



# Ministry of JUSTICE

## PART A: ORDER FORM

<b>Order Date</b>	30 <sup>th</sup> October 2020	<b>Order Reference</b>	PRJ_5716 CON_XXXXX
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Buyer	The Secretary of State for Justice on behalf of Her Majesty's Prisons and Probation Service
Supplier	Prison Radio Association
Contract Title	National Prison Radio Services for HMPPS Digital Hub
Contract Description	The provision of licensing for National Prison Radio (NPR) programmes for broadcast on In-Cell technology, including 20 weekly programmes, podcasts and administration of any relevant commercial music licencing, for up to 21 Public Prisons and Young Offenders Institutions in England and Wales.
Start Date	01/11/2020
End Date	31/10/2022
Contract Value	Up to £134,000.00
Charging Method	Variable licence costs, based on usage, paid quarterly in arrears
Purchase Order No.	To be confirmed upon contract signature.

## FROM:

Buyer	The Secretary of State for Justice on behalf of Her Majesty's Prisons and Probation Service
Buyer Address	HMPPS Digital Greenfield House 32 Scotland St Sheffield S3 7DQ
Invoice Address	Invoices will be sent to: <b>[REDACTED]</b>  <u>Post:</u>  Ministry of Justice Finance & Accounting Shared Services Connected Limited PO Box 766

	Newport, Gwent NP20 9BB  Copies of invoices are to be sent to [REDACTED]
Principal Contact	[REDACTED]  HMPPS Digital Greenfield House 32 Scotland St Sheffield S3 7DQ  [REDACTED]

**TO:**

Supplier	Prison Radio Association <b>“Supplier”</b>
Supplier's Address	Prison Radio Association  HMP Brixton Jebb Avenue London SW2 5XF
Account Manager	[REDACTED]  Address: HMP Brixton, Jebb Avenue, London, SW2 5XF  [REDACTED]

**1. DELIVERABLES**

**The Supplier shall provide the below Services to the Customer:**

**Core Services Delivery Model:**

This delivery model is based on the anticipated expansion of the Digital Hub into several new prisons over the coming 24 month contracted period, as follows:

- Digital Hub to provide a single portal for all National Prison Radio content, which will be branded as National Prison Radio and include a 'Listen Live' stream of National Prison Radio at the top of the page;
- PRA to take over responsibility for uploading content to the Digital Hub portal via the Content Management System (CMS);

- Provision of at least 20 weekly programmes (1000+ programmes/year), including daily Prison News bulletins, to the Digital Hub, and complete management of scheduling and prominence on the Digital Hub;
- Provision of daily text version of the current Prison News stories;
- Research and development to enhance content provision, including possible tracklist metadata, development of Electronic Programme Guide (EPG) content, pre-roll advertising to raise prominence of key messaging;
- Complete management of audience data processing for administration of PPL royalties;
- PRA to monitor data and feedback via Google Analytics and the Hub Slack Feedback channel for NPR content on the Hub, to produce a quarterly report to be reviewed by PRA and the Hub team, each quarter the PRA and Hub team to meet to review this content data to ensure content stays relevant to users.

### **PPL (Commercial Licensing Services)**

An allowance for up to [REDACTED] is included per listening prison, per annum. This is to cover PPL licence fees, which are calculated on a per-listen basis at the standard PPL rate. The amount is paid by the PRA and re-charged through this contract at cost.

### **HMP Public Prisons in Scope of these Contracted Services**

Prisons who will be in scope of this Contract from Contract Start Date:

[REDACTED]

Additional public prisons and Young Offenders Institutions (YOIs) may be brought within scope of this Contract during this Contract, within Year 1, Year 2, or under any extension period of this Contract.

Any additional prisons which are brought in scope of this Contract during Year 1, Year 2, or under any extension period of this contract, must be added to this Contract Agreement by Contract Change Notice. Where the Buyer identifies that a prison site will be brought in scope of this Contract, the Buyer will make the Supplier aware of this additional requirement and agree any necessary work for bringing the prison site in scope of this contract via written notification (an email is accepted as in writing). The Buyer and the Supplier will then draft a Contract Change Notice to bring the additional prison site in scope of this Contract. Any Contract Change Notices added to this Contract must be both agreed and signed by both the Buyer and the Supplier before additional prison sites may be brought in scope of this contract.

### **Service Level Agreement**

#### High

In the event of a significant delay or error in service, PRA staff will respond within 1 hour of notification from the Buyer and the target fix will be as soon as possible. Buyer to make contact with Supplier by phone. Outside office hours, PRA staff will respond as soon as possible.

#### Medium

In the event of a moderate delay or error in service, PRA staff will respond within 4 hours of notification from the Buyer and the target fix will be within 8 hours. Buyer to make contact with Supplier by phone or email. Outside office hours, PRA staff will respond as soon as possible.

Low

In the event of a low-priority delay or error in service, PRA staff will respond within 5 days of notification from the Buyer and the target fix time will be the next scheduled update, or within 20 days, whichever is sooner. Buyer to make contact with Supplier by phone or email.

Supplier office hours are 9:00am-5:00pm, Monday – Friday excluding national holidays.

Support incidents notified to the Supplier outside of normal Service Hours are treated as having been received at the start of the next period of Service Hours.

Outages identified by the Supplier will be reported to the Digital Hub team (including Jo Meek and Lauren Darby).

## 2. USAGE

All audio supplied is cleared for use on National Prison Radio only and by extension for broadcast on In-Cell technology in [REDACTED]. Plans to broadcast any content supplied outside of this context needs prior approval from the Prison Radio Association, HMPPS Digital Delivery Managers for this Service, and potentially the MoJ Press Office.

PPL (Commercial Licensing Services) is used on a per listener basis.

## 3. CHARGES

The maximum Contract Value is set at £134,000.00, with extension options available upon agreement between both the Buyer and the Supplier. Extension options are available under this Contract and outlined in the Section 6: Contract Change and Termination section below.

[REDACTED]

Any Charges for any extension periods within this Contract will use the same Annual Charges as outlined in this above Charges profile, for both annual core licensing costs and for PPL charges per site per annum.

All Call-Off Contract Charges listed above are exclusive of VAT.

## 4. PAYMENT METHOD & TERMS

**Payments against this Contract will be made in accordance with the above clause 3. Charges and the table below.**

**Payment Method:** The Payment method for this Contract is BACS.

**Payment Profile:** The payment profile for this Contract is that payment for these services shall be made monthly in arrears.

**Invoice Details:** The Supplier will issue electronic invoices monthly in arrears. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice.

**Invoice Information Required:** All invoices must include:

- Contract Reference Number and Title
- Purchase Order Number
- Description of the Services provided, including
  - A breakdown of core licensing costs per establishment per month
  - Charges for PPL (commercial licensing costs) per establishment per month.
- Site Names where each of these services are provided at and charges are made at
- Invoice Period

Copies of invoices are to be sent to **[REDACTED]**

## 5. RESPONSIBILITIES

**The Supplier commits to the below responsibilities;**

- PRA to take over responsibility for uploading content to this portal via the Digital Hub Content Management System (CMS);
- Provision of at least 20 weekly programmes, including daily Prison News bulletins, to the Digital Hub, and complete management of scheduling and prominence on the Digital Hub;
- Provision of daily text version of the current Prison News stories;
- Research and development to enhance content provision, including possible tracklist metadata, development of Electronic Programme Guide (EPG) content, pre-roll advertising to raise prominence of key messaging;
- Complete management of audience data processing for administration of PPL royalties;
- PRA to monitor data and feedback via Google Analytics and the Hub Slack Feedback channel for NPR content on the Hub, to produce a quarterly report to be reviewed by PRA and the Hub team, each quarter the PRA and Hub team to meet to review this content data to ensure content stays relevant to users.
- Organise all relevant clearances for any voices featured on air;
- Script any accompanying metadata;
- Facilitate the recording of any additional scripting required;
- Edit the programmes so they're suitable for broadcast on the In-Cell platform;
- Arrange the relevant broadcast licenses with the PPL and PRS. This includes submitting the necessary monthly music consumption and listenership data to both companies.

**The Buyer commits to the below responsibilities:**

Submit a monthly audience report by the 15<sup>th</sup> of every month to **[REDACTED]** Report to include a breakdown of the number of prisons and prisoners involved in Digital Prisons, number of times each show has been streamed and for how long, as well as any relevant audience comments and data consumption for other programmes offered on the Digital Prison platform;

- Reimburse the PRA within 30 working days of receiving a valid invoice for any PPL and PRS licensing costs associated with NPR content broadcast on the Digital Prison service;

**Exit Management (Offboarding) Responsibilities:**

The Supplier and the Buyer will agree a decommission plan for ending this service within 40 working days of the Contract End Date, or within 40 working days of the Contract being terminated. The Parties (the Buyer and the Supplier) will notify the other Party of the intention to Exit this Contract by written

notification (provided as a written email). This will be in accordance with the Ending (termination) requirements in the Order Form of this Contract.

This decommissioning plan for this service will be proposed by the Supplier and agreed by the Buyer. Once agreed by the Buyer and the Supplier, this decommissioning plan will begin to be mobilised by both Parties.

## 6. CONTRACT CHANGE & TERMINATION

In all instances for Contract Change and Termination clauses within this Contract, written notification in the form of an email between the Parties (both the Buyer and the Supplier) is accepted as written notice.

6.1 Both Parties must give at least 40 working days' written notice of any required changes to the Contract.

6.2 This Contract can be extended by the Buyer by 1 period of up to 12 months, by giving the Supplier 40 working days written notice before the Contract End Date.

6.3 This Contract's total contract value cannot be extended beyond 50% of the original contract value (£134,000.00) at any time during this Contract, including under any extension period to this Contract.

6.4 All changes to the Contract are subject to HMPPS Digital, and Digital and Technology Assurance Triage budget approval, and must be agreed by both the Buyer and the Supplier (the Parties) before implementation. Agreement for these changes must be received in the form of written notice, provided by the Buyer to the Supplier, 40 working days in advance of any changes to be implemented to the services under this contract.

6.5 Both the Buyer and the Supplier must give at least 40 working days' written notice for Early Termination of Contract (Ending without Cause) to the other contracted Party.

6.6 Early Termination of Contract shall not incur any additional costs to either the Buyer or the Supplier to exit from this Contract. All charges throughout this Contract shall remain as outlined in this Order Form above, including under any extension period to this Contract.

6.7 Any outstanding Core Licensing Services or PPL (commercial music) charges owed by the Buyer shall be remedied as part of the Contract Offboarding plan before the Contract Termination Date and paid in full to the Supplier within 30 days of the Contract End Date.

**BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES** to enter a legally binding contract with the Customer to provide the Services. The Parties hereby acknowledge and agree that they have read the Order Form and by signing below agree to be bound by the terms of this Contract.

**For and on behalf of the Supplier:**

**For and on behalf of the Customer:**

Name and Title	[REDACTED]	[REDACTED]
Position	[REDACTED]	[REDACTED]
Signature	[REDACTED]	[REDACTED]

	.....	.....
Date	[REDACTED]	[REDACTED]

## **CONTRACT TERMS AND CONDITIONS**

**THIS CONTRACT** is made on the 30<sup>th</sup> day of October 2020.

### **BETWEEN**

#### **THE BUYER**

The Secretary of State for Justice  
The Ministry of Justice  
102 Petty France  
London  
SW1H 9AJ

**THE SUPPLIER** incorporated and registered in England and Wales with company number 05571624  
whose registered office is at:

10 Queen Street Place  
London  
EC4R 1BE  
United Kingdom

### **IT IS AGREED AS FOLLOWS:**

#### **1. Interpretation**

In these terms and conditions, unless the context otherwise requires:

- a. references to numbered clauses are references to the relevant clause in these terms and conditions;
- b. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- c. the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- d. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- e. the word 'including' shall be understood as meaning 'including without limitation'.

#### **2. Basis of Agreement**

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

#### **3. Supply of Services**

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

#### **4. Term**

- a. The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- b. The Customer may extend the Agreement for a period of up to 12 months by giving not less than 40 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

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

- a. The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- b. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- c. The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- d. In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- e. If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- f. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.



- g. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- h. Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
  - i. provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
  - ii. a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
  - iii. In this clause 5.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- i. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6. Premises and equipment**

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

## **7. Staff and Key Personnel**

- a. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
  - i. refuse admission to the relevant person(s) to the Customer's premises;
  - ii. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
  - iii. require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,and the Supplier shall comply with any such notice.

- a. The Supplier shall:
  - i. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - ii. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
  - iii. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- b. Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- c. Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

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

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

#### **9. Intellectual Property Rights**

- a. All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- b. All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to

the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

- c. The Supplier hereby grants the Customer:
  - i. a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
    - 1. any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and
    - 2. any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.
- d. The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

## **10. Governance and Records**

- a. The Supplier shall:
  - i. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
  - ii. submit progress reports to the Customer at the times and in the format specified by the Customer.
- b. The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

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

- a. Subject to clause 11.2, each party shall
  - i. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
  - ii. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

- b. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
  - i. where disclosure is required by applicable law or by a court of competent jurisdiction;
  - ii. to its auditors or for the purposes of regulatory requirements;
  - iii. on a confidential basis, to its professional advisers;
  - iv. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
  - v. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
  - vi. where the receiving Party is the Customer:
    - 1. on a confidential basis to the employees, agents, consultants and contractors of the Customer;
    - 2. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
    - 3. to the extent that the Customer (acting reasonably) deems disclosure necessary or
    - 4. appropriate in the course of carrying out its public functions; or
    - 5. in accordance with clause 12.

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

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

## **12. Freedom of Information**

- a. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
  - i. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

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

### **13. Protection of Personal Data and Security of Data**

- a. The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
- b. Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Supplier shall:
  - i. ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;
  - ii. provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
  - iii. promptly notify the Customer of:
    - 1. any breach of the security requirements of the Customer as referred to in clause 13.3; and
    - 2. any request for personal data; and
  - iv. ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.
- c. When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

### **14. Liability**

- a. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- b. Subject always to clauses 14.3 and 14.4:
  - i. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
  - ii. except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Supplier be liable to the Customer for any:
    - 1. loss of profits;
    - 2. loss of business;
    - 3. loss of revenue;
    - 4. loss of or damage to goodwill;
    - 5. loss of savings (whether anticipated or otherwise); and/or
    - 6. any indirect, special or consequential loss or damage.
  - iii. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
    - 1. death or personal injury caused by its negligence or that of its Staff;
    - 2. fraud or fraudulent misrepresentation by it or that of its Staff; or
    - 3. any other matter which, by law, may not be excluded or limited.
  - iv. The Supplier's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

## **15. Force Majeure**

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

## **16. Termination**

- a. The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- b. Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
  - i. (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
  - ii. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

- iii. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - iv. undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
  - v. breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;
  - vi. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
  - vii. fails to comply with legal obligations in the fields of environmental, social or labour law.
- c. The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
  - d. The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
  - e. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
  - f. Upon termination or expiry of the Agreement, the Supplier shall:
    - i. give all reasonable assistance to the Customer and any incoming supplier of the Services; and
    - ii. return all requested documents, information and data to the Customer as soon as reasonably practicable.

## 17. Compliance

- a. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- b. The Supplier shall:
  - i. comply with all the Customer's health and safety measures while on the Customer's premises; and
  - ii. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- c. The Supplier shall:
  - i. perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
  - ii. take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
- d. The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.

- e. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
  - i. the Official Secrets Acts 1911 to 1989; and
  - ii. section 182 of the Finance Act 1989.

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

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

#### **19. Dispute Resolution**

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

#### **20. General**

- a. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- b. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.



- c. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- d. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- e. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- f. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- g. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- h. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21. Notices**

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

## **22. Governing Law and Jurisdiction**

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

## DATA PROCESSING

The contact details of the Authority's Data Protection Officer are: [REDACTED]

*or*

Data Protection Officer, 102 Petty France, London, SW1H 9AJ.

1. The contact details of the Supplier's Data Protection Officer are: [REDACTED]  
Operations Manager, Prison Radio Association, HMP Brixton, Jebb Avenue, London SW2 5XF; [REDACTED]
2. The Supplier shall comply with any further written instructions with respect to processing by the Authority.
3. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<p><b><i>The Buyer will be the Controller and the Supplier shall be Processor of Personal Data under this Contract.</i></b></p> <p>The Parties acknowledge that the Buyer will be the Controller and the Supplier will be the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> <li>• <i>Voices, forenames, middle names, surnames, previous names, current and previous names of establishments where the individual has resided, current and previous names of establishments where the individual is or previously has presented NPR content, any individuals presenting NPR content live on air, or as part of a pre-recording to be played live on NPR, or any recordings of individuals presenting of NPR which are retained by the Buyer (the Authority) or the Supplier.</i></li> <li>• <i>Weekly programmes, including daily Prison News bulletins, to the Digital Hub, and complete management of scheduling and prominence on the Digital Hub;</i></li> <li>• <i>Provision of daily text version of the current Prison News stories;</i></li> <li>• <i>Tracklist metadata</i></li> <li>• <i>Electronic Programme Guide (EPG) content</i></li> <li>• <i>pre-roll advertising to raise prominence of key messaging</i></li> <li>• <i>Audience data for the monthly consumption and listenership data for listening to NPR content and PPL (Commercial music) by offenders in the establishments under this Contract</i></li> <li>• <i>Data and feedback for NPR content on the relevant Digital Hub Feedback channels</i></li> </ul>
Duration of the processing	<p>This processing will take place from the Contract Start Date (01<sup>st</sup> November 2020) to the Contract End Date (31<sup>st</sup> October 2022). If the contract is extended under an extension period under this contract, this processing will take place under this extension period as part of the delivery of these contracted services until the new Contract End Date.</p> <p>In the event of the Exit Plan being put into place, and this Exit Plan requiring full delivery beyond the Contract End Date, this Personal Data will be processed until the Exit activities are completed by both Parties under this Exit Plan.</p>
Nature and purposes of the processing	<p><i>This processing is to provide National Prison Radio services to the prison sites under this Contract Agreement, to support HMPPS Digital Hub in tracking audience data for listening to NPR content and PPL (Commercial music), and to provide data and feedback regarding NPR content to the relevant Digital Hub Leads on behalf of the Buyer.</i></p>
Type of Personal Data being Processed	<ul style="list-style-type: none"> <li>• <i>Voices, forenames, middle names, surnames, previous names, current and previous names of establishments</i></li> </ul>

	<p>where the individual has resided, current and previous names of establishments where the individual is or previously has presented NPR content, any individuals presenting NPR content live on air, or as part of a pre-recording to be played live on NPR, or any recordings of individuals presenting of NPR which are retained by the Buyer (the Authority) or the Supplier.</p> <ul style="list-style-type: none"> <li>• Weekly programmes, including daily Prison News bulletins, to the Digital Hub, and complete management of scheduling and prominence on the Digital Hub;</li> <li>• Provision of daily text version of the current Prison News stories;</li> <li>• Tracklist metadata</li> <li>• Electronic Programme Guide (EPG) content</li> <li>• pre-roll advertising to raise prominence of key messaging</li> <li>• Audience data for the monthly consumption and listenership data for listening to NPR content and PPL (Commercial music) by offenders in the establishments under this Contract</li> <li>• Data and feedback for NPR content on the relevant Digital Hub Feedback channels</li> </ul>
Categories of Data Subject	<p>This Data relates to:</p> <ul style="list-style-type: none"> <li>• Audiences for services under this contract, including offenders who are serving a custodial sentence at each prison site where each of the Supplier's services are being delivered under this Contract.</li> </ul>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>Unless requirement under union or member state law to preserve that type of data</p>	<p>The Supplier will not store any Personal Data under this contract. When Processing is finished, the Supplier's access to the data will be revoked by the Buyer. The Supplier access to the data will be revoked by the Buyer on the Contract End Date, or on the final day of any exit management activities under the Call-Off Contract Exit Plan, if any Exit Plan activities must take place after the Contract End Date.</p>