

**SCHEDULE 13:****ASSET AND CONTRACT TRANSFER**

<b>Version number</b>	<b>Issue Date</b>	<b>Comment</b>
1.0	22 April 2024	Execution Version



**DATED [ ] [ ] 2024**

- (1) SECRETARY OF STATE FOR JUSTICE**
- (2) MITIE CARE AND CUSTODY LIMITED**

**Contract for the transfer of assets and contracts in relation to HMP Millsike**

**CONTENTS**

PART 1 - PRELIMINARY	4
1        DEFINITIONS AND INTERPRETATION	4
2        COMMENCEMENT DATE	6
PART 2 – LEGACY ASSETS	6
3        TRANSFER OF LEGACY ASSETS	6
4        STAMP DUTY AND OTHER FEES AND TAXES	6
5        COMPLETION AND TRANSFER OF LEGACY ASSET TITLE AND RISK	6
6        CONDITION OF LEGACY ASSETS	7
PART 3 –LEGACY CONTRACTS	7
7        NOVATION OF LEGACY CONTRACTS	7
8        MANAGED THIRD PARTY CONTRACTS	8
PART 4 - MISCELLANEOUS	9
9        MISCELLANEOUS	9
SCHEDULE 1 - LEGACY ASSETS AND LEGACY CONTRACTS	12
SCHEDULE 2 - AGREED FORM OF NOVATION AGREEMENT	13

**OFFICIAL****HMP Millsike****Commercial and Contract Management Directorate****THIS CONTRACT** is made on [                      ] 2024**BETWEEN:**

- (1) **Secretary of State for Justice** acting as part of the Crown (the "**Authority**"); and
- (2) **Mitie Care and Custody Limited** (the "**Contractor**")

each one "a Party" and together "the Parties".

**WHEREAS:**

- (A) The Contractor has agreed to provide certain custodial and property and facilities management services to the Authority in relation to HMP Millsike under a contract dated on or about the date of this Contract (the "**Prison Operating Contract**").
- (B) The Parties have entered into this Contract to provide for the transfer of certain legacy assets and certain legacy contracts to the Contractor to be used in the provision of the services under the Prison Operating Contract.

**PART 1 - PRELIMINARY****1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Contract (except where the context otherwise requires) words and expressions shall have the meanings set out in the Prison Operating Contract, except where defined in this Clause 1.1, in which case they shall have the following meanings:

<b>"Contract"</b>	means this asset and contract transfer contract together with its schedules and attachments (if any);
<b>"Legacy Assets"</b>	means the assets specified as such in Schedule 1 of this Contract;
<b>"Legacy Contracts"</b>	means the contracts specified as such in Schedule 1 of this Contract;
<b>"Legacy Asset Transfer Date"</b>	means the Services Commencement Date;
<b>"Legacy Contract Transfer Date"</b>	means the Services Commencement Date;
<b>"Managed Third Party Contract"</b>	has the meaning given to it in Clause 7.5.2(a);

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<b>"Novation Agreement"</b>	means the template novation agreement set out in Schedule 2 to this Contract;
<b>"Novation Date"</b>	has the meaning given to it in the Novation Agreement;
<b>"Parties"</b>	means the parties to this Contract and their successors and assignees which, as at the Commencement Date, means the Authority and the Contractor;
<b>"Prison Operating Contract"</b>	has the meaning given to it in recital (A) of this Contract; and
<b>"Transfer Price"</b>	has the meaning given to it in Clause 3.2.

**1.2 Interpretation**

In this Contract (except where the context otherwise requires):

- 1.2.1 the Clause headings are included for convenience only and will not affect the construction or interpretation of this Contract;
- 1.2.2 the Schedules (and any attachments) and recitals form part of this Contract and will have effect as if set out in full in the body of this Contract;
- 1.2.3 any reference to a recital, Clause or Schedule is to the relevant recital, Clause or Schedule of this Contract;
- 1.2.4 use of the singular includes the plural and vice versa;
- 1.2.5 words importing a particular gender do not exclude other genders;
- 1.2.6 any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted;
- 1.2.7 any phrase introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms;
- 1.2.8 any reference to "persons" includes natural persons, firms, partnerships, bodies corporate, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not incorporated and whether or not having separate legal personality);

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- 1.2.9 in the case of conflict or ambiguity the following descending order of precedence for this Contract shall apply:
- (a) the Clauses of this Contract; and
  - (b) the Schedules to this Contract; and
- 1.2.10 the words "in writing" and "written" mean "in documented form" whether electronic or hard copy, unless otherwise stated.

**2. COMMENCEMENT DATE**

- 2.1 This Contract shall take effect on the later of:
- 2.1.1 the date of its signature; or
  - 2.1.2 the date on which the Parties enter into the Prison Operating Contract.

**PART 2 - LEGACY ASSETS****3. TRANSFER OF LEGACY ASSETS**

- 3.1 On the Legacy Asset Transfer Date, the Authority shall sell, and the Contractor shall purchase, the Legacy Assets on the terms and subject to the provisions of this Contract.
- 3.2 The total consideration payable (the "**Transfer Price**") by the Contractor for the Legacy Assets shall be [●] plus any applicable VAT.
- 3.3 The Transfer Price shall be paid by the Contractor in [●] equal monthly instalments, the first such payment being due and payable at the end of the calendar month in which the Legacy Asset Transfer Date falls and payments being due and payable at the end of each calendar month thereafter.

**4. STAMP DUTY AND OTHER FEES AND TAXES**

- 4.1 The Contractor shall be responsible for payment of all stamp duty and all other duty and taxes payable in connection with this Contract within the time limits allowed by applicable Legislation.

**5. COMPLETION AND TRANSFER OF LEGACY ASSET TITLE AND RISK**

- 5.1 On the Legacy Asset Transfer Date:
- 5.1.1 title to and beneficial ownership of the Legacy Assets shall pass to the Contractor;
  - 5.1.2 risk in the Legacy Assets shall pass to the Contractor;
  - 5.1.3 delivery of the Legacy Assets shall take place at the applicable premises or facility at which the Legacy Assets are situated on the Legacy Asset Transfer Date; and

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- 5.1.4 if available, the Authority shall deliver to the Contractor all documents of title and other documents that it possesses relating to the Legacy Assets as may be necessary to transfer title to the Legacy Assets from the Authority to the Contractor.
- 5.2 To the extent that any of the Legacy Assets are located at any premises or other facilities of the Authority or any subcontractor of the Authority, and unless the Parties otherwise agree, the Authority shall ensure that such Legacy Assets are available for collection by the Contractor on the Legacy Asset Transfer Date, subject always to compliance by the Contractor with its obligations relating to access to and use of the Site including all Buildings and other facilities and equipment under the Prison Operating Contract.

**6. CONDITION OF LEGACY ASSETS**

- 6.1 The Authority warrants that the Legacy Assets are provided with good title and free from all liens, options and other legal encumbrances (save that this shall not be construed as meaning there are no Authority and/or Third Party IPR which may subsist in or in respect of the Legacy Assets).
- 6.2 Subject to Clause 6.1, no warranty is given by the Authority as to the state or condition of any of the Legacy Assets which are sold as and where they lie in the condition in which they are transferred. The Contractor has relied on (or has been given the opportunity to make and rely on) its own inspection and examination of the same and has not relied on any representation by or on behalf of the Authority in respect of the same and further, all warranties, representations, undertakings and conditions (statutory or otherwise) implied to be made by the Authority in respect of the Legacy Assets, are excluded to the maximum extent permitted by law.

**PART 3 –LEGACY CONTRACTS****7. NOVATION OF LEGACY CONTRACTS**

- 7.1 The Authority's intention is that the Legacy Contracts shall be novated in favour of the Contractor on the Legacy Contract Transfer Date. The Contractor shall use all reasonable endeavours to effect a novation of each Legacy Contract in accordance with the terms of this Contract.
- 7.2 The Contractor shall undertake the work and administration associated with the novation of the Legacy Contracts from the Authority to the Contractor. The Authority shall provide such assistance as may be reasonably required by the Contractor in support of its undertakings.
- 7.3 The Authority and the Contractor will each use their respective reasonable endeavours to obtain, from each relevant third party, that third party's consent to the novation of the relevant Legacy Contract on the Legacy Contract Transfer Date upon terms substantially similar to those contained in the Novation Agreement (or such other terms as are agreed between the Parties).
- 7.4 Subject to the other provisions within this Clause 7 and with effect from the relevant Novation Date, the Contractor shall be entitled to the benefit (and assume the burden)

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of the Legacy Contracts and the Contractor undertakes to carry out, perform and complete all obligations and liabilities created by or arising under the Legacy Contracts relating to periods on or after the relevant Novation Date.

7.5 If any of the Legacy Contracts cannot be novated on the terms referred to in Clause 7.3 or is subject to the payment of a novation fee that is not acceptable to the Authority, then:

7.5.1 this Contract will not constitute a novation (or attempted novation) in respect of the Legacy Contract where such would constitute a breach of the Legacy Contract; and

7.5.2 the Parties shall co-operate in taking such steps as the Authority may consider to be practicable in order to apply for and obtain the novation on alternative terms that are acceptable to the Parties, which may include, at the Authority's option, the following workarounds:

- (a) the Authority remaining the contracting party to the relevant Legacy Contract and the Parties treating the Legacy Contract as a managed third party contract in accordance with Clause 8 (and each such Legacy Contract shall be a "**Managed Third Party Contract**"); or
- (b) the relevant parties entering into such alternative arrangements as to achieve those objectives whether by way of sub-licensing, delegation of performance or otherwise.

7.6 The Contractor shall bear its own costs and expenses associated with its obligations to seek alternative rights and make any alternative arrangements referred to in Clause 7.5.

7.7 The Contractor shall ensure that all Legacy Contracts which are novated as described in this Contract are capable of novation back to Authority or to any New Contractor on reasonable terms without restriction (including without any need to obtain any consent or approval) or payment by the Authority or any New Contractor, in accordance with **Clause 72.10.3 (Flow Down and Payment Terms in Sub-Contracts)** and **Schedule 24 (Handover and Exit Management)** of the Prison Operating Contract.

## **8. MANAGED THIRD PARTY CONTRACTS**

8.1 In relation to any Managed Third Party Contract the Parties shall agree how the contract is to be managed and/or utilised by the Contractor in relation to the Contractor's provision of services under the Prison Operating Contract including:

8.1.1 the extent of the Contractor's relevant management obligations for which consent from the Authority or the relevant supplier is not required; and

8.1.2 whether the Contractor may place or cause to be placed any orders with the relevant supplier or otherwise incur liabilities in the name of the Authority.



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- 8.2 Any consequential amendments to the Prison Operating Contract resulting from any such arrangement shall be made by the Parties using the mechanism set out in **Schedule 16 (Change Protocol)** of the Prison Operating Contract.
- 8.3 Where any services are made available to the Contractor and/or where supplies are provided to the Contractor under the Managed Third Party Contract the Contractor shall be responsible for meeting all of the costs, fees or other charges levied by the relevant Supplier (and shall indemnify the Authority forthwith on demand in respect of any such costs, fees or charges incurred by the Authority following the relevant Services Commencement Date).

**PART 4 - MISCELLANEOUS****9. MISCELLANEOUS****9.1 Further Assurance**

At any time after the commencement date of this Contract each Party shall enter into or procure the entering into of such documents and do or procure the doing of such acts and things as the other Party may reasonably require for the purpose of giving to the other Party the full benefit of its rights under this Contract.

**9.2 Recovery of Sums Due**

If any sum of money shall be due from the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Prison Operating Contract.

**9.3 Variation**

No variation of this Contract shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

**9.4 Severability**

- 9.4.1 If a provision of this Contract is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.
- 9.4.2 Subject to Clause 9.4.1, if any provision of this Contract is prohibited by law or found by a court or authority of competent jurisdiction to be void, illegal, invalid or otherwise unenforceable, such provision shall be severed and the remainder of this Contract shall continue in full force and effect to the fullest extent permitted by law, as if this Contract had been entered into with the void, illegal, invalid or unenforceable provision eliminated. The Parties agree to negotiate in good faith in order to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves, to the greatest extent possible, the economic, legal and commercial objectives of the invalid or unenforceable provision.

**9.5 Waiver**

- 9.5.1 The failure of the Contractor or the Authority to insist upon strict performance of any provision of this Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.
- 9.5.2 A waiver by either Party of any default by the other Party shall not constitute a waiver of any other default.
- 9.5.3 No failure or delay in exercising or partial exercise of any right or power under this Contract or the Prison Operating Contract shall operate as a waiver thereof or prevent the further exercise of that or any other right or power.

**9.6 Confidentiality**

Each of the Parties agrees to treat the terms of this Contract as confidential information of the other Party and to comply with confidentiality obligations equivalent to those contained in **Clause 61 (Information and Confidentiality)** of the Prison Operating Contract.

**9.7 Entire Contract**

- 9.7.1 This Contract constitutes the entire understanding between the Parties relating to its subject matter (and the Prison Operating Contract provides further understanding, between the Parties, with respect to its specific subject matter).
- 9.7.2 Each Party acknowledges and agrees that it has not been induced to enter into this Contract in reliance upon any warranty, representation, statement, understanding, agreement or assurance of any nature whatsoever other than as expressly set out in this Contract.
- 9.7.3 Each Party unconditionally waives any rights it may have to claim damages against the other or any right it may have to rescind the Contract on the basis of any statement of any nature whatsoever, whether in writing or otherwise, made by the other (whether made carelessly or not) not set out or referred to in this Contract (or for breach of any warranty given by the other not so set out or referred to) unless such statement or warranty was made or given fraudulently.
- 9.7.4 Nothing in this Contract shall operate to limit or exclude any liability or remedy for fraud, fraudulent mis-statement or fraudulent concealment.

**9.8 Rights of Third Parties**

Nothing in this Contract confers or is intended to confer rights to enforce the whole or any term of this Contract on any person who is not a Party.



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9.9 **Law and Jurisdiction**

This Contract shall be governed by and construed according to the laws of England and Wales. Any dispute between the Parties relating to this Contract shall be resolved in accordance with the Dispute Resolution Procedure and, subject to the Dispute Resolution Procedure, the Parties shall submit to the exclusive jurisdiction of the courts of England and Wales.

**SIGNED** for the **Secretary of State for Justice** by

**SIGNED** for and on behalf of **Mitie Care and Custody Limited** by

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date:

who is authorised by the Secretary of State in that regard

**SCHEDULE 1****LEGACY ASSETS AND LEGACY CONTRACTS**

This Schedule 1 sets out the Legacy Assets and the Legacy Contracts for the purposes of this Contract and the Prison Operating Contract.

**Legacy Assets**

<b>Asset</b>	<b>Owned by</b>	<b>Description</b>	<b>Location</b>	<b>Use in conjunction with Services</b>

**Legacy Contracts**

<b>Contract</b>	<b>Contractor</b>	<b>Description</b>	<b>Location</b>	<b>Use in conjunction with Services</b>

**SCHEDULE 2****AGREED FORM OF NOVATION AGREEMENT****DATED [ ] [ ] 20[ ]****(1) SECRETARY OF STATE FOR JUSTICE****(2) MITIE CARE AND CUSTODY LIMITED****(3) [FULL NAME OF THIRD PARTY]**

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**NOVATION AGREEMENT**

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**OFFICIAL****HMP Millsike****Commercial and Contract Management Directorate****THIS AGREEMENT** dated the                      day of                      20 [●]**BETWEEN:**

- (1) **Secretary of State for Justice** (the "**Authority**"); and
- (2) **Mitie Care and Custody Limited** whose registered office is at Level 12 The Shard, 32 London Bridge Street, London, England, SE1 9SG (the "**Contractor**"); and
- (3) [●] whose registered office is [●] (the "**Service Provider**").

**WHEREAS:**

- (A) The Authority has appointed the Service Provider to provide [●] [services] (the "[**Services**]") by an agreement dated [●] (the "**Novated Contract**").
- (B) The Authority has appointed the Contractor under an agreement dated [●] for the provision of services (the "**Prison Operating Contract**").
- (C) The Authority, Service Provider and Contractor have agreed that from [●] [**Note: Parties to insert relevant Services Commencement Date**] (the "**Novation Date**") the Contractor shall assume the obligations of the Authority and that the Service Provider shall perform its obligations under the Novated Contract in favour of the Contractor and that the Authority and the Service Provider shall each release the other from any obligations owed by the other to them under the Novated Contract.

In consideration of the mutual undertakings and releases herein contained and the Contractor agreeing to assume the rights and obligations of the Authority under the Novated Contract, **IT IS AGREED** as follows with effect from the Novation Date:

**1. NOVATION**

- 1.1 The Authority transfers all its rights and obligations under the Novated Contract to the Contractor. The Contractor shall enjoy all the rights and benefits of the Authority under the Contract, and all references to the Authority in the Novated Contract shall be read and construed as references to the Contractor.
- 1.2 The Contractor agrees to perform the Novated Contract and be bound by its terms in every way as if it were the original party to it in place of the Authority.
- 1.3 The Service Provider agrees to perform the Novated Contract and be bound by its terms in every way as if the Contractor were the original party to it in place of the Authority.
- 1.4 The Service Provider and the Authority release each other from all future obligations to the other under the Contract.
- 1.5 Nothing in this Agreement shall affect or prejudice any claim or demand that the Service Provider or the Authority may have against the other under or in connection with the Novated Contract arising before the date of this Agreement.

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1.6 The Service Provider acknowledges that all charges, fees and expenses properly due to it under the Novated Contract up to the Novation Date have been paid by the Authority.

2. **INDEMNITY**

2.1 The Contractor agrees to indemnify the Authority against any losses, damages or costs the Authority suffers or incurs under or in connection with the Novated Contract as a result of the Contractor's failure to perform or satisfy its assumed obligations under the Novated Contract and for any prepayments made by the Authority under or in connection with the Novated Contract relating to periods on or after the Novation Date.

2.2 The Authority agrees to indemnify the Contractor against any losses, damages or costs the Contractor suffers or incurs under or in connection with the Novated Contract as a result of the Authority's failure to perform or satisfy its obligations under the Novated Contract before the Novation Date and for payments made by the Contractor under or in connection with the Novated Contract relating to obligations accrued under the Novated Contract before the Novation Date.

3. **GOVERNING LAW AND JURISDICTION**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed at all times in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

4. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to confer on any person any right to enforce any of the provisions of this Agreement which such person would not have had, but for the Contracts (Rights of Third Parties) Act 1999.

**SIGNED for the Secretary of State for  
Justice by**

**SIGNED for and on behalf of Mitie Care  
and Custody Limited by**

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date:

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who is authorised by the Secretary of State in  
that regard

**SIGNED** for and on behalf of [●] by

Signature:

Name:

Position:

Date: