice given under that clause is greater than or equal to 12 Months; (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to clause H (Default, Disruption and Termination); or



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	(c) wrongful termination or repudiation of this Contract by either Party;
“Ethical Wall Agreement”	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
“Exclusive Assets”	those Assets used by the Contractor or a Sub-Contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in paragraph 3.1;
“Exit Manager”	the person appointed by each Party pursuant to paragraph 2.3 for managing the Parties’ respective obligations under this Schedule;
“Exit Plan”	means the plan produced and updated by the Supplier during the Term in accordance with paragraph 5;
“Net Book Value”	the net book value of the relevant Authority Asset(s) calculated in accordance with the depreciation policy of the Contractor set out in the letter in the agreed form from the Contractor to the Authority of the same date as this Contract;
“Ordinary Exit”	any termination of the whole or any part of this Contract which occurs: (a) pursuant to clause H (Default, Disruption and Termination), where the period of notice given by the Party serving notice to terminate pursuant to such clause is greater than or equal to 12 Months; or (b) as a result of the expiry of the Term;
“Registers”	the register and configuration database referred to in paragraph 2.1(a) and 2.1(b);
“Staffing Information”	has the meaning given to it in Schedule 16 (TUPE, Employees and Pensions);
“Termination Assistance Notice”	has the meaning given in paragraph 6.1 of Schedule 19 (Exit Management);
“Termination Assistance Period”	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Contractor is required to provide the Termination Services as such period may be extended pursuant to paragraph 6.3 of Schedule 19 (Exit Management);
“Termination Services”	the services and activities to be performed by the Contractor pursuant to the Exit Plan, including those activities listed in Annex 1 (Scope of the Termination Services) of Schedule 19



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(*Exit Management*), and any other services required pursuant to the Termination Assistance Notice;

“Transferable Assets” those of the Exclusive Assets which are capable of legal transfer to the Authority;

“Transferable Contracts” the Sub-Contracts, licences for Contractor Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Contractor to perform the Services or the replacement services (which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by the Authority internally and/or by any third party); and

“Transferring Contracts” has the meaning given in paragraph 7.2(c).

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Contractor shall:

- (a) create and maintain a register of all:
 - (i) Assets or Equipment, excluding any consumables, detailing their:
 - (A) make, model and asset number;
 - (B) ownership and status as Exclusive Assets or not;
 - (C) Net Book Value;
 - (D) condition and physical location; and
 - (E) use (including technical specifications); and
 - (ii) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Contractor provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Contractor to understand how the Contractor provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
- (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
- (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

2.2 The Contractor shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.



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- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 Months of the Commencement Date. The Contractor's Exit Manager shall be responsible for ensuring that the Contractor and its employees, agents and Sub-Contractors comply with this Schedule. The Contractor shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point during the Term, the Contractor shall provide to the Authority and/or its potential Replacement Contractors (subject to the potential Replacement Contractors entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Contractors undertaking due diligence:

- (a) details of the Service(s);
 - (b) a copy of the Registers, updated by the Contractor up to the date of delivery of such Registers;
 - (c) an inventory of Authority Data in the Contractor's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - (f) to the extent permitted by applicable Law, all information relating to Transferring Contractor Employees required to be provided by the Contractor under this Contract; and
 - (g) such other material and information as the Authority shall reasonably require,
- (together, the "**Exit Information**").

- 3.2 The Contractor acknowledges that the Authority may disclose the Contractor's Confidential Information to an actual or prospective Replacement Contractor or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 3.2 disclose any Contractor's Confidential Information which is information relating to the Contractor's or its Sub-Contractors' prices or costs).

- 3.3 The Contractor shall:

- (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.



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- 3.4 The Contractor may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6-Month period.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Contractor (if the Contractor is invited to participate).

4 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES

- 4.1 The Authority may require the Contractor to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
- 4.2 If required to enter into the Ethical Wall Agreement, the Contractor will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The Contractor's costs of entering into the Ethical Wall Agreement will be borne solely by the Contractor.

5 EXIT PLAN

- 5.1 The Contractor shall, as part of the annual review, deliver to the Authority an Exit Plan which:
- (a) sets out the Contractor's proposed methodology for achieving an orderly transition of the relevant Services from the Contractor to the Authority and/or its Replacement Contractor on the partial termination, expiry or termination of this Contract;
 - (b) complies with the requirements set out in paragraph 5.2; and
 - (c) is otherwise reasonably satisfactory to the Authority.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such dispute shall be resolved in accordance with the dispute resolution procedure detailed in clause I1.
- 5.3 The Exit Plan shall set out, as a minimum:
- (a) how the Exit Information is obtained;
 - (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Contractor may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Contractor of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
 - (c) a mechanism for dealing with partial termination on the assumption that the Contractor will continue to provide the remaining Services under this Contract;
 - (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;



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- (e) the management structure to be employed during the Termination Assistance Period;
 - (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
 - (g) how the Services will transfer to the Replacement Contractor and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Contractor or its Sub-Contractors (where applicable);
 - (h) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
 - (i) a timetable and critical issues for providing the Termination Services;
 - (j) any charges that would be payable for the provision of the Termination Services, together with a capped estimate of such charges;
 - (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;
 - (l) procedures to deal with requests made by the Authority and/or a Replacement Contractor for Staffing Information pursuant to Schedule 16 (TUPE, Employees and Pensions); and
 - (m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Contractor to the Replacement Contractor and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 5.4 The Parties acknowledge that the migration of the Services from the Contractor to the Authority and/or its Replacement Contractor may be phased, such that certain of the Services are handed over before others.
- 5.5 The Contractor shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule, annually by the end of each February throughout the duration of the Contract and if requested by the Authority to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Contractor shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the dispute resolution procedure detailed in clause I1.

Finalisation of the Exit Plan

- 5.6 Within 20 Working Days after either Party gives notice of termination or 6 Months prior to the expiry of this Contract, the Contractor will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such dispute shall be resolved



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in accordance with the dispute resolution procedure detailed in clause I1. Until the agreement of the final form of the Exit Plan, the Contractor shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6 TERMINATION SERVICES

Notification of Requirements for Termination Services

6.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Contractor (a "**Termination Assistance Notice**") at least 6 Months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than 1 Month) following either Party terminating the Contract by notice. The Termination Assistance Notice shall specify:

- (a) the date from which Termination Services are required;
- (b) the nature of the Termination Services required; and
- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 12 Months after the date that the Contractor ceases to provide the terminated Services.

6.2 The Authority shall have:

- (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 Months after the date the Contractor ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Contractor to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- (b) the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Contractor to such effect.

Termination Assistance Period

6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Contractor shall:

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 6.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the partial termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Contractor;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 6.3(b) without additional costs to the Authority;
- (d) provide the Services and the Termination Services at no detriment to the Key Performance Indicators, save to the extent that the Parties agree otherwise in accordance with paragraph 6.5; and



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- (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 6.4 Without prejudice to the Contractor's obligations under paragraph 6.3(c), if it is not possible for the Contractor to reallocate resources to provide such assistance as is referred to in paragraph 6.3(b) without additional costs to the Authority, any additional costs incurred by the Contractor in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be agreed in accordance with clause F4 (Change).
- 6.5 If the Contractor demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Contractor's ability to meet one or more particular Key Performance Indicator(s), the Parties shall vary the relevant Key Performance Indicator(s) to take account of such adverse effect.

Termination Obligations

- 6.6 The Contractor shall comply with all of its obligations contained in the Exit Plan in respect of any partial termination or termination.
- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Contractor shall:
 - (a) cease to use the Authority Data;
 - (b) provide the Authority and/or the Replacement Contractor with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
 - (c) erase from any computers, storage devices and storage media that are to be retained by the Contractor after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
 - (d) return to the Authority such of the following as is in the Contractor's possession or control:
 - (i) all copies of the Authority Software and any other software licensed by the Authority to the Contractor under this Contract;
 - (ii) all materials created by the Contractor under this Contract in which the Intellectual Property Rights are owned by the Authority;
 - (iii) any parts of the Authority and/or Contractor's computing environment, consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with this Agreement or which is necessary for the Authority to receive the Services, and any other equipment which belongs to the Authority; and
 - (iv) any items that have been on-charged to the Authority, such as consumables;
 - (e) vacate the Premises unless access is required to continue to deliver the Services;



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- (f) provide access during normal working hours to the Authority and/or the Replacement Contractor for up to 12 Months after the partial termination, expiry or termination of this Contract to:
- (i) such information relating to the Services as remains in the possession or control of the Contractor; and
 - (ii) such members of the Staff as have been involved in the design, development and provision of the Services and who are still employed by the Contractor, provided that the Authority and/or the Replacement Contractor shall pay the reasonable costs of the Contractor actually incurred in responding to requests for access under this paragraph 6.7(f)(ii).
- 6.8 Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 6.9 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Contractor in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.
- 6.10 Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period, the Contractor shall remove all Equipment or Assets which is not the property of the Authority and that the Authority does not wish to be transferred in accordance with paragraph 7 together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff.

7 EQUIPMENT, SUB-CONTRACTS AND SOFTWARE

- 7.1 Following notice of termination or partial termination of this Contract and during the Termination Assistance Period, the Contractor shall not, in respect of the terminated Services, without the Authority's prior written consent:
- (a) terminate, enter into or vary any Sub-Contract except to the extent that such change does not or will not affect the provision of Services or the Price;
 - (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Equipment or acquire any new Equipment; or
 - (c) terminate, enter into or vary any licence for software in connection with the Services.
- 7.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Contractor pursuant to paragraph 6.3(e), the Authority shall provide written notice to the Contractor setting out:



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- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Contractor in respect of the terminated Services ("**Transferring Assets**");
- (b) which, if any, of the Exclusive Assets that are not Transferable Assets the Authority and/or the Replacement Contractor requires the continued use of; and
- (c) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Contractor (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Contractor to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Contractor, the Contractor shall provide all reasonable assistance to the Authority and/or its Replacement Contractor to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Contractor requires to provide the Services or substantially similar services in substitution of the Services..

- 7.3 With effect from the expiry of the Termination Assistance Period, the Contractor shall sell the Transferring Assets to the Authority and/or its nominated Replacement Contractor for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Price at the time of expiry or termination of this Contract, in which case the Authority shall pay the Contractor the Net Book Value of the Transferring Asset less the amount already paid through the Price.
- 7.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Contractor (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Contractor (as appropriate) on payment for the same.
- 7.5 Where the Contractor is notified in accordance with paragraph 7.2(c) that the Authority and/or the Replacement Contractor requires continued use of any Exclusive Assets that are not Transferable Assets, the Contractor shall as soon as reasonably practicable:
 - (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Contractor to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - (b) procure a suitable alternative to such assets and the Authority or the Replacement Contractor shall bear the reasonable proven costs of procuring the same.
- 7.6 The Contractor shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Contractor of the Transferring Contracts. The Contractor shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 7.7 The Authority shall:
 - (a) accept assignments from the Contractor or join with the Contractor in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Contractor, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Contractor does the same.



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- 7.8 The Contractor shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Contractor has been effected.
- 7.9 The Contractor shall indemnify the Authority (and/or the Replacement Contractor, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Contractor) pursuant to paragraph 7.6 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-Contract; and
 - (b) in relation to any matters arising after the date of assignment or novation of such Sub-Contract where the loss, liability or cost arises as a result of the Contractor's failure to comply with clause E1 (Intellectual Property Rights).

8 STAFF

- 8.1 The Authority and Contractor agree and acknowledge that in the event of the Contractor ceasing to provide the Services or part of them for any reason, Schedule 16 (TUPE and Pensions) shall apply.
- 8.2 The Contractor shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Contractor.
- 8.3 During the Termination Assistance Period, the Contractor shall give the Authority and/or the Replacement Contractor reasonable access to the Contractor's personnel to present the case for transferring their employment to the Authority and/or the Replacement Contractor.
- 8.4 The Contractor shall immediately notify the Authority or, at the direction of the Authority, the Replacement Contractor of any period of notice given by the Contractor or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The Contractor shall not for a period of 12 Months from the date of transfer re-employ or re-engage or entice any employees, Contractors or Sub-Contractors whose employment or engagement is transferred to the Authority and/or the Replacement Contractor, except that this paragraph shall not apply where the employee, Contractor or Sub-Contractor applies in response to a public advertisement of a vacancy.

9 PRICE

- 9.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Contractor to provide the Termination Services), the Authority shall pay the Price to the Contractor in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with clause F4 (Change).
- 9.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with paragraph 6.2:
- (a) where more than 6 Months' notice is provided, the same rate as set out in the Exit Plan (or the Price when not stated in the Exit Plan) shall be payable; and



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- (b) where less than 6 Months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Price when not stated in the Exit Plan) shall be payable.
- 9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with clause F4 (Change).
- 9.4 Except as otherwise expressly specified in this Contract, the Contractor shall not make any charges for the services provided by the Contractor pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Contractor in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.
- 10 APPORTIONMENTS**
 - 10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Contractor and/or the Replacement Contractor and the Contractor (as applicable) as follows:
 - (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - (b) the Authority shall be responsible for (or shall procure that the Replacement Contractor shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - (c) the Contractor shall be responsible for or entitled to (as the case may be) the rest of the invoice.
 - 10.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Contractor shall pay) any monies due under paragraph 10.1 as soon as reasonably practicable.



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ANNEX 1: SCOPE OF THE TERMINATION SERVICES

- 1.1 The Termination Services to be provided by the Contractor shall include such of the following services as the Authority may specify:
- (a) ceasing all non-critical software (including Contractor Software and Third Party Software) changes (except where agreed in writing with the Authority);
 - (b) notifying the Sub-Contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Contractor after the end of the Termination Assistance Period;
 - (d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12-Month period immediately prior to the commencement of the Termination Services;
 - (e) providing details of work volumes and staffing requirements over the 12-Month period immediately prior to the commencement of the Termination Services;
 - (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
 - (g) providing the Authority with any problem logs which have not previously been provided to the Authority;
 - (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 Months after the Termination Assistance Period;
 - (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
 - (j) reviewing all software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Contractor;
 - (k) providing assistance and expertise as necessary to support the Authority and/or the Replacement Contractor develop the migration plan for business operations and Authority Data to the Replacement Contractor, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;
 - (l) provide all necessary support, equipment, tools, Contractor Software and Third Party Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Contractor;
 - (m) making available to the Authority and/or the Replacement Contractor expertise to analyse training requirements and provide all necessary training for the use of tools



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by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;

- (n) assisting in establishing naming conventions for any new production site;
- (o) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (p) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- (q) in respect of the maintenance and support of the Contractor System, providing historical performance data for the previous 12 Months;
- (r) assisting in the execution of a parallel operation of the maintenance and support of the Contractor System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (s) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Contractor;
- (t) answering all reasonable questions from the Authority and/or the Replacement Contractor regarding the Services;
- (u) agreeing with the Authority and/or the Replacement Contractor a plan for the migration of the Authority Data to the Authority and/or the Replacement Contractor;
- (v) providing access to the Authority and/or the Replacement Contractor during the Termination Assistance Period and for a period not exceeding 6 Months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Contractor:
 - (i) to information and documentation relating to the services provided by the Replacement Contractor that is in the possession or control of the Contractor or its Sub-Contractors (and the Contractor agrees and shall procure that its Sub-Contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (ii) following reasonable notice and during the Contractor's normal business hours, to members of the Staff who have been involved in the provision or management of the Services and who are still employed or engaged by the Contractor or its Sub-Contractors; and
- (w) knowledge transfer services, including:
 - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Contractor staff responsible for internal training in connection with the provision of the Services;
 - (ii) providing for transfer to the Authority and/or the Replacement Contractor of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and



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- (iii) providing the Contractor and/or the Replacement Contractor with access to such members of the Contractor's or its Sub-Contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Contractor or its Sub-Contractors.

1.2 The Contractor shall:

- (a) provide a documented plan relating to the training matters referred to in paragraph 1.1(k) for agreement by the Authority at the time of termination or expiry of this Contract;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to paragraph 1.1(o), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to paragraph 1.1(s), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Contractor to the Authority and/or its Replacement Contractor, the Contractor shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Contractor.

1.4 The information which the Contractor shall provide to the Authority and/or the Replacement Contractor pursuant to paragraph 1.1(u) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party Contractors of goods and services which are to be transferred to the Authority and/or the Replacement Contractor;
- (d) key support contact details for third party Contractor personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Authority; and
- (g) any relevant interface information.

1.5 During the Termination Assistance Period the Contractor shall grant any agent or personnel (including employees, consultants and Contractors) of the Replacement Contractor and/or the Authority access, during business hours and upon reasonable prior written notice, to any Premises for the purpose of effecting a prompt knowledge transfer provided that:

- (a) any such agent or personnel (including employees, consultants and Contractors) having access to any Premises pursuant to this paragraph 1.5 shall:
 - (i) sign a confidentiality undertaking in favour of the Contractor (in such form as the Contractor shall reasonably require); and



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- (ii) during each period of access comply with the security, systems and facilities operating procedures of the Contractor relevant to such Premises and that the Authority deems reasonable; and
- (b) the Authority and/or the Replacement Contractor shall pay the reasonable, proven and proper costs of the Contractor incurred in facilitating such access.



ANNEX 2: ETHICAL WALL AGREEMENT

SECRETARY OF STATE FOR JUSTICE

and

Contractor

ETHICAL WALL AGREEMENT



Contract for the Provision of Learning and Skills at HMP & YOI Parc

This Agreement is dated xx.xx.xxxx

Between

- (1) THE SECRETARY OF STATE FOR JUSTICE (the "Authority"); and
- (2) Contractor (registered in England and Wales under number xxxxxxxx registered office is xxxxxxxxxxxx (the "Counterparty").

BACKGROUND

- (A) The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("**Agreement**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- (B) The Authority is conducting a procurement exercise for the supply of Learning and Skills at HMP Berwyn (the "**Purpose**").
- (C) The Authority has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"* (Regulation 24(2)). *"Staff members"* refers to staff members of the Authority or of a procurement service provider acting on behalf of the Authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. *"Procurement service provider"* refers to a public or private body which offers ancillary purchasing activities on the market.
- (D) Pursuant to Regulation 41 of the PCR, the Authority is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Authority has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Authority under existing contractual arrangements or as a subcontractor under those same arrangements.
- (E) The parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.



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IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

- 1.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

"Agreement" means this ethical walls agreement duly executed by the Parties;

"Bid Team" means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Conflicted Personnel" means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Authority under any Contract have or have had access to information which creates or may create a conflict of interest;

"Contract" means the contract for the provision of learning and skills dated [insert date] between the Authority and the Counterparty and/or an Affiliate;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Agreement as set out above;

"Invitation to Tender" or **"ITT"** means an invitation to submit tenders issued by the Authority as part of an ITT Process;

"ITT Process" means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Authority has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Authority as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

"ITT Response" means the tender submitted or to be submitted by the Counterparty or an Affiliate in response to an ITT;

"Other Affiliate" any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;



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"Other Bidder" means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

"Parties" means the Authority and the Counterparty;

"Professional Advisor" means a contractor, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

"Purpose" has the meaning given to it in recital (B) to this Agreement;

"Representative" refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

"Third Party" means any person who is not a Party and includes Other Affiliates and Other Bidders.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority or Representatives of the Counterparty (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms "associate", "holding company", "subsidiary", "subsidiary undertaking" and "wholly owned subsidiary" have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words 'holds a majority of the voting rights' shall be changed to 'holds 30% or more of the voting rights', and other expressions shall be construed accordingly.
- 1.10 The words "include" and "including" are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

2 ETHICAL WALLS

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:
 - (a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are 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 Counterparty or its Affiliates or



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Representatives and the duties owed to the Authority under the Contract or pursuant to an open and transparent ITT Process;

- (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Authority under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
- (c) where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with paragraph 2.2.

2.2 The Counterparty shall:

- (a) not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- (c) ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
 - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
 - (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- (d) ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- (e) ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Authority;
- (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
- (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
- (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- (j) comply with any other action as the Authority, acting reasonably, may direct.



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- 2.3 In addition to the obligations set out in paragraph 2.1(a) and 2.1(c), the Counterparty shall:
- (a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
 - (b) submit in writing to the Authority full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
 - (c) seek the Authority's approval thereto,
- which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in paragraph 2.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).
- 2.4 Any breach of paragraph 2.1, paragraph 2.2 or paragraph 2.3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Authority there has been a breach of paragraph 2.1, paragraph 2.2 or paragraph 2.3.
- 2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under paragraph 2.1 and 2.2 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under paragraph 2.1(c) and 2.2.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with paragraph 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.
- 2.8 The actions of the Authority pursuant to paragraph 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 2.9 In no event shall the Authority be liable for any bid costs incurred by:
- (a) the Counterparty or any Affiliate or Representative; or
 - (b) any Other Bidder, Other Affiliate or Other Representative,
- as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.
- 2.10 The Counterparty acknowledges and agrees that:
- (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in paragraph 2; and
 - (b) in the event of such breach by the Counterparty of any of its obligations in paragraph 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.



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3 SOLE RESPONSIBILITY

- 3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Authority shall discharge the Counterparty's obligations.

4 WAIVER AND INVALIDITY

- 4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

5 ASSIGNMENT AND NOVATION

- 5.1 Subject to paragraph 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- (a) any Central Government Body; or
 - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
 - (c) the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this paragraph 5.
- 5.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 6.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

7 TRANSPARENCY

- 7.1 The parties acknowledge and agree that the Authority is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.



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8 NOTICES

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

8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

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

	Counterparty	Authority
Contact		
Address		
Email		

8.4 This paragraph 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.



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9 WAIVER AND CUMULATIVE REMEDIES

- 9.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 9.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

10 TERM

- 10.1 Each party's obligations under this Agreement shall continue in full force and effect for period of 3 years from the Effective Date.

11 GOVERNING LAW AND JURISDICTION

- 11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Counterparty Signed by the

Name:

Signature:

Position in Counterparty: